

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF A COMMERCIAL PLAZA CONSISTING OF TWO BUILDINGS, TOTALING APPROXIMATELY 47,000 SQUARE FEET ON AN APPROXIMATELY 2.7-GROSS-ACRE SITE LOCATED AT THE SOUTHEAST CORNER OF NORTH JACKSON AVENUE AND BERRYESSA ROAD (APNS 254-80-021, 022 & 023)

FILE NO. H19-020

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on May 7, 2019, William Chan, on behalf of property owner Berryessa Property, LLC, filed an application (File No. H19-020) for a Site Development Permit to allow the construction of two buildings, totaling approximately 47,000 square feet (the “project”) on an approximately 2.7-gross-acre site, on that certain real property situated in the CP Commercial Pedestrian Zoning District and located at the southeast corner of North Jackson Avenue and Berryessa Road (APNs 254-80-021, 022, & 023) (the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” and depicted in Exhibit "B," entitled “Plat Map,” 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 City Council conducted a hearing on said concurrent applications, 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 reports and recommendation of the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Berryessa Plaza" dated October 30, 2018, updated June 5, 2020, and 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:

The foregoing recitals are hereby incorporated as findings as though set forth in the body of this Resolution. After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

- 1. Site Description and Surrounding Uses.** The subject property is a vacant lot located on the southeastern corner of Berryessa Road and Jackson Avenue. The subject site consists of three parcels totaling approximately 2.7 gross acres. The vacant lot is adjacent to residential development (Cherry Blossom at Pepper Lane community) under the same Planned Development Zoning District (PDC07-033). The site is surrounded by single to three-story residences, including detached single-family residences to the west and north, and multiple family and cluster development

residences to the northeast, east, and south, with Jackson Avenue to the west, Pepper Road to the east, and Berryessa Road to the north, which connects to Interstate Highway 680 approximately 1,000 feet to the east of the project site.

- 2. Project Description.** The project consists of a Site Development Permit to allow the construction of Berryessa Plaza, a 47,000-square-foot commercial plaza featuring two buildings: Building A, two stories, and Building B, one story, and associated paving and landscaping. The Berryessa Plaza building is sited in the front lot along Berryessa Road with pedestrian and vehicle entrances along North Jackson Avenue, Berryessa Road, and Pepper Road. Surface parking is provided in the rear lot area abutting the Cherry Blossom at Pepper Lane residential subdivision with pedestrian connections and walkways to the plaza. The Berryessa Plaza accommodates retail and commercial uses allowed in the CP Commercial Pedestrian Zoning District.

The project also includes a petition for a release of the Covenant of Easement on the subject site to release parking, emergency access, ingress and egress, and access to and/or operation and maintenance of storm water treatment measure easements to facilitate a lot merger of the three parcels and the commercial development.

- 3. General Plan Conformance.** The subject property has an Envision San José 2040 General Plan designation of Neighborhood/Community Commercial. This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction. General office uses, hospitals and private community gathering facilities are also allowed in this designation. The allowable Floor Area Ratio (FAR) is up to 3.5 in the Neighborhood/Community Commercial designation.

Analysis: The 47,000-square-foot commercial plaza is consistent with the commercial uses supported in the Neighborhood/Community Commercial designation. Additionally, the project consists of two commercial buildings totaling approximately 47,000 square feet with an FAR of 0.39, which is below the maximum 3.5 FAR. Consistent with the Neighborhood/Community Commercial designation, the project is designed to promote a connection at the pedestrian level with a storefront system, patios and ramps, and walkways along Berryessa Road. The project also includes other connections at existing openings at the property lines, encouraging the adjacent residential communities to access the project site via walking, bicycling, or driving.

The proposed project is also consistent with the following General Plan policies:

- 1. Implementation Policy IP-1.7:** Ensure that proposals to rezone and pre-zone properties conform to the Land Use/Transportation Diagram, and advance *Envision General Plan* vision, goals and policies.

Analysis: The CP Commercial Pedestrian Zoning District is a conforming district to the Neighborhood/Community Commercial land use designation, pursuant to Section 20.120.110 of the San José Municipal Code.

2. Implementation Policy IP-8.2: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the *Envision General Plan* Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective *Envision General Plan* land use designations, while providing greater detail as to the appropriate land uses and form of development.

Analysis: The commercial center and any future uses and development at the subject site would be required to conform with the development standards of the CP Commercial Pedestrian Zoning District. The allowed uses and development standards of the CP Commercial Pedestrian Zoning District generally correspond to the Neighborhood/Community Commercial land use designation and would implement the Envision General Plan Land Use/Transportation Diagram.

3. Land Use Policy LU-1.2: Encourage Walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

Analysis: The project buildings and associated signage would be sited and visible along Berryessa Road. The project design includes a storefront system with ramps and steps for pedestrian and handicap access to the main entrance. Buildings A and B are separated by a 26-foot driveway for vehicle ingress and egress that leads to and from a surface parking lot. Pedestrian access flanks the 26-foot driveway and is provided via ramps and steps through the middle area and leads to other walkways and the bicycle parking area behind the building. Moreover, there are also defined pathways to and from the adjacent residential subdivision to encourage the use of this pedestrian access point activities. Because this is a commercial plaza with the potential for varied retail/commercial uses, it will be a point of attraction for neighboring residents to walk to and patronize, minimizing vehicle miles traveled.

4. **Zoning Conformance.** The project site is located within the CP Commercial Pedestrian Zoning District. The rezoning conforms with Table 20-270 (Section 20.120.110) of the San José Municipal Code, which identifies the CP Commercial Pedestrian Zoning District as a conforming district to the General Plan Land Use/Transportation Diagram land use designation of Neighborhood/Community Commercial. Section 20.40.200 of the San José Municipal Code establishes the following development standards for the CP Commercial Pedestrian Zoning District.

Land Use

The CP Commercial Pedestrian Zoning District is a district intended to support pedestrian-oriented retail activity at a scale compatible with surrounding residential neighborhoods. This district is designed to support the goals and policies of the general plan related to Neighborhood Business Districts. The CP Commercial Pedestrian Zoning District also encourages mixed residential/commercial development where appropriate and is designed to support the commercial goals and policies of the general plan in relation to Urban Villages. This district is also intended to support intensive pedestrian-oriented commercial activity and development consistent with general plan urban design policies. The CP Commercial Pedestrian Zoning District would allow the property to be used and developed in accordance with the allowed uses in Table 20-90 (Section 20.40.100). The project would facilitate the development of a commercial plaza consisting of two buildings that would accommodate approximately 22 commercial uses allowed under the CP Commercial Pedestrian Zoning District, incorporating a pedestrian-oriented design where the building is oriented toward public streets and includes features to provide an enhanced pedestrian environment, such as accessible ramps, walkways, lighting, street trees, and architectural canopies. Therefore, the project is consistent with the uses allowed in the CP Commercial Pedestrian Zoning District.

Height and Setbacks

The CP Commercial Zoning District has no minimum front setback, but the maximum front setback is ten feet, no minimum side setback, a minimum rear setback of twenty-five feet, and a maximum height of 50 feet. As shown in the approved development plans, the project has a five-foot front setback, an approximately eight-foot side setback, a 125-foot rear setback, and a maximum height of 48 feet, 7 inches. Therefore, the project meets the development standards for the CP Commercial Pedestrian Zoning District.

Parking

Pursuant to Section 20.90.060 of the Zoning Code, one vehicle parking space per 200 square feet of floor area is required for a neighborhood shopping center. Floor area is 85% of the total gross floor area of a building. The project, therefore, would have a floor area of 39,950 square feet, requiring a total of 200 vehicle parking spaces. As shown in the approved development plans, a total of 200 vehicle parking spaces are provided, meeting the requirement. In addition, commercial uses require one motorcycle parking space per 20 code required vehicle parking spaces. The project would be required to provide 10 motorcycle parking spaces and per the approved plans, 10 would be provided. Therefore, the motorcycle vehicle parking is met. Pursuant to Section 20.90.060 of the Zoning Code, a neighborhood shopping center is to provide one bicycle parking space per 3,000 square feet of floor area. The project is required to provide 14 bicycle parking spaces. In addition, a minimum of one long-term bicycle parking space shall be provided for each site that has a non-residential use, requiring four long-term

spaces. Per the approved plans, a total of 14 short-term bicycle parking spaces and four long-term bicycle parking spaces are provided directly behind the commercial buildings, meeting the requirement.

Off-Street Loading

Per Zoning Code Section 20.90.410, any building, or part thereof, constructed, erected, or moved within or into any lot or parcel of land in any district for any use having a floor area of ten thousand square feet or more shall provide at a minimum one off-street loading space, plus one additional such loading space for each twenty thousand square feet of floor area.

Analysis: The project is approximately 47,000 square feet; therefore, three off-street loading spaces would be required. As shown in the approved development plans, the project would provide three off-street loading spaces, meeting the requirement.

Section 20.90.440 of the Municipal Code also has specific provisions regarding the location of off-street loading in relation to residential districts: No off-street loading space shall be closer than fifty feet to any lot or parcel of land in a residence district unless such off-street loading space is wholly within a completely enclosed building or unless enclosed on all sides by a wall not less than eight feet in height.

Analysis: As shown in the approved project plans, the off-street loading spaces would be located more than 75 feet from residential uses to the east and south. Therefore, no off-street loading space is closer than 50 feet to any lot or parcel of land in a residential district.

Noise Standards

Pursuant to Section 20.40.600 of the Zoning Ordinance, the maximum allowable noise level (in decibels) for commercial uses adjacent to properties used or zoned for residential purposes is 55 decibels.

Analysis: To determine noise impacts of the proposed project, a Noise and Vibration Study (Exhibit D of the Berryessa-Jackson Commercial Project IS/MND) was prepared by Illingworth and Rodkin, dated August 6, 2020. The noise study measured general operational and construction noise. The operational noise analysis included mechanical equipment, parking lot activity, and on-site truck circulation and loading activities. As discussed above, the surface parking lot abuts the Cherry Lane at Pepper Lane residential subdivision to the south, with a distance of over 100 feet between the existing sound wall and the proposed building. Given the distance to adjacent properties, truck deliveries would not exceed 55 decibels at any property line. The noise study assumed the parking lot would primarily be used between the hours of 7:00 a.m. and 10:00 p.m. and would include parking lot activities such as on-site circulation, loud engines, car alarms, door slams, and human voices. Based on these assumptions, the noise analysis concluded that the parking lot activities would result in a noise level of approximately 51 dBA, which is below the City's 55 dBA DNL noise level threshold. Therefore, the noise study concluded that parking lot noise levels

would be below ambient traffic noise levels generated along Berryessa Road and lower at sensitive receptors located further from the site or shielded by noise barriers.

When measuring the noise level pertinent to mechanical equipment, the noise study determined that noise levels could reach 52 dBA at the nearest property line if unshielded equipment were located along the eastern portion of the building. In addition, the noise levels, assuming 24-hour per day operation of the rooftop mechanical equipment, could reach 58 dBA. Therefore, the noise study included, and the project incorporated, mitigation measures to minimize potential ambient noise increases as a result of project operation. Specifically, the mitigation requires the applicant to commission a detailed acoustical study during building design to evaluate the noise generated by the mechanical equipment and to identify the necessary noise controls to meet the City's 55 dBA DNL noise limit at the shared property line.

Because no outdoor dining is proposed, the noise study did not analyze it. The proposed outdoor seating is not anticipated to generate long-term noise as the outdoor seating is not intended to support the commercial uses that would generate significant noise activity (e.g., outdoor dining), but rather would be used to sit in a temporary fashion.

Moreover, the commercial uses of the project would not include activity on the site that causes ground vibration that is perceptible without instruments at the property line as the project would be limited to uses allowed in the CP Commercial Pedestrian Zoning District. Therefore, with the implementation of mitigation measures, the project conforms to the noise standard outlined in the Municipal Code for commercial uses adjacent to residential uses.

Lighting and screening adjacent to residential properties

Pursuant to Section 20.40.540 of the Municipal Code, lighting facilities used in connection with any use conducted on any property adjacent to a site or lot used for residential purposes shall be arranged and shielded so that all light will be reflected away from any residential use.

Analysis: The project includes 25-foot-high, downward-facing and shielded LED light fixtures in the parking area to be set back 50 feet from the adjacent residential uses and 15-foot-high LED lamp fixtures in the pedestrian walkway areas. The lighting fixtures are arranged and shielded to be reflected away from adjacent residential uses.

Pursuant to Section 20.40.560, any use conducted on any property shall be effectively screened at the property line from any abutting property in a residential district. The screening required shall be a masonry wall or a solid wooden fence five feet in height, except that any portion thereof situated in the required setback area from abutting public streets shall be not more than four feet; and in the event the use includes any outdoor activity, such screening shall also include such trees or plants as the director deems reasonably necessary to effectively screen the use from the adjoining residential district. Such screening shall at all times be maintained in good condition

and be kept free at all times of signs. In addition, where a use involving outdoor activity is on a lot or parcel adjoining a residential district, such lot or parcel shall be landscaped in a manner approved by the director.

Analysis: There is an existing six-foot masonry wall along the project site's southern property line which abuts the Cherry Lane at Pepper Lane residential subdivision. In addition, the project's landscaping consists of mid-size trees and street trees to adequately screen the project's parking lot activities. The outdoor seating proposed on the second floor of Building A is enclosed by a covered patio and would be in the interior portion of the site, away from the surrounding residences. Therefore, through the project's landscaping and building design and the existing masonry wall, the project would be effectively screened from abutting property in a residential district.

- 5. Commercial Design Guidelines.** The project is subject to the Commercial Design Guidelines adopted by the Planning Commission of the City of San José in May 1988 and published in May 1990. Per the Director of Planning, Building and Code Enforcement, the Commercial Design Guidelines are applicable to Planning permit applications and permit amendment applications submitted before March 24, 2021. The project application for the Berryessa Plaza project was received May 2019; therefore, the project is subject to the Commercial Design Guidelines.

Neighborhood Centers are typified by the grocery store/drug store anchor with a series of smaller shops. They may also have one or more freestanding building sites. Because they are located in or next to residential areas, the major design problem related to Neighborhood Centers is the interface between the center's service activities and adjacent residences. Proximity of loading and storage to residences should be avoided if possible. The Neighborhood Centers guidelines apply to centers having a gross square footage of under 300,000 square feet.

Site Organization

- All buildings on the same site should have a strong spatial and functional relationship to each other.
- Parking should be provided within convenient walking distances of all tenants.
- In a small-scale neighborhood, the apparent scale of the center must also be small. This may be achieved in a number of ways, for example: keeping buildings as small as possible, particularly in height; reducing scale through building articulation and ornamentation; avoiding large planar walls and large-scale design elements and distributing the project floor area among a complex of smaller buildings.

Analysis: The project consists of two commercial buildings, Building A and Building B, which are sited in the front northern portion of the project site and the surface vehicle and bicycle parking is located in the rear part of the approximately 2.7-acre lot. The project frontage is along Berryessa Road with the highest point of Building A's second

floor reaching approximately 49 feet. The project site is surrounded by residential uses with structures that are one- to- three stories in height. The commercial project serves as a small-scale neighborhood commercial center that is accessible via walking, bicycling, and driving, and respects the character of existing residential development by including buildings that are similar in scale, using appropriate setbacks, a cohesive and stylistically consistent architectural design, and utilizing colors and materials that are compatible with its surroundings. -

Building Design

- An ‘extruded’ appearance should be avoided in the design of long linear buildings. Where long buildings are unavoidable, their linearity should be mitigated by changes in the building height, wall plane, and spatial volumes and by varied use of window areas, arcades, materials, and roof elements.
- Portions of buildings adjacent to and visible from residential properties should always be stylistically consistent with the more public portions of the buildings. In addition, these building faces should be reduced as far as possible toward residential scale by reducing wall height, articulating wall and roof planes, generating strong shadows, and/or by employing architectural decoration and sloped roofs.
- Retail shops should be provided with clear glass display windows.

Analysis: The building design creates movement by utilizing small offsets on the buildings’ facades and articulating the buildings’ openings. The buildings’ planes are accented with masonry veneer, wood textured siding, and metal awnings. The project buildings are anchored by the largest commercial spaces, defining their presence with large clear glass windows set facing the street at a diagonal. The massing is broken up further by providing a change in height and scale from Building A to Building B for retail spaces that vary in size from the smallest 1,295-square-foot space to the largest 2,926-square-foot space.

Signs

- Neighborhood shopping center sign programs should include one detached project identity sign per major street frontage and an individual attached sign for each tenant.
- Pedestrian oriented under-canopy signs are encouraged beneath arcades or arbors along walkways. These signs should be mounted perpendicular to the building, should leave clear pedestrian headroom, should not be visible from outside the arcade, and should not exceed 6 square feet in area.

Analysis: The subject Site Development does not approve specific project signage; however, the conceptual signage shown in the approved plans is consistent with the Commercial Design Guidelines for neighborhood centers in that they are pedestrian oriented, typically right above a canopy, and vary in size according to the length of the

building façade. The main project signage for the Berryessa Plaza is featured in the middle of the two buildings and is differentiated in color and size of the block letters for the rest of the project sign programming for the subordinate signage.

- 6. Environmental Review.** The City of San José, as the lead agency for the project, prepared an Initial Study/Mitigated Negative Declaration (IS/MND) in compliance with the California Environmental Quality Act (CEQA). The Berryessa-Jackson Commercial Project IS/MND was circulated for public review and comment for twenty days from December 12, 2022, through January 5, 2023. Comments were received from the Pacific Gas and Electric Company (PG&E) and the Santa Clara Valley Water District (Valley Water). PG&E responded that the project does not appear to interfere with their ability to provide service or any easements. Valley Water commented that the project site is adjacent to one of their easements and provided recommendations for identifying wells and addressing flood zone design measures. Comments did not identify any new or greater impacts than what was previously identified in the IS/MND.

The IS/MND concluded that with implementation of identified mitigation measures the project would not result in any significant and unavoidable environmental impacts. Analysis in the IS/MND found impacts related to Air Quality, Biological Resources, Hazards and Hazardous Materials, and Noise and Vibration. The project includes mitigation measures presented in the Mitigation Monitoring and Reporting Program that would reduce the identified impacts to a less than significant level. Therefore, an Environmental Impact Report is not required, and an IS/MND is the appropriate level of CEQA clearance for the project.

The entire IS/MND, Responses to Comments, and other related environmental documents are available on the Planning web site at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents/berryessa-jackson-commercial-project>.

7. FINDINGS

- 1) **Site Development Permit Findings.** To make the Site Development Permit findings pursuant to San José Municipal Code Section 20.100.630, the City Council must determine that:

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies; and

Analysis: As explained above, the project is consistent with the Neighborhood/Community Commercial General Plan land use designation. A broad range of commercial uses are supported within the land use designation. Specifically, this designation encourages commercial uses to have a strong connection to and provide services and amenities for the nearby community and be designed to promote that connection with an appropriate urban form that

supports walking, transit use and public interaction. The allowable Floor Area Ratio (FAR) is up to 3.5 in the Neighborhood/Community Commercial designation. The project consists of two commercial buildings totaling approximately 47,000 square feet with an FAR of 0.39, below the maximum FAR. The project is designed to promote a connection at the pedestrian level with a storefront system, patios and ramps, and walkways along Berryessa Road. In addition, the project also includes other walkway connections at existing openings at the property lines, encouraging the adjacent residential communities to access the project site via walking, bicycling, or driving. As discussed above, the project is consistent with General Plan policies relative to land use and employment, business growth and retention, vibrant neighborhoods, and community design.

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: The project conforms with all applicable development and noise standards of the CP Commercial Pedestrian Zoning District. The project is consistent with the permitted uses in the CP Commercial Pedestrian Zoning District as it is a commercial plaza consisting of two buildings accommodating commercial uses. As outlined above, the maximum allowed height in the CP Commercial Pedestrian Zoning District is 50 feet and the highest point of the Building A would reach approximately 49 feet. The project also meets the required parking requirements for vehicles (200 spaces), bicycles (14), and motorcycles (10) in conformance with Chapter 20.90 of the Zoning Code. Based on the Noise and Vibration Study prepared by Illingworth and Rodkin (Exhibit D of the Berryessa-Jackson Commercial Project IS/MND, posted to the City's Environmental Review Documents website), the project operations would not exceed the noise standards. City staff through the environmental review process and preparation of the Berryessa-Jackson Commercial Project IS/MND has reviewed the Noise and Vibration study and agrees with the report's conclusions. In addition, the project meets the lighting and screening requirements for the CP Commercial Pedestrian Zoning District in that there is an existing masonry wall along the southern property line; project landscaping would further screen parking lot activities; the commercial buildings are set back from the southern property line closest to residences at least 100 feet in excess of the Municipal Code's setback requirements; and the project lighting is downward facing and fully shielded to prevent light spillage outside of the property in conformance with the Municipal Code.

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project is consistent with City Council policies, including City Council Policy 6-30: Public Outreach Policy and Lighting: Outdoor lighting on private developments. To inform the public of the project, staff publicly noticed two community meetings, the first was held on Wednesday, May 29, 2019, to introduce the proposed project to the community, and the second community meeting was held on Thursday October 27, 2022, to provide the community an update on the project's review status and to present the current design. An on-site Notice of Development sign was posted on the project's frontage and 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 Planning Division website. Staff has also been available to respond to questions from the public. As discussed above, the project conforms to the outdoor lighting policy for private developments as it aligns with the lighting standard for the CP Commercial Pedestrian Zoning District; the project lighting fixtures are LED, downward-facing, and shielded to avoid light spillage.

- d. The interrelationship between the orientation, location, and elevation of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: As detailed above, the project site is a vacant lot consisting of three parcels totaling approximately 2.7 gross acres. The project site's southern property line abuts a residential subdivision and is generally surrounded by other residences, separated by Pepper Road to the east, Berryessa Road to the north, and Jackson Avenue to the west. The project is located and oriented towards Berryessa Road, away from adjacent residences and complements the scale of neighboring buildings in that the commercial buildings (Buildings A and B) would be one to two stories high and the surrounding development is one to three stories high. The project is a commercial project that would be constructed in one phase to accommodate the commercial uses permitted in the CP Commercial Pedestrian Zoning District. Therefore, the on-site uses would be compatible and aesthetically harmonious.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: While the subject site is surrounded primarily by residences, the project conforms to the scale and character of the neighborhood. Specifically, the buildings' design and massing represent a coherent architectural theme with neutral earth-toned colors that are compatible with the neighboring structures. The surface parking lot is sited behind the project buildings and would include landscaping consistent with the Commercial Design Guidelines and the CP Commercial Pedestrian Zoning District. The project would also include design elements to enhance the pedestrian experience along Berryessa Road, including

a widened sidewalk, street trees with decorative tree grates, ramps, and a pedestrian-scale storefront system.

- f. 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: All identified environmental impacts, as analyzed in the Berryessa—Jackson Commercial Project IS/MND, related to construction noise, vibration, dust, drainage, are temporary. Per the analysis in the IS/MND, the operational noise, specifically the noise related to the rooftop mechanical equipment, is the only noise activity that has the potential to exceed the maximum decibels allowed for commercial uses adjacent to residential uses. To ensure the noise does not exceed the maximum decibels allowed in the zoning district, the project applicant is required to submit a noise assessment for the selected project rooftop equipment prior to issuance of building permits. Because no outdoor dining is proposed, the noise study did not analyze it; however, the proposed outdoor seating is not anticipated to generate long-term noise. Outdoor seating is intended to be used in a temporary fashion and is not intended to support the commercial uses for noise-generating activity, such as outdoor dining. As shown on the approved plan set, the outdoor seating is not attached to any particular commercial space.

The commercial use is not anticipated to generate unacceptable odors, water runoff, drainage, erosion, or vibration to surrounding properties. The Department of Public Works staff has reviewed the preliminary grading and drainage plans and will finalize their review through the Grading Permit process, prior to issuance of Building Permits to ensure on-site stormwater, erosion, and drainage is treated in conformance with Public Works requirements.

To ensure the construction would not have an unacceptable negative effect on adjacent properties, the project applicant is required to prepare and implement a construction operations plan and retain a qualified environmental professional to complete a Site Management Plan in compliance with the project's Mitigation Monitoring and Reporting Program. The project also includes standard permit conditions and best management practices for construction-related air quality, construction-related noise, construction-related water quality, asbestos and lead-based paint, and seismic hazards, that will be required for project approval.

- g. Landscaping, irrigation systems, walls, and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood

Analysis: The approved project plans include a detailed landscaping plan for the approximately 2.70-gross-acre site. All areas not covered by driveways, parking, or utilities would be fully landscaped with a mix of trees, shrubs, groundcover, seating, lighting, and other landscape elements. Per the Site Plan, all commercial loading activities would be located approximately 100 feet away from the nearest residences; three trash bins and loading locations would be in the center of the parking lot, approximately 16 feet from the nearest residences. Three transformer pads for new transformers would be located along the southern property line. As stated above, outdoor seating would be located interior to the Building A in a covered patio area and along Berryessa Road. The outdoor seating would complement the commercial uses and provide pedestrian amenities but would not support an outdoor use such as outdoor dining. All rooftop equipment would be fully screened from view by the parapet. Any changes to the rooftop mechanical equipment screening would require the issuance of a permit adjustment.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: As described above, there are two primary vehicular entry points into Berryessa Plaza: a right-in, right-out from Jackson Avenue, and right-in, right-out from Berryessa Road; the Pepper Road vehicular entrance point is primarily for emergency vehicles and for trash collection trucks. The project site is bordered by public sidewalks on the east, west, and north. As such, pedestrian access would be provided via sidewalks to entrances along Berryessa Road and via walkways from Jackson Avenue and Pepper Road. The VTA Route 61 bus stop is located approximately 200 feet west of the project. As outlined above, the project provides all required vehicle, bicycle, and motorcycle parking in conformance with Chapter 20.90 of the San José Municipal Code.

CONDITIONS

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Site 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 Permit by the Permittee; and
 - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) 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 Site Development plans entitled, "Berryessa Plaza, Site Development Permit File No. H19-020" dated October 30, 2018, updated June 5, 2020, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".

6. **Lot Line Adjustment.** Prior to the issuance of a Building Permit the project applicant shall secure approval and provide proof of recordation of a Lot Line Adjustment to consolidate the existing lots.
7. **Recording (Release to be recorded).** This Site Development Permit is related to File No. ET19-003, a release of the Covenant of Easement. As a condition of this Site Development Permit and the release of the Covenant of Easement, and pursuant to San José Municipal Code Chapter 20.110, the permittee is required to record the ET19-003 resolution in the office of the recorder for the County of Santa Clara within fifteen days after the action of the City Council in granting a petition for release has become final. Prior to the issuance of building permits, the permittee shall provide proof to the Director of Planning, Building and Code Enforcement or Director's designee that the ET19-003 resolution granting the release of the Covenant of Easement was recorded.
8. **Required Vehicular and Bicycle Parking.** This project shall conform to the vehicular and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular or bicycle parking would require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
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 the San José Municipal Code.
11. **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.
12. **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 any time on weekends.
13. **Cultural Sensitivity Training.** Prior to issuance of any grading permit, the project applicant shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified archaeologist in collaboration with a Native American 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. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director Planning, Building and Code Enforcement or Director's designee.

14. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
15. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Changes in building colors and materials shall require a Permit Adjustment.
16. **Window Glazing.** Unless otherwise indicated on the Approved Plans, all windows shall consist of a transparent glass.
17. **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.
18. **Commercial Contribution.** The \$35,000 commercial contribution fee established in Planning File No. PDA08-001-02 shall continue to be in effect until the permittee is issued a Final Certificate of Occupancy for the subject project (File No. H19-020). The contribution will be made on an annual basis no later than October 1st of each year until the issuance of a Final Certificate of Occupancy for the completion of the building out of a minimum of 30,000 square feet of retail space.
19. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
20. **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 requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
21. **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.
22. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.

23. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground, unless otherwise shown on Approved Plans.
24. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
25. **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.
26. **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 of San José.
27. **Late night use and activities prohibited.** No outdoor activity, including loading, landscaping or maintenance shall occur within one-hundred fifty feet of any residentially zoned property between the hours of 12:00 midnight and 6:00 a.m. except pursuant to and in compliance with a Special Use Permit.
28. **Outdoor uses.** Pursuant to Section 20.40.520, no outdoor activity or sale of storage of goods, products, merchandise or food outdoors shall occur on any lands if any part of such lands or any part of the lot on which such buildings are located is situated within one hundred fifty feet of residentially zoned property except with a Special Use Permit.
29. **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 through a subsequent Permit Adjustment.
30. **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 shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
31. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping. The Permittee may request an exception/variance per Section 15.10.380, as amended, if needed in the future.
32. **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, H20-037, shall be printed on all construction plans submitted to the Building Division.
 - b. **San José's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.** The City's Natural Gas Infrastructure Prohibition and Reach Code

Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.

- c. **Americans with Disabilities Act.** The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - d. **Emergency Address Card.** The project permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - e. **Construction Plan Conformance.** A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance 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.
 - f. **Project Addressing Plan.** Prior to issuance of any Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
 - g. **Other.** Such other state or city adopted requirements as may be specified by the Chief Building Official.
33. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as may be amended or updated by the City.
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 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>.
- 1) **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
 - 2) **Transportation:** Transportation Analysis has been performed for this project. We conclude that, with the following conditions, the subject project will be in conformance with the City of San José Transportation Policy (Council Policy 5-

1) and a determination for less than significant impacts can be made with respect to transportation impacts. See separate Transportation Analysis Memo dated 1/23/23 for additional information.

- a) Provide monetary contribution for an in-lieu fee to planned Class IV protected bike lanes along the Berryessa Road and Jackson Road project frontages per the San José Better Bike Plan 2025 (\$144 per LF). Pay the US-101/Oakland/Mabury TDP traffic impact fee for the two (2) project PM peak hour trips to the interchange intersections prior to the issuance of Building Permits. The fee is subject to an annual escalation on January 1st in line with the ENR CCI. The current 2023 fee is \$48,226 per new PM peak hour vehicle-trip.

An estimated TIF fee will be provided upon the result of the peak-hour trips determined by the traffic distribution of the Transportation Analysis Report.

3) **Grading/Geology:**

- a) A grading permit is required prior to the issuance of a Public Works Clearance.
- b) 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 José 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.
- c) 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.
- d) 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.
- e) 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:

foundation, earthwork, utility trenching, retaining and drainage recommendations.

- 4) **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.
 - a) The project's Stormwater Control Plan and numeric sizing calculations have been reviewed for conformance with City Policy 6-29.
 - b) Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- 5) **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).
- 6) **Flood Zone AO, depth 2':**
 - a) Elevate the lowest floor to 2 feet or more above the existing highest adjacent grade to the proposed structure or floodproof to the same elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
 - b) 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.
 - c) If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 086-0-34) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
 - d) Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the depth of flooding or protected from flood damage.
 - e) Construction materials used below the depth of flooding must be resistant to flood damage.
- 7) **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.

- 8) **Undergrounding:** The project is subject to the City's electrical overhead undergrounding policy or the In-Lieu Undergrounding fee program. The In-Lieu Underground fee was paid under Tracts 10022 and 10169, no further undergrounding fee is due per this Planned Development project.
- 9) **Street Improvements:**
 - a) Close unused driveway cuts on Jackson Avenue and Berryessa Road and replace with City Standard curb, gutter, and attached sidewalk to match existing.
 - b) Proposed driveway width on Jackson Avenue and Berryessa Road to be 26 feet per City Standard.
 - c) Driveways must maintain 150 feet minimum distance from the intersection of Berryessa Road/Jackson Avenue.
 - d) Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- 10) **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.
- 11) **Street Trees:**
 - a) Replace any missing street trees in empty tree wells along Berryessa Road and Jackson Avenue and match existing trees per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects." Obtain a DOT street tree planting permit for any proposed street tree plantings.
35. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. [REDACTED].
36. **Standard Environmental Permit Conditions.**
 - a. Air Quality. The Permittee shall implement the following measures during all phases of construction to control dust and exhaust at the project site:
 - i. Water active construction areas at least twice daily 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 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. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. 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. Minimize idling times either by shutting off equipment 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 California Code of Regulations). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. Biological Resources.

- i. The project may be subject to applicable Santa Clara Valley Habitat Plan (SCVHP) conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the SCVHP Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director 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 a grading permit. The Habitat Plan and supporting materials can be viewed at <http://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

c. Cultural Resources.

- i. 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 or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally and

culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist 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 Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer 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. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building or Code Enforcement or the Director's designee and the qualified archaeologist in consultation with a Native American representative, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD shall inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
 - a) 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.
 - b) The MLD identified fails to make a recommendation; or
 - c) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

d. Geologic Resources:

- i. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iii. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- iv. The project shall be constructed in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- v. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

e. Hydrology:

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.

- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites would be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- ix. The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning
- x. Construction General Permit Requirements. Prior to initiating grading activities, the project applicant will file a Notice of Intent (NOI) with the State Water Resources Control Board and prepare a Stormwater Pollution Prevention Plan (SWPPP) prior to commencement of construction. The project's SWPPP shall include measures for soil stabilization, sediment and erosion control, non-stormwater management, and waste management to be implemented during all demolition, site excavation, grading, and construction activities. All measures shall be included in the project's SWPPP and printed on all construction documents, contracts, and project plans. The following construction BMPs may be included in the SWPPP:
 - a) Restrict grading to the dry season or meet City requirements for grading during the rainy season.
 - b) Use effective, site-specific erosion and sediment control methods during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed.
 - c) Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff with secure plastic sheeting or tarps.
 - d) Implement regular maintenance activities such as sweeping driveways between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area.
 - e) Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater.

- f) Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags.
- xi. The SWPPP shall also include a Post-Construction Stormwater Management Plan that includes site design, source control, and treatment measures to be incorporated into the project and implemented following construction (refer to Section 3.10.3.3 above).
- xii. When the construction phase is complete, a Notice of Termination (NOT) will be filed with the California Regional Water Quality Control Board and the Department of Toxic Substances Control, in conformance with the Construction General Permit requirements. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a Post-Construction Stormwater Management Plan is in place, as described in the SWPPP for the site.

37. Noise.

- i. A detailed acoustical study shall be prepared during final building design to evaluate the potential noise generated by building mechanical equipment and demonstrate the necessary noise control to meet the City's 55 dBA day-night average sound level (DNL) goal. Noise control features such as sound attenuators, baffles, and barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations around the project site. The noise control features identified by the study shall be incorporated into the project prior to issuance of a building permit.
- ii. Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
- iii. Residential units along the eastern building façade shall require windows and doors with a minimum rating of 31 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
- iv. A qualified acoustical specialist shall prepare a detailed analysis of interior residential noise levels from all exterior sources during the design phase pursuant to requirements set forth in the state building code. The study shall establish appropriate criteria for noise levels inside the commercial spaces affected by environmental noise. The study shall review the final site plan, building elevations, and floor plans prior to construction and recommend building treatments to reduce residential interior noise levels to 45 dBA DNL or lower and to reduce commercial interiors to 50 Leq (1-hr) or below. Treatments could include, but are not limited to, sound-rated windows and

doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what noise insulation treatments are necessary shall be conducted on a unit-by-unit basis during the final design of the project. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City, along with building plans and approved design, prior to issuance of a building permit.

38. **Revocation, Suspension, Modification.** This Site 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 of Chapter 20.100 of Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Site 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**.

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ADOPTED this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
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'
**Lot Line Adjustment for
Lands of Pulte Home Corporation**

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:

Lot 1

Being all of Lots 1, 2 and 3 as shown on that certain Parcel Map filed for record in the Office of the Recorder on June 15, 2011 in Book 845 of Maps, at Pages 41 and 42, Santa Clara County Records.

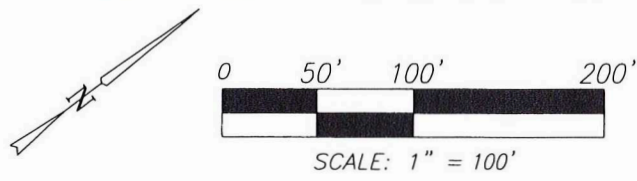
Said combined Lot 1 containing 120,319 square feet, (2.762 acres), more or less.

Attached hereto is an exhibit labeled "Exhibit A: Lot Line Adjustment Plat" and by this reference is made a part hereof.

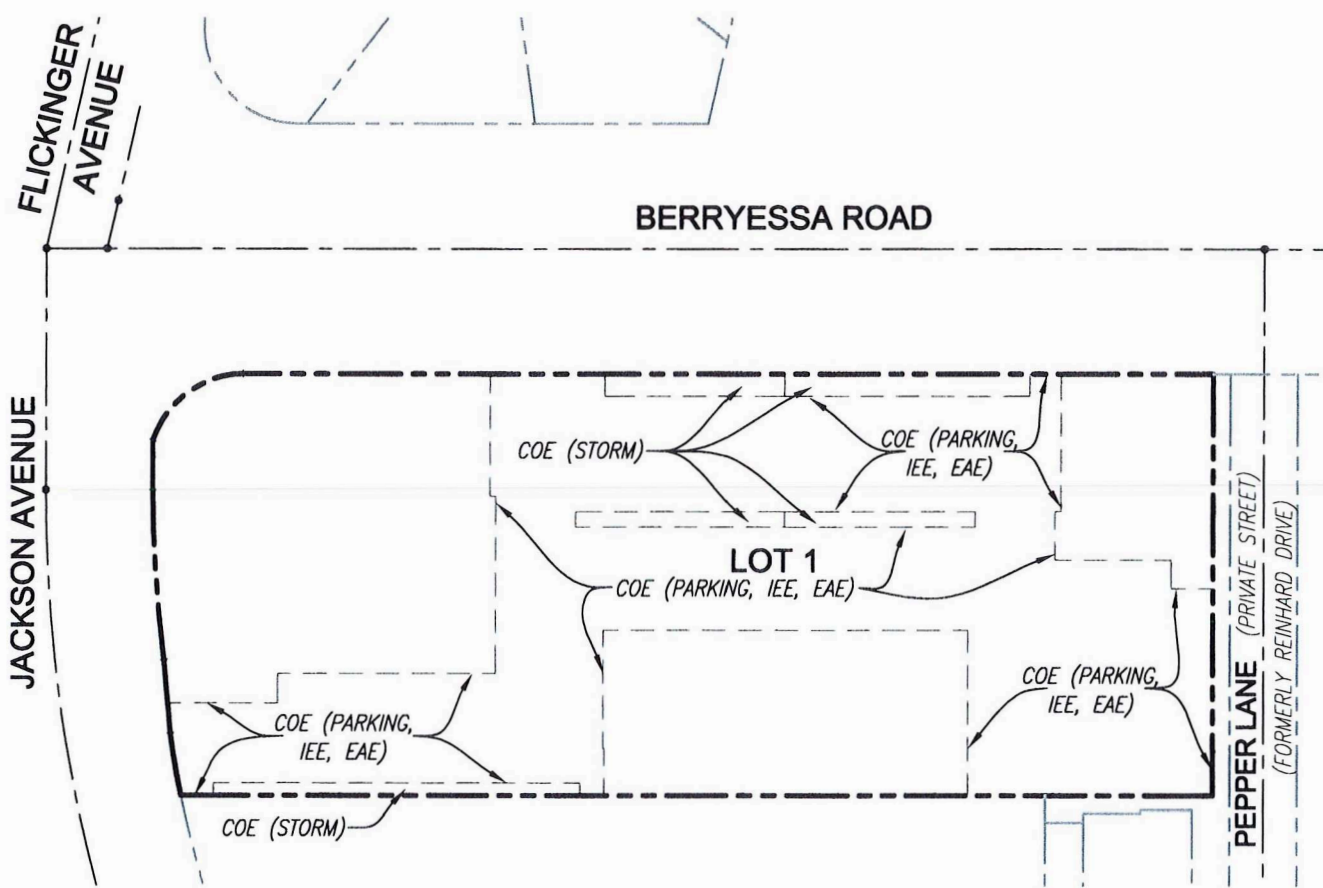



Kevin R. Weiss _____ Date 3/19/19

ET 19-003



LOT 1 IS A COMBINATION OF LOTS 1, 2 AND 3 OF THAT PARCEL MAP RECORDED ON JUNE 15, 2011 IN BOOK 845 OF MAPS, AT PAGES 41-42, SANTA CLARA COUNTY RECORDS.



BASIS OF BEARINGS:

THE BEARING OF A LINE DRAWN BETWEEN TWO FOUND MONUMENTS IN PEPPER LANE (A PRIVATE STREET); THE BEARING, NORTH 52°36'37" WEST, AS SHOWN ON THAT MAP OF TRACT NO. 10022, RECORDED ON APRIL 18, 2011, IN BOOK 844 OF MAPS, AT PAGES 10-18, SANTA CLARA COUNTY RECORDS, WAS TAKEN AS THE BASIS OF BEARINGS OF THIS SURVEY.



LEGEND & ABBREVIATIONS

- — — — — PROPERTY LINE - SUBJECT PARCEL
- — — — — PROPERTY LINE - ADJACENT PARCEL
- - - - - COVENANT OF EASEMENT TO BE RELEASED
- — — — — CENTERLINE/MONUMENT LINE
- FOUND CITY MONUMENT
- COE COVENANT OF EASEMENT

Kevin R. Weiss

KEVIN R. WEISS, L.S. 7139
 LICENSE EXPIRES 12/31/2020

06/10/19
 DATE

EXHIBIT 'B'		
COVENANT OF EASEMENT RELEASE		
SCALE:	DATE: 05/21/2019	BY: CT
SHEET 1 OF 1	JOB NO. 5138	

JMH WEISS, INC.

1731 Technology Drive, Ste #880
 San Jose, CA 95110
 Phone: (408) 286-4555
 www.jmhweiss.com

DWG NAME: P:\5138 - Berryessa Rd - San Jose\Survey\5138-Exhibit B-Release of COE.dwg, LAST EDITED: Wed, May 22, 2019 1:41pm
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