

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING SINGLE-FAMILY RESIDENCE, ALLOW CONSTRUCTION OF TWO SINGLE-FAMILY RESIDENCES AND A COMMERCIAL PARKING LOT, AND ALLOW THE REMOVAL OF ONE ORDINANCE-SIZE TREE APPROXIMATELY 55 INCHES IN CIRCUMFERENCE, ON AN APPROXIMATELY 1.01-GROSS ACRE SITE, LOCATED ON THE WEST SIDE OF SAN FELIPE ROAD, APPROXIMATELY 2,000 FEET NORTH OF YERBA BUENA ROAD (4349 SAN FELIPE ROAD)

FILE NO. PD19-018

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on May 23, 2019, a concurrent application (File No. PD19-018) was filed by the applicant, King Property Partners/Hawkstone Development on behalf of Douglas and Nancy Vierra, with the City of San José for a Planned Development Permit to allow the demolition of an existing single-family residence, the construction of two single-family residences and a commercial parking lot, and the removal of one ordinance-size tree approximately 55 inches in circumference, on an approximately 1.01-gross acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located on the west side of San Felipe Road, approximately 2,000 feet north of San Felipe Road (4349 San Felipe Road, San José, which real property is sometimes referred to herein as the "subject property"); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A", entitled "Legal Description," and depicted in Exhibit "B," entitled "Plat Map," 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, the Planning Commission conducted a hearing on said concurrent applications on July 22, 2020, notice of which was duly given; and

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

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

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

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

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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled "Lands of Vierra: Two Single Family Detached Residential and Parking Lot", dated revised January 23, 2020, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested, and is attached hereto and made a part hereof by this reference as if fully set forth herein; and

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

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

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

- 1. Site Description and Surrounding Uses.** The project site is located on the west side of San Felipe Road, approximately 2,000 feet north of Yerba Buena Road and east of Thompson Creek. The site is developed with an approximately 2,600-square foot single-family residence and an unpermitted commercial parking lot with access off San Felipe Road. The approximately 1.01-gross acre site is generally divided into three uses: open space on the western edge, residential in the center of the site, and the unpermitted commercial parking lot on the eastern edge of the site which also serves as the ingress/egress driveway to the existing single-family residence. The southern edge of the subject site abuts the Atria Evergreen property, a senior living and memory care facility, and a residential subdivision on Mousa Court is located to the north of the site. Residential uses are located east of the site, across San Felipe Road.

Site History

On December 11, 2018, the City Council adopted Resolution No. 78903, amending the San José 2040 General Plan to modify the Land Use/Transportation Diagram from Rural Residential to 1. Rural Residential; 2. Open Space, Parklands and Habitat; and 3. Neighborhood/Community Commercial at the subject site (4349 San Felipe Road). The subject Planned Development Rezoning, Planned Development Permit, and Tentative Map would complement the adopted General Plan designations in that the parcel would be subdivided into three parcels including the 100-foot riparian corridor setback from the edge of Thompson Creek (open space), two single-family residences, and a commercial parking lot.

- 2. Project Description.** The project is a Planned Development Permit (PD19-019) to allow the demolition of an existing residential structure removal of one ordinance size tree, and the construction of two single-family residences and associated grading, and establishment of the on-site commercial parking lot on-site.

The project would result in a net addition of one single-family residence, establish a 100-foot setback from the riparian corridor, and permit an existing commercial parking lot. Currently, site access is via a driveway through the unpermitted commercial lot from San Felipe Road. With the implementation of the project, the entrance to the commercial parking lot would continue to be accessible from San Felipe Road. The approximately 9,919-square foot commercial parking lot would serve the commercial uses along San

Felipe Road, north of the Mousa Court residential subdivision and can accommodate up to 28 vehicles. The remaining 31,754 square feet of the site would consist of the residential portion of the project which would be sited in the center of the project site and the habitat buffer which starts at the edge of Thompson Creek and continues 100 feet eastward towards the residential area. The residential area would have a dedicated driveway entrance from Mousa Court.

3. General Plan Conformance. The project site has an Envision San José 2040 General Plan designation of Rural Residential, Open Space, Parklands and Habitat, and Neighborhood/Community Commercial.

The Rural Residential designation is applied to areas already largely developed for residential use with a low density or rural character; new infill development should be limited to densities that match the established density, lot size, and character of surrounding properties. The subject portion of the project in the Rural Residential designation would allow the construction of two single-family residences consistent with the established density, lot size, and the character of surrounding properties Residential Neighborhood designated properties and therefore is consistent with the Rural Residential designation.

The Open Space, Parklands and Habitat designation is intended for low intensity uses. Typically, lands in this designation are devoted to open space, parks, recreation areas, rails, habitat buffers, nature preserves, and other permanent open space areas. The subject portion of the project in the Open Space, Parklands, and Habitat designation would be maintained as permanent open space dedicated to providing a habitat buffer, specifically a 100-foot riparian corridor setback, between the edge of Thompson Creek and the residential use consistent with the designation.

The Neighborhood/Community Commercial designation supports a very broad range of commercial activity, including commercial uses that serve communities in neighborhood areas, such as neighborhood serving retail and services and commercial/professional office development. The subject portion of the project in the Neighborhood/Community Commercial designation would establish a parking lot for the exclusive use of neighborhood commercial/professional office development consistent with the Neighborhood/Community Commercial.

The project conforms to the following key General Plan policies:

- a) LU-1.1. Foster development patterns that will achieve a complete community in San José, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing and a resident workforce.

Analysis: This project would foster a development pattern with commercial, residential, and open space uses to help achieve a complete community, consistent with the General Plan policy as described above. The project includes

the construction of two single-family residences meeting the prevailing density and character of surrounding residential uses.

- b) LU 11.1. Design all new single-family detached residences so that each home has a frontage on a public street or on a private street that appears and functions as a public street.
- c) LU 11.4. Locate new commercial uses in established residential neighborhoods on busier streets or at street intersections. Discourage new commercial uses on small existing residential streets unless it can be clearly demonstrated that the commercial use can integrate with the existing residential neighborhood without creating adverse impacts. Discourage primary access to large commercial parking lots and structures through residential neighborhoods.

Analysis: Consistent with Land Use Policy 11.1, the new detached single-family residences on the project site will have direct access from Mousa Court, a private street. Consistent with Land Use Policy 11.4, the commercial parking lot will be accessed from the busier street, San Felipe Road. The parking lot will be designed to integrate with the new residential development using buffers including landscaping and a wood fence to separate the uses.

4. Zoning and Planned Development Zoning Conformance.

The site is in the A(PD) Planned Development Zoning District which conforms to the Envision San José 2040 General Plan Land Use/Transportation Diagram designation.

The A(PD) Planned Development Zoning District for the project site references the allowed uses and development standards of the R-1-8 Single-Family Residence Zoning District and the CG – Commercial General Zoning District, except as included in the General Development Standards. Two single-family residences and a commercial parking lot are permitted uses in the R-1 Single-Family Residence Zoning District and the CG Commercial General Zoning District, respectively, with a Planned Development Permit.

The subject site would support three discrete land uses. The Planned Development Zoning District divides the parcel into two areas with distinct development regulations. Area A permits commercial a use (parking lot) while Area B permits residential uses and requires an Open Space buffer along the riparian corridor:

a. Area A (Commercial) Development Regulations

Use: Area A permits the permitted, special, and conditional uses of the CG Commercial General Zoning District as set forth in Title 20 of the San José Municipal Code, as amended.

Setback: The required setbacks include a minimum 12 feet from San Felipe Road, a public street, a five-foot setback from the side property lines, and a two-foot rear setback from the abutting Area B (residential use).

Parking: Parking shall be provided in accordance with Chapter 20.90 (Parking and Loading), of the City of San José Municipal Code, as amended.

Landscaping and Screening: Commercial parking shall be screened, from adjacent residential uses, by a masonry wall or solid wood fence five feet in height and no more than four feet in height within the public street setback area. Screening shall be at all times maintained in good condition. All setback areas within the parking area not suited for parking or circulation shall be landscaped.

Analysis: The Planned Development Permit would maintain the existing 28-space commercial parking lot in Area A to serve the commercial uses located along San Felipe Road and Mousa Court. No structures are being permitted within the commercial parking lot area. An off-site parking lot is permitted with a Special Use Permit in the CG Zoning District and therefore could be reviewed with the Planned Development Permit. The Planned Development Permit would include improvements to the existing parking lot including the addition of landscaping and a wood fence to separate Area A and B, on-site. Consistent with the development standards outlined in the General Development Standards specific to this Planned Development, the parking lot will be located 12 feet from San Felipe Road, 5 feet from the side property lines, and 2 feet from Area B.

b. Area B: (Single Family Residential) Development Regulations:

Use: Area B permits the permitted, special, and conditional uses of the R-1 Single-Family Residence Zoning District with the issuance of a Planned Development Permit. The density of Area B shall not exceed 8 dwelling units per acre, and the minimum lot size shall be 5,445 square feet. No new structures are permitted within the 100-foot Riparian Setback except the Riparian Setback area may be used for an earthen berm serving as a small detention basin, to the satisfaction of the Director of Planning, Building and Code Enforcement, and the Director of Public Works. The basin shall be set back at least 35 feet from the edge of the riparian corridor. The riparian setback and open landscape areas adjacent to it shall be treated as an amenity and landscaped in a manner that is to the setting as determined by a qualified biologist/ecologist and/or the recommended plantings made in the updated biological analysis report dated March 12, 2020.

Setbacks and Height: The setbacks established per the A(PD) Planned Development Zoning District are outlined below:

- Building from Private Street: 20 feet minimum
- Building from Southern PD Zoning Property Line: 6 feet
- Building to Side Property Line (internal: abutting Area A/Commercial): 5 feet
- Minor architectural projections such as, fireplaces and bay windows, may project into any setback or building separation (except riparian setbacks) by up to 2 feet for a length not to exceed 10 feet or 20% of the building elevation length.

Riparian Buffer: Within the required riparian buffer, landscaping shall be consistent with riparian vegetation recommended in the Live Oaks Biological Report dated March 12, 2020 (i.e., *Elymus triticoides*, *Baccharis salicifolia*, etc.). The detention basin shall be comprised of earthen berms that are composed of compacted soils and not have the appearance of being engineered (i.e., straight edged or non-undulated banks).

Parking: Parking shall be provided in accordance with Chapter 20.90 (Parking and Loading), of the City of San José Municipal Code, as amended.

Analysis: Two detached single-family homes would be constructed in Area B; each would have a minimum lot size of 5,445 square feet. Consistent with the development standards set forth in Area B, the two residences would provide the minimum required 20-foot front yard setback from Mousa Court, a six-foot rear yard setback from the southern property line, and a minimum five-foot setback side setback from the property line abutting the commercial lot on the east and would not exceed the maximum height of 35 feet established in the residential zoning district. No new structures would be located within the required riparian setback area except for the storm water detention basin. The basin would be located 35 feet from the edge of the riparian corridor (Thompson Creek) consistent with the minimum required 35-foot setback established in the Santa Clara Valley Habitat Plan. Pursuant to Table 20-190 in Section 20.90.060, two covered parking spaces are required for one single-family dwelling. The two single-family residences are designed with attached two-car garages; therefore, the covered parking requirement is met.

5. City Council Policies.

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

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

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

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City Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design policy

The Riparian Corridor Protection and Bird-Safe Design policy contains provisions for the protection, preservation, or restoration of riparian habitat and limits the creation of new impervious surface within Riparian Corridor setbacks to minimize flooding from urban runoff, and control erosion. Pursuant to the Riparian Corridor Protection policy, the project is subject to a minimum 100-foot setback from the edge of Thompson Creek.

Analysis: The Live Oak Associates, Inc. Biological Technical Study, dated April 28, 2017, describes how the biologist delineated the edge of the riparian vegetation and identified constituent species therein. With the maintenance of the 100-foot riparian setback, the ecologist determined that the project would not impact the channel or riparian habitat of Thompson Creek. A subsequent biological analysis by Live Oak Associates, Inc. dated March 12, 2020 specifically assessed the potential impact of a flow spreader within the 100-foot setback and concluded that the flow spreader is not considered to be an adverse addition to the riparian setback area. A flow spreader is a passive feature to manage stormwater runoff from the site, especially during periods of high precipitation. Per the Biological Technical Study, the predominantly soil-based construction of the basin will have an inconsequential grated drain in the bottom of the basin, but there are no structures or other potentially impactful aspects to the design. Biologically, the basin appears to be nothing more than a subtle change in the topography of the existing conditions of the site. As stated by the ecologist in the updated report, the Riparian Corridor Policy does not explicitly address earthen berms/stormwater basins; however, it does provide guidance related to erosion control. The flow spreader was determined to serve as an erosion control measure and therefore would be consistent with the Riparian Corridor Policy.

Evergreen-East Hills Development Policy

The Evergreen-East Hills Development Policy builds upon several prior planning efforts, including the work of the Evergreen Vision Strategy, the Evergreen-East Hills Vision Strategy (EEHVS) planning process, the Strong Neighborhood Initiative program, and the Knight Program in Community Building Evergreen-Eastridge area charrette. The total development proposed as part of the Evergreen-East Hills Vision Strategy was up to 5,700 residential units, 500,00 square feet of commercial development, and 75,000 square feet of office development in the development policy area.

Analysis: The project is within the Evergreen-East Hills Development Policy boundary/area. The project includes the construction of two single-family residences resulting in the net addition of one single-family residence. There are 138 residential units left in the residential pool, therefore, there is capacity for the additional single-family residence. The project includes a commercial parking lot totaling approximately 9,900 square feet. The commercial development capacity has not been exhausted as

it has a remaining capacity of 31,556 square feet. Therefore, the commercial lot is consistent with the Policy.

The project also includes a habitat buffer and erosion control measures consistent with the Evergreen-East Hills Development Policy.

- 6. Design Guidelines.** The project consists of three land uses: commercial parking lot, residential, and open space. Therefore, the project was reviewed against the Commercial Design Guidelines, the Single-Family Design Guidelines, and the recommendations made by the project biologist.

Analysis: Per the Commercial Design Guidelines, commercial parking lots are discouraged to provide access from or to an otherwise intact residential street and should be separated from the residential street by a masonry wall placed at the prevailing setback line. As recommended by the Commercial Design Guidelines, the subject commercial parking lot will be separated and screened from the residential uses with either a masonry wall or wooden fence and dense shrubs. Furthermore, the commercial parking lot will not provide access to or from an intact residential street. Perimeter landscaping, per the Guidelines, should be landscaped to provide parking lot screening. As such, the subject parking lot will be bordered by existing and new trees and the repaved driveway entrance will align with the public street improvements and compatible landscaping.

The Single-Family Design Guidelines consist of three primary considerations: neighborhood patterns, elements of building design, and relationships to adjacent properties.

The two new single-family residences are consistent with the character of the adjacent single-family homes in the Mousa Court subdivision. Specifically, the two new single-family homes are two stories with attached garages, low to medium-pitched roofs and framed/covered entries which are aesthetically harmonious with the character, massing, and scale of the adjacent residential use.

Because the residential use is in proximity to Thompson Creek, setbacks and specific interventions are required per the Live Oak Associates, Inc. Biological Technical Study dated March 12, 2020, and as outlined below.

- 100 feet between the Thompson Creek drip line of riparian vegetation or top of bank, whichever is greater, and any portion of the new development including roads and buildings.*
- The Riparian Setback area may be used for an earthen berm serving as a small detention basin, to the satisfaction of the Director of Planning, Building and Code Enforcement, and Public Works.*
- The basin shall be set back at least 35 feet from the edge of the riparian corridor.*

- *The riparian setback and open landscape areas adjacent to it shall be treated as an amenity and landscaped in a manner that is consistent with riparian vegetation recommended in the Live Oaks Biological Report dated March 12, 2020 (i.e. Elymus triticoides, Baccharis salicifolia, etc.).*
- *The detention basin shall be comprised of earthen berms that are composed of compacted soils and not have the appearance of being engineered (i.e., straight edged or non-undulated banks).*

7. Environmental Review.

Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303 New Construction or Conversion of Small Structures, Class 3, covers the construction of up to three single-family residences in an urbanized area. The subject project includes the rezoning of an existing parcel and the construction of two single-family residences in a residential area of the Evergreen-East Hills. CEQA Guidelines Section 15301 Existing Facilities, Class 1, covers operation, repair and maintenance or minor alteration of existing public or private structures and facilities. The existing unpermitted commercial parking lot would be repaved, striped and landscaped.

The environmental analysis determined that none of the exemption exceptions contained in Section 15300.2 (including Location, Cumulative Impact, Significant Effect, Scenic Highways, Hazardous Waste Sites, or Historical Resources) apply to the project. The project is located in an urbanized area and all project buildings will be located outside the 100-foot riparian setback. The project, which would have temporary construction impacts and result in a net increase of one unit, was not found to have a cumulative impact on the environment. The project does not have any unusual circumstances and the site is not located near a designated scenic resource or on any list compiled pursuant to Section 65962.5. The project would not adversely impact a historical resource.

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

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

Analysis: The construction of two single-family residences meeting the prevailing density and character of surrounding residential uses is consistent with the General Plan land use designations. The project's design is consistent with

General Plan Land Use Polices LU-1.1, LU-11.1, and LU-11.4 which promote the development of compatible land uses, as described above.

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

Analysis: As described above, the project conforms to the General Development Standards set forth in the A(PD) Planned Development Permit. The project's commercial parking lot and single-family residences meet the required setback, height, landscaping, and height provisions of the Zoning District.

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

Analysis: As discussed above, the project is consistent with the applicable city council policies. The project's on-site sign was posted, and hearing notices were sent to residents within 500 feet of the project to inform the community of the project. The project will adhere to the required 100-foot riparian setback. Additionally, the Live Oak Associates, Inc. Biological Technical Study dated March 12, 2020 determined the flow spreader would not impact the riparian corridor as it is a flood control measure.

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

Analysis: The density of the adjacent subdivision on Mousa Court is 4.2 dwelling units per acre. The prevailing character of the adjacent neighborhood consists of two-story single-family homes with attached garages, low-pitched roofs and similar framed/covered entries. The two new single-family residences are aesthetically harmonious with the character, massing, and scale of the adjacent residential use in that they are two stories in height with attached garages and generally follow the architectural style and fenestration of the existing residences. The project includes a 100-foot buffer from the riparian corridor and a commercial parking lot off San Felipe Road supporting neighborhood commercial uses. Landscaping and a 5-foot wood fence will separate the on-site commercial parking lot and residences. Therefore, the site design and orientation are compatible with the uses on and off the site.

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

Analysis: The project was reviewed against the exceptions to an exemption under Section 15300.2 and the project would not result in significant impacts to applicable resources such as noise and biological resources. The addition of a flow spreader was reviewed by a qualified ecologist in a biological report dated March 12, 2020

and determined to be consistent with the Riparian Corridor Policy. Additionally, the project includes two residences and the continued use of the commercial parking lot, the project will be designed to appropriately drain stormwater runoff. These uses will not have noise, vibration, dust or odor impacts on surrounding uses. Implementation of standard conditions of approval and best management practices will abate temporary construction impacts. Therefore, the project will not have an unacceptable negative effect on adjacent property or properties.

9. Tree Removal Findings

Chapter 13.32 of the San José Municipal Code establishes required findings for a Tree Removal which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

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

Analysis: There are currently 11 trees onsite. The project would remove one ordinance size-tree from the residential area and maintain the remaining ten trees on-site. The approximately 55-inch in circumference Coast Live Oak would impede the ingress/egress to the single-family residences from Mousa Court. Tree replacement for residential uses is 1:1. A total of three 15-gallon trees would be provided within the residential portion of the site as replacement trees. Therefore, the tree replacement is adequate.

10. Evaluation Criteria for Demolition

Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Resolution.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and

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

Analysis: The approval of the permit and demolition would facilitate a project which is compatible with the surrounding neighborhood and would increase the supply of existing housing stock in the City of San José. Conversely, the failure to approve the permit would result in the continued existence of blight because the existing commercial lot is unpermitted and therefore was not designed to meet the Commercial Design Guidelines and does not have the proper screening or landscaping as is evident from San Felipe Road. Additionally, the existing residential structure is accessed from the unpermitted commercial lot off San Felipe Road and is inharmonious with the neighborhood pattern. Approval of the project would facilitate a project which ties in the mid-section residential use of the parcel with the adjacent residential subdivision on Mousa Court. An historic report prepared by Urban Programmers and dated November 14, 2016 for the existing residential structure concluded that its mid-century ranch style was well represented in the City and it did not meet the criteria of the California Register of Historic Resources or the Landmark criteria of the City of San José. The demolition of the existing residential structure will not have an adverse impact on the surrounding neighborhood. Finally, the reuse or rehabilitation of the existing building would constrain the development of a second unit on-site.

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

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Planned Development Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Planned Development Permit; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.

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

6. **Scope and Use Authorization of the Planned Development Permit.** Subject to all conditions herein, this Planned Development Permit allows the demolition of a 2,600-square foot single-family residence, and allows the construction of two-single family residences and associated grading, establishment of a commercial parking lot, and allows the removal of one ordinance-size tree on an approximately 1.01-gross acre site, in accordance with the approved development plans and uses consistent with the General Development Standards of the Planned Development Zoning District.
7. **Conformance to Plans.** The development of the site shall conform to the approved plans entitled, "Lands of Vierra: Two Single-Family Detached Residential and Parking Lot" dated April 25, 2019, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set."
8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
9. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
10. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
11. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
13. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
14. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
15. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.

16. **Property Maintenance.** The permittee or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the parking lot such as striping, paving, lighting and landscaping.
17. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
18. **Lighting.** No new outdoor lighting has been approved as part of this permit. All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium. Any changes to the on-site lighting will require a Permit Adjustment. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
19. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
20. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise levels from such equipment will not exceed 55 dBA at the residential property line. All roof mounted mechanical equipment shall be screened from view.
21. **Generators.** This permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
22. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code. The Code addresses the use of reclaimed water including the requirement that an irrigation system be designed to allow for the current and future use of reclaimed water for all landscaped cumulative areas in excess of ten thousand (10,000) square feet.
23. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, PD19-018, shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division.

- Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- e. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial).
24. **Demolition of Structures.** No demolition permits may be issued prior to the submittal of foundation or structural building permits. Demolition Permits may be issued prior to the Final Map approval.
25. **Final Map or Lot Line Adjustment Required.** Prior to the issuance of a Building Permit, the permittee shall secure approval and provide recordation of the final map.
26. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered, and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
27. **Landscaping Maintenance.** The permittee shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
28. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
29. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
30. **Street Cleaning and Dust Control.** During construction, permittee shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
31. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff can provide assistance on how to recycle construction and

demolition debris from the project, including information on available haulers and processors.

32. **Lighting.** All exterior lighting shall be as shown on the approved plans. On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
33. **Parkland Dedication Ordinance.** This development is subject to the requirements of either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code,) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within the parkland dedication ordinance and the associated Fees and Credit Resolutions. Prior to approval of the Final Map or final building permits for this development, the permittee shall enter a parkland agreement with the City to the satisfaction of the Director of Public Works in order to fulfill the requirements of the Parkland Dedication Ordinance.
34. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee shall be required to have satisfied all 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 link:
<http://www.sanjoseca.gov/index.aspx?nid=2246>.
35. **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.
36. **Transportation:** This project is in the Evergreen East Hills Development Policy area and is required to pay a Traffic Impact Fee (TIF). The 2019 TIF per residential unit is \$16,357 and per 1,000 square feet of commercial or office is \$14,223. This fee is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco. We conclude that the subject project will be in conformance with the Evergreen East Hills Development Policy and a determination for a less than significant impact can be made with respect to traffic impacts. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued for any additional units after allocation credits.

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37. Grading/Geology:

- a. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- 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 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- c. 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.
- d. The Project site is within the State of California Seismic Hazard Zone. A Geologic Hazard Clearance is required prior to any environmental clearance, zoning approval, planning, building or grading permit. A geologic/geotechnical report addressing the potential hazard of earthquake induced landsliding and other geologic hazards must be submitted to, reviewed, and approved by the City Geologist prior to issuance of a Geologic Hazard Clearance. The report should be consistent with State guidelines for the preparation of engineering geologic and seismic hazard reports (CGS Note 44 and Special Publication 117A).

38. 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 and this project will be in 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.
 - c. A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.
39. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area but will create and/or replace one acre or less of impervious surface. Therefore, this project is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
40. **Flood Zones A and D.** Although a portion this property is shown to be within a Federal Emergency Management Agency (FEMA) 100-year floodplain, Flood Zone A, the locations of the two single-family residence are in Flood Zone D, which is not a designated 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 Flood Zone D.
41. **Streamside Resource Protection:** This Site is located within 50 feet from the top of bank of Thompson Creek and is therefore subject to the Guidelines and Standards for Land Use Near Streams that includes design requirements and recommendations for land-use activities in order to protect stream resources.
42. **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.
43. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable prior to issuance of Public Works clearance. Contact the San José Municipal Water System at (408) 794-6769 for further information.
44. **Parks:** This residential project is subject to the payment of park fees in-lieu of land dedication under either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code).
45. **Undergrounding:** San Felipe Road is a designated street for undergrounding. However, there are no overhead wires along the project frontage. Therefore, the project is not required to pay the undergrounding in-lieu fee.
46. **Street Improvements:**
- a. Construct 12-foot wide attached sidewalk with tree wells and curb and gutter along San Felipe Road that matches existing southern curb line. A 34-foot wide street dedication is required.
 - b. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.

- c. 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.
 - d. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
47. **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.
48. **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 along San Felipe Road. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.

49. Standard Environmental Permit Conditions

a. AIR QUALITY.

The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- iii. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- vi. Replant of vegetation in disturbed areas as soon as possible after completion of construction.
- vii. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California

airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- viii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- ix. Post a publicly visible sign with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.

b. BIOLOGICAL RESOURCES.

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

Circumference of Tree to be Removed ¹	Type of Tree to be Removed ²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
12 inches or more ³	5:1	4:1	3:1	15-gallon
6.0 to 12 inches	3:1	2:1	None	15-gallon
Less than 6.0 inches	1:1	1:1	None	15-gallon

¹ As measured 4.5 feet above ground level
² X:X = tree replacement to tree loss ratio
³ Ordinance-sized tree
 Notes: Trees greater than or equal to 38 inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a Tree Removal Permit is required for removal of trees of any size.
 A 38-inch tree equals 12.1 inches in diameter.
 A 19-inch tree equals 6.1 inches in diameter.
 One 24-inch box tree= two 15-gallon trees

- ii. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement.
 - 1) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage. Replacement tree plantings may be accommodated at an alternative site(s).
 - 2) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance

of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

- iii. Habitat Plan. The project is subject to applicable Santa Clara Valley Habitat Plan (SCVHP) conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. Prior to issuance of any grading permits, the permittee shall submit a SCVHP Coverage Screening Form to the Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement for review and will complete subsequent forms, reports, and/or studies as needed.
- iv. Riparian Setback. The Riparian Setback area may be used for an earthen berm serving as a small detention basin, to the satisfaction of the Director of Planning, Building and Code Enforcement, and Public Works.

The basin shall be set back at least 35 feet from the edge of the riparian corridor.

The riparian setback and open landscape areas adjacent to it shall be treated as an amenity and landscaped in a manner that is consistent with riparian vegetation recommended in the Live Oaks Biological Report dated March 12, 2020 (i.e. *Elymus triticoides*, *Baccharis salicifolia*, etc.).

The detention basin shall be comprised of earthen berms that are composed of compacted soils and not have the appearance of being engineered (i.e., straight edged or non-undulated banks).

c. CULTURAL RESOURCES.

- i. In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement will be notified, and a qualified archaeologist will examine the find. The archaeologist will 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery would be submitted to Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement and the Northwest Information Center (if applicable). Project personnel should not collect or move any cultural materials.
- ii. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9

through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American.

- iii. If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts.
- iv. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
 - 1) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - 2) The MLD identified fails to make a recommendation; or
 - 3) The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.
- v. If vertebrate fossils are discovered during construction, all work on the site will stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection, and may also include preparation of a report for publication describing the finds. The project proponent will be responsible for implementing the recommendations of the paleontological monitor.

d. GEOLOGY AND SOIL.

- i. To avoid or minimize potential damage from seismic shaking, the project would be built using standard engineering and seismic safety design techniques. Building design and construction at the site will be completed in conformance with the recommendations of a geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Planning, Building, and Code Enforcement as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes, including the 2016 California Building Code Chapter 16, Section 1613, as adopted or updated by the City. The project shall be

designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

- ii. All excavation and grading work will be scheduled in dry weather months or construction sites will be weatherized.
- iii. Stockpiles and excavated soils will be covered with secured tarps or plastic sheeting.
- iv. Ditches will be installed, if necessary, to divert runoff around excavations and graded areas.
- v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. In addition, the San José Department of Public Works requires a grading permit to be obtained prior to the issuance of a Public Works clearance. These standard practices, including the measure outlined below, will ensure that the future building on the site is designed properly to account for soils-related hazards on the site. The project shall conform to the recommendations of a project-specific geotechnical report, including design considerations for project foundations.

e. HAZARDS AND HAZARDOUS MATERIALS.

- i. In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building to determine the presence of asbestos-containing materials and/or lead-based paint.
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
- iii. All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent

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

f. **HYDROLOGY AND WATER QUALITY.**

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities would be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces would be watered at least twice daily to control dust as necessary.
- iv. Stockpiles of soil or other materials that can be blown by the wind would be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials would be covered and all trucks would be required to maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites would be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas would be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system may also be installed at the request of the City.

50. 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 of Chapter 20.100 of Title 20 of the San José Municipal Code it finds:

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

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

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EFFECTIVE DATE

The effective date of this Permit (File No. PD19-018) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC19-022 passed for publication on _____, 2020 (the "Planned Development Rezoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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



January 23, 2020
HMH 5423.11.270
Page 1 of 1

EXHIBIT "A"
FOR PD REZONING & PD PERMIT PURPOSES

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

BEGINNING at a railroad spike in the center line of dry creek and San Felipe Road at the southeasterly corner of that certain parcel of land described in the deed from Bank of America National Trust and Savings Association, a National Banking Association, to Matto Colacicco, et ux, dated August 28, 1942 recorded October 15, 1942 in Book 1112 of Official Records, page 470, Santa Clara County Records; running thence North 37°11' West along the said center line of dry creek and San Felipe Road 84.06 feet to a nail; thence leaving said last named line and running South 79°40' West and parallel with the southerly line of the land so described in the deed to Matto Colacicco, et ux, 652.80 feet to the center line of a dry creek; thence along said center line South 76°40' East 186.83 feet to a point on the southern line of the land so described in the deed to said Matto Colacicco, et ux, running thence North 79°40' East along said last named line 519.65 feet to the point of beginning.

Containing 43,965 square feet or 1.01 acres, more or less.

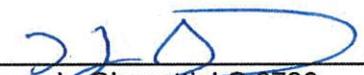
As shown on Exhibit "B" attached hereto and made a part hereof.

END OF DESCRIPTION

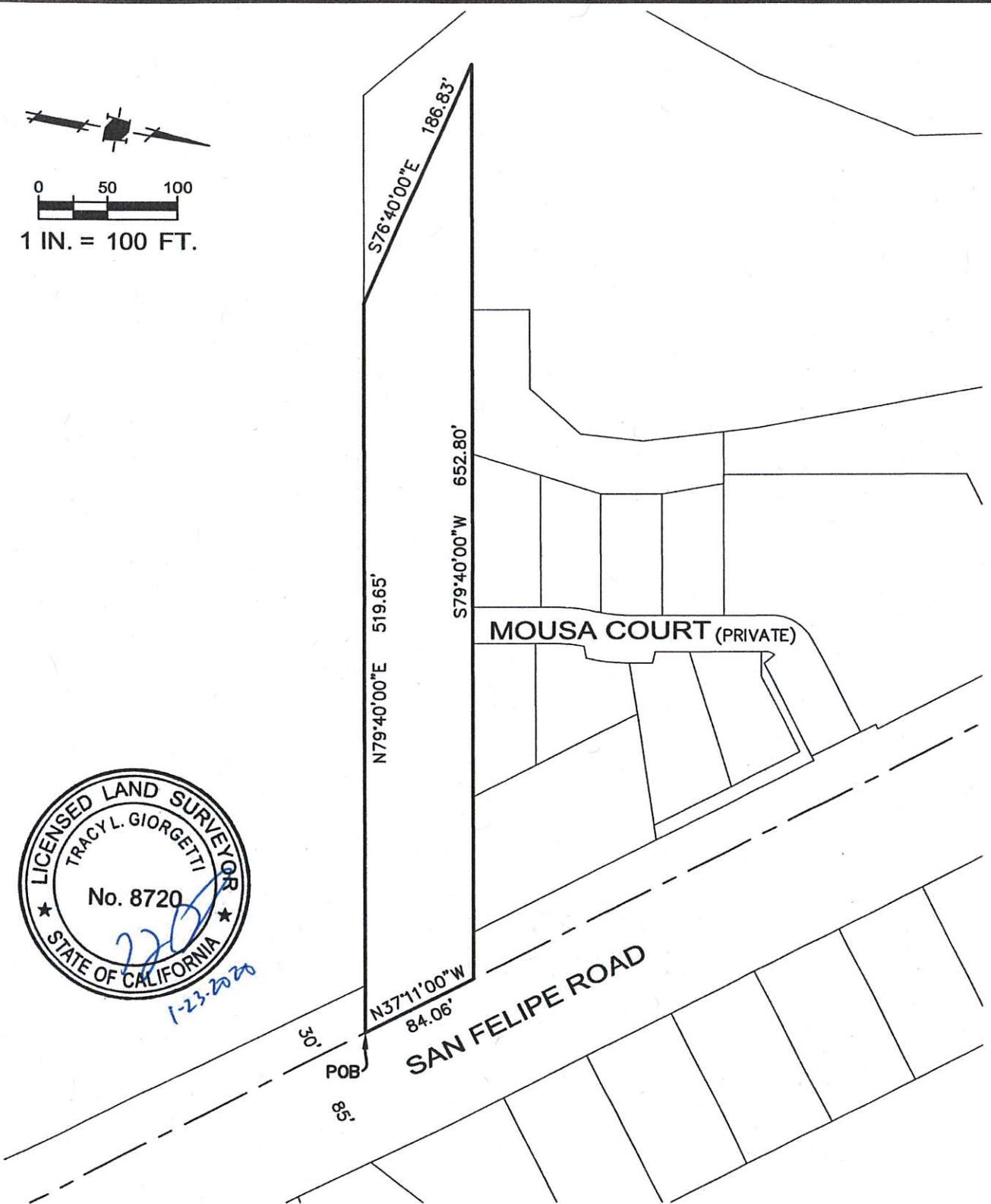
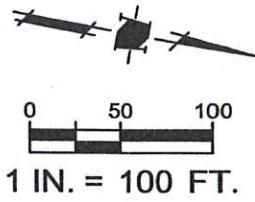
For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

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

Date: 1-23-2020


Tracy L. Giorgetti, LS 8720





LEGEND
 POB POINT OF BEGINNING

Date:	2020-01-23
Designed:	-
Drawn:	RF
Checked:	TG
Proj. Engr.:	-
542311PL01	



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

EXHIBIT "B"
 PLAT TO ACCOMPANY DESCRIPTION:
 FOR PD REZONING & PD PERMIT PURPOSES
 SAN JOSE CALIFORNIA