

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF A SIX-STORY MULTIFAMILY RESIDENTIAL BUILDING TOTALING 260 UNITS, 100% OF WHICH ARE AFFORDABLE, SUBJECT TO THE STATE DENSITY BONUS LAW ON AN APPROXIMATELY 2.38-GROSS-ACRE SITE, LOCATED ON THE NORTHERLY SIDE OF BERRYESSA ROAD, APPROXIMATELY 1,100 FEET WESTERLY OF LUNDY AVENUE (1655 BERRYESSA ROAD) (APNS 241-03-023, 241-03-024, 241-03-025)**

**FILE NO. PD25-008**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on April 29, 2025, Mark Pilarczyk (Swenson), representing the property owner, Robert Facchino (Terracommercial Real Estate Corp) (“Project applicant”) filed an application (File No. PD25-008) with the City of San José for a Planned Development Permit to allow the construction of a six-story multifamily residential building totaling 260 units, 100% of which are affordable, subject to the State Density Bonus Law (“Project”) on an approximately 2.38-gross-acre site, on that certain real property situated in the UR(PD) Planned Development Zoning District and located on the northerly side of Berryessa Road, approximately 1,100 feet westerly of Lundy Avenue (1655 Berryessa Road, APNs 241-03-023, 241-03-024, 241-03-025, 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 “Exhibit ‘A’ For Zoning Purposes” and depicted in Exhibit “B,” entitled “Exhibit ‘B’ Plat to Accompany Description: For Zoning Purposes,” which are 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, this City Council conducted a Public Hearing on said application, notice of which was duly given; and

**WHEREAS**, at said hearing, the 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 report and recommendation of the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, the City Council received in evidence a plan for the subject property entitled, "Berryessa Family Apartments" dated June 11, 2025, 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 and findings regarding this proposed Project:

1. **Site Description and Surrounding Uses.** The subject site consists of three parcels totaling approximately 13.05 gross acres, located on the north side of Berryessa Road, approximately 1,100 feet westerly of Lundy Avenue (1655 Berryessa Road; APNs 241-03-023, 241-03-024, 241-03-025). The site is currently occupied by an existing light industrial facility and surface parking lot. Existing access to the site is from one ingress/egress driveway from Berryessa Road. The site is surrounded by single-family and multifamily residential uses to the north, west, and east across the BART tracks, and the Berryessa Flea Market to the south across Berryessa Road. Prior to the submittal of this application, the Project applicant was notified by the California State Water Resources Control Board that a protected wetland exists on the property, which rendered the previously approved Vesting Tentative Map unfeasible.
2. **Project Description.** The Project consists of a Planned Development Permit to allow the construction of a six-story multifamily residential building totaling 260 units, 100% of which are affordable and subject to the State Density Bonus Law, on an approximately 2.38-gross-acre site within the larger overall site. The new multifamily building will contain 85 one-bedroom units, 110 two-bedroom units, and 65 three-bedroom units. The ground level consists of structured parking, bicycle parking, lobby space, a fitness room, a multipurpose room, and a computer room. The second level consists of two courtyards and residential units. Levels three through six consist of residential units. The new multifamily building will reserve approximately 10% of the total units for very-low-income, 51% for low-income, and 39% for moderate-income households. The project includes waivers for residential unit orientation, stepbacks, and streetwall articulation, and concessions for massing variation, façade design, and private open space, subject to the State Density Bonus Law. This Permit does not include any tree removals.
3. **General Plan and Berryessa BART Urban Village Plan Conformance.** The site has an Envision San José 2040 General Plan and Berryessa BART Urban Village Plan land use designations of Urban Residential, Open Space, Parkland and Habitat, and Transit Employment Center. The approximately 2.38-gross-acre portion of the subject site where the new multifamily building is located has a land use designation of Urban Residential. The Urban Residential designation is suitable for portions of Urban Village areas with medium-density residential development. The Urban Residential designation is most appropriate for the residential character of the Facchino District. This land use designation will enable a transition between medium-density residential and the adjacent single-family homes to the north and west. Urban Residential is envisioned in the Berryessa BART Urban Village Plan to support mid-rise multifamily residential uses preferably, including mixed-use residential with ground-floor neighborhood-serving commercial uses or other community amenities. The Urban Residential land use designation in the Berryessa BART Urban Village supports a residential density that ranges from 75 to 250 Dwelling Units per Acre (DU/AC) in the Facchino District. For context, the minimum density of 75 DU/AC supports the

development of approximately 320 units and the maximum density of 250 DU/AC supports the development of approximately 1,062 units, using the area designated as Urban Residential in the land use plan.

*Analysis: The project includes the construction of a mid-rise multifamily residential building with up to 260 residential units. The project will have a density of approximately 110.63 DU/AC, which is within the density allowed. Therefore, the project is consistent with the Urban Residential land use designation.*

The Project is consistent with the following General Plan Goals and Policies:

1. Land Use Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified “Growth Areas” in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.

*Analysis: The project will provide an increase in the housing growth capacity within the Berryessa BART Urban Village growth area. The subject site is less than one-half mile from the existing Berryessa / North San José BART station, which will encourage the use of existing transit infrastructure by residents. Reduction of motor vehicle travel in favor of transit infrastructure use will also align with General Plan Policy LU-10.3. Therefore, the project is consistent with this policy.*

2. Efficient Use of Residential and Mixed-Use Lands Policy LU-10.2: Distribute higher residential densities throughout our city in identified growth areas and facilitate the development of residences in mixed-use development within these growth areas.

*Analysis: The subject site’s location within the Berryessa BART Urban Village boundary promotes a higher density of residential development. Therefore, the project is consistent with this policy.*

3. Vibrant Urban Village Policy LU-1.1: Prioritize the development of residential projects in land use designations that support the residential capacities of each District. While other land uses are not strictly prohibited under the residential land use designations, the goal is to foster the development of residential development in specific areas of each District.

*Analysis: At the maximum allowed residential density of 250 DU/AC, the Facchino District will support the development of approximately 1,062 residential units. The new multifamily building will consist of up to 260 units, supporting the aforementioned residential capacity of the Facchino District. Therefore, the project is consistent with this policy.*

4. Vibrant Urban Village Policy LU-3.2: Require ground-floor active uses in the Urban Residential land use designation in the Facchino District.

*Analysis: The ground floor of the multifamily building includes a lobby, fitness room, multipurpose room, and computer room facing the street. In addition, the project includes a landscaped area near the building entrance, helping activate the street. Therefore, the project is consistent with this policy.*

#### Berryessa BART Urban Design Standards

The Planned Development Permit is consistent with the following standards within the Berryessa BART Urban Village Plan:

1. D-DS-4: Buildings facing the BART track shall have a minimum 50-foot set back measured from the edge of the BART rails or metal trackway to the building elevation.

*Analysis: The multifamily building is further than 50 feet from the BART rails, consistent with this standard.*

2. E-DS-3: Design multifamily blocks so there is a streetwall or podium level in at least 70% of the block perimeter. The height of the podium or building base shall not be less than 40 feet. The height of the massing base or podium shall be 30-40% of the total block frontage height when a “tower” is provided. The portion of the tower facing the street shall step-back 10-20 feet when the podium height is reached.

*Analysis: The multifamily building provides a streetwall for at least 70% of the block perimeter. The streetwall will be approximately 70 feet high, consistent with the standard.*

3. F-DS-1: Design the primary pedestrian building access directly to a public sidewalk, public open space, or paseo—uninterrupted by a parking area or vehicular circulation. Do not create a main pedestrian entrance from an internal private courtyard. Use the location of active frontage on each district as a main strategy to orient pedestrian access to buildings.

*Analysis: The primary pedestrian entrance to the building has direct access to a public sidewalk uninterrupted by a parking area or vehicular circulation. Therefore, the project is consistent with this standard.*

4. F-DS-10: The bicycle access in a building must be easily accessible from a public sidewalk, public open space, or paseo—uninterrupted by a parking area or vehicular circulation.

*Analysis: There is direct pedestrian access between the bike room and the lobby. Bicyclists will not have to cross vehicular parking or drive aisles. Therefore, the project is consistent with this standard.*

5. F-DS-12: Bicycle storage facilities inside of a building must be provided at the pedestrian level. Bicycle storage is not allowed in underground or basement levels.

*Analysis: Bicycle parking is provided at the pedestrian level and meets this standard.*

6. F-DS-21: For multifamily residential projects, locate parking and vehicle entries at least 20 feet away from primary pedestrian entries.

*Analysis: The distance between the parking garage entrance and lobby entrance is approximately 77 feet, consistent with the standard.*

7. F-DS-26: Parking for multifamily residential shall be fully enclosed by the residential development ("parking wrap" approach) or, alternatively, on a podium not exceeding the first three floors, fully screened. For buildings that exceed 110 feet in height, a maximum of five levels of parking from ground level is allowed, provided they are fully screened.

*Analysis: The fully screened parking garage is located entirely on the first floor, meeting this standard.*

4. **Zoning Code Compliance.** The Project site was rezoned from the R-M(PD) and CP(PD) Planned Development Zoning Districts to the UR(PD) and CP(PD) Planned Development Zoning Districts (File No. PDC25-016). The Planned Development rezoning includes the establishment of a General Development Plan and site-specific Development Standards that will be applied to the development of the site.

#### Use Regulations

Pursuant to the General Development Plan, permitted, special, and conditional uses of the UR Urban Residential Zoning District, as amended, are allowed with the issuance of a Planned Development Permit.

*Analysis: "Multiple dwelling" is a permitted use within the UR Urban Residential Zoning District, pursuant to Table 20-50 in Section 20.30.100 of the San José Municipal Code. Therefore, a Planned Development Permit is the appropriate permit to allow the construction of the multifamily building.*

#### Development Standards

The table below includes the applicable development standards of the General Development Plan.

Development Standard	Requirement	Provided
Density (within the Urban Residential District)	Minimum 75 DU/AC and maximum 250 DU/AC	Approximately 110.63 DU/AC
Setbacks	Maximum side setback for a corner lot: 14 feet	Between approximately 7 and 10 feet
Building Height	Consistent with the height limits described in the Berryessa BART Urban Village Plan: 90 feet (northwest portion) and 160 feet (southeast portion)	78 feet

*Analysis: The project is consistent with the density, setbacks, and building height requirements of the General Development Plan, as outlined above.*

#### Vehicle Parking

Pursuant to the General Development Plan, vehicle parking shall be designed in accordance with Title 20 of the San José Municipal Code, as may be amended.

*Analysis: As of April 10, 2023, the City of San José no longer has a minimum parking requirement. Instead, projects are required to prepare a Transportation Demand Management (TDM) Plan. A TDM Plan was prepared for the project by Hexagon Transportation Consultants, Inc. dated June 5, 2025. While Section 20.90.900.B.5 states that projects providing 100% restricted affordable units are exempt from TDM requirements in the Zoning Code, the Berryessa BART Urban Village Plan has its own TDM requirements and takes precedence over the Zoning Code. Chapter 5 of the Berryessa BART Urban Village District Parking Study, beginning on page 16, outlines implementation of the Berryessa BART Urban Village Plan's TDM requirements. All developments within the Berryessa BART Urban Village are required to implement a TDM plan which achieves 30 points. The first 10 of these points shall be met by the mandatory TDM measures as shown in Figure 4, page 18, and also as described below:*

Citywide TDM Category	Citywide TDM Measures	BBUV Points
Program-1	Transportation Management Association	10
Program-2	Education, Marketing, and Outreach	
Program-3	Transit Pass Subsidy	
Parking-1	Unbundled Parking	
Parking-2	Price Parking	

*These mandatory TDM measures are explained in further detail in Attachment A of the Berryessa BART Urban Village District Parking Study beginning on page 30. The remaining 20 points may be met using a combination of additional TDM measures outlined in Figure 5, page 22. Projects may be able to achieve these 20 points based on the amount of off-street parking provided. Pursuant to Figure 6 on page 24, the project's off-street parking ratio of 0.65 spaces per dwelling unit (170 spaces / 260 dwelling units) achieves 20 points. The TDM Plan for the project complies with the 30-point requirements discussed above.*

#### Bicycle Parking

Pursuant to the General Development Plan, bicycle parking shall be provided as required per Title 20 of the San José Municipal Code, as may be amended.

*Analysis: Pursuant to Table 20-190 in Section 20.90.060, one bicycle parking space is required for every four multifamily dwelling units. Therefore, 65 bicycle parking spaces are required. A total of 71 bicycle parking spaces (65 long-term and four short-term) are provided, meeting the requirement.*

#### Motorcycle Parking

The General Development Plan is silent on motorcycle parking. Therefore, motorcycle parking shall be provided per the requirements of the Zoning Code. Pursuant to Section 20.90.350, two-wheeled motorized vehicle (motorcycle) parking shall be provided at a rate of 2.5 percent of standard vehicle parking provided.

*Analysis: The project will provide 170 vehicle parking spaces. Therefore, five motorcycle parking spaces are required. The project includes five motorcycle parking spaces, meeting the requirement.*

5. **Citywide Design Standards and Guidelines Consistency.** The project is subject to the Citywide Design Standards and Guidelines where the Berryessa BART Urban Village Plan is silent. The following standards are applicable to the project:
- 2.3.4 - Open Space Placement and Access



- Standard 2 – Where common open spaces are provided on a medium or large site, ensure that all buildings have physical access to at least one of them via walkways or pedestrian paths from inside of the buildings.

*Analysis: As shown in the approved Plan Set, the two courtyard spaces on the second floor will be accessible by via interior hallways, meeting the standard.*

- 2.3.5 – Bicycle Parking Placement

- Standard 1 – Locate at least 40% of the required bicycle parking on the ground floor with direct physical access to an elevator or building exit.

*Analysis: As shown in the approved Plan Set, all of the required bicycle parking will be provided in a room on the ground floor with direct physical access to the lobby. The lobby has access to the building's elevators and building exit. Therefore, the project is consistent with this standard.*

- 2.3.7 – Site Lighting

- Standard 1 – Orient all site lighting directly downwards to prevent light pollution and excess glare in the public realm.

*Analysis: As shown in the approved Plan Set, the lighting fixtures specified are all downward-facing, meeting the standard.*

- 3.2.1 – Pedestrian and Bicycle Entrances Design

- Standard 1 – Provide at least one building entrance along a public street or active pedestrian area for all buildings with multiple access points, all buildings with over 200 feet of frontage along streets and public open spaces, and all residential developments with over 50 units.

*Analysis: As shown in the approved Plan Set, the multifamily building has one entrance along each street-fronting façade, meeting the standard.*

- 3.2.2 – Vehicular Entrances and Driveways

- Standard 1 – Driveways must be less than 25% of street frontage for sites that are more than 100 feet wide at the street and not more than 25 feet for sites that are less than 100 feet wide at the street.

*Analysis: The site is more than 100 feet in length, requiring driveways to be less than 25% of the street frontage. One 22-foot-wide driveway is provided, meeting the standard.*

- 3.3.2 – Roofs and Parapets

- Standard 3 – For buildings with five stories or greater:
  - Provide flat roofs for at least 90% of roof area. Up to 10% may be a

combination of other roof forms.

*Analysis: As shown in the approved Plan Set, the entire roof of the multifamily building will be flat, meeting the standard.*

- 3.3.3 – Decks and Balconies

- Standard 5 – When balconies are provided in a project, at least 25% of residential units facing secondary streets and public open spaces must have balconies.

*Analysis: As shown in the approved Plan Set, all units facing the street above the second level will have balconies, meeting the standard.*

6. **State Density Bonus Law Consistency.** The project includes 260 residential units. Three of the 260 units will be manager's units. Of the remaining 257 units, 26 units (10%) are reserved for very-low-income households (between 30% and 50% Area Median Income ("AMI")), 130 units (51%) are reserved for low-income households (between 50% and 80% AMI), and 101 units (39%) are reserved for moderate-income households (between 80% and 120% AMI), with income limits as defined in California Code Section 65915. Pursuant to Government Code 65915(d)(2)(C), the project is eligible for three concessions and unlimited waivers under the provisions of Density Bonus Law. The project has requested three concessions and three waivers.

Concessions

1. Reduction in massing variation and elimination of a taller massing element at the corner of the building pursuant to Berryessa BART Urban Village Plan Design Standard E-DS-2.

*Analysis: Adding massing variation along the building frontage and a taller massing element at the corner of the building will increase the project cost by approximately \$200,000 to \$500,000. Therefore, the concession is granted.*

2. Reduction in articulation pursuant to Citywide Design Standards and Guidelines Section 3.3.1 Standard 1.

*Analysis: Adding articulation elements such as material and plane changes will increase the project cost by approximately \$375,000. Therefore, the concession is granted.*

3. Reduction in private open space pursuant to Citywide Design Standards and Guidelines Appendix A.2.

*Analysis: The project requires 15,600 square feet of private open space. Balconies are provided as a private open space for a portion of the residential units. A balcony costs approximately \$13,000. One hundred-sixty units will not have balconies, reducing the project cost by approximately \$2,080,000. The project will still provide*

*a total of 6,100 square feet of private open space for the remaining one hundred units. Therefore, the concession is granted.*

### Waivers

1. Allowance of residential units that do not face a public right-of-way, private street, or open space courtyard area pursuant to Berryessa BART Urban Village Plan Design Standard E-DS-1.

*Analysis: Fifty residential units face the BART tracks and do not face a public right-of-way, private street, or open space courtyard. Compliance with this standard will result in the loss of 50 units. Therefore, the waiver is granted.*

2. Elimination of a five-foot setback in the upper floors above three stories, pursuant to Berryessa BART Urban Village Plan Design Standard 1A-DS-6.

*Analysis: A five-foot setback in floors four, five, and six will result in the loss of 18 units. Therefore, the waiver is granted.*

3. Elimination of streetwall articulation for streetwalls greater than 20 feet in length, pursuant to Citywide Design Standards and Guidelines Section 3.1.2 Standard 3.

*Analysis: Including a recession in the façade for streetwall articulation will result in the loss of at least 10 units. Therefore, the waiver is granted.*

7. **City Council Policy 6-30: Public Outreach Policy for Pending Land Use Decisions.** Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed Project. On-site signs have been posted on the Project frontages and were last inspected on May 29, 2025. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the Project site and posted on the City's website. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

8. **Environmental Review.** The City of San José has prepared an Addendum to the 2023 Berryessa Road Mixed Use Development FEIR (Resolution No. RES2023-223) ("2023 FEIR") for the subject Planned Development Rezoning, Vesting Tentative Map, and Planned Development Permit (File Nos. PDC25-016, T25-006 & T25-006) in compliance with the California Environmental Quality Act (CEQA).

As analyzed in the Addendum, the modifications to the previously approved project will continue to be consistent with the 2023 FEIR analysis for aesthetic, agricultural and forestry, biological, cultural, energy, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral, population and housing, public services, recreation, utilities and service systems, tribal cultural, and wildfire resources. The supplemental analyses for transportation (Appendix A), air quality (Appendix B), and noise and vibration (Appendix C) confirmed that the project modifications do not result in any new impacts than what

were disclosed in the 2023 FEIR. In addition, no new information of substantial importance has become available that will change the conclusions of the 2023 FEIR and all previously identified mitigation measures will remain applicable. Therefore, in accordance with CEQA Guidelines Section 15164, preparation of the Addendum to the certified 2023 FEIR is appropriate and sufficient to evaluate and document the project modifications.

**9. Planned Development Permit Findings:** Section 20.100.940 of the San José Municipal Code specifies the required findings for the approval of a Planned Development 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 Envision San José 2040 General Plan and Berryessa BART Urban Village Plan Conformance section above, the project is consistent with the land use designation of Urban Residential. The project includes the construction of a six-story multifamily residential building consistent with the Urban Residential land use designation's maximum allowed density. In addition, the project is consistent with land use policies regarding higher density housing growth and design standards of the Berryessa BART Urban Village Plan.*

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

*Analysis: As discussed in the Zoning Code Conformance section above, the project is consistent with all permitted uses, development standards, and parking requirements of the UR(PD) Planned Development Zoning District's General Development Plan.*

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

*Analysis: The project complies with Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals. An on-site sign describing the project has been posted at the project site, visible to the public right-of-way. The sign was last inspected on May 29, 2025. Notices for public hearing were mailed to property owners and tenants within a 1,000-foot radius of the project site. Staff has been available to answer questions from the public.*

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; and

*Analysis: The new multifamily building will be located along the eastern property line of the subject site, adjacent to the BART tracks and single-family homes approved under File No. PD21-009. The Berryessa BART Urban Village Plan designates this*

*location of the site for higher density residential development, creating a transition between single-family development and the Berryessa BART station.*

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 effect on adjacent property or properties.

*Analysis: The project does not include any outdoor uses or the installation of equipment that will exceed the zoning district's maximum allowed noise levels. All construction activity and impacts, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, will be temporary. Construction will be limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, and the Project applicant will comply with standard permit conditions, construction Best Management Practices, and regulatory agency requirements. The project is required to conform 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 discharge. The project site is listed as a closed Leaking Underground Storage Tank case on geotracker and residual contaminants remain in the soil. However, mitigation measures are incorporated into the project to ensure the proposed project would not result in significant impacts construction workers, neighboring residents, or the environment due the release of contaminated soil or groundwater. The project also includes standard environmental permit conditions to reduce and mitigate impacts regarding air quality, dust and emissions control, water quality, and noise. Additionally, the project is required to implement the Mitigation Monitoring and Reporting Program (MMRP) prepared for the project. Therefore, the project will not result in significant impacts that will negatively affect adjacent properties.*

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

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the Permittee fail to file a timely and valid appeal of this Planned Development Permit ("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 Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all 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.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility- represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, “Berryessa Family Apartments” dated June 11, 2025, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the “approved plans” or the “Approved Plan Set.”
6. **Conformance with Previously Approved Zoning.** All conditions of approval and environmental mitigation measures required by the approved Planned Development Rezoning (File No. PDC25-016) applicable at the time of issuance of this Permit, or by the environmental clearance for such zoning, are hereby incorporated by reference into and made a part of this Permit.
7. **Planned Development District Effectuated.** This Planned Development Permit effectuates the portion of the Planned Development Rezoning (File No. PDC25-016) as reflected in the Permit’s Approved Plan Set and the corresponding legal description.
8. **Conformance to Transportation Demand Management Plan.** The project shall conform to the approved Transportation Demand Management (TDM) Plan entitled “Facchino Block H and Block D Residential Development Draft Transportation Demand Management (TDM) Plan” and dated “June 5, 2025,” on file with the Department of Planning, Building and Code Enforcement (“Approved TDM Plan”), with the exception of any subsequently approved modifications. Modifications to the Approved TDM Plan can be made as provided by Section 20.90.912 of the Municipal Code, as amended.
9. **Berryessa BART Urban Village (BBUV) Plan:** The subject project is located in a designated Urban Village established under the Envision San Jose 2040 General Plan. Development approved under this project is subject to the policies in Berryessa BART Urban Village Plan, including each of the following conditions related to transportation demand management:
  - a. Transportation Demand Management (TDM)
    - i. Transportation Management Association (TMA) Participation – The project will participate in and pay associated fees of the district’s TMA. The TDM plan must be provided to the TMA which will oversee compliance with the TDM plan. A TDM coordinator must be identified and will work with the TMA in submittal of required monitoring and compliance.
    - ii. Education, Marketing, and Outreach – Residents will be provided with information on available travel options. The information will be conveyed via welcome packets to all new residents and highlights alternative transportation options and benefits to be provided.
    - iii. Transit Pass Subsidy – Contributions or incentives equivalent to 50% of the Adult-fare cost of a VTA monthly pass will be offered to each dwelling unit each month.

- iv. Unbundle Parking – Parking for each unit will be unbundled, or sold sperate, of the unit purchase to provide residents with the option to purchase a parking space.
  - v. Parking Supply – Proposed on-site parking will be provided at a unit to parking ratio (0.65 to 0.68 spaces per unit) that is less than the standard parking demand ratio of 2.0 spaces per unit.
- b. Transportation Management Association (TMA):
- i. The first development project to obtain a building permit within any of the four Districts in the BBUV Plan area established by that Plan shall, in conjunction with the City of San José, form the Berryessa BART Urban Village Transportation Management Association (TMA) in order to manage and administer the City-approved TDM Plans for development projects and uses with the four Districts in the BBUV Plan area. This TMA shall be established prior to occupancy of the first building. The TMA shall facilitate shared TDM services as appropriate; provide transportation-related marketing for TDM-related programs and services; coordinate annual monitoring, evaluation, and reporting to the City of San Jose in accordance with the relevant approvals and legally binding documents for each respective development project and use within the four Districts of the BBUV Plan area, with TMA approval prior to submittal to the City of San Jose. Appropriate funding mechanisms for the TMA shall be established no later than the date of occupancy of the first building following the BBUV Plan approval in any of the four BBUV Districts. The developer/property owner that forms the TMA shall be a member of the TMA and other developers/property owners of projects within the four Districts of the BBUV shall join the TMA for the purposes stated above.
  - ii. Projects approved under subsequent Planned Development permits are required to join the TMA established in Subsection (e) above, and property owners shall pay a portion of the costs of any adopted funding mechanism(s) to implement the City and TMA functions under the Parking and Transportation Management Entity.
  - iii. Development approved under this project shall work with the City and the TMA to make adjustments in the project-level TDM Plan as appropriate to meet the TDM compliance and monitoring requirements set forth in the anticipated Citywide Transportation Demand Management Policy.
10. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance under State law, the City's Municipal Code, or other law and requirements. Any such nuisance must be abated immediately upon notice by the City.
11. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.



12. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
13. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
14. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
15. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
16. **Anti-Graffiti.** All graffiti shall be removed from buildings, signs, and wall surfaces, including job sites for Projects under construction, within 48 hours of defacement.
17. **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.
18. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement through a subsequent Permit Adjustment.
19. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
20. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
21. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building, and Code Enforcement.
22. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators will require a separate administrative Backup/Standby Generator Facility Permit and shall conform to the regulations of Title 20 of the Municipal Code.
23. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.

24. **Construction Disturbance Coordinator.** Rules and regulations pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
25. **Replacement Landscaping.** All landscaping removed with the construction of the Project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
26. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the Project, including information on available haulers and processors.
27. **Regulatory Agreement.** Prior to the issuance of the first Building Permit, the Permittee shall submit a Permit Adjustment Application and enter into a Density Bonus Regulatory Agreement with the City. The final Regulatory Agreement, as amended and as approved by the City Attorney and by the Director of Planning, Building and Code Enforcement shall be recorded in the Office of the County Recorder by the City. This Permit shall take effect upon the date of recordation of the Density Bonus Regulatory Agreement in the form approved by the City and shall have no force and effect prior to that date.
28. **Building Division Clearance for Issuing Permits:** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit File No. PD25-008 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. *Construction Plan Conformance.* A Project construction plan conformance review by the Planning Division is required. Planning Division review for Project conformance begins 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.
  - d. *Other.* Such other requirements as may be specified by the Chief Building Official.
29. **Bureau of Fire Department Clearance for Issuing Permits:** Prior to the issuance of any Building Permit, the Project must comply with the California Fire Code as adopted by the City.
30. **Housing Department Conditions.** Prior to earliest of either approval of any parcel or final map, or issuance of any building permits, the permittee must execute and record their Affordable Housing Agreement memorializing the Inclusionary Housing

Ordinance obligations against the property, any other property required for the satisfaction of the compliance option selected in the Plan, and record the Affordable Housing Agreement or a City covenant against contiguous property under common ownership and control. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.

- a. The Permittee has received approval for an Alternative Methods Compliance Plan under San José Municipal Code (SJMC) Section 5.08.610(F). The project will satisfy the Inclusionary Housing requirement through construction of 257 affordable units in a 100% affordable building on Blocks D & H (defined below). This results in 129 surplus affordable units above the required 128 units (15% of 850). The affordable units will serve households at 30%, 50%, 60%, and 70% AMI and will be regulated for 55 years.

The affordable building will be financed using 4% Low Income Housing Tax Credits and tax exempt bonds, with a financing reservation from California Debt Limit Allocation Committee/California Tax Credit Allocation Committee received on April 8, 2025. The financing must close by October 6, 2025. Construction is expected to begin in October 2025 and be completed by February 2028.

The Permittee's obligations are summarized as follows:

- i. Phase 1 – Blocks A, B, and C: 48 for-sale market-rate units (24 rowhomes and 24 townhomes/flats).
- ii. Phase 2 – Blocks D and H: 260-unit affordable rental community, including 3 manager units.
- iii. Phase 3 – Blocks F and G: Up to 542 high-density market-rate units.

Total Units	Minimum IHO Obligation	Affordable Housing Proposed
850	128	257

Approval of the Plan includes waivers to:

- i. SJMC 5.08.420 (Contiguous Property under Common Ownership)
- ii. SJMC 5.08.460 (Timing of Construction of Inclusionary Units)
- iii. SJMC 5.08.470 (Standards for Inclusionary Units)

Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO or its guidelines and submit any additional or updated documents requested by the Housing Department in connection with the satisfaction of the compliance option selected in the Plan.

- b. The security obligation for assuring compliance with the IHO's affordable housing requirements is satisfied through either a City performance bond (by a California licensed surety) or a letter of credit using the City forms and its value is based upon the in-lieu fee amount for satisfying the project's IHO obligation ("security").
  - c. The Permittee will be required to record the IHO agreement prior to the recording of the parcel map, unsubordinated to any deeds of trust, and to include the following conditions:
    - i. The entire security is due for the entire market rate project prior to issuance of the first Certificate of Occupancy for the first market rate unit. The amount of the security is based on the current fiscal year in-lieu fee when the security is provided. Alternatively, the market rate phase 1 obligations for in-lieu security could be due for the entire market rate project prior to the first Certificate of Occupancy for the first phase 1 unit and with the same conditions applying to phase 2. The amount of the fee security should be based on the current fiscal year fee when the security is provided.
    - ii. The fees would be refundable to the payor upon the financing closing and the building permit issuance for the 260-unit restricted affordable project. If this does not occur within five (5) years of the 1st Certificate of Occupancy for the first phase 1 market-rate unit, then the City may call the bond or otherwise collect the amount due for the Project's entire in-lieu fee.
    - iii. No building permit should issue for Phase 3 except in accordance with the affordability restrictions for that site.
    - iv. Required minimum standards and amenities.
  - d. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO, its guidelines and the Affordable Housing Agreement are met.
31. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development by City Council Resolution No. RES2023-223.
32. **Standard Environmental Permit Conditions.**
- a. *Construction-related 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, or as often as needed to control dust emissions.
    - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.

- iii. Remove visible mud or dirt track-out onto adjacent public roads by using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
- vi. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Idling times shall be minimized either by shutting equipment off when not in use or
- x. Reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations ). Clear signage shall be provided for construction workers at all access points.
- xi. 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.
- xii. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Bay Area Air Quality Management District's phone number shall also be visible to ensure compliance with applicable regulations.
- xiii. During construction, all vehicle speeds on unpaved roads shall be limited to 15 miles per hour.

b. *Biological Resources*

- i. *Santa Clara Valley Habitat Plan*. The project is subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Permittee would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning or Director's designee of the City of San José Department of Planning, Building, and Code Enforcement or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of

grading permits. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

c. *Cultural Resources*

- i. *Subsurface Cultural Resources.* If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall (1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee, the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. *Human Remains.* If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Permittee shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist of the discovery. The qualified archaeologist shall 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 Native American Heritage Commission (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 their 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 their authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

d. *Construction-related water quality.*

- i. Install burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains.
- ii. Suspend earthmoving or other dust-producing activities during periods of high winds.
- iii. Water all exposed or disturbed soil surfaces at least twice daily to control dust as necessary.
- iv. Water or cover stockpiles of soil or other materials that can be blown by the wind.
- v. Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks.
- vi. Sweep all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites daily (with water sweepers).
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Fill with rock all unpaved entrances to the site to remove mud from tires prior to entering City streets. Install a tire wash system if requested by the City.
- ix. Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

e. *Geology and Soils*

- i. *Seismic Ground Shaking.* To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of

- applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
  - iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
  - iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
  - 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. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
  - vi. 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. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
  - vii. *Soil Erosion.* All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
  - viii. Cover stockpiles and excavated soils with secured tarps or plastic sheeting.
  - ix. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
  - x. *Paleontological Resources.* If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building, and Code Enforcement or Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The Permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee.



- f. *Construction-related Noise*: Noise minimization measures shall include, but are not limited to, the following:
- i. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.
  - ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
  - iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
  - iv. Prohibit unnecessary idling of internal combustion engines.
  - v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
  - vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
  - vii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
  - viii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
  - ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
  - x. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

**33. 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 will be required to have satisfied all of the following Public Works conditions. The Permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.

- a. **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:** A Supplemental Transportation Analysis has been performed for this project and indicated that the conclusions of the previous Transportation Analysis are still valid. See separate Transportation Analysis Memo dated 1/24/23 for additional information. The Transportation Analysis identified adverse intersection operation effects at four different intersections. In most instances, mitigation of the adverse operation effect is unfeasible and offsetting improvements is required. Results of the analyst found that, with the following conditions, the subject project will be in conformance with the City of San Jose Transportation Policy (Council Policy 5-1) and a determination for less than significant impacts can be made with respect to transportation impacts.
  - i. **Berryessa Road and Lundy Avenue:**
    1. Construct offsetting improvements planned at the Berryessa Road and Lundy Avenue intersection within the Berryessa BART Urban Village (BBUV) Area. The multi-modal improvements include the removal of pork-chop islands at the northeast and northwest corners of the intersection which will enhance safety by removing pedestrian-bicycle conflicts with vehicles. A signal modification also will be required for the intersection improvements (including APS, video detection, etc.), or
    2. Contribute \$1,500,000.00 towards the King Road multi-modal improvement plan line.
  - ii. **Berryessa Station Way and Berryessa Road:**
    1. Convert the middle northbound right-turn lane to a shared left and right turn lane at Berryessa Station Way and Berryessa Road. Install “no right turn on red” signage on the south leg of the Berryessa Station Way and Berryessa Road intersection to accommodate the lane conversion.
    2. Contribute \$50,000.00 towards signal modifications at the intersection of Berryessa Station Way and Berryessa Road to implement a bike signal.

- iii. **7th Street and Jackson Street:** Contribute \$100,000.00 towards offsetting improvements that include those planned at the 7th Street and Jackson Street intersection as part of the City's application for a quiet zone in the Japantown area.
- iv. **King Road and Mabury Avenue:**
  - 1. Construct offset improvements planned at the King Road and Mabury Avenue intersection that are within the adopted BBUV boundary and implementation plan. The multi-modal improvements include the removal of pork-chop islands at the northeast and southwest corners of the intersection which will enhance safety by removing pedestrian-bicycle conflicts with vehicles. A signal modification also will be required for the intersection improvements (including APS, video detection, etc.), or
  - 2. Contribute \$1,500,000.00 towards the King Road multi-modal improvement plan line.
- v. Pay the US-101/Oakland/Mabury Transportation Development Policy (TDP) traffic impact fee prior to issuance of Building Permits. The 2025 TIF is \$49,412 for each project peak project trip that travels through either the US-101/Oakland or US-101/Mabury Interchanges. This fee is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco.
- c. **Phased Development:** The Permittee has indicated the development will be constructed in phases; with phases 1 and 2 being the affordable units and single-family detached and townhomes, respectively, phase 3 being the market rate multi-family, and phase 4 being Lot 21 as shown on T25-006.
  - i. Phase 1 and 2: Prior to the approval of the Tract or Parcel Map, or the issuance of Building permits, whichever occurs first, the Permittee will have satisfied all the Public Works conditions related to Construction Agreement, Street Improvements, Grading Permits, and Private Street Permits, and any sewage fees, Park fees, Assessments, and TDP traffic impact fees applicable to phases 1 and 2 development.
  - ii. Phase 3 and 4: Prior to the approval of a Tract or Parcel Map (if applicable), or the issuance of Building permits, whichever occurs first, the Permittee will have satisfied all the Public Works conditions related to Construction Agreement, Street Improvements, Grading Permits, and Private Street Permits, and any sewage fees, Park fees, Assessments, Offsetting Traffic Adverse Effect fees, and TDP traffic impact fee applicable to phases 3 and 4 development.
- d. **Urban Village Plan:** This project is located in a designated Urban Village per the Envision San Jose 2040 General Plan. Urban Villages are designed to provide a

vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.

**e. Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- iv. Because this project involves a land disturbance of one or more acres, the Permittee 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 State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

**f. Shoring:**

- i. Shoring plans may be required for review and approval as part of the Grading Permit for this project.

- ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12 inches within the public right-of-way (i.e. soldier beams).
- iii. If tie-backs are proposed for use along the adjacent property (241-03-022) agreements between the Permittee and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.
- g. **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 for 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.
- h. **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).
- i. **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.
- j. **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.
- k. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.

- I. **Assessments:** This project is located within the boundaries of Community Facilities District No. 15 (Berryessa - Sierra), which maintains a stormwater treatment facility located between Coyote Creek and Mercado Way; its pump station; street trees and landscaping within parkstrips and areas adjacent to the basin; and access roads, all of which are non-city standard facilities. Properties within the district pay for the maintenance through annual special taxes, which are adjusted annually by the Consumer Price Index. The 2025-26 maximum special tax is calculated at \$142.14 per residential unit and \$6,047.59 per acre for non-residential uses, minus any credits. Future year assessments will continue to be collected through the County property tax bills listed under Tax Code 0945 "SJ-CFD #15". Questions may be directed to Stanley Wong at stanley.wong@sanjoseca.gov or Joseph Dyke at joseph.dyke@sanjoseca.gov or pwgeneralinfo@sanjoseca.gov.
- m. **Street Improvements:**
- i. Shore Drive: Provide a 48-foot Right-of-Way (ROW) width with a 9-foot attached sidewalk and tree wells along the public park frontage and a 9-foot detached sidewalk with park strip along the single family residential frontages to conform to the existing public street improvements for Tract 10160 (permit no. 12-035364 IP), with either full or half corner bulb-outs, depending on adjacent land use, at the Perlo Drive and Bernard Drive intersections.
  - ii. Perlo Drive between Shore Drive and Mercado Way: Provide a 46-foot ROW width with a 9-foot attached sidewalk and tree wells at the back of curb along the public park frontage and a 9-foot detached sidewalk with park strip along the single-family residential frontage to conform to the existing public street improvements for Tract 10160 (permit no. 12-035364 IP).
  - iii. Mercado Way:
    - 1. Provide a 56-foot ROW width with 10-foot attached sidewalks and tree wells at the back of curb to conform to the existing public street improvements for Tract 10160 (permit no. 12-035364 IP).
  - iv. De Rome Drive: Provide a 56-foot ROW width with 10-foot attached sidewalks and tree wells at the back of curb to conform to the existing public street improvements for Tract 10377 (permit no. 17-010463 IP).
  - v. Bernard Drive: Provide a 56-foot ROW width with 10-foot attached sidewalks and tree wells at the back of curb.
  - vi. Berryessa Road frontage:
    - 1. Provide a 12-foot attached sidewalk with tree wells at the back of curb to conform to the existing public street improvements per permit no. 12-035552 IP.

2. Provide an in-lieu contribution towards the Class IV protected bike lane along the Berryessa Road project frontage per the CSJ Better Bike Plan 2025 (\$144 per linear foot).
- vii. Facchino Way: Install speed bumps along the Facchino Way private drive aisle, between the office building and De Rome Drive to discourage the use of Facchino Way as a cut-through route.
- viii. Construct City Standard driveways at public/private street connections.
- ix. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- x. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
- xi. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- n. Electrical:
  - i. Electroliers along the project's frontages will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
  - ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
  - iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.
- o. 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 or withing the park strip. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
  - i. Berryessa Road: The recommended street trees are Ginkgo biloba 'Autumn Gold' planted 35-foot on center.
  - ii. De Rome Drive: The recommended street trees are Acer campestre planted 35-foot on center.
  - iii. Mercado Way: The recommended street trees are Acer campestre planted 35-foot on center.

iv. Shore Drive: The recommended street trees are *Ulmus parvifolia* ‘Emer II’ planted 35-foot on center.

p. Private Streets: Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.

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

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected, or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected, or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

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

### **EFFECTIVE DATE**

The effective date of this Permit (File No. PD21-009) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC25-016, passed for publication on [REDACTED], 2025 (the “Planned Development Rezoning Ordinance”) and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

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ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, MMC  
City Clerk

***NOTICE TO PARTIES***

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



April 18, 2023  
HMH 5221.00.270  
Page 1 of 2

EXHIBIT "A"  
FOR ZONING PURPOSES

**Parcel One**

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Parcels 1 & 2 and a portion of Parcel 3 as described in the Gift Deed recorded July 7, 2005, in Document No. 18456695 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the westerly corner of said Parcel 3;  
Thence along the southwesterly line of said Parcel 3, South 37°13'17" East, 854.86 feet, to Point A designated hereon;  
Thence North 48°50'52" East, 39.25 feet;  
Thence along a tangent curve to the right, having a radius of 190.00 feet, through a central angle of 06°39'07" for an arc length of 22.06 feet;  
Thence North 55°30'00" East, 65.11 feet;  
Thence along a tangent curve to the left, having a radius of 210.00 feet, through a central angle of 02°43'16" for an arc length of 9.97 feet;  
Thence North 52°46'43" East, 195.70 feet;  
Thence along a tangent curve to the left, having a radius of 60.00 feet, through a central angle of 65°35'57" for an arc length of 68.70 feet;  
Thence North 75°57'13" East, 1.51 feet, to the general westerly line of the Parcel of Land described in the Grant Deed recorded May 17, 2012, in Document No. 21671768 of Official Records, Santa Clara County Records;  
Thence along said general westerly line the following four courses:  
1. Thence North 14°02'47" West, 847.79 feet;  
2. Thence westerly, along a non-tangent curve to the left, having a radius of 10.00 feet, whose center bears South 75°57'56" West, through a central angle of 112°43'09" for an arc length of 19.67 feet;  
3. Thence South 53°14'47" West, 10.00 feet;  
4. Thence North 36°45'13" West, 21.69 feet, to the northwesterly line of said Parcel 3;  
Thence along said northwesterly line, South 53°13'56" West, 702.67 feet, to the POINT OF BEGINNING.

Containing 10.84 acres, more or less.

**Parcel Two**

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel 3 as described in the Gift Deed recorded July 7, 2005, in Document No. 18456695 of Official Records and a portion of Parcel C as shown on that certain Record of Survey, filed for record on February 17, 1969, in Book 249 of Maps, page 1, all of Santa Clara County Records, described as follows:

BEGINNING at Point A designated above, being on the southwesterly line of said Parcel 3;

Thence North 48°50'52" East, 39.25 feet;  
Thence along a tangent curve to the right, having a radius of 190.00 feet, through a central angle of 06°39'07" for an arc length of 22.06 feet;  
Thence North 55°30'00" East, 65.11 feet;  
Thence along a tangent curve to the left, having a radius of 210.00 feet, through a central angle of 02°43'16" for an arc length of 9.97 feet;  
Thence North 52°46'43" East, 195.70 feet;  
Thence along a tangent curve to the left, having a radius of 60.00 feet, through a central angle of 65°35'57" for an arc length of 68.70 feet;  
Thence North 75°57'13" East, 1.51 feet, to the general westerly line of the Parcel of Land described in the Grant Deed recorded May 17, 2012, in Document No. 21671768 of Official Records, Santa Clara County Records;  
Thence along said general westerly line the following three courses:  
    1. Thence South 14°02'47" East, 137.76 feet;  
    2. Thence South 30°57'40" West, 15.38 feet;  
    3. Thence South 14°01'55" East, 206.48 feet;  
Thence South 46°05'08" West, 239.78 feet, to the southwesterly line of said Parcel 3;  
Thence along said southwesterly line, North 37°13'17" West, 315.90 feet, to the POINT OF BEGINNING.

Containing 2.09 acres, more or less.

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

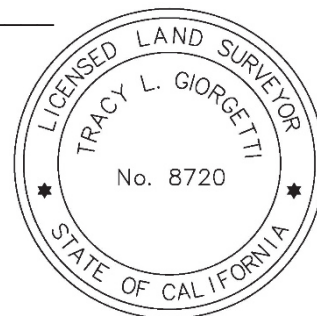
END OF DESCRIPTION

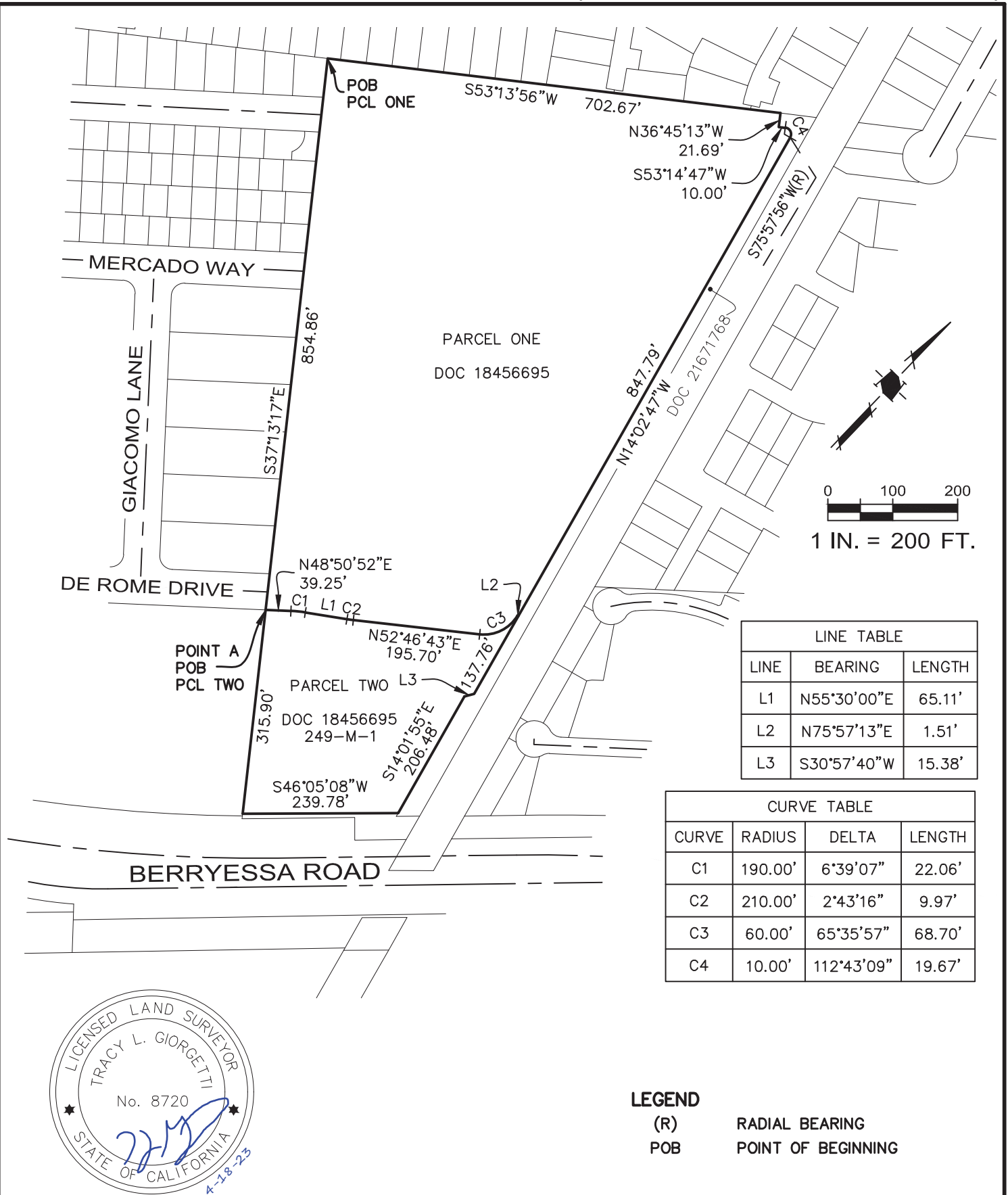
*For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.*

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

Date: 4-18-23

  
\_\_\_\_\_  
Tracy L. Giorgetti, LS 8720





SHEET 1 OF 1

Date: 2023-04-18

Designed: DM

Drawn: RF

Checked: TG

Proj. Engr.: —

522100PL01



1570 Oakland Road (408) 487-2200  
San Jose, CA 95131 HMHca.com

SAN JOSE

EXHIBIT "B"  
PLAT TO ACCOMPANY DESCRIPTION:  
FOR ZONING PURPOSES

CALIFORNIA