

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF ONE SINGLE-FAMILY RESIDENCE, ONE ACCESSORY DWELLING UNIT, AND FIVE ACCESSORY BUILDINGS, THE REMOVAL OF 23 ORDINANCE-SIZE AND 16 NON-ORDINANCE-SIZE TREES, AND THE CONSTRUCTION OF FOUR DETACHED-SINGLE-FAMILY RESIDENCES ON AN APPROXIMATELY 2.59-GROSS-ACRE SITE SITUATED ON THE SOUTH SIDE OF AMBUM AVENUE, APPROXIMATELY 250 FEET WESTERLY OF MITTON DRIVE (3464 AMBUM AVENUE) (APN 654-55-015)

FILE NO. PD22-021

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 6, 2022, an application (File No. PD22-021) was filed by Denna Morsilli, on behalf of the applicant and the owner, Viam Capital LLC, with the City of San José for a Planned Development Permit to allow the demolition of one single-family residence, one accessory dwelling unit, and five accessory buildings, the removal of 23 ordinance-size and 16 non-ordinance-size trees, and the construction of four detached-single-family residences on an approximately 2.59-gross-acre site (the “Project”), on that certain real property situated in the R-1-5(PD) Planned Development Zoning District and located on the south side of Ambum Avenue, approximately 250 feet westerly of Mitton Drive (3464 Ambum Avenue,) APN 654-55-015, in San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a Public Hearing on said application on September 11, 2024, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, this City Council received and considered the reports and recommendation of the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Planned Development Permit, 3464 Ambum Avenue" dated August 17, 2021, and last revised January 11, 2024; said plan is on file in the Department of Planning, Building and Code Enforcement, is available for inspection, and is incorporated by reference; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

WHEREAS, this City Council has heard and considered the testimony presented at the public hearing and has further considered written materials submitted on behalf of the Project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The foregoing recitals are hereby incorporated by reference as if fully set forth herein, and after considering evidence presented at the public hearing the City Council finds that the following are the relevant facts and findings regarding this project:

- 1. Site Description and Surrounding Uses.** The Project Site is located on the south side of Ambum Avenue, approximately 250 feet westerly of Mitton Drive (3464 Ambum Avenue). The approximately 2.59-gross-acre site is a small hill/knoll, and is developed with a detached single-family residence, one accessory dwelling unit and five accessory buildings on top of the hill/knoll. The Project Site is accessed by a private driveway from Ambum Avenue and surrounded by single-family residences on all sides on the lower hill slopes, with rear yards backing onto the project site.
- 2. Project Description.** The project consists of a Planned Development Permit to allow the demolition of all existing buildings and structures on site including one single-family residence, one accessory dwelling unit and five accessory buildings, the removal of 23 ordinance-size and 16 non-ordinance-size trees, and the construction of four detached-single-family residences on this 2.59-acre site.

In conjunction with the Planned Development Permit, the Project also includes a Planned Development Rezoning, File No. PDC22-008, and a Vesting Tentative Map, File No. T22-034. The Planned Development Rezoning rezoned the site from the R-1-5 Single-Family Residence Zoning District to the R-1-5(PD) Planned Development Zoning District, and the Vesting Tentative Map subdivided the site from two existing parcels to four parcels.

- 3. Envision San José 2040 General Plan Consistency.** The Project site is within the Residential Neighborhood land use designation in the Envision San José 2040 General Plan Land Use/Transportation Diagram Map. The land use designation is applied to established, single-family residential neighborhoods. This designation typically allows a density of up to 8 dwelling units per acre (du/ac), but also allows projects to match the existing neighborhood density if it is greater than 8 du/ac.

New infill development within the Residential Neighborhood land use designation should improve and/or enhance existing neighborhood conditions by completing the existing neighborhood pattern and bringing infill properties into general conformance

with the quality and character of the surrounding neighborhood. New infill development should be integrated into the existing neighborhood pattern, continuing and, where applicable, extending or completing the existing street network. The average lot size, orientation, and form of new structures for any new infill development must therefore generally match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project.

Analysis: Senate Bill (SB) 330 limits a local jurisdiction's ability to disapprove a housing development project that complies with the applicable objective general plan, and zoning standards and criteria that were in effect at the time the development application was deemed to be complete. The objective allowed density standard for the Residential Neighborhood land use designation is up to 8 du/ac if the prevailing average density is less than 8 du/ac. The prevailing average density for the neighborhood is 3.43 DU/AC, which is less than 8 DU/AC; therefore, the project is allowed a maximum density of 8 DU/AC. The project has a density of 1.54 DU/AC; therefore, the project meets the criteria of a maximum 8 DU/AC objective standard.

The average lot size of the surrounding single-family residential lots is approximately 12,700 square feet (ranging from 8,000 to 20,400 square feet), and the lot width ranges from 68 to 110 feet. The proposed lot sizes are 18,713 to 39,432 square feet, larger than the average lot size. The proposed lot widths range from 87 feet to 112 feet, similar to the lots surrounding the area. Therefore, the proposed lot size and lot width are consistent with the existing neighborhood. Although the proposed two-story houses will be located on the knoll and are larger than the surrounding houses, they are more than 200 feet from the front property line along Ambum Avenue. Three of the four proposed houses will be behind the surrounding houses. The architectural design incorporates articulations to reduce the building massing. The new residences would therefore be consistent with the overall existing neighborhood character. Therefore, the project is consistent with the RN General Plan land use designation.

The project is consistent with the following key General Plan policies:

Implementation Policy IP-8.5: Use the Planned Development zoning process to tailor such regulations as allowed uses, site intensities and development standards to a particular site for which, because of unique circumstances, a Planned Development zoning process will better conform to Envision General Plan goals and policies than may be practical through implementation of a conventional Zoning District.

Analysis: The site is a small hill/knoll with a narrow street frontage and irregular shape. The buildable areas are located on top of the hill in the rear portion of the site and accessed by an existing driveway meandering along the northern and eastern property lines. To minimize the site grading, the site layout utilizes the existing driveway corridor for the new private street to access the new houses in these buildable areas from the rear side. This form differs from a conventional subdivision layout.

The Planned Development Zoning District aims to establish a set of development standards to regulate future development on this unique site. Specifically, the new standards include much larger setback requirements to the project boundaries and larger minimum lot size requirements than that of the conventional R-1-5 Zoning District to ensure future development occurs within the buildable areas, minimizes site grading, and better complies with Planning regulations, Fire Department and Public Works Department's requirements.

4. Zoning Ordinance Consistency

The project is in the R-1-8(PD) Planned Development Zoning District.

Land Use

Chapter 20.60 of the Zoning Ordinance allows a Planned Development Zoning District to be established through ordinance, including regulations for allowed uses and development standards. The Planned Development zoning can be effectuated through a valid Tentative Map or Planned Development Permit. Per Section 20.60.040.B of the Zoning Code, when a PD permit has been implemented, the provisions of the permit prevail over the regulations of the base district zoning of the property.

The development standards of the proposed Planned Development Zoning District allow permitted, special, and conditional uses of the R-1-5 Single-Family Residence Zoning District for each of the lots. The project includes four detached single-family residences, consistent with the allowed uses of the proposed district.

Development Regulations

The R-1-5 Single-Family Residence Zoning District in Section 20.30.200 of the Zoning Code is the base zoning district for the R-1-5(PD) Planned Development Zoning District. The development standards for both are compared in the table below, including proposed project compliance with the Planned Development Zoning standards.

Development Standard	R-1-5 Zoning District	R-1-5(PD) Planned Development Zoning District	Project Compliance with PD Standards
Minimum Lot Area	8,000 square feet	18,700 square feet	18,713 to 39,432 square feet
Minimum Lot Width	55 feet per Section 19.26.170.	85 feet	87 feet to 112 feet
Minimum Front Setback	20 feet	The minimum building setbacks refer to	See the next table.

Minimum Rear Setback	20 feet	setbacks to the PD Zoning boundary and the proposed lot lines. The detailed requirements are listed in the next table.	
Minimum Side Setback (interior)	5 feet		
Maximum Height	35 feet	35 feet	House 1: 29.33 feet House 2: 33.83 feet House 3: 31.83 feet House 4: 29.83 feet
Minimum # of Stories	2.5	2.5	2

**R-1-5(PD) Planned Development Zoning District
Building Setback Standards**

Setback Standards	Minimum Building Setback in feet	Project 1st Floor Building Setback in Feet	Project 2nd Floor Building Setback in Feet
Front: Ambum Avenue	190	Lot 2: 203 Lots 1, Lots 3 & 4: N/A	Lot 2: 203 Lots 1, Lots 3 & 4: N/A
Side: the western property line abutting APNs 654-55-002 & 003	15	Lot 4: 18 Lots 1 to 3: N/A	Lot 4: 18 Lots 1 to 3: N/A
Side: the northern property line abutting APNs 654-55-005 & 057	45	Lot 4: 48 Lot 3: 70 Lots 1 & 2: N/A	Lot 4: 48 Lot 3: 67 Lots 1 & 2: N/A
Side: the northern property line abutting APN 654-55-016)	70	Lot 1: 72 Lot 2: 132 Lots 3 & 4: N/A	Lot 1: 72 Lot 2: 132 Lots 3 & 4: N/A
Side: the eastern property line abutting APNs 654-55-018 & 019	100	Lot 1: 106 Lots 2 to 4: N/A	Lot 1: 106 Lots 2 to 4: N/A

Side: the eastern property line abutting APNs 654-55-022 & 023	65	Lot 1: 69 Lots 2 & 4: N/A	Lot 1: 68 Lots 2 & 4: N/A
Rear: the southern property line	40	Lot 1: 68 Lot 2: 61 Lot 3: 52 Lot 4: 40 with a 2-foot architectural projection which is allowed per Section 20.30.400.C	Lot 1: 68 Lot 2: 63 Lot 3: 44 Lot 4: 40
Side: the proposed lot lines	5	Lot 1: 6 Lot 2: 18/28 Lot 3: 10/21 Lot 4: 7	Lot 1: 6 Lot 2: 18/22 Lot 3: 10/12 Lot 4: 6
Balcony/deck setback to side property lines/internal lot lines	10	N/A	Lot 1: N/A Lot 2: 18/22 Lot 3: 12 Lot 4: 18

Analysis: As shown on the Planned Development Permit PD22-021 Plan Set, the Project conforms with all required setback standards pursuant to the General Development Plan of the R-1-5(PD) Planned Development Zoning District.

Vehicle Parking:

Under Section 20.90.900.B, this project is exempt from Transportation Demand Management (TDM) plan requirements because it consists of fewer than 16 single-family detached housing units. Under the City code, no parking is required, and there are no parking requirements within the Planned Development Zoning standards.

Analysis: While there are no parking requirements, this project provides two garage parking spaces for each detached single-family residence.

5. Single-Family Design Guidelines Consistency

The project was analyzed for consistency with the 1999 Single-Family Design Guidelines. As mentioned above, SB 330 limits a jurisdiction’s ability to disapprove a qualified housing development project that complies with applicable objective general plan, and zoning standards and other criteria that were in effect when the development

application was deemed complete. The Single-Family Design Guidelines were adopted in 1999, and contain only subjective guidelines.

While housing development projects cannot be required to meet subjective design standards, the project does meet subjective criteria of the design guidelines. For example, the site design minimizes grading to avoid significant changes to the topography. The new private street follows the existing driveway alignment, and the proposed residences are located in the areas on the hill requiring the least amount of grading. Each house is custom-designed based on each lot's condition but with a consistent modern architectural style. Although the proposed houses are larger than the surrounding houses, the architectural design incorporates porches, balconies, decks, projections and recessions, stepbacks, and varying colors and high-quality materials to articulate the building massing and provide visual interest. To avoid privacy and visual impact on the surrounding residents, the site design includes trees along the new private street or along the project boundaries where surrounding buildings are closer, and the 2nd-floor balconies and decks have greater setbacks to the sides.

6. California Environmental Quality Act.

The City of San José, as the Lead Agency, prepared an Initial Study supporting a Mitigated Negative Declaration (IS/MND) (State Clearinghouse No. 2024060080), for the 3464 Ambum Avenue Residential Project in compliance with the California Environmental Quality Act ("CEQA") Guidelines (California Code of Regulations §15000 et. seq.) and the regulations and policies of the City of San José. The IS/MND evaluated the environmental impacts that might reasonably be anticipated to result from implementation of the proposed project.

The IS/MND was circulated from June 3, 2024 to June 24, 2024, and four comment letters were received during the public review period:

- a. A member of the public is concerned with additional single-family residences being constructed and furthering car dependency in the city.
- b. A neighbor identified concerns regarding the proposed development's setbacks and heights impacting the views and privacy of the neighborhood and the removal of ordinance-size trees impacting birds.
- c. The Amah Mutsun Tribal Band of San Juan Bautista & A.M.T.B. Inc. recommended cultural sensitivity training and having qualified archaeological and tribal monitors on-site if there is positive cultural or historic sensitivity within one mile of the project area.
- d. Pacific Gas and Electric Company (PG&E) stated that the project does not directly interfere with existing PG&E facilities or impact easement rights.

The IS/MND, including responses to comments received during the public review period, can be found on the Department of Planning, Building and Code Enforcement webpage (www.sanjoseca.gov/Planning).

The IS/MND identified relevant mitigation measures for potential impacts to nesting birds, hazards from the project site's past agricultural history, and mechanical equipment noise. In addition, environmental standard permit conditions are made part of the permit approval. These standard permit conditions include best management practices for construction related air quality impacts, removal of existing trees on the site, compliance with the Santa Clara Valley Habitat Plan, compliance with the California Building Code for seismic safety of the proposed building, erosion control during construction activities, protection of unknown subsurface cultural resources and human remains, protection of construction workers from hazards related to contaminated soils, water quality impacts during construction and operation periods, and best management practices to control noise during construction and achieving an interior noise level of less than 45 dBA DNL after construction. The mitigation measures are included in the Mitigation Monitoring and Reporting Program ("MMRP") and both the mitigation measures and standard permit conditions are made a part of this permit.

The Initial Study concluded that the proposed project would not result in any significant and unavoidable environmental impacts, with implementation of identified mitigation measures. Therefore, an Environmental Impact Report is not required, and a Mitigated Negative Declaration is the appropriate level of CEQA clearance for the project.

7. Planned Development Permit Findings. Section 20.100.940 of the Zoning Ordinance specifies the required findings for approval of a Planned Development Permit. In order to make the Planned Development Permit findings and recommend approval to the Planning Commission, staff must determine that:

- a. The planned development permit, as issued, is consistent with and furthers the policies of the general plan; and

Analysis: As analyzed in the General Plan conformance section above, this four-unit single-family residential project conforms with the Residential Neighborhood land use designation per the General Plan, including relevant goals and policies. The uses are allowed within the Residential Neighborhood designation, and the project is providing 1.54 du/ac, allowable under the Residential Neighborhood land use designation. The lot sizes and widths are consistent with the existing neighborhood and the project would not change the neighborhood character.

- b. The planned development permit, as issued, conforms in all respects to the planned development zoning of the property; and

Analysis: As analyzed in the Zoning Ordinance Consistency section above, the project is consistent with the R-1-5 (PD) Planned Development Zoning District

Development Standards. The project is consistent with the use, setback, and height requirements of the Planned Development Standards and the General Development Plan.

- c. The planned development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As discussed in the City Council Policy Consistency section, the project is subject to and conforms to the Public Outreach Policy for Pending Land Use and Development Proposals. The project was noticed at a 500-foot radius and the required on-site sign has been posted at the site since November 2, 2022, to inform the neighborhood of the project. No community meeting was required or held for this project because the project is considered a Standard Development Proposal, as it includes less than 50 dwelling units. Staff has been available to answer questions from the public.

- d. 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; and

Analysis: The subject project provides four detached single-family houses which are compatible and appropriate uses within the residential neighborhood. As discussed in the Design Guidelines section above, although each residence is custom designed based on each lot's site condition, the same architectural theme, design treatments, and color and materials are applied to all four houses. All houses are two stories and the sizes are similar. They are all located on the areas fronting on the new private street. Therefore, the houses are compatible and aesthetically harmonious.

- e. 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 purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: As discussed in the CEQA section below, the project incorporates measures to address noise, stormwater runoff, drainage, and erosion. The project would be required to adhere to all applicable standard permit conditions and mitigation measures related to reducing temporary and operational sources of noise and vibration, dust, and erosion. Residential buildings are not a source of significant odor and would not impact adjacent properties. The project will be required to comply with all City permits and policies related to erosion and storm water runoff. For these reasons, the project is not anticipated to have an unacceptable negative impact on adjacent properties.

- 8. Demolition Findings.** Per Section 20.80.460 of the Municipal Code, prior to the issuance of any Development Permit which allows for the demolition, removal or relocation of a Building, the approval authority shall determine whether the benefits of

permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation. In making such a determination, the following factors shall be considered. Staff recommends the Planning Commission adopt the considerations below for each factor, based on the above stated findings related to General Plan, Zoning and CEQA conformance and other reasons stated below, and subject to the conditions set forth in this Resolution:

- 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;

Analysis: The property contains no nuisance, blight, or dangerous conditions. Therefore, failure to approve the permit would not conclusively result in the creation of nuisance, blight, or dangerous conditions or jeopardize the public health, safety, or welfare.

- c. The approval of the permit should facilitate a project that is compatible with the surrounding neighborhood;

Analysis: The approval of the permit facilitates a project that is compatible with the surrounding neighborhood in that it is a four-unit single-family residential project. This project is compatible with the Residential Neighborhood designation in that it is consistent with the existing single-family neighborhood is consistent with the existing neighborhood character.

- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;

Analysis: Approval of the permit increases the supply of housing stock in the City of San José. One single-family residential unit and one ADU would be demolished, and four single-family residential units would be constructed.

- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;

Analysis: No buildings, sites, or districts of historical significance are being demolished. The project site is not located within a Historic Area or District, and there are no historic resources adjacent to the project site. As discussed in the Historic Resources Evaluation prepared by AHC dated May 2024, and analyzed in the Initial Study/Mitigated Negative Declaration prepared for the project, the existing single-family residence on the project site was constructed in 1956; therefore, it was evaluated for historical significance against the California Register of Historic Resources (CRHR) criteria. The evaluation found that the building at 3464 Ambum Avenue does not appear to be a historical resource under CEQA because no significant events, patterns of history, or important figures in history are associated with the site. In addition, the evaluation found

that the structures on-site are not associated with significant themes of its period such as postwar residential development and suburbanization, do not exemplify distinct aspects of San José's cultural, economic, social, or historic heritage during the postwar period, nor do they portray the environment of a group of people through a distinctive architectural style. Therefore, structures on-site are not eligible for listing as a City of San José Landmark on the City's Historic Resources Inventory because they do not possess sufficient historical, architectural, cultural, aesthetic, or engineering interest or value to be designated as a City Landmark.

- f. Rehabilitation or reuse of the existing building would not be feasible; and

Analysis: The rehabilitation or reuse of the existing buildings would not be feasible should the new project be constructed, as the demolition of the existing buildings is required to construct the new buildings and circulation, and the project is intended to replace the existing buildings. Additionally, reusing these buildings is also not economically feasible; retaining the existing buildings would mean that the project could not be built to the density allowed by the General Plan land use designation.

- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: Replacement buildings would be approved in this application, and the existing buildings could not be demolished prior to submittal of a building or grading permit for the replacement buildings.

- 9. Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees. Findings are made for the Project based on the findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the resolution.

- a. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

Analysis: As discussed above, 23 ordinance-size trees and 16 non-ordinance-size trees will be removed to accommodate the project. The trees to be removed are within the proposed building footprints, the new private street, stormwater treatment areas or site grading area.

All removed trees are to be replaced per the City's Tree Replacement ratios in the table below. To replace the removed trees, 131 15-gallon trees (5x5+18x4+2x3+14x2) will be required to be planted on this site, including five native ordinance-size trees replaced at a 5:1 ratio, twelve non-native ordinance-size trees replaced at a 4:1 ratio,

two native ordinance-size trees replaced at a 3:1 ratio, 14 non-native ordinance-size trees replaced at a 2:1 ratio. According to the landscape plans, 47 24-inch box trees will be planted on this site, equivalent to 94 15-gallon trees. The applicant will pay the off-site planting fee for the remaining 37 15-gallon trees prior to the issuance of building permits in accordance with the City Council’s approved fee resolution, which is in effect at the time of payment.

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio

Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box tree = two 15-gallon trees

In accordance with the findings set forth above, a Planned Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

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

- a. Acceptance of the Permit by the Permittee; and
 - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **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 Permittee'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 in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility 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; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, "Planned Development Permit, Ambum Avenue" dated revised January 11, 2024 and last updated April 30, 2023, on file with the Department of Planning, Building and Code Enforcement as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
6. **Demolition Permit.** A demolition permit may be issued for the existing single-family house, accessory dwelling unit and structures only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
7. **Planned Development District Effectuated.** This Planned Development Permit effectuates the Planned Development Zoning as reflected in the Permit's Approved Plan Set and the corresponding legal description.
8. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
9. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
10. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
11. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
12. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
13. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
14. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
15. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.

- 16. Tree Protection Standards.** The Permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning, Building and Code Enforcement. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the Permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
- 17. Tree Replacement Enforcement.** Failure to plant trees in conformance with the approved plan set may be subject to in-lieu fees for trees not planted.
- 18. Verification of Payment and/or Planting of Replacement Tree(s).** After payment of the in-lieu fee and/or the planting of replacement trees on-site, the permittee shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager to verify compliance with the mitigation requirements. Such evidence shall be uploaded to www.sjpermits.org using these instructions: (1) how to set up an account: <https://www.sanjoseca.gov/business/development-services-permit-center/online-permits-at-sjpermits-org>, and (2) how to upload <https://www.sanjoseca.gov/home/showpublisheddocument/88853/638088605255430000>. Such evidence shall also be e-mailed to the Planning Project Manager and labeled File No. PD22-021.
- 19. Replacement Tree Failure.** On-site tree replacement trees that fail within three years after planting shall be promptly replaced.
- 20. Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
- 21. Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans, as applicable. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
- 22. Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building

and Code Enforcement prior to approval of the final inspection of the Project, as applicable.

23. **Common Area Landscaping.** All landscaping in common areas shall be maintained by the Homeowner's Association or other similar entity.
24. **Inclusionary Housing Ordinance Requirements for Residential Developments.** The developer has selected to comply with the Inclusionary Housing Ordinance (IHO) through Payment of an In-Lieu Fee (5.08.520) compliance option and will not provide any Inclusionary Units on-site. The development is in the Evergreen Area of the Inclusionary Housing Ordinance Area, also referred to as Moderate Market area. The proposed four-unit development will not be required to pay the In-Lieu fee as Residential Developments that have nine (9) or fewer For Sale Dwelling units are exempt from compliance with the requirements of the IHO (SJMC Section 5.08.320.A.2).
25. **Conditions for Senate Bill 330 / Government Code 66300 (as amended).** The permittee has submitted a fully completed Replacement Unit Determination (RUD) Application with all attachments. The Housing Department has determined that this project is not subject to SB330 affordability conditions on the replacement units.
26. **Homeowner's Association.** A Homeowner's Association shall be established for maintenance of all common areas, including driveways/courtyards, landscaping and the community amenity area. A copy of the Development Permit, the accompanying Approved Plans, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans shall be provided to the Homeowner's Association by the Permittee no later than 30 days upon completion of each phase.
27. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the Project must comply with the California Fire Code as adopted or updated by the City.
28. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit file number, PD22-021 shall be printed on all construction plans submitted to the Building Division.
 - b. *San José's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
 - c. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).

- d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - 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.
 - f. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee 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 the 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).
 - g. *Other.* Such other requirements as may be specified by the Chief Building Official.
29. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the Project, including information on available haulers and processors.
30. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Parcel Map by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Permittee will be required to have satisfied all of the following Public Works conditions. The Permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.
- 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. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
 - b. **Transportation:** This project meets the screening criteria of Single-family detached residential Projects of 15 or fewer dwelling units for Vehicle Miles Traveled under Council Policy 5-1 which results in less-than-significant impacts for transportation. This project does not require a detailed CEQA Transportation Analysis nor a Local Transportation Analysis. The project is expected to result in less-than-significant transportation impacts and the projected traffic for the project was reviewed and found to be minimal.

c. Grading/Geology:

- i. A grading permit is required prior to the issuance of a Public Works Clearance.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) 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 latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- 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 soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to, foundation, earthwork, utility trenching, retaining and drainage recommendations.
- vi. A Geologic Hazard Clearance has been issued for this project on 09/29/22.

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) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- 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 design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area. However, the project will not create and/or replace one acre or more of impervious surface. The project is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f. **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.
- g. **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 prior to issuance of Public Works clearance.
- h. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact San José Municipal Water at (408) 535-8550 for further information.
- i. **Parks:** This residential project is subject to the payment of park fees in-lieu of land dedication under 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).
- j. **Street Improvements.**
 - i. Remove and replace curb, gutter, and sidewalk along Ambum Avenue project frontage to an ADA compliant 8' sidewalk section.
 - ii. Proposed driveway width to be 26' per City Standard Detail R-6.
 - iii. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - iv. 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. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.

- l. **Sanitary:** The project is required to submit plan and profile of the sewer mains with lateral locations for final review and comment prior to construction.
- m. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

31. **Conformance to Mitigation Monitoring and Reporting Program (MMRP).** This project shall conform to all applicable requirements of the MMRP approved for this development by City Council Resolution No. [REDACTED].

32. **Standard Environmental Conditions.**

- a. Air Quality. The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
 - i. Water all exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) two times per day.
 - ii. Cover all haul trucks transporting soil, sand, or other loose material off-site.
 - iii. Remove all visible mud or dirt trackout onto adjacent public roads at least once per day using wet power vacuum street sweepers. The use of dry power sweeping is prohibited.
 - iv. Limit all vehicle speeds on unpaved roads to 15 mph.
 - v. Pave all new roadways, driveways, and sidewalks as soon as possible.
 - vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
 - vii. Suspend all excavation, grading, and/or demolition activities when average wind speeds exceed 20 mph.
 - viii. Wash off all trucks and equipment, including their tires, prior to leaving the site.
 - ix. Treat unpaved roads providing access to sites located 100 feet or further from a paved road with a 6- to 12-inch layer of compacted layer of wood chips, mulch, or gravel.
 - x. Minimize idling time either by shutting equipment off when not in use or reducing the time of idling to no more than 2 minutes (A 5-minute limit is required by the state airborne toxics control measure [Title 13, Sections 2449(d)(3) and 2485 of the California Code of Regulations]). Provide clear signage that posts this requirement for workers at all access points to the site.

- xi. Maintain and properly tune all construction equipment in accordance with the manufacturer’s specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xii. Post a publicly visible sign with the name and phone number of an on-site construction coordinator to contact regarding dust complaints. The on-site construction coordinator shall respond and take corrective action within 48 hours. The sign shall also provide the City’s Code Enforcement Complaints email and number and the Air District’s General Air Pollution Complaints number to ensure compliance with applicable regulations.

b. Tree Removal

Trees removed for the project shall be replaced according to tree replacement ratios required by the City, as provided in the table below:

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio

Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box tree = two 15-gallon trees

- i. 39 trees including 23 ordinance-size trees and 16 non-ordinance-size trees onsite would be removed. The total number and size of replacement trees required to be planted on-site is 131 15-gallon trees. 47 24-inch box trees will be planted on site per the Approved Plans.
- ii. If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code

- Enforcement or Director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment.
- a) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
 - b) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
 - i. Prior to the issuance of building permit(s), the permittee shall pay Off-Site Tree Replacement Fee(s) to the City for 37 off-site replacement trees in accordance with the City Council approved Fee Resolution in effect at the time of payment.
- c. **Santa Clara Valley Habitat Plan.** The project is subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of PBCE or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at www.scv-habitatagency.org.
- d. **Archaeological Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee, the City's Historic Preservation Officer, and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- e. **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further

excavation or disturbance of the site, or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC shall then designate a Most Likely Descendant (MLD). The MLD shall inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- o The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- o The MLD identified fails to make a recommendation;
- o The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

- f. **Seismic Safety Design.** To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- g. **Construction Related Erosion.**
 - i. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
 - ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
 - iii. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
 - iv. The project shall be constructed in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance.

- h. **Paleontological Resources.** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.
- i. **Asbestos-Containing Materials and Lead-Based Paint.**
- i. 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 building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
 - ii. During demolition activities, all building materials containing LBP shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
 - iii. All potentially friable ACMs shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
 - iv. 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.
 - v. Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- j. **Construction Erosion and Runoff Prevention**
- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.

- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- ix. The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José
- x. Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

k. Construction-Related Noise

- i. Pile Driving is prohibited.
- ii. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.
- iii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- iv. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. Prohibit unnecessary idling of internal combustion engines.
- v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.

- vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- vii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- viii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
- ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- x. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

33. Construction Equipment Plan. Prior to issuance of any grading, and/or building permits (whichever occurs first), the project applicant shall develop a plan demonstrating that all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for particulate matter (PM10 and PM2.5). The plan shall be signed and verified by an air quality specialist and shall be submitted to the Director of Planning, Building, and Code Enforcement or the Director’s designee. Construction equipment measures shall be printed on all construction documents, contracts, and project plans.

34. Cultural Sensitivity Training. A qualified Native American representative, registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally and culturally affiliated with the geographic area, would provide sensitivity training to construction crew prior to the initial ground-breaking activities

35. Revocation, Suspension, Modification. This Planned Development Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or state law was not abated, corrected or rectified within the time specified on the notice of violation; or

c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

EFFECTIVE DATE

The effective date of this Planned Development Permit shall be the same as effective date of the Rezoning Ordinance for File No. PDC22-008 passed for publication on _____, 2024 (the "Zoning Ordinance") and shall be no earlier than the effective date of said Rezoning Ordinance.

ADOPTED this ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.



EXHIBIT "A"
FOR ZONING PURPOSES

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcels 1 & 2 as described in the Grant Deed recorded February 5, 2021, in Document No. 24819121 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the southeasterly corner of said Parcel 1;
Thence South 89°53'08" West, 407.77 feet;
Thence North 05°36'27" West, 172.91 feet;
Thence North 79°07'56" East, 197.38 feet;
Thence North 00°06'48" West, 157.62 feet;
Thence South 79°25'14" East, 78.48 feet;
Thence South 09°55'48" East, 72.02 feet;
Thence South 78°14'03" East, 166.94 feet;
Thence South 29°52'39" East, 69.99 feet;
Thence South 16°57'27" West, 194.47 feet, to the POINT OF BEGINNING.

Containing 2.58 acres, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

END OF DESCRIPTION

For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 8-29-24

Tracy L. Giorgetti
Tracy L. Giorgetti, LS 8720

