

COUNCIL AGENDA: 02-07-06  
ITEM: 11.3

## Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** January 30, 2006

Approved

Date

2/1/06

**COUNCIL DISTRICT: 5**

**SUBJECT: PDC05-116, PD05-086 AND PT05-047. PLANNED DEVELOPMENT REZONING FROM R-1-8 RESIDENCE DISTRICT TO A(PD) PLANNED DEVELOPMENT DISTRICT, AND PLANNED DEVELOPMENT PERMIT AND TENTATIVE MAP FOR ONE EXISTING AND ONE NEW SINGLE-FAMILY DETACHED RESIDENCE ON A 0.25 GROSS ACRE SITE, LOCATED ON THE WEST SIDE OF MAHONEY DRIVE OPPOSITE DAVENPORT DRIVE (471 MAHONEY DRIVE).**

### REASON FOR SUPPLEMENTAL MEMO

This item was considered by the Planning Commission on January 11, 2006, at which time the Commission voted to recommend denial of the project. The Commission expressed concern regarding neighborhood compatibility, the safety of the proposed driveway, storm water run-off and fire flow adequacy. The applicant has confirmed the availability of adequate fire flow (see attached revised memorandum from the Fire Department) and has submitted revised plans (see attached) to address driveway safety, drainage and privacy of adjacent property.

### ANALYSIS

The revised plans modify the design of the proposed new single-family residence so that the driveway and garage are located on the northerly side of the parcel, which allows a vehicle turnaround to be provided. This modification responds to the Commission's safety concerns by allowing cars to turn around before exiting the driveway, thereby eliminating the need for drivers to back onto the street. The plans also provide more detailed information regarding on-site drainage. Public Works staff will work with the applicant at the improvement plan stage to ensure that storm water from the site does not drain onto adjacent properties. In response to privacy concerns articulated by an adjacent resident, the revised plans relocate second-story windows and include obscured glass to minimize views of adjacent properties. The revised plans conform to the Draft Development standards previously transmitted to the City Council with the original staff report. A revised Planned Development Permit resolution is attached which references the revised plans.

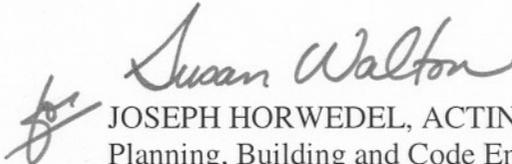
HONORABLE MAYOR AND CITY COUNCIL

**Subject: PDC05-116, PD05-086 AND PT05-047**

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**RECOMMENDATION**

Staff recommends that the City Council approve the subject Planned Development Zoning, Permit and Tentative Map for the reasons stated in the original staff report.

  
JOSEPH HORWEDEL, ACTING DIRECTOR  
Planning, Building and Code Enforcement

cc: Manuel Morgado, 725-C East Julian Street, San Jose, CA 95112



# Memorandum

**DATE:** 01/23/06

**TO:** Hadasa Lev

**FROM:** Nadia Naum-Stoian

**REVISED**

Re: Plan Review Comments

**PLANNING NO:** PDC05-116

**DESCRIPTION:** Planned Development Rezoning from R-1-8 Residential Zoning District to the A(PD) Residential Zoning District to allow 2 single-family detached residences on a 0.25 gross acre site

**LOCATION:** west side of Mahoney Drive, opposite Davenport Drive

**ADDRESS:** west side of Mahoney Drive, opposite Davenport Drive (471 MAHONEY DR)

**FOLDER #:** 05 060310 ZN

The Fire Department's review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

Required fire flow confirmed by San Jose Water Co. letter dated 1/13/06.

Approved for access and fire flow only.

Nadia Naum-Stoian  
Fire Protection Engineer  
Bureau of Fire Prevention  
Fire Department  
(408) 535-7699

# Memorandum

**DATE:** 01/23/06

**TO:** Hadasa Lev  
**FROM:** Nadia Naum-Stoian

**REVISED**

Re: Plan Review Comments

**PLANNING NO:** PD05-086

**DESCRIPTION:** Planned Development Permit to construct one additional single-family detached residence on a 0.25 gross acre site

**LOCATION:** west side of Mahoney Drive opposite from Davenport Drive

**ADDRESS:** west side of Mahoney Drive opposite from Davenport Drive (471 MAHONEY DR)

**FOLDER #:** 05 060330 DV

The Fire Department's review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

Required fire flow confirmed by San Jose Water Co. letter dated 1/13/06.

Approved for access and fire flow only.

Nadia Naum-Stoian  
Fire Protection Engineer  
Bureau of Fire Prevention  
Fire Department  
(408) 535-7699



*Department of Planning, Building and Code Enforcement*

JOSEPH HORWEDEL, ACTING DIRECTOR

**RESOLUTION NO.**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ, GRANTING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO USE CERTAIN REAL PROPERTY DESCRIBED HEREIN TO ALLOW ONE EXISTING AND ONE NEW SINGLE FAMILY DETACHED RESIDENCES ON INDIVIDUAL LOTS.

**FILE NO. PD05-086**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100.900 of Title 20 of the San José Municipal Code, on August 13, 2004, an application (File No. PD05-086) was filed for a Planned Development Permit for the development of one existing and one new single family detached residences on individual lots, situate in the A(PD) Planned Development Zoning District, located on the west side of Mahoney Drive opposite from Davenport Drive, San Jose, and

WHEREAS, the subject property is all that real property described in Exhibit "A," 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 20.100.900 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 recommendation of the 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, " New Residence & Lot Split for Morgado 4 Construction," dated November 14, 2005. 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 development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

**NOW, THEREFORE:**

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

1. The project site has a designation of Medium Low Density Residential (8 DU/AC).
2. The project site is located in the A(PD)Planned Development Zoning District.
3. The subject site is 0.25 gross acres.
4. This project includes the removal of 2 ordinance size trees.
5. The project proposes construction of 1 single-family detached residential unit in addition to the existing unit on the site.

**FINDINGS**

1. The Planned Development Permit, as issued, furthers the policies of the General Plan in that:
  - a. The project consists of an infill housing development that furthers the City's Growth Management and Housing Major Strategies.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development zoning of the property in that:
  - a. The building location, setbacks, density, and number of units and parking spaces, conform to the General Development Plan.
3. The interrelationship between the orientation, location and elevations of the proposed building(s) and structure(s) and other uses on-site are mutually compatible and aesthetically harmonious in that:
  - a. The architectural elements of the proposed and/or existing structure(s) are integrated into a harmonious whole.
4. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that:
  - a. Under the provisions of Section 15303(a) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt pursuant to the environmental review requirements implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
5. The location of the ordinance-size trees with respect to the proposed improvements does unreasonably restrict the economic development of the parcel in question.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested

right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval, may be imposed by the approval authority.

2. **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 applicant'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 Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
3. **Permit Expiration.** This Planned Development Permit shall automatically expire 30 months from and after the date of issuance hereof by the City Council, if within such 30 month period, the proposed use of this site of the construction of buildings has not commenced, pursuant to and in accordance with the provision of this Planned Development Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
4. **Conformance with Plans.** Construction and development shall conform to approved plans entitled, "New Residence & Lot Split for Morgado 4 Construction" dated November 14, 2005, last revised January 25, 2006, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
5. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
6. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
7. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. **Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance** for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
8. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:

- a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant 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.
9. **Revised Plans.** Within 60 days of the issuance of this permit and prior to recordation, the applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning prior to issuance of a Building Permit. Failure to provide said revisions within 60 days shall render this permit null and void.
- a. **Site Plan** – the applicant shall show the proposed house on the site plan.
10. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not 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.
11. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
- a. **Construction Hours.** Construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site construction activities located within 500 feet of any residential unit.
12. **Dust Control/Air Quality.** Project construction shall implement the Bay Area Air Quality Management District's list of feasible construction dust control measures. The following construction practices shall be implemented during all phases of construction on the project site:
- a. Use dust-proof chutes for loading construction debris onto trucks.
  - b. Water or cover stockpiles of debris, soil, sand or other materials sufficient to prevent the material from becoming airborne.
  - c. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
  - d. Sweep daily or as often as necessary to keep the adjoining streets, paved access roads, parking areas and staging areas at construction site free of dust and debris.
  - e. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
  - f. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
  - g. Replant vegetation in disturbed areas as quickly as possible

13. **Noise.** All units shall be built in conformance with Title 24, to the satisfaction of the Chief Building Official.

14. **Storm Water:**

- a. Submit a conceptive grading/drainage plan prior to approval.
- b. Indicate the overland release path in arrows.
- c. The release path must be paved.
- d. On-site ponding must be less than one foot.
- e. Finished floor elevations must be one foot higher than overland release elevation.

15. **Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

**Public Works Approval of Parcel Map:** Prior to the approval of the parcel map by the Director of Public Works, the applicant will be required to have satisfied all of the following Public Works conditions.

a. **Sanitary:**

1. Submit a conceptive sanitary sewer plan prior to approval.
2. Submit a sanitary sewer plan if construction of new laterals is proposed.

b. **Geology:** A Geologic Hazard Clearance has been approved subject to the following conditions. Failure to comply with these conditions shall constitute a violation of the San Jose Municipal Code and may result in penalties as described in Section 1.08.101 of the Municipal Code including suspension or revocation of any development permits obtained with this Clearance.

1. A soil report must be submitted for review and approval by the project engineer in Public Works prior to issuance of a grading permit for the project.
2. All recommendations of the project's geologic and geotechnical reports and geotechnical consultants must be followed. All geotechnical constraints and methods of geologic hazard mitigation identified in your reports must be implemented in your development as specified.
3. This clearance applies only to the project specified in References 1 and 2 above. Any changes to the geotechnical consultants of record or to the project as referenced above, its design, location, or concept, must be reviewed and approved by the City's Engineering Geologist. Significant changes will require a new Geologic Hazard Clearance or may result in revocation of this clearance.
4. All earthwork, foundation excavations, drainage improvements and related facilities

must be inspected by the project engineering geologist and geotechnical engineer during each phase of site grading and construction, and documented by submission of final geotechnical and geologic reports to the City.

5. If any unanticipated hazardous geologic conditions are encountered during the grading, or if there are any modifications in the grading or geologic hazard mitigation measures, the City Geologist must be immediately notified. In such an event, a supplemental geologic investigation must be performed and submitted to the City for review and approval, prior to progressing further with the project.
- c. **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. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
  - d. **Transportation:** This project is exempt from the Level of Service (LOS) Policy, and no further LOS analysis is required because the project proposes 15 units of Single Family detached or less.
  - e. **Grading/Geology:**
    1. 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.
    2. A Geologic Hazard Clearance is required prior to environmental clearance or zoning approval.
    3. A geologic report addressing the potential hazards of fault rupture, slope stability, and erosion must be submitted to and accepted by the City Engineering Geologist prior to environmental clearance or zoning approval.
  - f. **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) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges.
  - g. **Flood: Zone D**
    1. The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for zone D.
  - h. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
  - i. **Street Improvements:**

1. Remove and replace broken or uplifted curb, gutter, sidewalk and AC pavement along project frontage.
  2. Close unused driveway cut(s).
  3. Improvement of the public streets to the satisfaction of the Director of Public Works.
  4. 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.
- j. **Complexity Surcharge (In-Fill):** This project has been identified as an in-fill project, and as such is subject to the following:
1. Based on established criteria, the public improvements associated with this project have been rated medium complexity. An additional surcharge of 25% will be added to the Engineering & Inspection (E&I) fee collected at the street improvement stage.
- k. **Sanitary:** The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
- l. **Electrical:** Installation, relocation and relamping of electrolier(s) along project frontage may be required.
16. **Replacement Trees.** Prior to occupancy of the new single-family residence the applicant shall replace the removed trees with new trees at a ratio of 4 to 1 (24-inch box size). Any of the trees not accommodated on the site may be furnished to Our City Forest in the form of an in-lieu donation of \$300 per tree. The applicant shall submit documentation of compliance with this condition to the satisfaction of the Director of Planning prior to occupancy.
17. **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.
18. **Parkland Dedication.** The project must conform to the City's Parkland Dedication Ordinance prior to issuance of a Building Permit.
19. **Lighting.** On-site lighting shall be shielded so that no light source is visible from outside of the property.
20. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
21. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
22. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.

23. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
24. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
25. **Fire Flow.** Required fire flow for the site is 1000 G.P.M., or as otherwise approved in writing by the Fire Chief.
26. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
27. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. **Construction Plans.** This permit file number, PD05-086, shall be printed on all construction plans submitted to the Building Division.
  - b. **Emergency Address Card.** The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - c. **Americans With Disabilities Act.** The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
  - d. **Street Number Visibility.** Street numbers of the buildings shall be easily visible at all times, day and night.
28. **Police Issues.** The following requirements shall be provided to the satisfaction of the Director of Planning.
  - a. **Address Numbers.** All buildings shall be clearly marked by address numbers.
  - b. **Security Hardware.** The project developer shall install adequate security hardware to the satisfaction of the Chief of Police and Chief Building Official.
29. **Street Cleaning and Dust Control.** During construction, the developer 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, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

ADOPTED and issued this 24<sup>th</sup> day of January 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, 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.

44. **Police Security Plan.** Prior to the opening of the store, the applicant, Home Depot, shall provide a Police Security Plan of the operation of the store to the satisfaction of the Director of Planning and Police Chief. A draft of this plan shall be provided prior to the issuance of Building Permits. This plan shall include but is not limited to the following:
- a. The applicant, Home Depot, shall hire security personnel to monitor the site during the hours of operation of the store between 6:00 a.m. to 10 p.m. to prevent nuisance being cause on the site.
  - b. Financial contribution to city wide day laborer solution - The Home Depot should contribute a sum of money for an outreach person that will come to the site, and assist in dealing with the issue of day laborers on the site and in the broader community.
45. **Quarterly Reports of Store Operation.** The applicant, Home Depot shall submit a report every quarter of every year to the Director of Planning and Police Chief regarding the security of the operation of the store.
46. **Drinking fountain** - A drinking fountain should be installed adjacent to the outdoor vending facility.
47. **Restrooms/portable restrooms** – If evidence of urination or defecation is found on the property, the Home Depot should provide restrooms within the proposed building, or portable restrooms, that can be used by day laborers and customers, and cleaned and maintained by Home Depot.
48. **Dedication of Land to the City.** The applicant, Home Depot, shall dedicate a piece of property, shown on the eastern corner of the site, to the City to allow day laborers to gather. Should a separate instrument be required for the conveyance of such dedication, it shall be recorded prior to the recordation of the Final Map.