

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 AN EXISTING SINGLE-FAMILY RESIDENCE, TWO-CAR GARAGE, AND SHED TOTALING 2,400 SQUARE FEET, THE REMOVAL OF FIVE ORDINANCE-SIZE TREES, AND THE CONSTRUCTION OF SIX SINGLE-FAMILY ATTACHED RESIDENCES ON AN APPROXIMATELY 0.46-GROSS ACRE, LOCATED ON THE WEST SIDE OF NORTH CAPITOL AVENUE, APPROXIMATELY 240 FEET NORTHERLY OF PENITENCIA CREEK ROAD (907 NORTH CAPITOL AVENUE)**

**FILE NO. PD19-022**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on May 23, 2019, a concurrent application (File No. PD19-022) was filed by the applicant, Margaret Pham of Berryessa Homes Development, on behalf of William and Nancy Hoang, with the City of San José for a Planned Development Permit to allow the demolition of an existing single-family residence, two-car garage, and shed totaling 2,400 square feet, the removal of five ordinance-size trees, the construction of six single-family attached residences on an approximately 0.46-gross acre site, on that certain real property situated in the R-M(PD) Planned Development Zoning District and located on the west side of North Capitol Avenue, approximately 240 feet northerly of Penitencia Creek Road (907 North Capitol Avenue, 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 concurrent applications on November 17, 2020, 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 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 development plan for the subject property entitled "Berryessa Home Development", dated January 15, 2020, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested, and is attached hereto and made a part hereof by this reference as if 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 project:

1. **Site Description and Surrounding Uses.** The project site is located on the west side of North Capitol Avenue, approximately 240 feet northerly of Penitencia Creek Road. The site is currently developed with a single-family residence, two-car garage, and shed. The site has one driveway off of North Capitol Avenue. Residential uses surround the site including multi-family residential to the north, a single-family residence and attached single-family residences to the south, and attached single-family residences to the east and west. Planned Development Zoning Districts surround the site and permit densities between 12.1 to 26 dwelling units per acre. The Valley Transportation Authority (VTA) Light Rail Orange Line runs along the project site's North Capitol Avenue frontage and the Penitencia Creek is located approximately 575 feet southeast of the site. The nearest VTA light rail station is the Penitencia Creek Station approximately 700 feet southeast of the site.
2. **Project Description.** The project is a Planned Development Permit application (File No. PD19-022) to allow the demolition of an existing single-family residence, two-car garage, and shed totaling 2,400 square feet and the removal of five ordinance-size trees for the construction of six single-family attached residences on the approximately 0.46-gross acre site. The project would be developed at a density of approximately 13 dwelling units per acre and would permit a minimum lot size of 1,300 square feet.

The development would consist of two residential buildings with three single-family dwelling units in each building designed as attached townhomes. The 3-story buildings would have a maximum height of 34 feet, 2 inches. The buildings would have a modern design with cedar siding, fiber cement cladding, panel cladding, and painted stucco materials to create visual interest along all facades of the buildings. The roofs of each building would be slightly angled to further define the massing of the residential buildings. Each residential unit would provide a minimum of 400 square feet of residential open space in the form of rear yards and balconies.

A total of 18 parking spaces would be provided on-site; including twelve covered spaces and six uncovered spaces. The covered spaces would be within individual two-car garages. The uncovered parking spaces would be designated for guest parking and

would be located on the common lot with the private street and trash collection area. The project would include a new private street providing access to each unit's garage and entry.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan designation of Mixed Use Neighborhood. This designation is described in Chapter 5 of the General Plan as being applied to areas intended for development primarily with either townhouse or small lot single-family residences and also to existing neighborhoods that were historically developed with a wide variety of housing types, including a mix of residential densities and forms. The designation supports densities up to 30 dwelling units per acre and a commercial Floor Area Ratio of 0.25 to 2. This designation supports commercial or mixed-use development integrated within the Mixed Use Neighborhood area. Existing neighborhoods with this designation are typically characterized by a prevalence of atypical lot sizes or shapes and a parcel-by-parcel development pattern where small townhouse development may exist adjacent to more traditional single-family development or more intense multi-family development.

This designation should be used to establish new neighborhoods with a cohesive urban form, to provide transition between higher-density and lower-density neighborhoods, or to facilitate new infill development within an existing area that does not have an established cohesive urban character. Small lot single-family neighborhoods with this designation may involve zero lot-line or other design features not available through a standard subdivision process.

Because, within such mixed neighborhoods, the established overall neighborhood density and character is more intense than that found in typical single-family detached neighborhoods, it is appropriate to allow for infill development in Mixed Use Neighborhood areas that includes medium density residential uses such as townhouses or stacked flats and some opportunity for live/work, residential/commercial, or small stand-alone commercial uses.

*Analysis: The development would allow six attached townhomes on an infill site surrounded by other single-family and multi-family residential uses. The project would have a density of 13 dwelling units per acre, consistent with the land use designation. The project site is surrounded by a mixture of residential densities and the infill development would complement the surrounding combination of single family residences and multi-family residential developments. Consistent with this land use designation, the project proposes to establish small lot single-family units with zero-foot lot line setbacks between the new townhome units.*

The project conforms to the following key General Plan goal and policies:

- a. Goal H-3 Housing: Create and maintain safe and high quality housing that contributes to the creation of great neighborhoods and great places.

*Analysis: The infill project would develop six new residential units on the existing single-family site which fronts Capitol Avenue and the VTA light rail orange line. The three-story townhomes would continue the development pattern of the three-story residential development located south and east of the site.*

- b. Community Design Policy CD-2.7: Design private streets to appear and function like public streets. Include street trees and sidewalks, and prohibit gated communities that restrict connectivity. Promote security at the building face rather than at the street.

*Analysis: The project's private street would include landscaping along the walkway and would not be gated. The project would incorporate street lights along the private street and building lighting along the project's frontage and private street to enhance security.*

- c. Land Use Policy LU-11.1. Design all new single-family detached residences so that each home has a frontage on a public street or on a private street that appears and functions as a public street.

*Analysis: Consistent with Land Use Policy LU-11.1, the new attached single-family residences would have direct access from the new private street. The private street design would be similar and compatible to the neighborhood pattern and private street across Capitol Avenue.*

- d. Transportation Policy TR-4.3: Support the development of amenities and land use and development types and intensities that contribute to increased ridership on the potential high-speed rail system, and also provide positive benefits to the community.

*Analysis: The project would increase the residential density of the site located along the VTA light rail line and would include design measures to encourage transit ridership such as locating bicycle parking along the project's frontage and ensuring the frontage of the development which faces Capitol Avenue is oriented towards the street, with a front door, and is pedestrian friendly through the use of landscaping and walkways.*

- e. Implementation Policy IP-1.7: Ensure that proposals to rezone and prezone properties conform to the Land Use / Transportation Diagram, and advance Envision General Plan Vision, goals, and policies.

*Analysis: The Planned Development Rezoning would support the development of smaller residential lot to allow the development of attached single-family townhomes consistent with the Mixed Use Neighborhood General Plan land use designation described in Chapter 5 of the General Plan.*

#### 4. Zoning and Planned Development Zoning Conformance.

The subject site's rezoning to a R-M(PD) Planned Development Zoning District best conforms with the General Plan goals, policies, standards, and guidelines. The R-M(PD) Planned Development Zoning District would allow for uses that conform to the R-M Multiple Residence Zoning District, as amended and the development of up to six attached single-family residential units.

##### *Use*

Subject to the Development Standards as adopted as part of the rezoning, the allowed uses are pursuant to the R-M Multi-Family Residence Zoning District per Title 20 of the Municipal Code. The R-M(PD) Zoning District would also permit the development of attached single-family units. The project includes the development of six attached single-family residential units.

##### *Development Standards*

The table below shows the minimum lot size, lot width, and setbacks in the Development Standards. The project conforms to the following setback requirements.

<b>Development Standard</b>	<b>Minimum Requirement</b>	<b>Provided</b>
Minimum Lot Size	1,300 square feet	Minimum 1,301
Minimum Lot Width	27 feet	Minimum 27 feet 4 inches
Setback Along North Capitol Avenue	15 feet	15 feet
Side Setback along northern shared property line	15 feet	15 feet
Side Setback along southern shared property	15 feet	32 feet
Rear Setback along the rear shared property line	5 feet	5 feet
Interior lot line setbacks	0 feet	0 feet

The Tentative Map would divide the property into seven parcels including 6 residential parcels and one common area parcel that would be maintained by a Homeowners' Association. The smallest lot would be the 1,301 square foot parcel size and the largest lot would be the 11,702 square foot common area parcel. Consistent with the Planned Development Standards the minimum lot width would be 27 feet 4 inches. The two residential townhome buildings would comply with the Planned Development Permit Setbacks. The front townhome building (Block A) would be located 15 feet from North Capitol Avenue and the northern property line. The building would be located 32 feet from the southern property line. The rear townhome building (Block B) would be located

15 feet from the northern property line, 5 feet from the eastern rear property line, and 32 feet from the southern property line. The individual townhomes would have 0-foot interior setbacks as attached units. The private street would be located between the townhomes and the southern property line.

### *Height*

The development standards state that the allowable height is pursuant to the R-M Multi-Family Residence Zoning District in Title 20 of the San José Municipal Code, as may be amended. Therefore, the maximum allowed height would be 45 feet. The height of the two townhome buildings measure 34 feet, 2 inches.

### *Parking*

The Development Standards state the parking shall be provided in compliance with Title 20 of the San José Municipal Code, as amended. In addition, the Planned Development Zoning requires guest parking shall be provided at a ratio of 0.5 space per unit. Table 20-190 of Section 20.90.060 requires two parking spaces per single-family unit. The Development Standards state one guest bicycle parking per unit shall also be provided.

The parking requirements provided in the Development Standards incorporate the parking requirements of the Municipal Code and additionally require 0.5 guest parking space per unit and one guest bicycle space per unit. The guest bicycle parking spaces would be located on the common area lot and would incentivize the use of alternative modes of transportation to the site. Consistent with the development standards, the project provides 6 bicycle spaces along the project's Capitol Avenue frontage and 18 vehicle parking spaces, which exceeds the minimum 15 vehicle parking spaces required by the R-M(PD) Zoning District.

## **5. City Council Policies.**

### City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Under City Council Policy 6-30, the project is a standard project. Council Policy 6-30 specifies the public outreach and communication required regarding development projects including posting a notice of development application on the project site, hosting a community meeting which is appropriately advertised to the community, and providing Public Hearing Notices to the community in a timely matter to an appropriate project radius. Under City Council Policy 6-30, a standard project requires notification to property owners and tenants within 500 feet of the project site.

*Analysis: Following City Council Policy 6-30, the project applicant has posted on-site signs to inform the neighborhood of the project. The hearing notice was sent to all owners and tenants within 500 feet of the project. Staff contact information has also been available on the on-site sign and hearing notice. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.*

## 6. Residential Design Guidelines.

The project is a residential use and is therefore evaluated under the City of San José Residential Design Guidelines.

Per the design guidelines, new development should continue the functional, on-site relationships of the surrounding neighborhood. The development efficiently uses the narrow project site to develop and infill attached single-family project. The residential development is a modern design to reflect the newer developments in the project's vicinity. The project uses earth-tone colors, grays, and blues on the exterior stucco as well as a variety of materials including cedar siding, Equitone exterior cladding panels, fiber cement trim, and cable railing for the balconies. The front townhome unit is oriented towards Capitol Avenue and the remaining five townhome units are oriented towards the private street with the front doors and garages facing the private street similar to the single family development across Capitol Avenue.

The design guidelines state that enclosed garages that front on parking drives or parking courts should have tree pockets of not less than nine square feet. The project would provide tree pockets along the garage entries. Additionally, the project would provide landscaping along the southern property line. The project includes a mix of trees, shrubs, and groundcover.

Pursuant to the Residential Design Guidelines, each unit should provide a minimum of 400 square feet of private open space. The six units would each provide at least 400 square feet of private open space. Unit 1 would provide 412 square feet of rear yard open space, Unit 2 would provide 410 square feet of rear yard open space, unit 3 would provide 402 square feet of open space including 330 square feet of rear yard space and a 73-square foot balcony, unit 4 would provide 400 square feet of open space including 330 square foot rear yard and 70 square foot balcony, unit 5 would provide 410 square feet of rear yard open space and unit 6 would provide 552 square feet of rear yard open space. The rear yards would be separated by 6-foot tall wooden privacy fences and each rear yard would have a minimum depth of 12 feet.

## 7. Environmental Review.

Under the provisions of Section 15303(b) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Conditional Use Permit is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303(b) New Construction or Conversion of Small Structures, Class 3, consists of construction and location of limited numbers of new, small facilities or structures; installation of small equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Examples of the exemption include but are not limited to a duplex or similar multi-family residential structures totaling no more than four dwelling units. In urbanized areas, this exemption



applies to apartments, duplexes, and similar structures designed for not more than six dwelling units.

*The project is located in an urbanized area and involves the construction of six new single-family attached residential units at the project site. Phase I and Phase II Environmental Site Assessments were conducted for the subject site, by AEI Consultants and GeoRestoration, which found contaminated soils due to the site's agricultural history. As part of the project and incorporated as Condition No. 36, the applicant will submit the Phase II results and obtain regulatory oversight from the Santa Clara County Department of Environmental Health (SCCDEH), under their Site Clean Up Program, to ensure the appropriate remediation of the site. The subject site is served by public services such as water, sewer, trash, and is not in an environmentally sensitive area Based on the Santa Clara Valley Habitat Agency, the subject site is in an Urban-Suburban land cover area. The project would conform to the City's Environmental Standard Permit Conditions outlined in Condition No. 37 and Public Works Condition No. 34 requiring the project implement Stormwater Best Management Practices. For the reasons cited above, the project meets the provisions for CEQA Guidelines Section 15303 (b) to qualify for a Categorical Exemption and would not result in a significant environmental impact.*

**8. 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 permit.

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

*Analysis: As discussed in the General Plan conformance section above, the project is consistent with the General Plan Land Use designation of Mixed Use Neighborhood, as the density and building form are consistent with the land use designation and surrounding residential developments. As described herein, the project complies with the Housing Goal, Community Design and Land Use General Plan policies pertaining to housing and transit.*

2. The planned development permit, as approved, conforms in all respects to the Planned Development Zoning of the property; and

*Analysis: As discussed in the Development Standards Consistency section above, the project conforms in all respects to the Planned Development Zoning's General Development Plan. The attached single-family residences are an allowed use and the development and tentative map comply with the lot size, lot width, setback, and height standards. The project is also compliant with the bicycle and vehicle parking requirements.*

3. The planned development permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and  
*Analysis: The project is consistent with the City Council Policy 6-30 for Public Outreach. The project installed an on-site sign at the project site. Additionally, the public hearing notices were mailed to property owners and tenants within a 500-foot radius of the project site.*

4. The interrelationship between the orientation, location, mass and scale of the building volume and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible, and aesthetically harmonious.

*Analysis: The project would result in two townhouse buildings with three attached residential units in each building. The two residential buildings would be designed in a similar modern style. All six units would be three stories and the building would have sloped roofs to enhance the visual interest of the building. The driveway is located on the south side of the project site. Parking would be located within the residential units, with each unit having a two-car garage. Additionally, six guest parking spaces would be located on the common area lot between the two townhome buildings and six guest bicycle parking spaces would be located on the project's North Capitol Avenue frontage. The common area lot would include landscaping along the project's Capitol Avenue frontage, along the private street and near the trash collection area between the two townhome buildings and guest parking area. The building, parking, and landscaping are compatible with each other.*

5. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*Analysis: The project would be located on a site designated for residential use and includes the addition of three residential units. The development is located in an urbanized area that is adequately served by all required utilities and public services, and the Stormwater Control Plan is in compliance with the City's stormwater policies that require low impact development stormwater treatment measures to minimize stormwater pollutant discharges. Construction activities would only result in temporary noise, vibration, and air quality impacts. The project would involve the removal of an existing underground storage tank (UST) and would apply for the appropriate UST removal permits with the Santa Clara County Department of Environmental Health (SCCDEH) and San José Fire Department, as outlined in Condition No. 35, to ensure the appropriate removal and remediation of the site, as needed. Therefore, the project will not have unacceptable negative effects on adjacent properties. The project is located over 500 feet from the Penitencia Creek riparian corridor and due to its distance would not impact the*

*riparian corridor. The project would be subject to the City's Standard Environmental Permit Conditions (Condition No. 37) requiring payment of applicable Santa Clara Valley Habitat Conservation Plan fees. The project's operations would be residential and compatible with the surrounding residential use of the area.*

## **9. Tree Removal Findings**

Chapter 13.32 of the San José Municipal Code requires at least one of the specified 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 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 this Permit.

1. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

*Analysis: The project site has 16 trees on-site. Development of the project would result in the removal of all the on-site trees including five ordinance-size trees and eleven non-ordinance-size trees. The five ordinance-size trees are between 12 and 27 inches in diameter and include one cedar, two redwoods, one elm, and one persimmon tree. The ordinance and non-ordinance size trees require removal as they are located where the project's private street and new townhomes would be located.*

*The project would require a minimum of twenty-nine 15-gallon replacement trees for the removal of the five ordinance-size and eleven non-ordinance-size trees. Two 15-gallon trees may be replaced by one 24-inch box tree. The project applicant would plant twenty-six (26) 15-gallon box trees and three (3) 24-inch box trees on-site including crape myrtles, sycamores, crimson redbuds, and Eastern Redbud trees. These trees would exceed the minimum replacement requirement.*

## **10. Evaluation Criteria for Demolition**

Part 5 of Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for 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 Resolution. . In order to approve a demolition permit, Municipal Code sections 20.80.440.C and 20.80.460 require the consideration of the following criteria:

1. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
2. The failure to approve the permit would jeopardize public health, safety or welfare;

3. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
4. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
5. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
6. Rehabilitation or reuse of the existing building would not be feasible; and
7. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: Consistent with criteria 3 and 4 above, the project includes demolition of the existing single-family residence, a garage, and shed to allow the addition of the six attached single-family residential units facilitating a project that is compatible with the surrounding neighborhood as described above and also increasing the existing housing stock of the City. Although the residence is not a historic resource listed on the historic resource inventory, a historic report was prepared by Robert Cartier on February 5, 2016 to review the existing residence on-site which was constructed in 1936. Although the building's age is greater than 45 years old, the building was not found to be eligible for local, state, or national listing and therefore the demolition would not result in the removal of a building of historic significance. The demolition would facilitate the development of a residential development compatible with the surrounding single-family and multi-family uses around the site and would not result in any adverse impacts on the surrounding residential neighborhood. The rehabilitation or reuse of the residence, garage, and shed would limit the ability to maximize the infill development on the narrow project site due to the orientation and location of the existing development.*

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 **approved**. 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 four (4) 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. 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 of the San José Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Planned Development 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 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.** 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 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. **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.
6. **Scope and Use Authorization of the Planned Development Permit.** Subject to all conditions herein, this Planned Development Permit to permit the demolition of an existing single-family residence, two-car garage, and shed totaling 2,400 square feet and the removal of five ordinance-size trees for the construction of six single-family attached residences on an approximately 0.46-gross acre site, in accordance with the approved development plans and uses consistent with the General Development Standards of the Planned Development Zoning District.
7. **Conformance to Plans.** The development of the site shall conform to the approved plans entitled, "Berryessa Home Development" dated January 15, 2019, 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."
8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
9. **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.
10. **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.
11. **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.
12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
13. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.

14. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
15. **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.
16. **Property Maintenance.** The permittee 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 parking lot such as striping, paving, lighting and landscaping.
17. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
18. **Lighting.** No new outdoor lighting has been approved as part of this permit. All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium. Any changes to the on-site lighting will require a Permit Adjustment. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
19. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
20. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise levels from such equipment will not exceed 55 dBA at the residential property line. All roof mounted mechanical equipment shall be screened from view.
21. **Generators.** This permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
22. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code. The Code addresses the use of reclaimed water including the requirement that an irrigation system be designed to allow for the current and future use of reclaimed water for all landscaped cumulative areas in excess of ten thousand (10,000) square feet.
23. **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.* This permit file number, PD19-022, 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).

- c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. *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.
- e. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial).

24. **Demolition of Structures.** No demolition permits may be issued prior to the submittal of foundation or structural building permits. Demolition Permits may be issued prior to the Final Map approval.

25. **Affordable Housing Requirements.** If the development is a rental project, the permittee must pay the Affordable Housing Impact Fee prior to the issuance of any building permits, unless an exemption claim has been made and conditionally accepted. Rental developments are developments that do not include the filing of a tentative map, parcel map or other plan intended to allow the separate conveyance of individual residential units or interests.

- a. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this development and any other applicable requirements of the AHIF.
- b. If a development qualifies for a conditional exemption to the AHIF in the approved Plan, the permittee and owner must execute and record an Affordable Housing Agreement with the City prior to the issuance of any building permits.
- c. Permittee's approval is for development of less than 20 qualifying dwelling units, as determined by Housing. Any changes in the number of units or the type of units in the development may result in additional requirements up to and including a requirement to comply with the IHO.
- d. No building permit may be issued 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.

If the development is a for-sale project, the permittee must comply with the requirements under IHO.

- e. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this development and any other applicable requirements of the IHO.



- f. If a development requests an IHO exemption in the Plan, the conditions of that exemption shall be complied with through the issuance of the certificate of occupancy.
  - g. Permittee's approval is for development of less than 20 qualifying dwelling units, as determined by Housing. Any changes in the number of units or the type of units in the development may result in additional requirements up to and including a requirement to comply with the IHO.
  - h. No building permit may be issued until evidence of compliance with the IHO and exemption process. 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
26. **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.
27. **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.
28. **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.
29. **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.
30. **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.
31. **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.

32. **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.
33. **Parkland Dedication Ordinance.** This development is subject to the requirements of either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code,) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within the parkland dedication ordinance and the associated Fees and Credit Resolutions. Prior to approval of the Final Map or final building permits for this development, the permittee shall enter a parkland agreement with the City to the satisfaction of the Director of Public Works in order to fulfill the requirements of the Parkland Dedication Ordinance.
34. **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 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 link:  
<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 would not require a detailed CEQA transportation analysis because the project is expected to result in less-than-significant VMT impacts based on Table 1 (Screening Criteria for CEQA Transportation Analysis for Development Projects) of the Transportation Analysis Handbook 2018, as a small infill single family housing project of 15 units or less.
  - c. **Grand Boulevard:** This project fronts Capitol Avenue which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.

d. **Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- ii. 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 2013 California Plumbing Code 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. 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.

e. **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 and source controls to minimize stormwater pollutant discharges.

- i. A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of Public Works Clearance.

f. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

g. **Flood Zone AO, Depth 2':**

- i. Elevate the lowest floor, including basement, to 3 feet or more above the existing highest adjacent grade to the proposed structure (depth of flooding plus one foot per 2016 CRC).
- ii. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation (depth of flooding plus one foot) or protected from flood damage.
- iii. Construction materials used below the base flood elevation (depth of flooding plus one foot) must be resistant to flood damage.

- iv. An Elevation Certificate (FEMA Form 086-0-33) for each proposed structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction is required prior to issuance of an occupancy permit.
- h. **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.
- i. **Parks:** This residential project is subject to the payment of park fees in-lieu of land dedication under the requirements of the City's Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code).
- j. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to North Capitol Avenue prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2020 base fee is \$515 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
- k. **Street Improvements:**
  - i. Remove and replace curb, gutter, and sidewalk along the North Capitol Avenue project frontage with a 15-foot wide ADA compliant attached sidewalk. This includes a 0.5-foot wide curb and a 14.5foot wide sidewalk section. A Street Easement Dedication of approximately 7 feet will be required to achieve the 15-foot wide sidewalk.
  - ii. Proposed driveway width to be 20-foot wide per City Standard Detail R-6.
  - iii. Close unused driveway cut.
  - iv. Developer 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.
  - v. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - vi. 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.
- l. **Sanitary:**
  - i. A sanitary sewer main extension will be required as there is no existing sanitary main along the project frontage. The main extension can be constructed from the following options:

- a) The existing system on Kestral Way. The extension will be approximately 850 feet long.
  - b) The existing 8-inch diameter sanitary main located across the light rail tracks and existing median along the northbound direction on North Capitol Avenue (Coordination with VTA will be required).
  - c) The project is required to submit plan and profile of the sewer main with lateral location for final review and comment prior to construction.
- m. **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.
- n. **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”. Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
- o. **Private Streets:** Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.
- p. **Referrals:** If a sanitary main extension from the existing 8-inch diameter sanitary main along the northbound direction on North Capitol Avenue is required, this project should be referred to the Santa Clara Valley Transportation Authority (VTA).
- 35. Underground Storage Tanks (USTs):** Prior to any Underground Storage Tank (UST) removal activities including excavation, the project applicant shall obtain permits from the San José Fire Department (SJFD) and the SCCDEH. The permits include an Underground Storage Tank System Closure Permit Application with the SCCDEH and an Underground Storage Tank System Closure Application (UN-003) with the SJFD.
- The SCCDEH and SJFD will be present during the tank removals and the SCCDEH will direct the applicant to collect soil samples in the former tank pit after the tanks have been removed. The soil samples will be tested, and depending upon the results, the SCCDEH will determine if the former USTs have leaked. If the USTs have leaked, the SCCDEH will designate the site as a leaking underground fuel leak case and require follow-up investigations and remediation, if necessary.
- 36. Regulatory Oversight:** The Phase II Study found contaminated soils in concentrations above the regulatory environmental screening levels. The applicant

shall submit the Phase II results and obtain regulatory oversight from the Santa Clara County Department of Environmental Health (SCCDEH) under their Site Clean Up Program. Evidence of regulatory oversight shall be provided to the Director of Planning, Building, and Code Enforcement or Director's designee and the Environmental Compliance Officer in the City of San José Environmental Services Department prior to the issuance of grading permits.

A Site Management Plan (SMP) shall be prepared to manage the cleanup of potential contamination. The SMP shall be prepared prior to construction to establish appropriate management practices for handling impacted soil, soil vapor, and groundwater, and shall include the following, at a minimum:

- A detailed discussion of the site background
- Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program
- Procedures to follow if evidence of an unknown historic release of hazardous materials is discovered during excavation or demolition; and
- A health and safety plan (HSP) for each contractor working at the site, in an area below grade, that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.

The SMP shall be submitted to the SCCDEH (or equivalent agency) for review and approval. A copy of the approved SMP shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José for approval prior to the issuance of any grading permits. Prior to the approval of a building permit, the applicant shall submit evidence, such as a letter or email) from the oversight agency confirming adherence to the SMP Plan.

### **37. Standard Environmental Permit 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. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

- iii. 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.
- iv. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- vi. Replant of vegetation in disturbed areas as soon as possible after completion of construction.
- vii. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- viii. 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.
- ix. Post a publicly visible sign with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

**b. BIOLOGICAL RESOURCES.**

- i. Any tree to be removed from the residential use will be replaced at a 1:1 ratio; any trees removed from the commercial use will be replaced with new trees in accordance with the City's Tree Replacement Ratios, as set forth below.

<b>Table 4.4-2: Tree Replacement Ratios</b>				
<b>Circumference of Tree to be Removed<sup>1</sup></b>	<b>Type of Tree to be Removed<sup>2</sup></b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
12 inches or more <sup>3</sup>	5:1	4:1	3:1	15-gallon
6.0 to 12 inches	3:1	2:1	None	15-gallon
Less than 6.0 inches	1:1	1:1	None	15-gallon

<sup>1</sup> As measured 4.5 feet above ground level  
<sup>2</sup> X:X = tree replacement to tree loss ratio  
<sup>3</sup> Ordinance-sized tree  
Notes: Trees greater than or equal to 38 inches in 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 Tree Removal Permit is required for removal of trees of any size.  
A 38-inch tree equals 12.1 inches in diameter.  
A 19-inch tree equals 6.1 inches in diameter.  
One 24-inch box tree= two 15-gallon trees

- ii. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement.
  - 1) 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, at the development permit stage. Replacement tree plantings may be accommodated at an alternative site(s).
  - 2) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- iii. Habitat Plan. The project is subject to applicable Santa Clara Valley Habitat Plan (SCVHP) conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. Prior to issuance of any grading permits, the permittee shall submit a SCVHP 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.

**c. CULTURAL RESOURCES.**

- i. In the event that 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 Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement will be notified, and a qualified archaeologist will examine the find. The archaeologist will 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 would be submitted to Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement and the Northwest Information Center (if applicable). Project personnel should not collect or move any cultural materials.
- ii. 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 permittee 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.
- iii. 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.
  - iv. 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 48 hours after being given access to the site.
    - 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.
  - v. If vertebrate fossils are discovered during construction, all work on the site will 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 proponent will be responsible for implementing the recommendations of the paleontological monitor.

**c. 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 geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Planning, Building, and Code Enforcement 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 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. All excavation and grading work will be scheduled in dry weather months or construction sites will be weatherized.
- iii. Stockpiles and excavated soils will be covered with secured tarps or plastic sheeting.
- iv. Ditches will be installed, if necessary, to divert runoff around excavations and graded areas.
- v. 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 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 measure outlined below, will ensure that the future building on the site is designed properly to account for soils-related hazards on the site. The project shall conform to the recommendations of a project-specific geotechnical report, including design considerations for project foundations.

**d. HAZARDS AND HAZARDOUS MATERIALS.**

- 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 to determine the presence of asbestos-containing materials and/or lead-based paint.
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- iii. 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 shall be undertaken in accordance with Cal/OSHA standards contained in Title 8 of 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 BAAQMD regulations. Removal of materials containing more than one percent

asbestos shall be completed in accordance with BAAQMD requirements and notifications.

**e. HYDROLOGY AND WATER QUALITY.**

- 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 would be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces would 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 would be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials would be covered and all trucks would be required to maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites would be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas would 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 may also be installed at the request of the City.

**38. Homeowners' Association(s) and/or Maintenance District.** A Homeowners' Association or Maintenance District or Facilities District shall be established for maintenance of all common areas, including private streets, pedestrian walkways, parking, easements, landscaping, and landscaping in the public right-of-way that is not already in a maintenance district, etc. The applicant shall provide to the Homeowners Association(s) a copy of the Tentative Map Permit, the accompanying Plan Set within 30 days of completion the construction phase.

**39. 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. PD19-022) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC17-046 approved for publication on \_\_\_\_\_, 2020 (the "Planned Development Rezoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020, 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.*

**Exhibit "A"**

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being more particularly described as follows:

All of Parcel No. 1 and Parcel No. 2, as described in the Trust Transfer Deed from Anna Chelstowski, an unmarried woman to Anna Chelstowski, as Trustee of the Chelstowski 1990 Living Trust, recorded on July 9, 1990 in Book L411 of Official Records at Page 1521, said Santa Clara County records, excepting therefrom that certain parcel of land as described in the Grant Deed from Anna Chelstowski, as Trustee of the Chelstowski 1990 Living Trust to the Santa Clara Valley Transportation Authority, recorded on April 5, 2001 as Document No. 15621624 of Official Records, said Santa Clara County records.

and, excepting therefrom, the following area:

Beginning at the most Southerly corner of said parcel of land as described in the Grant Deed from Anna Chelstowski, as Trustee of the Chelstowski 1990 Living Trust to the Santa Clara Valley Transportation Authority;

Thence along the Southeasterly line of Parcel No. 2 and Parcel No. 1, as both parcels are described in said Trust Transfer Deed from Anna Chelstowski, an unmarried woman to Anna Chelstowski, as Trustee of the Chelstowski 1990 Living Trust, South 48° 30' 22" West, 247.54 feet to the most Southerly corner of said Parcel No. 1;

Thence leaving said Southeasterly line, along the Southwesterly line of said Parcel No. 1, North 40° 00' 53" West, 2.54 feet;

Thence leaving said Southwesterly line, North 49° 05' 35" East, 247.49 feet to the Point of Beginning.

and, in addition thereto, the following area:

Beginning at the most Southerly corner of said Parcel No. 1, as described in the Trust Transfer Deed from Anna Chelstowski, an unmarried woman to Anna Chelstowski, as Trustee of the Chelstowski 1990 Living Trust;

Thence, from said Point of Beginning, along the Southwesterly line of said Parcel No. 1, North 40° 00' 53" West, 2.54 feet to the True Point of Beginning;

Thence leaving said Southwesterly line, South 49° 05' 35" West, 3.89 feet;

Thence parallel with said Southwesterly line of Parcel No. 1, North 40° 00' 53" West, 80.78 feet to a point in the Northwesterly line of said Parcel 2;

Thence leaving said parallel line, along the Northwesterly line of said Parcel 2, North 49° 15' 22" East, 3.89 feet to the most Westerly corner of said Parcel No. 1;

Thence leaving said Northwesterly line, along the said Southwesterly line of Parcel No. 1, South 40° 00' 53" East, 80.77 feet to the True Point of Beginning.

Containing an area of 0.463 acres (20,162 square feet), more or less.

Assessor's Parcel Numbers(s): 254-29-029