

## PLANNED DEVELOPMENT PERMIT

**FILE NO.** PD12-010

**LOCATION OF PROPERTY** The southwest side of Carol Drive, approximately 900 feet west of Highway 87 (2661 Carol Drive)

**ZONING DISTRICT** A(PD) Planned Development

**ZONING FILE NUMBER** PDC07-018

**GENERAL PLAN DESIGNATION** Single-Family Residential (1 DU/AC) (Communications Hill Planned Community)

**PROPOSED USE** Master Planned Development Permit for the development of 2 single-family detached residences on a 1.67 gross acre site.

**ENVIRONMENTAL STATUS** Use of the Mitigated Negative Declaration for File No. PDC07-018

**OWNER/ADDRESS** Roman and Monnaree Avila  
1790 Commodore Drive  
San Jose, CA 95133

### 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 Rural Residential (up to 2 DU/AC; match existing land use pattern)(*Communications Hill Specific Plan*) on the adopted San José 2040 General Plan Land Use/Transportation Diagram.
2. San José 2040 General Plan, Implementation Policy IP-1.4 states that the implementation of existing planned development zonings and/or approved and effective land use entitlements, which were previously found to be in conformance with the General Plan prior to its comprehensive update, are considered as being in conformance with the *Envision San Jose 2040 General Plan* when the implementation of such entitlements supports its goals and policies.
3. At the time of approval of the Planned Development Zoning of the subject site, the site had a designation of Single-Family Residential (1 DU/AC) (*Communications Hill Planned Community*) on the San José 2020 General Plan Land Use/Transportation Diagram.

4. The site is zoned A(PD) Planned Development. The Planned Development Zoning (File No. PDC07-018) was reviewed by the City Council and approved with Ordinance No. 28756 adopted June 22, 2010.
5. The proposed residential density is 1.2 DU/AC.
6. The subject lot contains approximately 1.67 net acres.
7. The site is currently developed with one (1) single-family detached residence, which is proposed to be demolished with this permit.
8. The project proposes the development of two (2) single-family detached units on the subject site.
9. The project includes the removal of seven (7) trees from the site, which include two (2) ordinance sized trees.
10. The Planned Development Zoning requires a two (2) car garage for each unit and establishes setbacks for individual lots.
11. The proposed project will meet all of the development regulations set forth in Planned Development Zoning, File No. PDC07-018, including but not limited to heights, setbacks, densities, parking and environmental mitigation.
12. An Initial Study was prepared for this project, and the Director of Planning circulated a Mitigated Negative Declaration for public review that was adopted on June 15, 2010. The key issues addressed in the Initial Study included the impacts of air quality, geology and soils, hazards and hazardous materials, and noise on the site. The project includes 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 San Jose 2020 General Plan, in that:
  - a. The proposed development conforms to the site's General Plan Land Use/Transportation Diagram designation in that the proposed use and density of 1.2 DU/AC are consistent with the sites Single-Family Residential (1 DU/AC) (*Communications Hill Planned Community*) land use designation and the following goals and policies of the San Jose 2020 General Plan:
    - i. Hillside Development Policy No. 5, as the project is a Planned Development Zoning that will allow for the clustering and/or limiting development to areas of the on areas of this hillside site that are not as steep by employing flexible design techniques such as varied lot sizes and setbacks to prevent development on minimize damage to the natural environment and protect more of the hillside.
    - ii. Residential Land Use Policy No. 18, which notes that flag lots are appropriate for hillside settings as a way to reduce the grading impacts that would otherwise be caused by the creation of additional public streets which most typically serves single-family houses.

- 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.
    - c. The project maintains the existing pattern of development in the immediate vicinity.
  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.
  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 shall conform to the standards of the Single-Family Design Guidelines.
    - b. The project conforms to the intent of the Communications Hill Specific Plan.
    - c. The project conforms to the key principles of the City's Flag Lot Policy.
  4. Pursuant to Section 20.80.460 of the San José Municipal Code the following criteria have been considered by the Director of Planning to determine whether the benefits of permitting the demolition of the existing building outweighs the impacts of demolition:
    - a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
    - b. The failure to approve the permit would jeopardize public health, safety or welfare;
    - c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
    - d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
    - e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
    - f. Rehabilitation or reuse of the existing building would not be feasible; and
    - g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.
  5. After investigation pursuant to Chapter 13.32 of the San José Municipal Code, the Director of City Planning finds that the affected trees are of a size, type and condition, and in such a location and in such surroundings that removal would not significantly frustrate the purposes of the Chapter as set forth in Section 13.32.010 of the San Jose Municipal Code in that the trees restrict the economic development of the property.
  6. Based upon the above-stated finding, the Director of Planning approves the subject proposal to allow the removal of two (2) ordinance size trees subject to the conditions included in this permit.

7. 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. A Mitigated Negative Declaration that was adopted on June 15, 2010 addressed the environmental impacts of this project.
  - b. The project will not result in any reasonably foreseeable environmental impacts.

Further, the Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that the proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.

Based upon the above-stated finding and subject to the Conditions of Approval set forth below, the Director of Planning approves, pursuant to the San José Municipal Code Section 20.80.460 (Demolition), Part 8 of Chapter 20.100 (Planned Development Permits) and Chapter 13.32 (Tree Removal Controls), a Planned Development Permit allow for the demolition of existing structures on the site and the development of two (2) single-family detached residences.

**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:
2. Acceptance of the Permit by the applicant; and
3. 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.
4. **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 demolition 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 in accordance with Title 20 of the San Jose Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
5. **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.

6. **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.
7. **Conformance to Plans.** Development of the site shall conform to approved Planned Development plans entitled "*Planned Development Permit for 2661 Carol Drive*" last dated *May 12, 2010*, 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.
8. **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.
9. **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. PDC07-018) remain in effect.
10. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
11. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
12. **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. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
  - b. **Transportation:** This project is exempt from the Level of Service (LOS) Policy, and no further LOS analysis is required because the project proposes 2 Single Family detached units.
  - c. **Grading/Geology:**
    - i. A geologic hazard clearance has been issued, and the project is subject to its requirements and expiration date.
    - ii. A grading permit is required prior to the issuance of a Public Works Clearance.

- iii. 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.
  - iv. 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.
  - v. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
  - vi. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit.
  - vii. 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.
  - viii. Retaining walls not tied to the building structure will be reviewed by Public Works and approved as part of the grading and drainage plan. Retaining wall design review, special inspection and payment of related fees will be required prior to permit issuance for the retaining walls.
- 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.
- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- 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. **Storm:**

- i. This project plans to retain storm runoff such that there is no increase from pre-project to post-project levels then storm runoff storage volumes shall be designed to a 10-year event.
- ii. Stored runoff will need to be dispersed throughout the site and overland release easements retained for any water that is not historically draining into neighboring properties.

g. **Sanitary:**

- i. The project proposes a sanitary sewer pipe in private easements, as well as an on-site sanitary sewer pump and /or lift stations. These approvals are under the authority of the Building Division.
- ii. Prior construction of the proposed sanitary sewer line all necessary easements that support the proposed sanitary sewer plan shall be secured and in place.

13. **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 payment of fees in lieu of the dedication of land for park purposes, under the formula contained with that Chapter.
14. **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, **PD12-010**, 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).
  - c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - d. *Street Number Visibility.* Street numbers of the buildings shall be easily visible at all times, day and night.
  - e. *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.
15. **Green Building.** Prior to the issuance of any shell or complete building permits for the construction of buildings approved through the scope of this Planned Development Permit, the applicant shall submit either a LEED or Build it Green, green building checklist for the each of the residential units which are approved through this Permit.
16. **Fire Clearance for Issuing Permits.** Compliance with all 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.

17. **Fire Retardant Roof.** All buildings shall have fire retardant roofs subject to the satisfaction of the Fire Chief.

18. **Environmental Mitigation.**

- a **Air Quality.** The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site.
- i. Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from the leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
  - ii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
  - iii. Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
  - iv. Sweep daily (or more often if necessary) to prevent visible dust from leaving the site (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality; and
  - v. Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
  - vi. The planned disturbance at the site exceeds one acre in size, and the presence of NOA has been confirmed on the site at a content level that exceeds .25%. In conformance with BAAQMD regulations, the project shall therefore follow Asbestos Airborne Toxic Control Measure standards, which include the preparation of an Asbestos Dust Mitigation Plan, submittal of a permit application to the BAAQMD, and implementation of a stabilization measures to reduce the release of asbestos fibers. The stabilization measures may include capping of disturbed areas with structured, hardscape, NOA-free soils, or establishment of a vegetative cover.
- b **Geology and Soils.**
- i. The project shall incorporate all recommendations set forth in the geotechnical investigation prepared for the development by TRC, dated April 15, 2009, and in the report entitled Geologic Hazards Assessment, 2661 Carol Drive, San Jose, California prepared by Strategic Engineering & Science, Inc., dated June 11, 2008. From a geotechnical engineering viewpoint the proposed two single family residential structures and new sewer line may be constructed as planned, provided the design is performed in accordance with the recommendations presented in the report produced by TRC.

c **Hazards and Hazardous Materials.**

- i. The planned disturbance at the site exceeds one acre in size, and the presence of NOA has been confirmed on the site at a content level that exceeds .25%. In conformance with BAAQMD regulations, the project shall therefore follow ATCM standards, which include the preparation of an Asbestos Dust Mitigation Plan, submittal of a permit application to the BAAQMD, and implementation of stabilization measures to reduce the release of asbestos fibers. The stabilization measures may include capping of disturbed areas with structures, hardscape, NOA-free soils, or establishment of a vegetative cover.

d **Noise.**

- i. All units shall be equipped with forced air ventilation systems to allow the occupants the option of maintaining the windows closed to control noise, and maintain an interior noise level of 45 DNL. Prior to issuance of building permits, the developer shall retain a qualified acoustical consultant to check the building plans for all units to ensure that interior noise levels can be sufficiently attenuated to 45 DNL to the satisfaction of the Director of Planning, Building and Code Enforcement.
- ii. All first and second story windows and glass doors of living spaces of the home closest to Highway 87 with a direct or side view of Highway 87 shall be maintained closed at all times. Mechanical ventilation must also be provided. Windows and glass doors behind the recommended noise barrier shall not be included.
- iii. Install windows and glass doors so that the sliding window and glass door panels form an air-tight seal when in the closed position and the window and glass door frames are caulked to the wall opening around their entire perimeter with a non-hardening caulking compound to prevent sound infiltration.

19. **Trees.** The removal of two (2) ordinance size trees is included with the approval of this permit. 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 If the site does not have a public street frontage, a copy of the permit shall be posted at a location where the permit is readable from a common access driveway or roadway.
- c **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.

20. **Planned Development Permit Amendment Required.** Specific architecture and floor plans are not approved as a part of this permit. Each lot shall require the approval of a Planned Development Permit Amendment.

21. **Garbage/Trash/Recycling.** A duck out for the storage of garbage/trash/recycling bins for both residential units shall be provided at the end of the shared driveway, adjacent to Carol Drive.
22. **Architecture.** The architectural design of the houses shall conform to the standards of the Single-Family Design Guidelines.
23. **Lighting.** No lighting is approved at this time. On-site, exterior, unroofed lighting shall be included in the Planned Development Permit Amendment for each house and 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.
24. **Fencing.** Fence height and materials are not approved at this time and shall be included in the Planned Development Permit Amendment for each house.
  - a **Fence Placement on Lot 2.** The rear fence for Lot 2 shall be a view fence constructed of wrought iron or tubular steel with the first three feet in height being a solid material of stucco or masonry. The rear yard fence shall be placed at the top of the slope, the point where the flat pad stops and the slope downward begins.
25. **Accessory Structures.** Accessory structures are permitted within the flat pad area of the site and not on any sloped area. Accessory structures shall also conform to R-1-8 standards, as amended, with the exception of the rear setback, which shall be measured from the rear fence line and not the rear property line. Accessory structures are subject to the review of the Director of Planning, Building, and Code Enforcement.
26. **Additions.** All additions are subject to the review of the Director of Planning, Building, and Code Enforcement.
27. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

**APPROVED** and issued on this 16<sup>th</sup> day of January, 2012.

Joseph Horwedel, Director  
Planning, Building, and Code Enforcement

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Deputy