

**NOTICE  
OF  
NONCOMPLIANCE**

Niaz and Sameena Baig, 1249 Fleming Avenue, San Jose, CA 95127

AS AN OWNER OR PARTY IN INTEREST OF THE PROPERTY LOCATED AT THE SOUTHEAST CORNER OF E. ST. JOHN STREET AND N. 4TH STREET, YOU ARE HEREBY NOTIFIED OF FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE FOLLOWING LAND USE PERMIT(S):

**H09-004**

SPECIFICALLY, WITH CONDITION NO. 5, WHICH REQUIRES FULL COMPLIANCE WITH THE CONDITIONS CONTAINED IN THE ASSOCIATED HISTORIC PRESERVATION PERMIT, HP09-004. CONDITION NO. 5 IN HISTORIC PRESERVATION PERMIT HP09-004 REQUIRES THE REMAINING BUILDING MATERIALS FROM THE DONNER HOUGHTON HOUSE TO BE CATALOGED, PHOTOGRAPHED, AND STORED IN A SECURE, WEATHER PROTECTED ENVIRONMENT, BY NOVEMBER 7, 2009. FAILURE TO COMPLY WITH SAID PERMIT BY MAY 7, 2010, WILL CAUSE THE ISSUANCE OF AN ORDER TO SHOW CAUSE FOR THE REVOCATION OF SAID DEVELOPMENT PERMIT(S).

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

  
Deputy

Date: 4/6/10

c: Anna Scott, Affirmed Housing Group, 13520 Evening Creek Dr. N, Suite 360, San Diego, CA 92128

**SITE DEVELOPMENT PERMIT**

<b>FILE NO.</b>	<b>H09-004</b>
<b>LOCATION OF PROPERTY</b>	<b>Southeast corner of E. St. John Street and N. Fourth Street</b>
<b>ZONING DISTRICT</b>	<b>DC - Downtown Commercial</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Residential Support for the Core (25+ DU/AC)</b>
<b>PROPOSED USE</b>	<b>Site Development Permit to: (1) demolish an existing structure (160 E. St. John Street) and (2) construct: (a) up to 156 (90% affordable) attached residential units, (b) approximately 2,684 square feet of ground floor commercial uses and (c) associated parking; on the approximately .43 gross acre site</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Addendum to the San Jose Downtown Strategy Final EIR, Resolution No. 72767</b>
<b>APPLICANT/ADDRESS</b>	<b>Affirmed Housing Group Attn: Anna Scott 13520 Evening Creek Dr. N. Suite 360, San Diego, CA 92128</b>
<b>OWNER/ADDRESS</b>	<b>Niaz and Sameena Baig 1249 Fleming Ave. San Jose, CA 95127</b>

**FACTS**

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

1. The subject site is located on the southeast corner of E. St. John Street and N. Fourth Street.
2. The site is currently developed with a fire-damaged multi-family residential structure (160 E. St. John Street) on the east portion and the remnants of the Donner-Houghton House on the west portion at the southeast corner of E. St. John Street and N. Fourth Street.
3. The residential structure located on the east portion of the site at 160 E. St. John Street was evaluated in a Department of Parks and Recreation (DPR) evaluation form which concluded that the structure was not eligible for listing on the City's Historic Resources Inventory.
4. The subject site is approximately 4.3 gross acres in size.
5. The site is surrounded by multi-family residential and commercial uses, including the municipal employee parking garage, a vacant gas station, and office buildings.

6. The site is listed on the City's Historic Resources Inventory as a National Register Structure and a City Landmark associated with the Donner-Houghton House. The structure was destroyed by fire in July of 2007. Remnants of the house remain on the site.
7. Based on the criteria specified in the above facts, an associated Historic Preservation Permit, File No. HP09-004, was referred to the Historic Landmarks Commission for comment on conditions related to the commemoration of the Donner-Houghton House at the September 2, 2009 Historic Landmarks Commission hearing.
8. The subject Site Development Permit proposes to demolish the existing structure on the east portion of the site and to construct up to 156 attached residences and approximately 2,684 square feet of commercial uses.
9. Parking for the proposed development would occur in two levels of sub-grade parking. Approximately 78 automobile, 26 motorcycle and 20 bicycle parking spaces are proposed within the two sub-grade parking garage levels.
10. A Historic Preservation Permit, file number HP09-004, proposes documentation, salvage and creation of an educational exhibit on the subject site. Conformance with all conditions in the associated Historic Preservation Permit, file number HP09-004, is a requirement of this permit.
11. The subject site is zoned DC Downtown Commercial Zoning District, and is designated Residential Support for the Core (25+ DU/AC) on the San José 2020 General Plan Land Use/Transportation Diagram.
12. Commercial and attached residential uses are permitted uses in the DC Downtown Commercial Zoning District.
13. Under the provisions of Chapter 20.70.330 of the San Jose Municipal Code, for mixed use projects, the Director may reduce the required parking spaces by up to fifty percent (50%), including any other exceptions or reductions as allowed under Title 20, upon making the following findings:
  - a. That the reduction in parking will not adversely affect surrounding projects;
  - b. That the reduction in parking will not be dependent upon public parking supply; or reduce the surrounding public parking supply; and
  - c. The project demonstrates that it can maintain the TDM program for the life of the project and it is reasonably certain that the parking shall continue to be provided and maintained at the same location for the services of the building or use for which such parking is required, during the life of the building or use.
14. Under the provision of Chapter 20.70.330 of the San Jose Municipal Code, a total of 78 parking spaces have been required for the residential portion of the project based on the proposal for 156 residential units. These parking spaces are proposed on-site in a manner that provides smooth on-site circulation. No parking is required for commercial uses in the DC Downtown Primary Commercial Zoning District.
15. The project is located within one-half mile of the St. James Light Rail Station.
16. With the proposed extension of BART from Fremont to Santa Clara, VTA is planning a downtown station located between Market and Fourth Streets. One of the access points to the station will be provided on E. Santa Clara Street between First Street and Second Street, within walking distance of the proposed project.
17. Future bicycle improvements include a planned cycle track, separated from vehicular traffic, on the east side of Fourth Street.

18. The project has developed a Travel Demand Management /Parking Management Plan (TDM/PMP) to be operated by onsite resident managers, including:
  - a. Management will have the opportunity to select qualifying residents who do not own personal vehicles with priority given to households that do not own personal automobiles. Should the onsite parking garage reach full capacity, prospective tenants would be required to provide evidence of a secured off-site parking lease agreement valid for the duration of the residential lease.
  - b. Onsite Car Sharing Program. Through the services of onsite management or a third party vendor, the use of private vehicle(s) will be available to residents to rent.
  - c. Transit Information Kiosk. A kiosk will be located in the lobby of the building providing digital and paper transit schedules, maps, ridesharing and carpooling information with a digital and paper bulletin board for coordination.
19. The applicant will enter into a one year agreement with the City to lease 10 full time parking spaces and a two year agreement with the City to lease 10 residential parking spaces in City structures with City options for extensions as needed.
20. In the future the City will review the use of the parking spaces and will make a determination whether the project will require an increase in the number of parking spaces, require maintenance of the number of parking spaces, or allow reduction in the number of parking spaces based on the extension of available public transit.
21. Private open space is provided at a ratio of 32 square feet per unit. Common open space is proposed within the courtyard of the project at a ration of 41 square feet per unit.
22. The Federal Aeronautics Administration issued a "Determination of No Hazard" on July 20, 2009.

## FINDINGS

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

1. The interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious in that:
  - a. The exterior wall and roof materials of the proposed structure are compatible in terms of color, materials, and texture.
  - b. The architectural elements of the proposed structure are integrated into a harmonious whole.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
  - a. The exterior wall and roof materials of the proposed structure on site are compatible with the materials of existing adjacent or nearby structures.
  - b. The structure proposed on site is comparable in terms of mass, scale and height with existing adjacent or nearby structures. Building and base heights, façade bay proportions and changes in material on the proposed structure correspond with characteristics of adjacent development.

- c. The proposed structure does not unreasonably interfere with the light and air available on adjacent sites.
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff and odor which even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties in that:
    - a. The environmental impacts of the project were addressed by a Final EIR entitled, "San Jose Downtown Strategy 2000 Final EIR," and findings were adopted by City Council Resolution No. 72767 on June 21, 2005. The proposed development would contribute incrementally to traffic, air quality and noise impacts associated with development in an urban area. Standard measures and mitigation measures have been included in the project to reduce any project impacts on the natural and human environment to a less than significant level. The City of San Jose may take action on the proposed project as being within the scope of the General Plan and uses of the Program EIR in that (1) the Final EIR is a Program EIR pursuant to CEQA and CEQA Guidelines Section 15168, (2) it is determined that no new significant impacts will occur from this proposed project, and no new mitigation measures would be required beyond those contained in the General Plan and Final EIR pursuant to CEQA Guidelines 15162.
  4. Under the provisions of Section 20.80.400(A) of the San José Municipal Code, except as specifically exempted by Section 20.80.450, no demolition permit or removal permit shall be issued unless and until a Development Permit which specifically approves such demolition or removal has been issued and has become effective pursuant to the provisions of Chapter 20.100.
    - a. The Director of Planning has considered the following in evaluating the proposed demolition:
      - i. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
      - ii. The failure to approve the permit would jeopardize public health, safety or welfare.
      - iii. The approval of the permit would not negatively impact the supply of existing housing stock in the City of San José.
      - iv. Both inventoried and non-inventoried buildings, sites and districts of historical significance will not be negatively impacted.
      - v. Rehabilitation or reuse of the existing building would not be feasible
      - vi. The approval of the demolition of the building should facilitate a project that is compatible with the surrounding neighborhood.
    - b. Further, the Director of Planning concludes and finds, based on the analysis of the above facts, that:
      - i. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.

- ii. The proposed project is in conformance with the California Environmental Quality Act, as noted in the above finding regarding the Addendum to the Downtown Strategy 2000 Environmental Impact Report.
  - iii. The benefits of permitting the demolition, removal or relocation of the subject building outweigh the impacts of the demolition, removal or relocation.
5. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior hearing, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
- a. Landscaping will be provided on the site and an adequate irrigation system will be provided to support this landscaping.
  - b. Outdoor activities, ventilating, plumbing, utility and trash facilities will be screened by parapets, fences, walls or other devices compatible with the architectural treatment of the structure.
- Traffic access, pedestrian access and parking are adequate in that:
- c. The driveways and on-site circulation provide access to the site without interfering with off-site circulation.
  - d. Pedestrian walkways within the public right-of-way are provided to all exterior building entrances.
  - e. The reduction in parking will not adversely affect surrounding projects;
  - f. The reduction in parking will not be dependent upon public parking supply; or reduce the surrounding public parking supply; and
  - g. The project demonstrates that it can maintain the TDM program for the life of the project and it is reasonably certain that the parking shall continue to be provided and maintained at the same location for the services of the building or use for which such parking is required, during the life of the building or use.
6. The site has a General Plan Land Use/Transportation Diagram designation of Residential Support for the Core (25+ DU/AC). The Residential Support for the Core (25+ DU/AC) designation is intended for high density residential uses in and near the Downtown Core Area. The designation permits development with commercial uses on the first two floors. The subject project conforms in that it proposes high density residential uses (greater than 25 DU/AC) with ground floor commercial spaces. Furthermore, the proposed project furthers the Economic Development, Growth Management, Downtown Revitalization, the Greenline/Urban Growth Boundary, Housing, and Sustainable City General Plan Major Strategies in that the proposed downtown high-density housing results in an efficiency related to the existing City service provisions; proximity to public transportation, jobs, and entertainment; and support of Downtown revitalization.

**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. **Deadline for Commencing Construction.** This Site Development Permit shall automatically expire two years from and after the date of issuance hereof by said Director if within such two-year period, construction has not commenced, pursuant to and in accordance with, the provisions of this Site Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning, Building, and Code Enforcement. However, the Director 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. **Revocation.** This Site Development Permit is subject to revocation for violation of any of its provisions or conditions.
4. **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.
5. **Conformance with Other Permits.** This permit shall only be implemented in conjunction with and in full compliance with all conditions contained in the associated Historic Preservation Permit, File No. HP09-004, including but not limited to documentation, salvage and creation of an onsite educational exhibit for the Donner Houghton House City Landmark structure destroyed by fire in 2007.
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 with Plans.** Construction and development shall conform to approved Site Development Permit plans entitled, "Donner Lofts," dated February 10, 2009 last revised on July 13, 2009, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any special conditions noted within this permit.
8. **Colors and Materials.** All building colors and materials are to be as specified on the approved plan set and in the submitted colors/materials board. Changes to the colors or materials are subject to approval by the Director of Planning, Building, and Code Enforcement.
9. **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 to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water 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.

10. **Environmental Mitigation from the Downtown Strategy 2000 EIR.** The applicant shall implement the following environmental mitigation measures from the San Jose Downtown Strategy 2000 FEIR for the proposal to the satisfaction of the Director of Planning, Building, and Code Enforcement:

- a. **Air Quality.** Similar to the construction air quality mitigation measures described in the Downtown Strategy 2000 EIR, BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a less than significant level. The following mitigation measures (MM) would be implemented during all phases of construction on the project site:
  - i. **MM AIR 1-1:** Water all active construction areas at least twice daily or as often as need to control dust emissions.
  - ii. **MM AIR 1-2:** Cover all trucks hauling soil, sand, gravel and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
  - iii. **MM AIR 1-3:** Sweep daily or as often as needed with water sweepers all paved access roads, parking areas and staging areas at construction sites to control dust.
  - iv. **MM AIR 1-4:** Sweep public streets daily or as often as needed to keep streets free of visible soil material.
  - v. **MM AIR 1-5:** Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
  - vi. **MM AIR 1-6:** Replant vegetation in disturbed areas as quickly as possible.
- b. **Archaeology.** The developer shall implement the following practices before or during all phases of excavation and construction for the proposed project to the satisfaction of the Director of Planning, Building and Code Enforcement.
  - i. Conduct appropriate levels of review prior to undertaking project elements involving ground-disturbing activities that may impact buried archaeological deposits that meet the definition of a historical or archaeological resource (CEQA Guidelines §15064.5[a] and §21083.2[g]). At a minimum, this effort should include a records search at the NWIC and an archaeological assessment by a qualified archaeologist prior to project implementation.
  - ii. Prior to project implementation, a qualified archaeologist shall: (1) assess the potential for subsurface archaeological remains that may meet the definition of a historical or archaeological resource, and may be impacted by project activities; and (2) make project-specific recommendations, as warranted, about the disposition of such resources. The results of this archaeological assessment should be submitted to the NWIC.
  - iii. If unidentified archaeological deposits are encountered during project activities, all work within 50 feet of the find should be redirected. A qualified archaeologist should: (1) evaluate the finds to determine if they meet the definition of a historical or archaeological resource; and (2) make recommendations regarding the disposition of such finds. If the finds do not meet the definition of a historical or archaeological resource, then no further study or protection is necessary prior to project implementation. If the finds do meet the definition of a historical or archaeological resource, then they should be avoided by project activities. If avoidance is not feasible, adverse effects to such resources should be mitigated in accordance with the

- recommendations of the evaluating archaeologist. Project personnel should not collect or move any cultural material. Fill soils that may be used for construction purposes should not contain archaeological materials. Upon completion of the archaeological evaluation, a report documenting the methods, results, and recommendations of the archaeologist should be prepared and submitted to the NWIC. If human remains are encountered by project activities, construction activities shall be halted and the County Coroner shall be notified immediately. If the remains are of Native American origin, the Coroner shall notify the Native American Heritage Commission within 24 hours of this identification and a qualified archaeologist shall be contacted to evaluate the situation. The NAHC will identify a site Native American Most Likely Descendent (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. The archaeologist should recover scientifically valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of analysis, as appropriate, the archaeologist should prepare a report documenting the methods and results of the investigation. This report should be submitted to the NWIC.
- iv. Archeological monitoring by a professional archaeologist is required during ground disturbing construction. The frequency and duration of the monitoring shall be at the discretion of the Monitoring Archaeologist and dependent on his/her subsurface observations.
  - v. Pre-construction meeting will be conducted with the Construction Manager and other personnel by the Project Archaeologist to brief workers on the role and responsibility of the Project Archaeologist and procedures to follow in the event of a cultural resources discovery. The prime construction contractor and any subcontractors will be informed of the legal and/or regulatory implications of knowingly destroying cultural resources or removing artifacts, human remains, and other cultural materials from the Project Area.
  - vi. Prior to any sub-surface site disturbance, the site shall be evaluated for potential historic archeological resources.
  - vii. In the event that significant prehistoric and/or historic materials are found, all construction within a 50-foot radius will halt, the Director of Planning, Building and Code Enforcement shall be notified, and the archaeologist shall examine the find and make appropriate recommendations regarding the significance of the find and any necessary mitigation measures.
  - viii. The treatment of any significant unexpected discoveries of, as yet, unknown cultural resources shall be administered by a qualified archeologist in consultation with the Department of Planning, Building, and Code Enforcement and the Redevelopment Agency. Where appropriate, the actions taken would include scientific removal, study and analysis, reporting in both technical and popular format and curation with an approved repository.
  - ix. In the event of an inadvertent discovery of human remains and cultural items during Project construction, the Construction Manager shall take immediate steps if necessary to secure and protect any remains and cultural materials. This shall include but is not limited to such measures as: temporary avoidance until the remains and items can be removed; posting of security; placement of a security fence around the area of concern; or some combination of these measures. Any such measures will depend upon the nature and the particular circumstances of the discovery.

- x. In the event that human skeletal remains are encountered, all construction shall stop within a 50-foot radius of the find and the Santa Clara County Coroner shall immediately be notified. The County Coroner shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. Upon determination by the County Coroner that the remains are Native American, the coroner shall contact the California Native American Heritage Commission, pursuant to subdivision "c" of section 7050.5 of the Health and Safety Code and the County Coordinator of Indian Affairs. No further disturbance of the site shall be made except as authorized by the County Coordinator of Indian Affairs in accordance with the provisions of State law and the Health and Safety Code. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial.
- xi. A final report shall be prepared by the project archaeologist when a find is determined to be a significant archaeological resource, and/or when Native American remains are found on the site. The final report shall 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. A copy of the final report shall be provided to the Director of Planning, Building and Code Enforcement.
- c. **Geology.** The following mitigation measures (MM) have been included to reduce potential construction related erosion impacts:
  - d. **MM GEO1-1:** All excavation and grading work will be scheduled in dry weather months or construction sites will be weatherized to withstand or avoid construction.
  - e. **MM GEO 1-2:** Stockpiles and excavated soils will be covered with secured tarps or plastic sheeting.
  - f. **MM GEO1-3:** Ditches will be installed, if necessary, to divert runoff around excavations and graded areas.
- g. **Hazardous Materials.** The project shall implement the following mitigation measures (MM):
  - i. **MM HAZ 1-2:** Prior to issuance of demolition or grading permits, the project applicant will file an application for discharging dewatering effluent from construction and future building operations to the City's sanitary sewer line. Filtering of the effluent will be included if necessary to meet City standards. Effluent will be required to meet the City's Industrial Waste Discharge Regulations Maximum Allowable Concentrations.
  - ii. **MM HAZ 1-2:** If soil contamination is found in this location, the following measures will be implemented as necessary to remediate contamination issues:
    - 1) A Soil Management Plan (SMP) will be prepared to address the handling of impacted soils during project development. In addition, a Health and Safety Plan (HSP) will be prepared addressing worker safety, including the rationale for selection of personal protective equipment for site workers during site development and during any post-development construction activities (such as underground utility repairs, where workers might expose contaminated materials). The HSP will also include a discussion of health risks associated with the contaminants identified at the site. Furthermore, a Sampling and Analysis Plan will be prepared with provisions for collecting post-demolition soil samples in previously inaccessible areas to confirm the extent of soil contamination under the pre-existing buildings.

The SMP, HSP, and Sampling and Analysis Plan will be prepared and submitted to the City of San José for approval prior to issuance of grading permits.

- 2) The applicant will have a Remedial Action Work Plan (RAWP) prepared by a qualified hazardous materials consultant prior to issuance of grading permits that will detail the remediation work left to be done on-site and the timing of the work. The RAWP will be submitted to the RWQCB for approval.
  - 3) Upon approval of the RAWP by the RWQCB, the RAWP will be submitted to the City of San José Planning, Building and Code Enforcement Department for review and approval prior to issuance of grading permits.
  - 4) After the RAWP has been fully implemented, appropriate documentation will be submitted to the RWQCB for issuance of a No Further Action letter. A copy of the No Further Action letter must be filed with the City of San José Department of Planning, Building, and Code Enforcement.
- iii. The project proposes to conform with the following regulatory programs and to implement the following standard measures to reduce impacts due to the presence of ACMs and/or lead-based paint:
- 1) In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site buildings to determine the presence of asbestos-containing materials and/or lead-based paint.
  - 2) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
  - 3) All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
  - 4) A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
  - 5) Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements.
- h. **Water Quality.** The following standard mitigation measures, based on RWQCB Best Management Practices, are included in the project to ensure compliance with NPDES permit requirements to reduce construction-related water quality impacts:
- i. **MM HYD 1-1:** During construction, burlap bags filled with drain rock will be installed around storm drains to route sediment and other debris away from the drains.
  - j. **MM HYD 1-2:** During construction, earthmoving or other dust-producing activities will be suspended during periods of high winds.

- k. **MM HYD 1-3:** During construction, all exposed or disturbed soil surfaces will be watered at least twice daily to control dust as necessary.
- l. **MM HYD 1-4:** During construction, stockpiles of soil or other materials that can be blown by the wind will be watered or covered.
- m. **MM HYD 1-5:** During construction, all trucks hauling soil, sand, and other loose materials will be covered and/or all trucks will be required to maintain at least two feet of freeboard.
- n. **MM HYD 1-6:** During construction, all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites will be swept daily (with water sweepers).
- o. **MM HYD 1-7:** During construction, vegetation in disturbed areas will be replanted as quickly as possible.
- p. **MM HYD 1-8:** Prior to construction grading for the proposed land uses, the applicant will file a "Notice of Intent" (NOI) to comply with the General Permit administered by the Regional Board and will prepare a Stormwater Pollution Prevention Plan (SWPPP) which addresses measures that would be included in the amendment to minimize and control construction and post-construction runoff. The following measures shall be included in the SWPPP:
  - q. Preclude non-stormwater discharges to the stormwater system.
  - r. Effective, site-specific Best Management Practices (and other BMPs as described in the *Blueprint for a Clean Bay*) for erosion and sediment control during the construction and post-construction periods.
  - s. Coverage of soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff.
  - t. Perform monitoring of discharges to the stormwater system.
- u. **MM HYD 1-9:** The developer will submit a copy of the draft SWPPP to the City of San José Director of Public Works for review and approval prior to construction of the project. The certified SWPPP will be posted at the site and will be updated to reflect current site conditions.
- v. **MM HYD 1-10:** The developer will comply with the City of San José Grading Ordinance, including erosion and dust control, during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- w. The following standard measures, based on RWQCB Best Management Practices and City of San José requirements, are included in the proposed project to ensure compliance with NPDES permit requirements to reduce post-construction water quality impacts:
  - x. When the construction phase is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the RWQCB and the City of San José. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the project site.

- y. All post-construction treatment control measures (TCMs) will be installed, operated, and maintained by qualified personnel. On-site inlets will be stenciled in conformance with City requirements and cleaned out a minimum of once per year, prior to the wet season.
- z. The property owner/site manager will keep a maintenance and inspection schedule and record to ensure that the TCMs continue to operate effectively for the life of the project. Copies of the schedule and record must be provided to the City upon request and must be made available for inspection on-site at all times.
- aa. **Construction Generated Noise.** The project shall implement the following standard measures:
  - bb. Noise-generating activities at the construction site or in areas adjacent to the construction site associated with the project in any way should be restricted to the hours of 7:00 AM and 7:00 PM, Monday through Friday, and 8:00 AM to 5:00 PM on Saturdays. No construction activities shall occur Sundays or holidays.
  - cc. Equip all internal combustion engine driven equipment with intake and exhaust mufflers which are in good condition and appropriate for the equipment.
  - dd. Locate stationary noise generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
  - ee. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
  - ff. The contractor shall prepare a detailed construction plan identifying the schedule for major noise generating construction activities. The construction plan shall identify a procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance.
  - gg. Designate a “noise disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.
- hh. **Utilities.** The Downtown EIR identifies the following mitigation measures for identified impacts to water supply and wastewater treatment facilities:
  - ii. **MM UTIL 1-1:** Consistent with General Plan policies related to water, the City will review the development proposal to ensure that the project could be adequately served by the City’s water supply prior to the approval of any specific development projects. The City shall also require that all new residential and commercial development incorporates water-saving measures, including the use of reclaimed water for irrigation, and water conserving fixtures, such as low-flow toilets and shower heads, flow-reducing aerators on sinks, and automatic shut-off faucets, in commercial buildings. All new development shall be in compliance with these General Plan Green Building Policies.

- jj. **MM UTIL 1-2:** Consistent with General Plan policies related to wastewater services, the City shall review individual development proposals to ensure that the projects could be adequately served by the Water Pollution Control Plant prior to the approval of any specific development projects. At the time that specific development projects are proposed, the City shall require that indoor and outdoor conserving technologies and practices are integrated into the development.
11. **Travel Demand Management.** A Travel Demand Management /Parking Management Plan (TDM/PMP) shall be implemented and operated by onsite resident managers, including:
- Management shall select qualifying residents who do not own personal vehicles with priority given to households that do not own personal automobiles. Should the onsite parking garage reach full capacity, prospective tenants shall be required to provide evidence of a secured off-site parking lease agreement valid for the duration of the residential lease.
  - Onsite Car Sharing Program. Through the services of onsite management or a third party vendor, the use of private vehicle(s) shall be made available to residents to rent.
  - Transit Information Kiosk. A kiosk shall be located in the lobby of the building providing digital and paper transit schedules, maps, ridesharing and carpooling information with a digital and paper bulletin board for coordination.
12. **Off-site Parking Agreement.** The applicant shall enter into a one year agreement with the City to lease 10 full time parking spaces and a two year agreement with the City to lease 10 residential parking spaces in City structures with City options for extensions as needed. The Residential Parking Permit shall authorize the permit holder to access the participating Municipal Off-Street Parking Facilities between the hours of 5:00 p.m. and 8:00 a.m. weekdays, all day weekends and official government holidays, and up to twenty (20) weekdays per year from the hours of 8:00 a.m. to 5:00 p.m.
13. **Off-site Parking Agreement Review and Renewal Process.** Six months prior to expiration of the agreement the applicant will submit to the City a request for cancellation/reduction. The City will review the use of the parking spaces and will make a determination whether the project will: require an increase in the number of parking spaces, require maintenance of the number of parking spaces, or allow reduction in the number of parking spaces based on the extension of available public transit. If the request is not submitted the agreement will automatically renew.
14. **Dewatering Effluent.** All dewatering effluent shall be contained prior to discharge to allow the sediment to settle out. Water shall be filtered, if necessary, to ensure that only clear water is discharged to the sanitary or storm system. Prior to discharge to the City's sanitary or storm system, the treatment or filtration methods shall meet City of San Jose standards.
15. **Construction Impact Mitigation Measures.** The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical conditions to minimize noise created by faulty or poorly maintained engine, drive-train and other components. Notwithstanding any conditions from the required environmental mitigation measures, the project developer shall ensure that the following construction impact mitigation measures are implemented 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:

- a. *Plans.* The construction hours shall be printed on all project plans used for construction.
  - b. *Mitigation Measure Disclosure.* These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors. In addition, the project developer is responsible to ensure the all construction impact mitigation measures are implemented.
  - c. *Signage.* Signage shall include: the name and phone number of the disturbance coordinator, the hours of construction limitations, City File Number, city contact and phone number (department and phone number); and shall be displayed on a weatherproof sign posted at each entrance to the project site.
  - d. *Telephone Contact.* A phone with answering machine for non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents, businesses, or hotel guests. The phone number should be the same as, or at minimum posted with, the signage noted above.
16. **Public Works Clearance (3-16950).** 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:** This project is located in the expanded Downtown Core and is covered under the new San Jose Downtown Strategy 2000 EIR; therefore, no further traffic analysis is required. We conclude that the subject project will be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.
  - c. **Grading/Geology:**
    - i. 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.
    - ii. 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.
  - 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 to the maximum extent practicable.

- 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.
  - iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating the all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
- e. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for zone D.
- f. **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.
- g. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- h. **Shoring:** A revocable encroachment permit may be required for shoring due to the underground garage construction.
- i. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact Tim Town at (408) 277-3671 for further information.
- j. Street Improvements:
- i. Remove and replace curb, gutter, and sidewalk along all project frontages.
  - ii. Construct a 12' attached sidewalk along the N. 4<sup>th</sup> Street frontage and a 10' attached sidewalk along the St. John Street frontage.
  - iii. Close unused driveway cuts.
  - iv. Proposed driveway width to be 26'.
  - v. Construct two (2) City standard handicap ramps at opposite returns across St. John Street.
  - vi. Improvement of the public streets shall be to the satisfaction of the Director of Public Works.
  - vii. A 10'-12' cycle track (for bicycles) is planned for the east side of N. 4th Street. Existing on-street parking and parking meters will need to be removed when the cycle track is installed.
  - viii. Coordinate with the City's Department of Transportation (DOT) prior to any changes with the metered on-street parking along all project frontages.

- ix. 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.
  - k. **Greater Downtown Area Masterplans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
  - l. **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.
  - m. **Street Trees:** 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 on N. 4<sup>th</sup> Street and St. John Street. Obtain a DOT street tree planting permit for any proposed street tree plantings. 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.
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 and the Director of Planning, Building, and Code Enforcement:
- a. **Project Addressing Plan.** Prior to issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The project applicant shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for any new streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
  - b. **Property Lines, Easements, and Building/Fire Codes.** Prior to the issuance of building permits for new construction, approval of a Tentative Map and Final Map or approval of a Lot Line Adjustment may be necessary to ensure compliance with the Building and Fire Codes. Modifications to the locations of existing or proposed property lines and/or the provision of easements through one of the above noted processes may be necessary prior to issuance of building permits.
    - i. *Building Height.* No building permits shall be issued for a building height that exceeds the height specified by a final FAA "Determination of No Hazard."
    - ii. *Construction Plans.* This Development Permit File Number shall be printed on all construction plans submitted to the Building Division.
    - iii. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
    - iv. *American With Disabilities Act.* The applicant shall provide appropriate access as required by the American With Disabilities Act (ADA).
    - v. *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 development permits and applicable conditions.

18. **FAA Clearance.** The applicant shall abide by all conditions of any final FAA "Determination of No Hazard," including but not limited to the height specifications, rooftop marking/lighting, construction notification to the FAA, and "Determination of No Hazard" expiration date.
19. **Fire Departments Requirements.** The applicant will be required to comply with all Fire Department comments at the plan review stage, including but not limited to those comments contained in the memorandums from Ronald Chan dated February 25, 2009 and August 18, 2009 for the subject permit. Compliance with all comments, including but not limited to the following items, will be confirmed at the plan review stage to the satisfaction of the Fire Chief.
- a. **Fire Site Access.** Fire site access has been approved with Variance #09016562.
  - b. **Fire Alarm System.** Depending on UFC occupancy type shall be provided with an automatic fire system, including voice communication and public address system, and remote alarm system to the satisfaction of the Fire Chief.
  - c. **Fire Extinguisher System.** Building(s) shall be provided with an automatic fire extinguisher system. Systems serving more than 100 heads shall be supervised by a remote alarm system to the satisfaction of the Fire Chief.
  - d. **Fire Flow.** Required fire flow for the site is 4,000 gpm provided through 4 hydrants, or as otherwise approved in writing by the Fire Chief.
  - e. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by the Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
  - f. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
  - g. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE-NO PARKING," shall be provided as required by the Fire Department.
  - h. **Fire Retardant Roof.** All buildings shall have fire retardant roofs subject to the satisfaction of the Fire Department.
  - i. **Lock Boxes.** The project development shall provide lock boxes to the satisfaction of the Chief Building Official and Fire Chief.
  - j. **Project Address.** The applicant shall provide an address system, including named private streets, acceptable to the Police and Fire Departments.
  - k. **Route of Travel.** Provide Fire Department personnel route of travel for the interior podium for access to all interior rescue windows. The Fire Department requires all exterior stairways to have direct egress to all interior court(s) without obstructions for equipment (i.e., ladders, etc.) used by this Department for rescue as well as suppression. All exterior stairways to interior podium shall be 6 feet wide for the fire personnel for reasons as noted.
  - l. **Medical Elevator.** At least one elevator shall be sized to accommodate a gurney that is 22 by 81-1/2 inches. The elevator entrance shall have a clear entrance of not less than 42 inches wide by 78 inches high. The elevator car shall have a minimum clear distance between walls or between walls not less than 80 inches by 65 inches.
20. **Recycling.** Project demolition debris shall be properly recycled or disposed of. Details on recycling construction waste are available through the Construction & Demolition Diversion Deposit (CDDD) incentive program. Information available at:

<http://www/sjrecycles.org/business/cddd.htm>. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

21. **Storm Water Best Management Practices.** The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of storm water pollutants including sediments associated with construction activities. Examples of BMPs are contained in the publication *Blueprint for a Clean Bay*. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San José, California 95110-1795. The Erosion Control Plan may include BMPs as specified in ABAG's Manual of Standards Erosion & Sediment Control Measures for reducing impacts on the City's storm drainage system from construction activities. For additional information about The Erosion Control Plan, the NPDES permit requirements or the documents mentioned above, please call the Department of Public Works at (408) 535-3555. Whenever feasible, project landscaping shall use engineered soils to help retain stormwater on-site.
22. **Street Cleaning and Dust Control.** In addition to the criteria listed above, the following measures shall also be implemented. In any on-site area visible to the public from the public right-of-way, the site shall be clean of debris, rubbish and trash at least once a week. The developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the construction site.
23. **Protection of Storm Drains.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet. Inlets shall be stenciled, "No dumping – Flows to Guadalupe River."
24. **Nuisance.** As required by Title 20 of the San José Municipal Code, construction on this site shall be conducted in a manner, which does not create a public or private nuisance. The applicant must abate any nuisance immediately upon notification by the City.
25. **Landscaping.** Planting and irrigation are to be provided, as indicated on the final approved plan set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner.
26. **Roof Equipment.** All roof equipment shall be screened from view.
27. **Refuse/Recycling.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage containers. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping. An equal number of trash and recycling chutes shall be contained within the structure. A trash compactor unit shall be utilized on the ground floor.
28. **Alcohol Sales.** This permit does not include any approval for on- or off-sale alcohol. Any alcohol sales would need to obtain all appropriate permits.
29. **Entertainment and Late Night Use.** This permit does not include any approval for entertainment or late night uses. Entertainment and late night uses require discretionary approval in accordance with Chapter 20.70 of Title 20 of the San Jose Municipal Code.
30. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
31. **Inclusionary Housing.** If the project described in this permit is located in a Redevelopment Project Area that is subject to the City's Inclusionary Housing Policy and the Project includes

construction or substantial rehabilitation of residential units, then prior to issuance of a building or foundation permit for the project, the owner of the property described in this permit shall comply with the City's Inclusionary Housing Policy and record against the property written evidence of compliance with the City's Inclusionary Housing Policy, including, if required, recorded affordability restrictions and/or evidence of payment of an in lieu fee. Affordability restrictions and other written evidence of compliance shall be in a form acceptable to the City.

32. **Green Building.** No building permit shall be issued unless the permit applicant pays the Green Building Refundable Deposit fees or submits a Housing Department In-Lieu Guarantee in order to warrant that the project will meet the Green Building Certification Requirements.

**APPROVED and issued this 7<sup>th</sup> day of October, 2009.**

Joseph Horwedel, AICP  
Director, Planning, Building and Code Enforcement

  
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Deputy

## HISTORIC PRESERVATION PERMIT

<b>FILE NO.</b>	<b>HP09-004</b>
<b>LOCATION OF PROPERTY</b>	<b>156 E. Saint John Street</b>
<b>ZONING DISTRICT</b>	<b>DC Downtown Core District</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Residential Support for the Core (25+ dwelling units/acre)</b>
<b>PROPOSED DESCRIPTION</b>	<b>Historic Preservation permit to allow for the commemoration of the Donner-Houghton House.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt</b>
<b>HISTORIC SITE DESIGNATION</b>	<b>City Landmark site</b>
<b>OWNER/ADDRESS</b>	<b>Tony and Sameena Baig 1249 Fleming Avenue San Jose, CA 95127</b>
<b>APPLICANT/ADDRESS</b>	<b>Anna Scott Affirmed Housing Group 13520 Evening Creek Drive N., Suite 360 San Diego, CA 92128</b>

### FACTS

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

1. This Historic Preservation Permit is to allow for the commemoration of the Donner Houghton house, which was located on the subject site until being destroyed by fire in January 2007.
2. There are currently no structures on the site.
3. The subject property is an approximately 0.44 acre site in the DC Downtown Core District.
4. This site has a designation of Residential Support for the Core (25+ dwelling units per acre) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
5. A Site Development Permit (File No. H09-004) was submitted the Director of Planning on February 11, 2009 to permit a seven-story, 156 unit, affordable housing project.
6. This project was heard by the Historic Landmarks Commission on September 2, 2009. The Commission recommended approval of the concept of a commemorative exhibit for the Donner Houghton House, with the recommendation to return to the Landmarks Commission, and to provide a range of location options to the Commission, that the commemoration be made accessible to the public, that it incorporate salvaged material, and be designed by qualified consultants meeting the professional qualification standards of the *Secretary Of The Interior's Standards And Guidelines For Archeology And Historic Preservation*; and

that the applicant catalog, photograph and properly store the salvage material and report back with the status at the next commission meeting.

## FINDINGS

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

1. The proposal is consistent with the adopted San José 2020 General Plan Historic, Archaeological and Cultural Resources Goals promoting the preservation of historically significant structures and districts in order to promote a greater sense of awareness and community identity and to enhance the quality of urban living.
2. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that the project has been determined exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15331. The project is limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

## 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. **Archival Photo-Documentation:** Archival Photo-Documentation will be completed to the satisfaction of the Director of Planning, Building and Code Enforcement prior to issuance of building permits. The documentation level as well as the number and orientation of views shall be determined by the Director. The documentation will consist of selected large format, black-and-white views of the resource, as well as written documentation. At a minimum the views shall include: building views, exterior facades, interiors, auxiliary structures, related equipment, setting and selected details, as exist in the extant photographic record of the Donner-Houghton House. The documentation shall be submitted to the Director for approval and distribution to History San Jose, the California Room at the MLK Jr. Library, and the Northwest Information Center at Sonoma State University. Digital photos may be provided as a supplement to the above photo-documentation, but not in place of it. Digital photography shall be recorded on a CD and shall be submitted with the above documentation. The documentation is to be conducted by a qualified consultant meeting the professional qualification standards of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*.
3. **Interpretive Display:** An interpretive display of historic photography, objects, and materials to commemorate the history of the Donner Houghton house shall be developed with input from the Historic Landmarks Commission, Preservation Action Council and the public to the satisfaction of the Director of Planning, Building and Code Enforcement prior to issuance of building permits.
4. **Historic Preservation Architect.** The Developer shall retain a historic preservation architect, or qualified historic display designer to finalize the design of the commemorative display.

5. **Salvaged Material from the Donner Houghton House.** Remaining building materials shall be cataloged, photographed, and stored in a secure, weather protected environment until such time as they have been incorporated into an educational exhibit and offered for salvage and at a minimum until a certificate of occupancy has been secured to the satisfaction of the Director of Planning, Building, and Code Enforcement. Cataloging and storage shall be completed within thirty days of approval of this permit.
6. **Adjustment Required.** Prior to issuance of a building permit for the housing project, the developer shall obtain approval for the final plans of the commemorative display through the historic preservation permit. Referral of the Historic Preservation Permit Adjustment to the Historic Landmarks Commission is mandatory.
7. **Salvage:** Following completion of the interpretive display, the remaining materials from the historic structure shall be made available for salvage the satisfaction of the Director of Planning, Building and Code Enforcement. The project applicant shall coordinate a salvage tour with History San Jose, Preservation Action Council of San Jose, Victorian Preservation, and the Historic Landmarks Commission by placing the salvage tour on a Historic Landmarks Commission agenda. Representatives shall tour the site in order to identify elements that warrant salvage for public information or for reuse in other locations. It will be the applicant's responsibility to facilitate removal and transfer for the identified elements to the above entities. Any elements not identified through this effort for salvage shall be made available to salvage companies facilitating the reuse of historic building materials.
8. **Deadline for Commencing Construction.** This Historic Preservation Permit shall automatically expire two years from and after the date of issuance hereof by said Director if within such two-year period construction of buildings, pursuant to and in accordance with the provisions of this Historic Preservation Permit, has not commenced. 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 a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
9. **Revocation.** This Historic Preservation Permit is subject to revocation for violation of any of its provisions or conditions.
10. **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.
11. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday and to the hours of 8:00 a.m. to 7:00 p.m. on Saturdays, and legal holidays, except that construction may occur at any other hour within a totally enclosed building if such construction is not audible at the property line and does not result in a public or private nuisance.
12. **Nuisance.** As required by Title 20 of the San José Municipal Code, construction on this site shall be conducted in a manner, which does not create a public or private nuisance. The property owner must abate any such nuisance immediately upon notice.

**APPROVED** and issued on the 7<sup>th</sup> day of October, 2009.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement



Deputy