

PLANNED DEVELOPMENT PERMIT AMENDMENT

FILE NO. PDA11-007-02

LOCATION OF PROPERTY West side of Old Oakland Road,
approximately 700 feet southerly of
Brokaw Road.

ZONING DISTRICT A(PD) Planned Development

ZONING FILE NUMBER PDC07-010

GENERAL PLAN DESIGNATION Medium High Density Residential (12-
25 DU/AC)

PROPOSED USE To allow for (1) a reduction in the
number of residential units previously
approved for the subject site from 275
units to 239 units, (2) changes in the site
plan layout, and (3) modifications to the
building architecture for the subject
15.94 gross acre site.

ENVIRONMENTAL STATUS Use of the Addendum to the Fox
Property General Plan Amendment
Environmental Impact Report (EIR),
File Nos. GP06-04-02 & PDC07-010.

OWNER/ADDRESS Markovits & Fox
c/o Fox Properties
14125 Capri Drive #43
Los Gatos, CA 95032

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 Medium High Density Residential (12-25 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. This application was filed on February 24, 2011 prior to the adoption of the Envision San Jose 2040 General Plan, and therefore is considered a “pipeline project” and analyzed under the policies of the San José 2020 General Plan.
3. The site is zoned A(PD) Planned Development. The Planned Development Zoning (File No. PDC07-010) was reviewed by the City Council and approved with Ordinance No. 28876 adopted January 11, 2011.

4. The project site is located within the North San José Area Development Policy area.
5. The subject site is currently undeveloped, relatively flat land.
6. The subject lot contains approximately 15.94 gross acres and 10.85 net acres.
7. The proposed residential density is 21.67 DU/AC.
8. The purpose of this Planned Development Permit Amendment is to allow for (1) a reduction in the number of residential units previously approved for the subject site from 275 units to 239 units, (2) changes in the site plan layout, and (3) modifications to the building architecture for the subject 15.94 gross acre site.
9. This Planned Development Permit will allow for the construction of 239 multi- and single-family attached residential units.
10. There are 31 street trees that will be removed in accordance with the process of the City Arborist for the removal of street trees on the subject development area. An additional seven (7) trees on the subject site will be removed as a part of this development permit.
11. The Planned Development Zoning (File No. PDC07-010) covers a larger 29.85 gross acre site. A minimum of 165 units and a maximum of 650 residential units are allowed over the entire site under this zoning. With the approval of the subject project, a maximum of 411 residential will remain available for development. The overall Planned Development Zoning included a commercial component that extends along the south side of Brokaw Road.
12. A street network was approved to place a new street between the subject residential site and the commercial site. Additionally, the plan provides for an internal street situated in such a manner that it serves as a frontage road between the development and the riparian corridor for at least a portion of the riparian area.
13. The approval of this Planned Development Permit Amendment for 239 units reserves development capacity for those units per the North San José Area Development Policy. Actual allocation of development capacity will be granted to the site upon issuance of Building Permits, at which time the Traffic Impact Fee is collected.
14. Per City Council action on the Status Report of housing unit reservation and allocation in the North San Jose Area Development Policy area on May 17, 2011, the subject site was specifically allocated 275 units for Phase I of the development project on the subject site.
15. The proposed project will meet all of the development regulations set forth in Planned Development Zoning, File No. PDC07-010, including but not limited to heights, setbacks, densities, parking and environmental mitigation.
16. An Initial Study completed for the proposed Planned Development Rezoning determined that the project will not have a significant effect on the environment and an Addendum to the Fox Property General Plan Amendment Environmental Impact Report (EIR) was prepared for the Planned Development Zoning, File No. PDC07-010. The Fox Property General Plan Amendment EIR was certified by the City Council on December 13, 2006 under File No. GP06-04-02, which covered subsequent development permits.

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 San Jose 2020 General Plan, in that:
 - a. The proposed development conforms to the site's San Jose 2020 General Plan Land Use/Transportation Diagram designation of Medium High Density Residential (12-25 DU/AC) in that the proposed use has a density of 24.09 DU/AC and is compatible with the surrounding area.
 - b. 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.
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 will include two new publicly accessible streets with sidewalks and park strips.
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 this permit require that the architectural design of the houses conform to the standards of the Residential Design Guidelines and the proposed structures meet the criteria identified for garden townhouse product type.
 - b. Landscaping will be provided along both sides of Street B to maintain an attractive appearance along the interim industrial park edge of the street.
4. Pursuant to Chapter 13.32 of the San José Municipal Code Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts,
 - a. The removal of 7 trees, of which all are ordinance sized, are proposed as part of the subject development. The trees affected are in such a location in such surroundings that their removal would not significantly frustrate the purposes of Section 13.32.010 of the San Jose Municipal Code in that the location of the trees with respect to the proposed improvement unreasonably restricts the economic development of the subject property.
 - b. That the location of the trees 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 Initial Study completed for the proposed Planned Development Rezoning (File No. PDC07-010) determined that the project will not have a significant effect on the environment and therefore an Addendum to the Fox Property General Plan Amendment Environmental Impact Report (EIR) was prepared. This EIR was certified by the City Council on December 13, 2006 under File No. GP06-04-02.
 - b. The project will not result in any reasonably foreseeable environmental impacts.
 - 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.

Based upon the above-stated findings and subject to the Conditions of Approval set forth below, the Director of Planning, Building, and Code Enforcement approves pursuant to Part 8 of Chapter 20.100 (Planned Development Permits) and Chapter 13.32 (Tree Removal Controls) of the San José Municipal Code, a Planned Development Permit to allow for the removal of 14 on-site trees and the construction of 239 multi- and single-family attached residences per the approved plans on the subject 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, the proposed use of this site or the construction of buildings has not commenced, 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, for site and architectural design, only, and not an extension on the reservation of residential units, 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 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.** Except as noted under condition no. 6 below, development of the site shall conform to approved Planned Development plans entitled "*Brokaw Road and Old*

Oakland Road Redevelopment” dated July 23, 2012 and last revised on **October 10, 2012**, 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. **Permit Adjustment Required.** The developer shall secure and agree to implement a Permit Adjustment to the satisfaction of the Director of Planning prior to the issuance of a Building Permit as noted below:
 - a. Provide back of sidewalk landscape planting, including trees and shrubs, with appropriate automatic irrigation for the area on the north side (industrial site) of new Street B as depicted on sheet 3.1 of the plan set.
7. **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.
8. **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. PDC07-010) remain in effect.
9. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
10. **Phased Development.** This permit approves Phase I of a project on a portion of a larger development site as approved under the Planned Development Rezoning (File No. PDC07-010). Building permits for at least 100,000 square feet of retail use shall be obtained prior to or concurrent with obtaining the planning permits for the additional 411 residential units on the larger site for which the Planned Development Zoning (File No. PDC07-010) was approved in December 2010.
11. **Expiration of Development Capacity.** This Planned Development Permit allows for the construction of Phase I of a larger project as approved under the Planned Development Rezoning (File No. PDC07-010). This Planned Development Permit reserves 239 residential units of the development capacity within the North San Jose Area Development Policy. Reservation of this development capacity shall expire on May 18, 2014 unless a building permit is obtained and construction has commenced with concrete poured.
12. **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.
13. **South Bay Water Recycling (SBWR).** The development is adjacent to an existing recycled water pipeline and therefore must conform to Chapters 15.10 and 15.11 of the San Jose Municipal Code. These chapters require all new and rehabilitated landscaping for projects that require a development permit from the City to be designed and constructed to receive recycled water. All irrigation systems shall be metered separately from the potable water supply system, shall have no on-site cross-connections to the potable water supply and shall meet all other legal requirements necessary to allow for recycled water use. The use of potable water to irrigate any outdoor landscaping plumbed for recycled water where recycled water is available to the property is prohibited.
 - a. The design and construction of the irrigation system must conform to South Bay Water Recycling (SBWR) Rules and Regulations and must be submitted to and approved by SBWR. Standard Details, specifications and notes are available online at www.sanjoseca.gov/sbwr or by calling (408) 277-3671. You should also consider using

recycled water in lieu of drinking water for other non-potable applications such as toilet flushing, commercial laundry, and building cooling. Please visit SBWR's website for a complete list of approved uses of recycled water. Questions regarding recycled water use should be directed to SBWR staff at the above number.

14. **Public Works Clearance for Building Permit(s) 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.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation:**
 - i. An area wide traffic impact analysis was prepared as part of the North San Jose Area Development Policy, adopted June 2005. Traffic impacts were identified and resulted in an area wide traffic impact fees. This project is covered under the North San Jose EIR.
 - ii. Consistent with North San Jose EIR, this project is required to pay a traffic impact fee. The 2011 fee is \$11,332 per PM Peak Hour trip or \$6,800 per multi-family unit and subject to an annual escalation of 3.3% on July 1st. This fee must be paid prior to issuance of Public Works Clearance. Credits for existing structures on site will be applied to the residential traffic impact fee consistent with the policy and will be prorated with each building permits issued.
 - c. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iii. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - iv. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

- v. All on-site storm drainage conveyance facilities and earth retaining structures shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2010 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.
- e. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- f. **Assessments:** A portion of this project is located within the boundaries of Maintenance District 11 which maintains the enhanced street island landscaping along a portion of Brokaw Road and Old Oakland Road. The benefiting properties within the district pay for the maintenance through annual assessments placed on the property tax bills which are adjusted annually by the Consumer Price Index. The 2010-11 assessment on assessor's parcels 237-03-061 and 237-03-069 is calculated at approximately \$327 per acre. A change in zoning to allow residential on the vacant land creates a corresponding change in benefit, since the project matches other land uses within the district and fronts the enhanced street islands on Brokaw Road and Old Oakland Road. This property may be required to annex into the district because of the benefit received by the special district amenities. For consideration, the current assessment for single family homes is \$49 per unit.
- g. **Transportation Improvements:**
 - i. Remove up to 10' of existing median island nose on Brokaw Road at Brokaw / Oakland Road intersection.
 - ii. Construct new traffic signal at Oakland Road and "Street B". "Street B" should align with the existing driveway across the street.
 - iii. Install signal interconnect conduit and communications cable per City standard to interconnect the signal at Brokaw/Oakland and the new traffic signal.
 - iv. Install signal interconnect conduit and pull boxes per City standard along Oakland Road project frontage.
 - v. No parking shall be allowed along Old Oakland Road.
- h. **Street Improvements:**
 - i. Extend and reconstruct existing 21" sanitary sewer pipe in Oakland Road from onsite lateral to existing manhole near Brokaw and Oakland Road.
 - ii. Extend storm system along Oakland Road from onsite lateral to Brokaw Road. Provide 10-year storm calculations at improvement plan stage.

- iii. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - iv. Remove and replace broken or uplifted curb, gutter, and construct a 12' wide attached sidewalk along Oakland Road project frontage.
 - v. Close unused driveway cut(s).
 - vi. Install City standard handicap ramps with truncated domes at all four corners of Brokaw/Oakland Road intersection.
 - vii. All proposed public improvements shall conform to City standards.
 - viii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - i. **Median Island Improvements:** Developer is required to construct Type 1 landscaped median on Old Oakland Road along project frontage per City standards; refer to the current "Guidelines for the Planning, Design and Construction of City Streetscape Projects". Upon successful completion of the median island, the City will reimburse the developer for the cost of the construction pursuant to the Residential Construction Tax Contribution Fund Program, in accordance with section 4.64.100 of the Municipal Code.
 - j. **Private Streets:** Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.
 - k. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - l. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only. Contact the City Arborist at (408) 277-2756 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings.
15. **Full Public Access for Streets A & B.** Full public access for Streets A & B (as described under the approved Planned Development Zoning) shall be provided for segments constructed under this Planned Development Permit. The developer shall fully disclose to buyers of residential units that Street A will be connected to Brokaw Road as part of a future phase and that through public access from Brokaw Road to Oakland Road shall be accommodated. In addition, all parking spaces along Street A directly adjacent to the future park shall be made available for general public use.
16. **Parkland Dedication Ordinance.** This development is subject to the requirements of the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code,) for the dedication of land or payment of fees in lieu of the dedication of land for park purposes, under the formula contained with that Chapter. Prior to approval of the Final Map or final building permits for this development, the applicant shall enter into a parkland agreement with the City to the satisfaction of the Director of Parks, Recreation and Neighborhood Services in order to fulfill the requirements of the Parkland Dedication Ordinance.

17. **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. *Park Impact Fees.* The applicant shall provide evidence to the Chief Building Official that the applicant has entered into a parkland agreement with the City to the satisfaction of the Director of Public Works in order to fulfill the requirements of the Parkland Dedication Ordinance, pursuant to Ordinance 24172 (Chapter 14.25 of Title 14 of the San José Municipal Code).
 - b. *Construction Plans.* This permit file number, **PDA11-007-02**, shall be printed on all construction plans submitted to the Building Division.
 - c. *Permit Adjustment.* The developer shall comply with condition no. 6 of this permit prior to the issuance of a building permit.
 - d. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - e. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - f. *Street Number Visibility.* Street numbers of the buildings shall be easily visible at all times, day and night.
 - g. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
18. **Green Building.** The development is subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued for the construction of residential buildings approved through the scope of this Planned Development Permit, the applicant shall pay a Green Building Refundable Deposit applicable to the gross square footage for the buildings approved through this Planned Development Permit. The project must receive the minimum green building certification of LEED Certified or GreenPoint Rated, 50 points. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
19. **Fire Clearance for Issuing Permits.** The Fire Department's review was limited to verifying compliance of the project to Chapter 5, Appendix B, and Appendix C of the 2010 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
20. **Construction Impact Mitigation Measures.** The applicant is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction activities in compliance with these conditions, or be subject to enforcement action.
 - a. *Compliance.* The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply

with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.

- b. *Construction Hours.* Construction and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m.
- c. *Plans.* The construction hours shall be printed on all plans for the project used to construct the project.
- d. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.
- e. *Construction Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
- f. *Fencing.* The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during all other times, except for a 30-minute period immediately preceding and following the above hours of construction.
- g. *Assembly Area.* Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
- h. *Disturbance Coordinator.* A Construction/Disturbance Coordinator shall be identified by the developer for this project. The Construction/Disturbance Coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also compile information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem in a timely manner. The coordinator shall maintain a log of calls and shall make that log available to the City of San Jose upon request.
- i. *Construction Equipment.* Equip all internal combustion engine-driven equipment with mufflers which are in good condition and appropriate for the equipment.
 - i. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists.

- ii. Locate stationary noise-generating equipment as far as possible from sensitive receptors. Staging of construction equipment will be as far as feasible from the sensitive receptors.
- iii. Prohibit unnecessary idling of internal combustion engines.
- j. *Posting of Telephone Number.* The name and phone number of the construction/Disturbance coordinator, the hours of construction limitations, City File Number PD11-007, City contact and phone number shall be displayed on a weatherproof sign posted at each entrance to the project site. A local phone number with answering service shall be maintained during the duration of project construction.
- k. *Street Cleaning and Dust Control.* During construction, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
- l. *Construction Watering.* The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during construction to the satisfaction of the Director of Public Works.
- m. *Recycling.* Scrap construction and demolition material should be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

Air Quality Mitigation Measures:

- n. Water all active construction areas at least twice daily.
 - o. Water or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
 - p. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
 - q. Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
 - r. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
 - s. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
 - t. Enclose, cover, water twice daily, or apply non-toxic soil binder to all exposed stockpiles (dirt, sand, etc.).
 - u. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - v. Replant vegetation in disturbed areas as quickly as possible.
21. **Environmental Mitigation.** The applicant is responsible for notifying all contractors of the environmental mitigation conditions of this permit and that they shall perform construction activities in compliance with these conditions, or be subject to enforcement action.

Air Quality

- a. Allow only natural gas fireplaces, pellet stoves, or EPA-certified wood-burning fireplaces or stoves in residences. Conventional open-hearth fireplaces should not be permitted. EPA-certified fireplaces and fireplace inserts are 75 percent effective in reducing emissions from this source;
- b. Utilize reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand; and
- c. Provide transit passes to new residents.
- d. Provide secure and conveniently placed bicycle parking.

Biological Resources

- e. No trees are proposed to be removed as part of this project.
- f. No construction shall occur in Coyote Creek during the steelhead spawning season and rainy season (generally October 15 through June 14), when most runoff water would enter the channel.
- g. A meeting discussing the identification of steelhead and the purpose of implementing precautionary measures to avoid impacts to steelhead is required with on-site workers prior to the start of construction.
- h. No materials or equipment shall be staged within the Coyote Creek channel. All materials and equipment shall be staged at least ten feet from the top of the creek bank.
- i. Open trenches or pipes at water level shall be covered or some escape method (e.g., escape board) placed within the trench or pipe at the end of each workday. Doing so would preclude steelhead from being trapped in the trench or pipe after working hours. The filling of any trenches shall be monitored by a qualified biologist.
- j. Best management practices (BMPs) shall be implemented during construction to prevent any construction debris or sediment from entering the creek channel.
- k. A biological monitor shall be present on-site during construction within potentially suitable habitat to ensure that no steelhead are harmed, injured, or killed during project build out.
- l. A meeting discussing the purpose of implementing precautionary measures to avoid impacts to western pond turtles is required with on-site workers prior to the start of construction.
- m. Pre-construction surveys shall be completed to ensure that western pond turtles are absent from the construction area supporting potentially suitable habitat prior to ground disturbance.
- n. The construction zone shall be cleared, and silt fencing shall be erected and maintained around construction zones to prevent western pond turtles from moving into these areas.
- o. A biological monitor shall be present on-site during construction within potentially suitable habitat to ensure that no western pond turtles are harmed, injured, or killed during project build out.
- p. In conformance with federal and state regulations regarding protection of raptors, it is the City of San José's practice to require that appropriate preconstruction surveys for raptors be completed prior to any development on sites where it is reasonable to assume that such

species may be located. The preconstruction surveys are used to verify the presence/absence of breeding raptors and the surveys must follow California Department of Fish and Game protocols.

- i. Pre-construction surveys for nesting raptors shall be completed on the site prior to any disturbances that occur during the nesting season (February 1 through August 31) to ensure that raptors are not harmed, injured, or killed as a result of any future development project. These surveys would entail evaluation of all trees within approximately 250 feet of proposed ground disturbance. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.
- q. In the event that construction activities are within Coyote Creek and its riparian corridor area as a result of removal or reconstruction of the outfall, actions shall be taken to minimize impacts to the riparian corridor during construction. Measures taken during construction activities shall include placing construction fencing around the riparian area(s) to be preserved to ensure that construction activities do not inadvertently impact these areas.
- r. All proposed lighting should be designed to avoid light and glare impacts to the riparian corridor. Light sources should not be visible from riparian areas and should not illuminate riparian areas or cause glare on the opposite side of Coyote Creek (e.g., to neighboring properties and Schallenberger Road).
- s. In the event that construction activities are within Coyote Creek as a result of removal or reconstruction of the outfall compensatory mitigation will be required to offset temporary and permanent impacts to the riparian corridor of Coyote Creek as a result of removal or reconstruction of the outfall. These measures will include 1) the creation of new habitat, either on-site or offsite, as replacement for habitat lost; or 2) enhanced quality of existing riparian habitat for native plants and wildlife. This mitigation shall include a replacement-to-loss ratio of up to 3:1 for permanent acreage impacts (three acres created for each acre impacted) as well as reseeded of vegetation for temporarily impacted areas. This mitigation could include the enhancement of on-site riparian habitat for minimal impacts or the implementation of offsite efforts along a nearby tributary for larger impacts. The exact compensation measures needed may vary depending on the final project design.
- t. The applicant shall comply with all state and federal regulations related to removal or replacement of the outfall, which will impact Coyote Creek and its riparian corridor. This may require obtaining a Section 404 Clean Water Act permit from the USACE, Section 401 Water Quality Certification from the RWQCB, and Section 1602 Streambed Alteration Agreement from the CDFG prior to initiating any construction, if deemed necessary, and fulfilling the mitigation requirements of these permits.

Cultural Resources

- u. Any earth-disturbing activities in the northern portion of the project site near the existing office buildings, outside of the consolidation cells, will be monitored by a qualified professional archaeologist under an Archaeological Monitoring Agreement until the professional is satisfied that construction will not disturb important archaeological deposits. The Agreement shall include advanced notification of earth-moving in the recommended area to be monitored, monitoring of all earth-moving activities that would require a grading or demolition permit, authority of the archaeological monitor to halt and/or relocate construction activities if significant archaeological materials or human remains are uncovered, and time and funding for activities related to evaluation, collection, recordation, analysis and reporting of any discovered archaeological materials.
- v. If any significant cultural materials are exposed or discovered during site preparation or subsurface construction activities, operations shall stop within 50 feet of the find and a qualified professional archaeologist contacted for evaluation and further recommendations. The archaeologist's recommendations shall be presented to the Director of Planning, Building and Code Enforcement for consideration. Potential recommendations could include evaluation, collection, recordation, analysis, and reporting of any significant cultural materials.
- w. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American.
 - i. If the Coroner determines that the remains are not subject to his/her authority, the Native American Heritage Commission shall be notified to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location no subject to further subsurface disturbance.
- x. If the Director of Planning Building and Code Enforcement finds that the archaeological discovery is not a significant resource, work would resume only after submittal of a preliminary archaeological report and after provisions for reburial and ongoing monitoring are accepted.
 - i. A final report would be prepared when a find is determined to be a significant archaeological site, and/or when Native American remains are found on the site. The final report will include background information on the completed work, a description and list of identified resources, the disposition and curation of these resources, any testing, other recovered information, and conclusions.

Geology and Soils

- y. Design and construct buildings in accordance with a design-level geotechnical investigation to be prepared for the project site, which shall identify the specific design features that will be required for the project, including site preparation, compaction, trench excavations, foundation and subgrade design, drainage, and pavement design. The geotechnical investigation shall be reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance for the project.

- z. Implement standard grading and best management practices to prevent substantial erosion and siltation during development of the site.
- aa. The project shall be designed and constructed in conformance with the Uniform Building Code guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking and seismic-related hazards on the site.
- bb. Extension of public utilities and infrastructure to serve the development would be required to be designed to withstand seismic and structural damage in conformance with General Plan policies.

Noise

- cc. Use sound rated windows, doors and exterior wall assemblies in commercial buildings to reduce interior noise to the General Plan noise goal of 45 dBA DNL or lower. Specific ratings shall be determined as part of the design-level acoustical analysis based on building locations and orientations, room sizes, and window sizes.
- dd. Sound-rated windows, doors, and exterior wall assemblies in residences will be required for future development on the site to reduce interior noise from exterior sources to the day-night noise level 45 dBA criterion. Preliminary estimates of window and door Sound Transmission Class (STC) ratings need to achieve an interior day-night noise level of 45 dBA suggest that sound insulation ratings in the range of STC 35 to 37 may be needed in units along Oakland Road. In the interior shielded portions of the site, typical dual-pane construction-grade windows, without specific higher STC ratings, may be adequate reduce interior noise levels to acceptable levels. The exact required STC ratings will be determined as part of the design-level acoustical analysis of specific development proposed on the site.
- ee. Attached residential units are required to have ventilation or an air-conditioning system to provide a habitable interior environment with the windows closed. The system must not compromise noise insulation of exterior wall assemblies.
- ff. Depending on the location and exposure to the UPRR track, shell assemblies of residential buildings may need to include double-stud exterior walls with added layers of gypsum board, and windows with sound insulation ratings in the range of STC 44 to 50 or higher. Noise barriers could also be used to reduce noise levels for ground floor receivers, although the barriers would have little or no effect for second-floor units and above in podium buildings. Specific achievable and measurable noise goals and noise reduction measures shall be developed during the design phase to achieve maximum single-event noise levels of 50 dBA in sleeping rooms and 55 dBA in other living spaces. These measures will be reviewed and approved by the Director of Planning, Building, and Code Enforcement prior to the issuance of a building permit(s).
- gg. Units shall be arranged so that the least noise-sensitive spaces are located closest to the railroad tracks. Kitchens, living rooms, closets, and bathrooms located on the railroad side of buildings proposed near the UPRR tracks, would provide a buffer for more sensitive spaces such as bedrooms. Bedrooms should be located to avoid a direct line-of-sight to the UPRR tracks.
- hh. Prospective residents shall be advised in disclosure and/or lease documents of the presence of high noise levels on the site due to train pass bys.

- ii. Reasonable measures should be taken to stiffen the residential structures. For example, deeper and stiffer joists than would otherwise be used, joists should be spaced more closely than normal, and the span of unsupported floor joists should be limited to a maximum of 15-feet. These measures would reduce the potential for amplification of vibration by increasing the natural frequency of the floors. A structural engineer shall be consulted regarding the feasibility of these measures.
 - jj. Additional ground-borne vibration measurements shall be conducted at the site during the design phase and prior to the issuance of a building permit(s) to ensure that the proposed building locations would not be subject to vibration levels exceeding FTA guidelines.
22. **Homeowner's Association/Maintenance District.** A Homeowner's Association or Maintenance District shall be established for maintenance of all common areas, including, private streets, pedestrian walkways, easements, back up landscaping areas that are not dedicated, etc. The applicant shall provide to the Homeowners Association a copy of the Development Permit, the accompanying Plan Set, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans within 30 days of completion of each construction phase.
23. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans and the related required Permit Adjustment. 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.
24. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San Jose Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
25. **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.
26. **Storm Water Stenciling.** All drain inlets shall be labeled "No Dumping—Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
27. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any changes in the materials or architectural elements shown shall require the approval by the Director of Planning, Building, and Code Enforcement.
28. **Lighting.** On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
29. **Fencing.** Fence height and materials shall be as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
30. **Roof Equipment.** All roof equipment shall be screened from view.

31. **Garage Parking Spaces.** All garage parking spaces shown on the approved plan set are to be used only as such and shall be kept free and clear of all obstructions that prevent parking of vehicles.
32. **Tract Sales Office/Model Homes.** This permit does not include the approval of a tract sales office/model homes complex. Such use requires a Permit Adjustment approved by the Director of Planning.
33. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

APPROVED and issued on this **14th day of November, 2012.**

Joseph Horwedel, Director
Planning, Building, and Code Enforcement

Deputy

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