

PLANNED DEVELOPMENT PERMIT AMENDMENT

FILE NO.	PDA11-003-01
LOCATION OF PROPERTY	Southwest corner of Ruby Avenue and Aborn Road (Mirassou Property)
ZONING DISTRICT	A(PD) Planned Development
ZONING FILE NUMBER	PDC10-001
GENERAL PLAN DESIGNATION	Village Center (<i>Evergreen Planned Residential Community</i>)
PROPOSED USE	Planned Development Permit Amendment to allow for: 1) Architectural details for the renovation of the existing historic house and winery building, 2) commercial site design, 3) stormwater control plan for the entire site, and 4) tree removal plan for the entire 15.0 gross acre site.
ENVIRONMENTAL STATUS	Mirassou Mixed Use Development Final Environmental Impact Report (EIR) for File Nos. GP09-08-05 & PDC10-001
OWNER/ADDRESS	SummerHill Ruby Avenue, LLC 3000 Executive Parkway, Suite 450 San Ramon, CA 94583

FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. This subject site has a designation of Village Center (Evergreen Planned Residential Community) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The subject site is located within the Evergreen-East Hills Development Policy (EEHDP)
3. The EEHDP establishes a capacity for development of up to 500 new residential units, up to 500,000 square feet of commercial uses, and up to 75,000 square feet of office uses within the area covered by the policy.
4. The pool of new residential units is divided between 70% for small projects (35 units or less) and 30% for large projects (between 35 and 150 units) that meet the set forth criteria.

5. For consideration of a large project it must include one of the three following criteria; (1) affordable housing, (2) mixed-use, and (3) historic preservation in that, a project incorporates significant cultural resources either through preservation or integration of an identified historic structure.
6. The proposed project meets the criterion for historic preservation in that, the project incorporates the historic Mirassou Winery building, which is listed on the City of San Jose's Historic resources Inventory as a "Candidate City Landmark", and, although not listed on the Inventory, the project also includes preservation of the (Peter Mirassou) Heritage House and its surrounding landscaping, which were found to be historically significant.
7. The project site is located in the A(PD) Planned Development Zoning District. The Planned Development Zoning (File No. PDC10-001) was reviewed by the City Council and approved with Ordinance No. 28864 adopted December 14, 2010.
8. On July 29, 2011, the Director of Planning, Building, and Code Enforcement approved a Master Planned Development Permit (File No. PD11-003) that allowed for a conceptual street lay out, lotting pattern, demolition of existing structures, and grading for the future development of 104 residential units, 10,000 square feet of commercial uses, and the restoration and preservation of two (2) historic buildings on the subject 15.0 gross acre site.
9. This Planned Development Permit Amendment will allow for: 1) architectural details for the renovation of the existing historic house and winery building, 2) commercial site design, 3) stormwater control plan for the entire site, and 4) tree removal plan for the entire site.
10. This permit proposes the removal of all 120 trees on the subject site, which includes 63 ordinance sized trees.
11. In accordance with the City's standard tree replacement ratios, a total of 346 trees are required to be planted over the entire project site. As this Planned Development Permit Amendment will allow for the development of the landscape plan on the commercial portion of the project site only, 135 new trees are shown on the landscape plan. The remainder of the replacement trees will be required to be planted on the residential portion of the project site.
12. The subject lot contains approximately 15 gross acres and 11.9 net acres.
13. The site is developed with a vacant winery operation and includes; pavement, former vineyards, and some landscaping, and vacant residential structure, office, sales, production, and warehouse buildings.
14. The proposed project will meet all of the development regulations set forth in Planned Development Zoning, File No. PDC10-010, including but not limited to heights, setbacks, densities, open space, parking and environmental mitigation.
15. An Environmental Impact Report, "Mirassou Mixed-Use Development", was prepared for this project and certified on December 14, 2010, pursuant to the provisions of CEQA (Resolution No. 75657).
 - a. The project will have a significant effect on the environment regarding air quality, biotics, hazards and hazardous materials, noise, and traffic. Cumulative significant unavoidable impacts regarding traffic and air quality were covered under the "Final Supplemental Environmental Impact Report for the Revision to the Evergreen Development Policy" (including amendments, City of San Jose, December 2008), Resolution No. 74742, and the "Final Environmental Impact Report for the Evergreen-

East Hills Vision Strategy Project” (including amendments, City of San Jose, 2006), Resolution No. 73570.

16. This Planned Development Permit includes environmental mitigation measures that reduce any potentially significant impacts to a less than significant level.

FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan, in that:
 - a. The rezoning under File No. PDC10-001 were found consistent with the site’s San Jose 2020 General Plan Land Use Transportation Diagram land use designation of Village Center (Evergreen Planned Residential Community) in that mixed use development is an intended use under this designation. The proposed project is at a net density of 12.5 dwelling units per acre in the Village Center, which is consistent with the 12 -25 dwelling units per acre range identified for the Village Center designation.
 - b. The project furthers the General Plan’s Growth Management Major Strategy, as the project provides infill development within an urbanized area.
 - c. The project furthers the General Plan’s Housing Major Strategies by providing housing opportunities on infill property that is already served by existing urban services.
 - d. The project furthers the General Plan’s Urban Design Policy No. 3, as the development will include new streets with a sidewalk and park strip and provide a clear connection between existing surrounding uses and the subject site.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
 - a. The proposed project conforms to the approved General Development Plan.
 - b. The project incorporates the preservation and adaptive reuse of the historic Mirassou Winery building, which is listed on the City of San Jose’s Historic resources Inventory as a “Candidate City Landmark”, and, although not listed on the Inventory, the project also includes preservation of the (Peter Mirassou) Heritage House and its surrounding landscaping, which were found to be historically significant, to be used as a single-family residence.
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious, in that:
 - a. The Planned Development Zoning and its development standards were found consistent with the Residential Design Guidelines and the design guidelines contained in the Evergreen Specific Plan. This permit is in conformance with the zonings development standards.
4. After investigation and hearing held pursuant to Chapter 13.32 of the San José Municipal Code, the Director of City Planning finds:

- a. That the trees affected are of a size, type and condition, and are in such a location in such surroundings, that their removal would not significantly frustrate the purposes of Chapter 13.32; and
 - b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.
5. The environmental impacts of the project including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, which, even if insignificant for the purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties. Any potential negative effects on adjacent property or properties have been addressed in that:
- a. An Environmental Impact Report, “Mirassou Mixed-Use Development”, was prepared for this project and certified on December 14, 2010, pursuant to the provisions of CEQA (Resolution No. 75657).
 - b. The project will have a significant effect on the environment regarding air quality, biotics, hazards and hazardous materials, noise, and traffic. Cumulative significant unavoidable impacts regarding traffic and air quality were covered under the “Final Supplemental Environmental Impact Report for the Revision to the Evergreen Development Policy” (including amendments, City of San Jose, December 2008), Resolution No. 74742, and the “Final Environmental Impact Report for the Evergreen-East Hills Vision Strategy Project” (including amendments, City of San Jose, 2006), Resolution No. 73570.
 - c. Mitigation measures were made a condition of the approval of the project.
 - d. A Mitigation Monitoring and Reporting Program was adopted for this project.
 - e. A Statement of Overriding Considerations was adopted for this project. The City Council determined that the environmental impacts identified in the original EIR will not occur insofar as the proposed project is of smaller scale than that contemplated and described under the original Final EIR.

Based upon the above-stated finding and subject to the Conditions of Approval set forth below, the Director of Planning, Building, and Code Enforcement approves pursuant to Chapter 13.32 (Tree Removal Controls) and Part 8 of Chapter 20.100 (Planned Development Permits) of the San José Municipal Code, a Planned Development Permit Amendment to allow for 1) architectural details for the renovation of the existing historic house and winery building, 2) commercial site design, 3) a stormwater control plan for the entire site, and 4) a tree removal plan for the entire site.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and

- b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such four year period, a building permit has not been issued for the renovation of the Historic Mirassou Winery structure, pursuant to and in accordance with the provisions of this Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San Jose Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit for demolition and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **Conformance to Plans.** Development of the site shall conform to approved Planned Development plans entitled "**Master Planned Development Permit Amendment, for Lands of Mirassou Trust, a Mixed Use Development by SummerHill Homes**", dated June 24, 2011 and last revised on **July 26, 2011**, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.
6. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
7. **Conformance with Previously Approved Zoning and Environmental Clearance.** All conditions of approval and required environmental mitigation measures from the approved Planned Development Zoning, File No. PDC10-001, remain in effect.

8. **Previous Conditions.** All of the conditions of the previously approved Planned Development Permit (File PD11-003) shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted by this Amendment.
9. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
10. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San Jose Municipal Code.
11. **Planned Development Permit Amendment.** This Planned Development Permit Amendment approves 1) architectural details for the renovation of the existing historic house and winery building, 2) commercial site design, 3) a stormwater control plan for the entire site, and 4) a tree removal plan for the entire site. No Planning approval for residential buildings shall be issued by the Director of Planning, Building, and Code Enforcement unless and until a Planned Development Permit Amendment has been approved and all appeal periods have expired for:
 - a. The pedestrian and streetscape improvements along Ruby Avenue and Aborn Road (including proof of a joint marketing agreement between Shapell and Summerhill Homes to coordinate the place making elements including signage, landscaping, and lighting) and architecture for the attached townhomes along Ruby Avenue; and
12. **Tree Removals.** This permit allows for the removal of all 120 trees on the subject site, which includes 63 ordinance sized trees.
13. **Replacement Trees.** Trees are required to be planted to replace those removed as part of this proposal in accordance with the City's standard replacement ratio. Replacement trees are required to be placed on the site as shown on the approved landscape plan. Any alteration or modification to the landscape plan shall require the approval of the Director of Planning, Building, and Code Enforcement.
14. **Trees Removals - Permit Posting.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the applicant shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following:
 - a. The copy of the permit shall be a minimum size of 8.5 by 11.0 inches; shall be posted at each public street frontage within 2 feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the permit is readable from the public sidewalk or right-of-way; or
 - b. Presentation of Permit. During removal of any ordinance-size tree pursuant to this permit, the applicant shall maintain the validated permit on the site and present it immediately upon request by the Director of Planning, Building, and Code Enforcement, Police Officers, or their designee.
15. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape

Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

16. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
17. **Lighting.** On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy and shall use fully cut-off and fully shielded fixtures. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
18. **Public Works Clearance for Building Permits or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
19. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, **PDA11-003-01**, shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
20. **Fire Clearance for Issuing Permits.** The review is limited to verifying compliance of the project to Chapter 5, Appendix B and Appendix C of the 2007 California Fire Code with City of San Jose Amendments (SJFC). Additional review will be required at the building permit stage. All other code requirements for this project shall be reviewed and commented upon by both Fire and Building departments during the building permit process. Standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
21. **Reciprocal Parking.** A covenant of easement is required to allow for parking areas to be shared between the lot with the 7,500 square foot retail pad building and the lot with the Historic Mirassou Winery building.
22. **Signs.** No signage is approved with this Planned Development Permit Amendment. All proposed signage shall receive prior approval of a Sign Permit.
23. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

APPROVED and issued on this 7th day of September, 2011.

Joseph Horwedel, Director
Planning, Building, and Code Enforcement

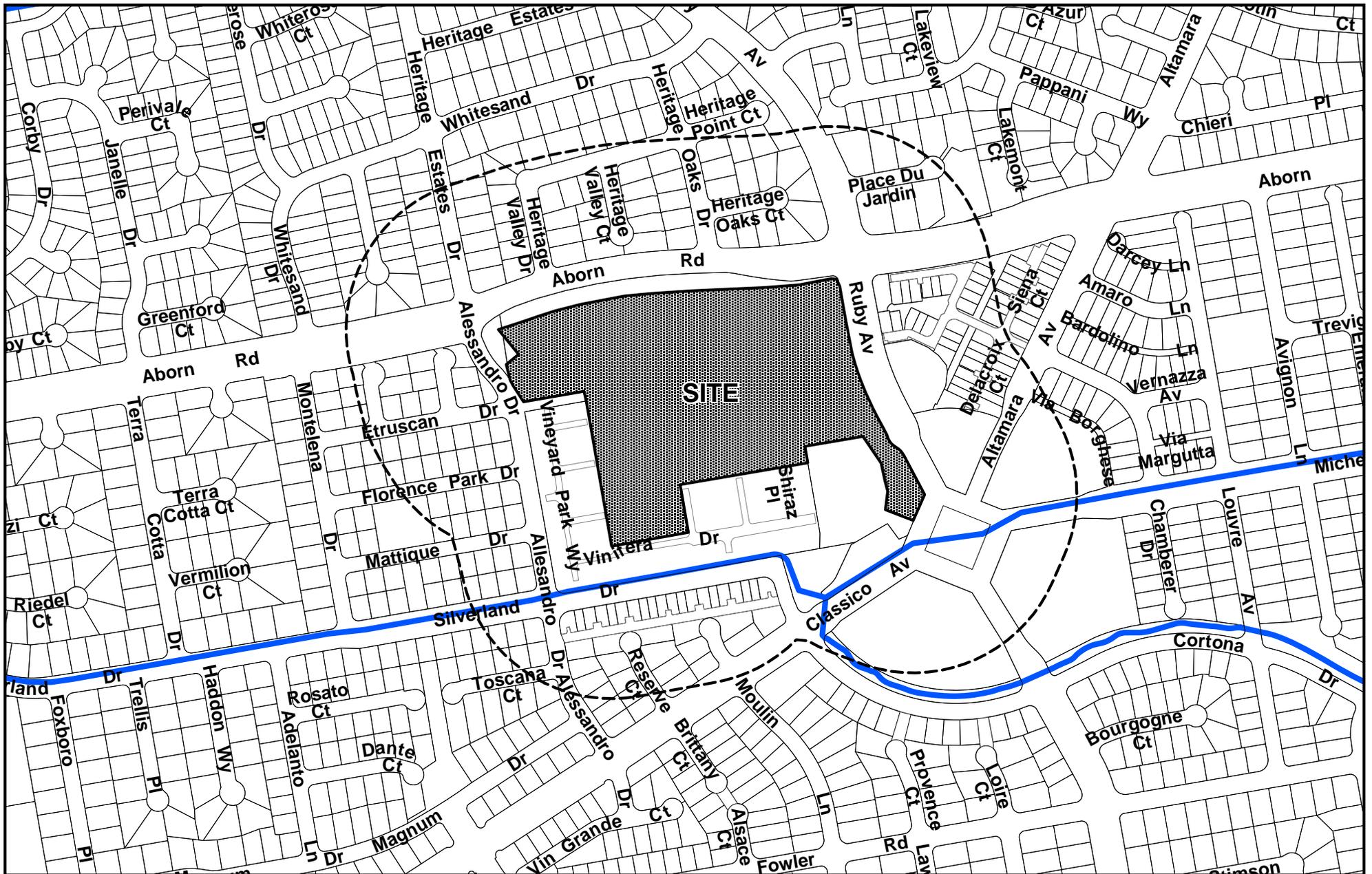
Deputy

PLEASE NOTE: Permit not valid for tree removal until after
September **19, 2011** and until countersigned below:

PERMIT VALID ON SEPTEMBER 19, 2011

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Deputy



File No: PDA11-003-01

District: 8

Noticing Radius: 500 feet

