

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 APPROXIMATELY 25 BUILDINGS AND STRUCTURES, THE CONSTRUCTION OF A MEDICAL CARE FACILITY WITH UP TO 248 BEDS, AND THE REMOVAL OF SEVEN ORDINANCE-SIZE TREES ON AN APPROXIMATELY 3.0-ACRE PORTION OF A 21.0-GROSS ACRE SITE, LOCATED AT THE EAST SIDE OF DOVE HILL ROAD, APPROXIMATELY 500 FEET NORTH OF HASSLER PARKWAY (4200 DOVE HILL ROAD)**

**FILE NO. PD16-019**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on July 1, 2016, an application (File No. PD16-019) was filed by the applicant, Salvatore Caruso, on behalf of the owner, Kuehne Stanislaw & Eleanore/Donna Maiochi, with the City of San José for a Planned Development Permit to allow the demolition of approximately 25 buildings and structures, the construction of a Medical Care Facility with up to 248 beds, and the removal of seven ordinance-size trees on an approximately 3.0-acre portion of a 21.0-gross acre site, on that certain real property situated in the PQP(PD) Planned Development Zoning District and located at the east side of Dove Hill Road, approximately 500 feet north of Hassler Parkway (4200 Dove Hill Road, 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 hearing on said application on July 25, 2018, 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 recommendations of the City's Planning Commission and City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Dove Hill Medical Care Facility," dated revised on May 9, 2018, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; 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 to it 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:**

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject site encompasses four parcels and is located on the east side of Dove Hill Road, approximately 500 feet north of Hassler Parkway). The overall site is currently developed with two single-family houses and a commercial landscaping business with an associated plant nursery, sheds and storage yards. The subject rezoning would rezone the entire 21 gross acre site; however, the majority of the site has a slope of greater than 15% and is therefore undevelopable and is currently primarily used as a grazing pasture. The developable area would be limited to approximately three-gross acres at the southwest downhill portion of the property that is located with the area designated in the Envision San José General Plan as Public/Quasi-Public.

To the west of the site is U.S. Highway 101, and the site is approximately 700 feet downhill from the residential development (Ranch on Silver Creek) to the east. To the north and south of the site are low density single-family and agricultural development. Access to the proposed project would be taken from of Dove Hill Road. This area is within the Evergreen-East Hill Development Policy boundary, which was adopted in 2008 to provide a development framework for transportation and traffic improvement for sites within the policy boundary.

2. **Project Description.** The project consists of two four-story buildings with a total building area of 141,359-gross square feet. The two four-story buildings would be connected by a pedestrian bridge. The project would be limited to a 3-acre the area of the site with less than a 15% slope (15% grade build-to line), which is approximately 3-acres of the subject site and the remaining portion of the 21-gross acre site would be zoned Open Hillside for private open space.

The approximately 3-acre portion of the site would remove all existing buildings, structures, trees and landscaping, and associated improvements within the development footprint, and would construct a medical care facility with two buildings containing a total of 155 patient rooms and up to 248 beds. The project would also include a dining hall, multipurpose room and other ancillary uses, surface parking areas with 124 spaces, new landscaping, walkways, and landscaped common outdoor open space. Vehicle access to the site would be from the northern extension of Dove Hill Road. The design of the project and parking areas is required to comply with the City's standards for emergency vehicle access, which include requirements to provide adequate points of access, vertical clearance, and turning radius.

The project is a convalescent hospital/medical care facility providing significant medical services on-site, including skilled nursing services, rehabilitation services, wound care, occupation therapy, physical therapy, speech therapy, and memory care. The facility would operate 24 hours per day, seven days per week and would be staffed at all times with medical, administrative, maintenance, and kitchen personnel. A maximum of 55 staff would be on site during the daytime and up to 25 staff at night. Based on data from similar facility operations, it is assumed that approximately 10 percent of the convalescent hospital facility's 248 occupants (maximum) would have visitors, which equates to approximately 25 visitors over a two-day weekend period (the period most frequented by visitors). The number of visitors during the week is typically less.

The project includes construction of a new water main in Dove Road and installation of new on-site water lines and sanitary sewer lines. Existing water lines to serve the project are located within Hassler Parkway. A sewer line would be constructed within an existing utility easement and includes a 3,000 feet connection with an elevation change at approximately 220 feet, connecting to an existing sewer connection in Yerba Buena Avenue. A sewer pump station connecting to the sewer line would be installed at the southwestern corner of Building A. The project would not connect to the City's stormwater drainage system. The project proposes storm drainage infrastructure including flow-through planters, bio-swales, storm drain lines, and a bioretention basin on the site. Two emergency back-up diesel generators would be located on the site, one in each building, to provide electrical power in the event of an emergency power outage.

- 3. General Plan Conformance.** The project has an Envision San José 2040 General Plan Land Use/Transportation Diagram designations of Public/Quasi-Public (PQP) and Open Space, Parkland, and Habitat (OSPH). The location of the medical service facility would be located at the 3-acre lower portion of the subject site, that is designated PQP. The PQP designation is used to designate public land uses, including schools, colleges, libraries and fire stations and also allows some private entities such as private schools, daycare centers, hospitals, and public utilities. The remaining 18.0 acre site is designated OSPH. The OSPH designation is for land devoted to open space, parks, recreation areas, trails, habitat buffers, nature

preserves and other permanent open space areas. The subject project is a medical care facility with significant medical services provided on site, including: skilled nursing services, rehabilitation services, wound care, occupation therapy, physical therapy, speech therapy, and memory care. For the portion of the site located in the OSPH General Plan land use designation, the Planned Development Zoning District's land use diagram limits the use for only open hillside and private open space.

1. Land Use Policy LU-17.2: Apply strong architectural, site, and grading design controls through a discretionary development review process to all types of hillside and rural residential development that require significant grading activities in order to protect the hillsides and to minimize potential adverse visual and environmental impacts.

*Analysis: The project includes building heights at 58 feet with certain portions of the building and projection elements as high as 68 feet to provide visual interest and breaks to the proposed buildings. The design of the buildings are inspired by the surrounding Italian hillside village architectural style with a natural color palette (green, rock, tan) to blend into the surrounding developments and natural hillside color tones. The project would be largely shielded from US Highway 101 by existing and newly planted trees, and would allow the overall undeveloped visual character of the hill slopes behind and above the project to be maintained.*

2. Land Use Policy LU-17.6: Avoid any new development along ridges and other major hillside areas (typically all properties that exceed 30% slope) that surround the valley floor to minimize visibility of development on these aesthetic resources.

*Analysis: The project would be limited to the area of the site with less than a 15% slope (15% grade build-to line) covering approximately three-acres of the subject site and the remaining portion of the 21-gross acre site, is in the Open Hillside Zoning District for private open space in the land use plan of the Planned Development Zoning.*

3. Infrastructure Policy In-1.3: Provide sustainable utility services and infrastructure in a cost-efficient manner consistent with Envision General Plan goals and policies related to Fiscal Sustainability.

*Analysis: The project would install a system of private pumps and sewer lines on the east side of the property to the top of the ridgeline, utilizing an established utility easement dedicated across multiple properties, onto a public right-of-way on Dove Hill Road with a privately maintained sewer line until it connect onto existing lines located in the public right-of-way. A new private sanitary sewer line will extend from Deans Place Way and Yerba Buena Road to the terminus of Dove Hill Road, near Yerba Buena Road. This extension will be reviewed and approved by Public Works, and all sewer improvements beyond Dove Hill Road will be considered private sewer main. The new private sanitary sewer line will require approvals from Caltrans and the Santa Clara Water Valley Water District. Permittee shall be required to obtain*

*any third party approvals, subject to review and approval, prior to issuance of any building permit. The City would only be required to maintain the existing public infrastructure.*

4. Fiscally Beneficial Land Use Policy FS-4.1: Preserve and enhance employment land acreage and building floor area capacity for various employment activities because they provide revenue, near-term jobs, contribute to our City's long-term achievement of economic development and job growth goals, and provide opportunities for the development of retail to serve individual neighborhoods, larger community areas, and the Bay Area.

*Analysis: The project includes both ambulatory and non-ambulatory clients for a range of assisted medical care and memory care beds that require significant medical and personal assistance services on-site. The proposed project is estimated to provide approximately 120 jobs with the development of the medical care facility. This includes both medical staff (doctors, nurses, and medical aides) and various support staff such as cooks, facility maintenance, and clerical. The development would be helping the City's plans for increased job growth.*

5. 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. These development standards and other site design issues implement the design standards set forth in the Envision General Plan and design guidelines adopted by the City Council. The second phase of this process, the Planned Development Permit, is a combined site/architectural permit and Conditional Use Permit which implement the approved Planned Development zoning on the property

*Analysis: The site is currently in the Agricultural Zoning District, which does not allow for more than one single-family dwelling and agricultural uses to be developed on the site. The subject site is approximately 21-gross acres, with the majority of the site with more than 15% slope grade. The Planned Development Zoning District would allow the proposed use on the portion of the site with the least required amount of grading and would preserve the majority of the site for private open space. A conventional zoning district would not have been able to include the development standards that would limit the site layout, design, and uses that the Planned Development Zoning District would allow.*

#### **4. Evergreen-East Hills Development Policy**

The Evergreen-East Hills Development Policy (EEHDP) was an update to the original Evergreen Development Policy (EDP) that was adopted in 1976 to address flood protection and traffic capacity in the EDP area. The EEHDP was adopted by City Council on December 16, 2008 to replace the original EDP and to allow a

limited increase in development in the Evergreen-East Hill Area, which encompasses the area south of Story Road and east of U.S. Highway 101. When the Planned Development Zoning was submitted in 2014, there was limited development capacity to allow development consideration of the subject project. There is currently only 62,907 square feet of commercial and 47,374 square feet of office development capacity remaining in the EEHDP.

In the event that a proposed use is not a clearly defined residential, office, or commercial use, the Evergreen-East Hills Development Policy allows the use of a project trip equivalency conversion to the use category that would most closely reflect the project. Of the capacity categories, the project is more consistent with a commercial use. The project would result in a trip conversion commercial square footage of 14,825 square feet, which is within the current available capacity of 62,907 square feet. The project is required to pay into the Evergreen-East Hills Traffic Impact Fee (TIF) program.

5. **Zoning and Planned Development Zoning Conformance.** The PQP(PD) Planned Development Zoning District would facilitate the development of up to 3 acres for PQP uses consistent with the Development Standards for the Planned Development Zoning District, while preserving the remaining 18 acres, in the Open Hillside Zoning District, where the project is not proposing development, for open space uses. The Development Standards require the project to complement the existing Italian Hillside Village architectural style.

Setbacks, Height and Parking. The Planned Development Zoning District Development Standards would limit structures to the portion so the site with less a 15% slope (3.0 acres). The Development Standards require a 10-foot front setback and requirements for screening with landscaping to minimize the visual impact of the project and further integrate into the hillside. The project has a 30-foot front setback. The maximum allowed height on the site is 70 feet and the average height of the building are approximately 58 feet with certain portions of the buildings projecting to 68 feet to provide visual interest.

The project is providing one parking space per four beds and one parking space per employee for medical care facilities. Thus, the project is required to provide 62 spaces for each bed (248 beds) and 55 spaces for each employee (55 employees) on-site for a total of 117 required parking spaces. The project is providing a total of 124 parking spaces that is all located within the 15% grade build-to-line.

Therefore, the project conforms to the required setbacks, height, parking, landscaping and architecture of the Planned Development Zoning Development Standards.

6. **Environmental Review.** An Initial Study (IS) and Mitigated Negative Declaration (MND) was approved with intent to adopt on April 4, 2018, by the Director of the Department of Planning, Building and Code Enforcement for the subject Planned

Development Rezoning and Planned Development Permit. The environmental review evaluated a rezoning of 3 acres (“development footprint”) of the 21-acre site from Agriculture to A(PD) Planned Development to a Planned Development (PD) Zoning District for the demolition of all existing buildings, structures, trees and landscaping, and associated improvements, and to construct a medical care facility with two buildings containing a total of 155 patient rooms and up to 248 beds, all within the development footprint of the 3 acres. The remaining 18 acres would remain Open Hillside and would be maintained as undeveloped, permanent private open space.

The proposed project would allow the demolition of two houses and a landscaping business with its associated nursery, sheds, and storage yard. The existing two-story primary residential structure on the site was developed between 1939 and 1961. According to the evaluation of the structure in the Historical Resource Evaluation Report (Archaeological Resource Management, August 15, 2008), this primary residence is not associated with significant eras, persons, or events. The vernacular style in which the house was built does not appear to be architecturally significant. The structure does not appear to be likely to yield information important in prehistory or history.

The documents were circulated for public comments from April 9, 2018 to April 30, 2018. During the circulation period, the City of San José received comment letters and email messages from 1) the representative from Amah Mutsun Tribal Band, 2) the Santa Clara Valley Transportation Authority (VTA), 3) Lozeau Drury LLP, and 4) local resident, Deepesh Chouhan. Concerns highlighted in the comment letters include: traffic and pedestrian safety, air quality analysis, greenhouse gas analysis, impact to biological resources, and “fair argument” that the project may have unmitigated adverse environmental impacts.

Environmental comments have been addressed in a formal Responses to Comments document. The primary environmental issues that required mitigation measures are biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, and transportation. The IS/MND includes mitigation measures that would reduce any potentially significant project impacts to a less-than-significant level. In addition to the mitigation measures, other permit conditions in regards to lighting requirements, nuisance, and maintenance of the site are included in the Planned Development Permit as conditions of approval to ensure all potential impacts have been addressed.

Prior to adopting this Resolution, the City Council adopted a separate resolution adopting the IS/MND and related Mitigation Monitoring and Reporting Program for this project. The project is required to fully comply with the City Council approved IS/MND and related Mitigation Monitoring and Report Program.



**7. Planned Development Permit Findings:** Chapter 20.100 of the San José Municipal Code establishes evaluation criteria for the issuance of a Planned Development Permit. These criteria are applied to the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the proposed permit. Pursuant to Section 20.100.720 of the San José Municipal Code, the City Council finds that:

1. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan;

*Analysis:* As described in the General Plan conformance analysis above, the project is consistent with the General Plan land use designation of Public/Quasi-Public and Open Space, Parkland, and Habitat land use. The project would generate new employment with the proposed medical care facility. With the proposal to include a private sanitary pump system, the project would not increase the fiscal impact to the infrastructure improvements. The site design, material, and use of landscaping helps minimize the visibility of the project on the hillside.

2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property;

*Analysis:* As described above, the Planned Development Permit conforms in all respects to the development standards of the proposed PQP(PD) Planned Development Zoning of the property. The proposed medical care facility in the Planned Development Permit is a permitted use in the Development Standards of Planned Development Zoning District. The project buildings are required to have a 10-foot setback from Dove Hill Road and are proposed to be setback approximately 30 feet. The proposed maximum building height of 68 feet is below the maximum 70-foot height. The project is required to provide 117 parking space and the project would be providing 124 parking spaces.

3. The Planned Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency;

*Analysis:* The project site is not subject to a specific City Council Policy or specific plan. The project was analyzed for conformance with the Evergreen-East Hills Development Policy, and based on the proposed use the and new vehicle trips generated by the new use would be allowed as discussed in the Evergreen-East Hills Development Policy analysis above.

4. 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;

*Analysis:* As described above, the project site contains approximately 21 acres, and the majority of the site would remain as open space and with approximately 3 acres used for the project. The project buildings would be located at the foot of the hillside by Dove Hill Road and adjacent to U.S. Highway 101. The average height of the buildings are approximately 58 feet with certain portions of the buildings projecting to 68 feet to provide visual interest. The buildings are consistent with the architectural style of the surrounding area and the natural color palette (green, rock, tan) proposed for the project blend into the surrounding developments and natural hillside color tones.

5. The environmental impacts of the project, including, but not limited to aesthetics, air quality, noise, and transportation/traffic, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Analysis:* An Initial Study and Mitigated Negative Declaration (IS/MND) was prepared for the project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. Based on the environmental analysis of the project in the IS/MND, as discussed above, the project was determined to not have unacceptable negative effects on adjacent properties. The project is adjacent to a freeway off-ramp on the west side of the site and approximately 18 acres of open space to the east, both of which provide a buffer from other nearby uses and minimizes the impact to the nearest residents at the top of the hill. In addition, the project will be required to adhere to conditions and mitigation measures to ensure the development of this project would not encroach or affect the adjacent 18 acres of open space.

8. **Demolition Findings:** Pursuant to Section 20.80.460 of the San José Municipal Code the following criteria have been considered by the Director of Planning to determine whether the benefits of permitting the demolition of the existing building outweighs the impacts of demolition:
  - a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
  - b. The failure to approve the permit would jeopardize public health, safety or welfare;
  - c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
  - d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
  - e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;

- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: The proposed project would allow the demolition of two houses and a landscaping business with its associated nursery, sheds, and storage yard. The existing two-story primary residential structure on the site was constructed between 1939 and 1961. According to the evaluation of the structure in the Historical Resources Evaluation Report (Archaeological Resource Management, August 15, 2008), this primary residence is not associated with significant eras, persons, or events. The vernacular style in which the house was built is not architecturally significant. The structure does not yield information important in prehistory or history. The removal of the existing structures would facilitate the development of the medical care facility that would generate additional employment opportunities for city residents, and utilize the developable three-acre portion of the site while preserving the existing open space.*

**9. Tree Removal Findings:** Pursuant to Section 13.32.100 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Tree Removal Permit for ordinance-size trees measuring 56 inches or more in circumference. Findings are made for the project based on the above-stated findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
- c. 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: The project includes the removal of seven ordinance-size trees and 13 non-ordinance-size trees for a total of 20 trees. This includes 17 trees that would fall within the building footprints and three trees would be impacted by needed road improvements. 15 existing trees would be preserved on-site, and an additional 153 trees and landscaping would be planted in association with development of the project.*

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.

## CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Planned Development Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
  - a. Acceptance of the Planned Development Permit; 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 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** The 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, a Building Permit has not been obtained or the use, if no 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. No permit extension shall be granted with a Permit Adjustment, any permit extension would require a new Planned Development Permit or Planned Development Permit Amendment.
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 Planned Development 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 by 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.** 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 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. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Dovehill Medical Care Facility," dated revised on May 9, 2018, 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 Plan Set".
6. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of land covered by the Permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
7. **Scope and Use Authorization of the Planned Development Permit.** This Planned Development Permit allows the demolition of approximately 25 buildings and structures, the construction of a Medical Care Facility with up to 248 beds for both ambulatory and non-ambulatory clients for a range of assisted medical care and with up to 50 beds for memory care clients, and the removal of seven ordinance-size trees on an approximately 3-acre portion of a 21-gross acre site, in accordance with the approved development plans and uses consistent with the General Development Standards of the Planned Development Zoning District. Additionally, this Planned Development Permit effectuates the remaining portion of the site to be used for open hillside for private open space.
8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
10. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare

of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.

11. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
12. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
13. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
14. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
15. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
16. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
17. **Building and Property Maintenance.** The property owner or management company shall maintain the property 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.
18. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment.
19. **Lot Merger.** Prior to the issuance of a building permit, the project shall merge the lots via a final map or lot line adjustment in area of proposed buildings and structures.
20. **Affordable Housing Conditions.** Prior to the issuance of the final building permit, housing shall review the building plans to confirm the project is still not subject to the City's Inclusionary Housing Ordinance (IHO) or Affordable Housing Impact Fee (AHIF). If the project is determined to be subject to the IHO or AHIF based on that review, an Affordable Housing Compliance Plan is required at that time.
  - a. If the project is subject to the AHIF, no building permit may issue until the AHIF is paid. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice

of Completion for any units shall be issued until all requirements of the AHIF Resolution are met.

- b. If the project is subject to the IHO, no building permit may issue until the Affordable Housing Agreement is recorded and no Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO are met.

**21. Covenant of Easement.** Prior to construction authorized with a building permits, all sewer and all other necessary easements that cross property lines shall be obtained and recorded by the property owner.

**22. Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. Construction Plans. The permit file number, PD16-019 shall be printed on all construction plans submitted to the Building Division.
- b. Americans with Disabilities Act. The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA), including paths of travel connecting all buildings on the site.
- c. Emergency Address Card. The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. Street Number Visibility. Street numbers of the buildings shall be easily visible at all times, day and night.
- e. Construction Plan Conformance. A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

**23. Construction and Demolition Hours.** Construction, demolition, and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m.

**24. Demolition of Structures.** Subsequent to permit approval, no demolition permits may be issued prior to the submittal of foundation or structural building permits for the medical care facility.

**25. Green Building.** The project shall receive a minimum green building certification of LEED Silver Certified. The permittee shall pay a Green Building Refundable Deposit

prior to building permit issuance. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

26. **Interior Noise:** Prior to issuance of any building permit, an acoustical analysis shall be required to demonstrate to the City's Chief Building Official and/or the Environmental Supervising Planner in the Planning Division, that interior noise standards is in compliance with the General Plan and ensure land use compatibility and General Plan consistency over the life of this plan to ensure. A design-level acoustical analysis shall be completed at the building permit stage, in conformance with the Building Code, to document the noise attenuation measures necessary to reduce interior noise to 45 dBA DNL or lower prior to the issuance of building permits.
27. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
28. **Landscaping Maintenance.** The permittee shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
29. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
30. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
31. **Street Cleaning and Dust Control.** During construction, permittee shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.



32. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
33. **Lighting.** All exterior lighting shall be as shown on the approved plans. On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
34. **Fencing.** Fence height and materials shall be as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
35. **Mechanical Equipment.** The location of mechanical equipment (AC Units) shall be located as shown on the approved plans and shall be screened from view.
36. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
37. **Encroachments.** Prior to any building permit issuance, permittee shall obtain all required easements from Caltrans, Santa Clara Water District, or any other third party for the construction of the new sanitary and storm sewer system for the project. All easements are subject to prior City review and approval.
38. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee shall 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/index.aspx?nid=2246>.
  - 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 Evergreen-East Hills Development Policy area and is required to pay a Traffic Impact Fee (TIF). The proposed project will construct 248 nursing home beds which would be equivalent to approximately 14,825 square feet. The 2018 TIF fee for Commercial/Office use is \$13,941 per 1,000 square feet. This fee is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco.

**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 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 2010 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should 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. The project site is within the City of San José Geologic Hazard Zone.
    - 1) A Certificate of Geologic Hazard Clearance was issued on April 15, 2016 for the site structures as shown on the plans. The project must adhere to the conditions and requirements set forth in the certificate.
    - 2) A Certificate of Geologic Hazard Clearance was issued on May 8, 2018 for the sanitary sewer alignment shown on the plans. The project must adhere to the conditions and requirements set forth in the certificate.
- 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.
- 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. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area and will create and/or replace one acre or more of impervious surface. The project must comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14) which requires HM projects to demonstrate that post-project runoff does not exceed estimated pre-project runoff rates and durations.
  - i. The project's HM plan and sizing calculations have been reviewed and this project will be in conformance with City Policy 8-14.
  - ii. Final inspection and maintenance information for the HM controls must be included on the final HM plans.
- 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 Public Works clearance.
- h. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable prior to Public Works clearance. Contact Public Works at (408) 794-6769 for further information.
- i. **Street Improvements:**
  - i. Construct curb, gutter and 8-foot wide sidewalk on Dove Hill Road from the curb return at Hassler Parkway to the project site. These street surface improvements made from the intersection of Hassler Parkway and Dove Hill Road to the project site will be subject to reimbursement by the City.
  - ii. Reconstruct handicap ramp at the northeast corner of Hassler Parkway and Dove Hill Road to City and ADA standard.
  - iii. Construct driveway entrance at the property line on Dove Hill Road.
  - iv. Proposed driveway width to be 26 feet.
  - v. Provide signage and markings for a 3-way stop control at the intersection of Dove Hill Road and Hassler Parkway.
  - vi. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.

- j. **Sanitary:** Construct a sanitary sewer line extension from Deans Place Way and Yerba Buena Road to the terminus of Dove Hill Road, near Yerba Buena Road. This extension shall be reviewed and approved by Public Works. All sewer improvements beyond Dove Hill Road shall be considered private sewer main, will be reviewed by the Building Department, and shall be privately maintained. The private sanitary sewer line must conform to the recommendations within the Geohazard Clearance.
- 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.

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

40. **Environmental Conditions.** This project shall conform to all applicable environmental conditions.

- a. **Air Filtration:** The project shall include the following safeguards to minimize exposure of site residents to long-term TAC and annual PM2.5 emissions:
  - i. Air filtration devices shall be installed as part of the heating, ventilation, and air conditioning (HVAC) system. Air filtration devices shall be rated MERV13 or higher. Alternately, at the approval of the City of San Jose, equivalent control technology may be used if it is shown by a qualified air quality consultant HVAC engineer that it would reduce risk below significance thresholds.
  - ii. An ongoing maintenance plan for the buildings' HVAC air filtration system shall be prepared and submitted to the Director of the Department of Planning, Building and Code Enforcement for review and approval. The maintenance plan shall (1) specify provisions for the cleaning, maintenance, and monitoring of affected buildings for air flow leaks; (2) include assurance that owners/tenants are provided information on the ventilation system; and (3) include provisions that fees associated with occupancy of the building include funds for cleaning, maintenance, monitoring, and replacements of the filters.
  - iii. Conditions of approval shall be printed on all approved construction contracts, plans, and similar documents.
- b. Consistent with the City's standard measures for dust emission impacts during construction, and in conformance with standard BAAQMD dust control measures, the following dust control measures would be implemented during all phases of construction on the project site to reduce dust emissions.

- i. All active construction areas shall be watered twice daily or more often if necessary. Increased watering frequency shall be required whenever wind speeds exceed 15 miles-per-hour.
- ii. Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved access roads and parking and staging areas at construction sites.
- iii. Cover stockpiles of debris, soil, sand, and any other materials that can be windblown. Trucks transporting these materials shall be covered.
- iv. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- v. Subsequent to clearing, grading, or excavating, exposed portions of the site shall be watered, landscaped, treated with soil stabilizers, or covered as soon as possible. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas and previously graded areas inactive for 10 days or more.
- vi. Installation of sandbags or other erosion control measures to prevent silt runoff to public roadways.
- vii. Replanting of vegetation in disturbed areas as soon as possible after completion of construction.
- viii. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes. Clear signage shall be provided for construction workers at all access points.
- ix. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- x. Post a publicly visible sign with the telephone number and person to contact at the City of San José regarding dust complaints. This person shall respond and take corrective action within 48 hours. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

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**c. BIOLOGICAL RESOURCES**

- i. Tree Replacement. The removed trees would be replaced according to tree replacement ratios required by the City, as provided below.

Diameter of Tree to be Removed (measured at 4.5 feet above ground)	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or greater	5:1	4:1	3:1	15-gallon
12 - 18 inches	3:1	2:1	none	15-gallon
less than 12 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio

**Note:** Trees greater than 38-inch circumference shall not be removed unless a Tree Removal Permit or equivalent, has been approved for the removal of such tree.

For Multi-Family Residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch in circumference equals 12.1 inches in diameter

A 24-inch box tree can be used in lieu of two 15-gallon trees

Single-Family and Two-dwelling properties may be mitigated at a 1:1 ratio

- ii. If the project cannot replace according to the Table above, one or more of the following measures will be implemented, to the satisfaction of the City's Environmental Principal Planner, at the development permit stage:
  - 1) Replacement tree plantings may be accommodated at an alternative site(s). An alternative site may include local parks or schools, or an adjacent property where such plantings may be utilized for screening purposes. However, any alternatively proposed site would be pursuant to agreement with the Director of the Department of Planning, Building and Code Enforcement.
  - 2) A donation may be made to Our City Forest or similar organization for in-lieu tree planting in the community. Such donation will be equal to the cost of the required replacement trees, including associated installation costs, for off-site tree planting in the local community. A receipt for any such donation will be provided to the City of San José Planning Project Manager prior to issuance of a grading permit.
- iii. 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 shall submit a Habitat Plan Coverage Screening Form to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement for review and will complete subsequent forms, reports, and/or studies as needed.

**d. CULTURAL RESOURCES**

- i. 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. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American.

If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will 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:

- 1) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 24 hours after being notified by the NAHC.
  - 2) The MLD identified fails to make a recommendation; or
  - 3) The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.
- ii. Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include 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 ensuring that the recommendations of the paleontological monitor regarding treatment and reporting are implemented.

**e. GEOLOGY AND SOILS**

- i. To avoid or minimize potential damage from seismic shaking, the project would be built using standard engineering and seismic safety design techniques. Building design and construction at the site will be completed in conformance with the recommendations of a design-level geotechnical investigation. The structural designs for the proposed development will account for repeatable horizontal ground accelerations. The report shall be reviewed and approved of by the City of San José's Building Division as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes, including the 2016 California Building Code (CBC) Chapter 16, Section 1613, 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.
- ii. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. In addition, the City of San José Department of Public Works requires a grading permit to be obtained prior to the issuance of a Public Works Clearance. These standard practices, including the measures outlined below, would ensure that future buildings on the site are designed properly to account for soils-related hazards on the site and to prevent soil erosion.
  - 1) The project shall conform to the recommendations of a project-specific geotechnical report, including design considerations for proposed foundations.
  - 2) The project shall prepare and implement an Erosion Control Plan in conformance with the requirements of the Department of Public Works.
- iii. The slope behind proposed Building B shall be graded to an inclination of 3:1 or flatter. During construction, the Engineer on Record shall observe cut slopes to verify the inclinations are appropriate for the conditions encountered. Alternatively, a retaining structure, supported by the underlying bedrock, shall be installed to prevent rockfall and soil creep. The retaining wall shall be designed to withstand the applicable earth pressures, dependent on the slope inclination and backfill material, as determined by a qualified Geologist. This condition shall be printed on all approved construction plans and documents prior to the issuance of any grading and building permits.



**f. HAZARDS AND HAZAROUS MATERIALS**

Asbestos Containing Materials

- i. Based on BAAQMD and Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers and others from asbestos-containing materials (ACMs).
  - 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 building to determine the presence of asbestos-containing materials.
  - 2) 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.
  - 3) 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.
- ii. 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 and notifications.

Lead Based Paint

- iii. To identify and quantify building materials containing lead-based paint, a building survey, including sampling and testing, shall be completed prior to the commencement of demolition activities.
- iv. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR 1532.1, including employee training, employee air monitoring and dust control.
- v. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the waste being disposed.

**g. HYDROLOGY AND WATER QUALITY**

- i. The following project-specific measures, based on RWQCB BMPs, have been included in the project to reduce construction and development-related water quality impacts. BMPs would be implemented prior to and during earthmoving activities on-site and would continue until the construction is complete, and during the post-construction period, as appropriate.

- 1) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- 2) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- 3) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- 4) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- 5) All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- 6) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- 7) Vegetation in disturbed areas shall be replanted as quickly as possible.
- 8) All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- 9) 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 Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- 10) A Storm Water Permit will be administered by the State Water Resources Control Board (SWRCB). Prior to construction grading for the proposed land uses, the project proponent will file an NOI to comply with the General Permit and prepare a SWPPP which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB Best Management Practices.
- 11) The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions.
- 12) When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the SWRCB. 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 site.

## h. NOISE

### i. Minimize Construction Noise:

- 1) Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists.
- 2) Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- 3) Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from adjacent land uses.
- 4) Locate staging areas and construction material areas as far away as possible from adjacent land uses.
- 5) Prohibit all unnecessary idling of internal combustion engines.
- 6) If impact pile driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by a single pile driver, the total duration of pile driving activities would be reduced.
- 7) If impact pile driving is proposed, temporary noise control blanket barriers shall shroud pile drivers or be erected in a manner to shield the adjacent land uses. Such noise control blanket barriers can be rented and quickly erected.
- 8) If impact pile driving is proposed, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile. Notify all adjacent land uses of the construction schedule in writing.
- 9) Designate a "disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. The telephone number for the disturbance coordinator at the construction site will be posted and included in the notice sent to neighbors regarding the construction schedule.

**40. Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council, as applicable, 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 of Chapter 20.100 of 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 Permit (File No. PD16-019) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC14-051 approved for publication on \_\_\_\_\_, 2018 (the "Planned Development Rezoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
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.*

ORDER NO. : 0616011318-SL

## EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

### PARCEL ONE:

Beginning at a one inch iron pipe at the Northwesterly corner of that certain parcel of land conveyed by John Tripoli, et ux, to Viola M. Woodall, et al, by Deed recorded October 3, 1947, and under Recorder's Serial No. 482499, Santa Clara County Records, said one inch iron pipe also being at the point of intersection of the Westerly prolongation of the Southerly line of that certain 76.05 acre Tract, conveyed by Mary Aubrey to Tony R. Thomas, recorded in Book 153, Official Records, Page 557, Santa Clara County Records, with the Easterly line of that certain 10.152 acre Tract conveyed by Max S. Abbott to the State of California, recorded February 2, 1946, Book 1337, Official Records, Page 9, Santa Clara County Records; thence along the said Easterly line of said 10.152 acre Tract, North 8° 03' 20" West, 24.70 feet to a concrete monument and North 2° 40' West, 200.79 feet to a one inch iron pipe; thence parallel to the Northerly line of property conveyed by John Tripoli, et ux, to Viola M. Woodall, et al, North 80° 46' 30" East, 246.00 feet to a one inch iron pipe; thence parallel to the center line of the Department of Public Works Survey of the State Highway, between Santa Clara Street in San Jose, and Ford Road, IV-SCL-2SJSE, South 2° 40' East, 225.65 feet to a one inch iron pipe in the said Northerly line of Viola M. Woodall property; thence along the said Northerly line of said Viola M. Woodall property, South 80° 46' 30" West, 243.67 feet to the point of beginning.

EXCEPTING THEREFROM all that portion thereof lying within the bounds of the following described parcel of land:

Commencing at the Northwesterly corner of the 1.265 acre parcel of land conveyed to Johnnie Woodall by Deed recorded January 2, 1957, in Book 3697, Page 294, Official Records of Santa Clara County; thence along the Northerly line of said Parcel North 81° 40' 00" East, 17.09 feet; thence South 8° 29' 16" West, 27.91 feet; thence South 1° 50' 00" East, 302.37 feet to the Easterly line of the existing State Freeway in Santa Clara County, Road IV-SC1-68-C; thence along last said line North 7° 13' 24" West, 127.53 feet and North 1° 50' 00" West, 200.93 feet to the point of commencement.

APN: 679-09-001

### PARCEL TWO:

Beginning at a stake marked M.4 standing in the fence line of the Easterly line of the 95.48 acre tract of land conveyed by Thomas Aubrey, et al, to Susan Aubrey, by Deed dated August 20, 1903, recorded August 20, 1903, Book 263 of Deeds, Page 298, said stake being in the Southwesterly corner of the 76.05 acre tract of land conveyed by Mary Aubrey, a widow, to Tony R. Thomas, by Deed dated May 19, 1925, recorded May 20, 1925, Book 153 of Official Records, Page 557, records of Santa Clara County, California; thence from said point of beginning, North 81° 19' East, along the Southerly line of said 76.05 acre Tract, 868 feet, more or less, to a point in said line that is distant thereon, and along its Westerly prolongation, North

81° 19' East, 1000 feet from the Easterly line of that certain 10.152 acre tract of land conveyed by Max S. Abbott, et ux, to the State of California, by Deed dated December 19, 1945, recorded February 23, 1946, Book 1337 of Official Records, Page 9, records of said County; thence at a right angle South 8° 41' East, 462 feet; thence parallel with the Southerly line of said 76.05 acre Tract, South 81° 19' West, 1000 feet, more or less, to a point on the Easterly line of the aforementioned 10.152 acre State of California Tract; thence along said line, North 8° 03' 20" West, 462 feet, more or less, to the point of intersection thereof with the Westerly prolongation of the hereinabove referred to Southerly line of the 76.05 acre Thomas Tract; thence North 81° 19' East, along said Westerly prolongation, 132 feet to the point of beginning.

Being a portion of the Rancho yerba Buena Y Socayre.

EXCEPTING THEREFROM all that portion thereof lying within the bounds of the following described parcel of land:

Commencing at the Northwesterly corner of the 1.265 acre parcel of land conveyed to Johnnie Woodall by Deed recorded January 2, 1957, in Book 3697, Page 294, Official Records of Santa Clara County; thence along the Northerly line of said Parcel North 81° 40' 00" East, 17.09 feet; thence South 8° 29' 16" West, 27.91 feet; thence South 1° 50' 00" East, 302.37 feet to the Easterly line of the existing State Freeway in Santa Clara County, Road IV-SC1-68-C; thence along last said line North 7° 13' 24" West, 127.53 feet and North 1° 50' 00" West, 200.93 feet to the point of commencement.

ALSO EXCEPTING THEREFROM all that portion thereof described as follows:

Beginning at a ¾ inch iron pipe from which the Southeasterly corner of that certain 1.265 acre tract of land conveyed to Johnnie Woodall, by Deed recorded January 2, 1957, Book 3697 of Official Records, Page 294, Santa Clara County Records, bears North 48° 39' East, 115.83 feet distant; thence South 45° 25' 40" West, 150.00 feet; thence South 46° 10' 33" East, 151.68 feet to a ¾ inch iron pipe, North 45° 25' 40" East, 150.00 feet to a ¾ inch iron pipe and North 46° 10' 33" West, 151.68 feet to the point of beginning, and being a portion of the Yerba Buena Rancho and being that certain 0.522 acre Tract, more or less, shown upon a Record of Survey, filed for record in the Office of the Recorder of the County of Santa Clara, Sacramento, on July 30, 1964, in Book 183 of Maps, Page 7.

APN: 679-08-002 (portion)

PARCEL THREE:

Beginning at a ¾ inch iron pipe from which the Southeasterly corner of that certain 1.265 acre tract of land conveyed to Johnnie Woodall by Deed recorded January 2, 1957, in Book 3697 of Official Records, at Page 294, Santa Clara County Records, bears North 48° 39' East, 115.83 feet distant; thence South 45° 25' 40" West, 150.00 feet; thence South 46° 10' 33" East, 151.68 feet to a ¾ inch iron pipe, North 45° 25' 40" East, 150.00 feet to a ¾ inch iron pipe and North 46° 10' 33" West, 151.68 feet to the point of beginning, and being a portion of the Yerba Buena Rancho, and being that certain 0.522 acre Tract, more or less, shown upon a Record of Survey filed for record in the Office of the County Recorder of the County of Santa Clara, State of California, on July 30, 1964, in Book 183 of Maps, at Page 7.

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PARCEL FOUR:

Beginning at the point of intersection of the Westerly line of that certain 24.938 acre parcel of land conveyed by John Tripoli, et ux, to Y. Archibald by Deed dated October 8, 1951, and recorded May 12, 1952, in Book 2417 of Official Records, Page 645, with the Southerly line of that certain parcel of land described in the Deed from Julia H. Lorentz to William M. Hughins, et ux, dated December 6, 1963, recorded December 9, 1963, in Book 6301 Official Records, Page 150; thence along said last named line and along the Southerly line of that certain parcel of land described in the Deed from Margaret M. Weaver, et al, to Marvin Morales dated November 2, 1943, and recorded November 9, 1943, in Book 1161 of Official Records, Page 465, South 75° 28' West, 585.34 feet, more or less, to a point in the Easterly line of Bayshore Highway as established by Deed to the State of California dated November 26, 1962, recorded April 18, 1963, in Book 5988 of Official Records, Page 371; thence along said last named line South 3° 52' 39" West, 74.36 feet and South 1° 50' 00" East, 397.55 feet to a point in the Northerly line of that certain 1.265 acre parcel of land conveyed by John Tripoli to Viola M. Woodall by Deed dated May 27, 1949, and recorded May 31, 1949, in Book 1795 of Official Records, at Page 357; thence along the Northerly line of said 1.265 acre parcel of land North 80° 30' East, 228.68 feet to an iron pipe set at the Northeasterly corner thereof; thence along the Easterly line of said 1.265 acre parcel of land, South 3° 02' East, 225.65 feet to an iron pipe set at the Southerly corner thereof on the Southerly line of the 76.05 acre tract of land described in the Deed from Margaret M. Weaver to Margaret Weaver, et al, dated December 10, 1942, and recorded December 10, 1942, in Book 1120 of Official Records, Page 317; thence along the Southerly line of said 76.05 acre parcel of land, North 80° 28' East, 443.42 feet to an iron pipe set at the most Southerly corner of said 24.938 acre parcel of land North 9° 32' West, 407.47 feet to an iron pipe; thence continuing along the Westerly line of said 24.938 acre Parcel, said Westerly line also being the center line of a 40 foot right of way, North 14° 22' West, 120.72 feet to an iron pipe; thence North 4° 50' West, 181.92 feet to an iron pipe; thence North 2° 26' West, 40.37 feet, more or less, to the point of beginning and being a portion of the Rancho Yerba Buena Y Socayre.

APN: 679-09-002

PARCEL FIVE:

A non-exclusive easement appurtenant to Parcel Four above described for the purposes of ingress and egress and for the installation and maintenance of public utilities over a strip of land 40 feet wide, the center line of which is described as follows:

Beginning at an iron pipe at the point of intersection of the Northeasterly line of the Bayshore Highway being the Easterly line of that certain 9.128 acre tract of land described as Parcel No. 1 in the Deed from Margaret M. Weaver, et al, to the Santa Clara, dated April 16, 1945, and recorded July 7, 1945, in Book 1274 of Official Records, Page 241, Santa Clara County Records with the Northeasterly line of that certain 76.05 acre tract of land described in the Deed from Margaret M. Weaver to Margaret M. Weaver, et al, dated December 10, 1942, and recorded December 10, 1942, in Book 1120 of Official Records, Page 317, Santa Clara County Records; running thence Southeasterly along the said Northeasterly line of the Bayshore Highway on a curve to the right with a radius of 3120.00 feet from a tangent which bears South 12° 56' 13" East, through an angle of 1° 39' 37", for a distance of 90.41 feet to the true point of beginning of the 40.00 foot easement described; thence leaving the said Easterly line of the Bayshore

Highway and running Southeasterly on a curve to the right with a radius of 247.20 feet from a tangent bearing of South 79° 49' 10" East, through an angle of 30° 38' 19", for a distance of 132.18 feet; running thence South 49° 11' East, and parallel with the Northeasterly line of the said 76.05 acre Tract and distant 20.00 feet; Southwesterly, measured at right angles therefrom, for a distance of 218.98 feet; thence on a curve to the right with a radius of 110.00 feet; through an angle of 69° 17', for a distance of 133.02 feet; thence South 20° 06' West, 109.28 feet; thence on a curve to the left with a radius of 65.00 feet, through an angle of 75° 18', for a distance of 85.43 feet, and South 55° 12' East, 152.88 feet to a point on the Southwesterly line of that certain 5.7377 acre tract of land conveyed by John Tripoli, et ux, to Julia Hughins Lorentz by Deed dated February 23, 1951, and recorded March 2, 1951, in Book 2163 of Official Records, Page 271; said point being distant along said Southwesterly line, South 12° 11' East, 363.78 feet from an iron pipe at the Northernmost corner of said 5.7377 acre parcel of land; running thence South 55° 12' East, 183.11 feet; thence on a curve to the right with a radius of 250.00 feet through an angle of 19° 31', for a distance of 85.38 feet and South 35° 38' East, 269.20 feet to an iron pipe on the Southeasterly line of the said 5.737 acre tract of land distant thereon North 75° 03' East, 278.94 feet from an iron pipe set at the Southernmost corner thereof; thence South 40° 25' East, 123.73 feet; thence along the Northwesterly and Westerly line of that certain 24.938 acre parcel of land conveyed by John Tripoli, et ux, to Y. Archibald by Deed dated October 8, 1951, and recorded on May 12, 1952, in Book 2417 of Official Records, Page 645, on a curve to the right with radius of 28.75 feet through a central angle of 97° 29' 30", for an arc distance of 48.92 feet to an iron pipe; thence South 57° 04' 30" West, 70.04 feet to an iron pipe; thence on a curve to the left with a radius of 125.00 feet, through a central angle of 38° 22' 30", for an arc distance of 33.72 feet to an iron pipe; thence South 18° 42' West, 53.81 feet to an iron pipe; thence a curve to the left with a radius of 382.00 feet, through a central angle of 21° 08', for an arc distance of 30" West, 70.04 feet to an iron pipe; thence on a curve to the left a radius of 125.00 feet, through a central angle of 38° 22' 30", for an arc distance of 83.72 feet to an iron pipe; thence South 18° 24' West, 53.81 feet to an iron pipe; thence a curve to the left with a radius of 882.00 feet, through a central angle of 21° 08', for an arc distance of 325.32 feet to an iron pipe; thence South 2° 26' East, 130.37 feet to an iron pipe; thence South 4° 50' East, 181.92 feet to an iron pipe; and thence South 14° 22' East, 120.72 feet to an iron pipe, being a certain 40 foot roadway as delineated upon that certain Record of Survey Map filed for record in the Office of the Recorder of the County of Santa Clara, on January 5, 1951, in Book 29 of Maps, Page 32, that certain Record of Survey Map filed for record in the Office of the County Recorder of the County of Santa Clara, State of California, on May 23, 1951, in Book 32 of Maps, Page 21, and that certain Record of Survey Map filed for record in the Office of the County Recorder of the County of Santa Clara, on June 19, 1952, in Book 37 of Maps, Page 27.

EXCEPTING THEREFROM that portion thereof quitclaimed to the State of California by Instrument dated November 26, 1962, and recorded January 14, 1963, in Book 5863 of Official Records, Page 167, as follows:

Commencing at the most Southerly corner of the parcel of land conveyed to the State of California by Deed recorded June 8, 1944, in Book 1206, at Page 77, Official Records of Santa Clara County; thence along the line common to the lands, now or formerly of John Tripoli and Warren G. Epstein, et al, South 48° 01' 29" East, 72.48 feet; thence South 13° 44' 43" East, 33.32 feet; thence from a tangent bears North 69° 35' West along a curve to the left with a radius of 267.20 feet; through an angle of 9° 04' 04", an arc length of 42.29 feet; thence North 78° 39' 39" West, 8.03 feet to the Easterly line of the existing State Freeway in Santa Clara County Road IV-SC1-68-C; thence along last said line from a tangent that bears North 10° 28'



09" West, along a curve to the left with a radius of 3,120.00 feet, through an angle of  $1^{\circ} 15' 55''$ , an arc length of 68.90 feet to the point of commencement.

PARCEL SIX:

A portion of that certain 10.152 acre parcel of land described in Deed to State of California recorded February 23, 1946, in Volume 1337, at Page 9, Official Records of Santa Clara County, said portion being more particularly described as follows:

Commencing at the Westerly terminus of the course described as "North  $81^{\circ} 38' 00''$  East, 110.73 feet" in Parcel 2 of the Relinquishment No. 31401 to Santa Clara County, recorded August 29, 1966, in Book 7489, at Page 111, Official Records of Santa Clara County; thence North  $2^{\circ} 36' 22''$  East, 64.60 feet; thence North  $1^{\circ} 50' 00''$  West, 297.63 feet to the Easterly line of said 10.152 acre Parcel; thence along last mentioned line South  $7^{\circ} 13' 24''$  East, 359.18 feet to aforesaid course; thence along said course South  $81^{\circ} 38' 00''$  West, 38.99 feet to the point of commencement.

APN: 679-08-002 (portion)