



# Memorandum

**TO: HONORABLE MAYOR**

**FROM: Joseph Horwedel**

**SUBJECT: SEE BELOW**

**DATE: July 31, 2007**

Approved

Date

**COUNCIL DISTRICT: 3**

**SNI AREA: Spartan Keys**

## SUPPLEMENTAL MEMO

**SUBJECT: CA07-001 Consideration of a proposed Conservation Area historic designation encompassing the area generally bounded on the north by Interstate 280, on the east generally by the rear property lines of the lots on the east side of South Third Street, on the west by the alley between South First and Second Streets, and on the south by Martha Street on an approximately 13.5 acre site.**

### REASON FOR SUPPLEMENTAL

The proposed Martha Gardens Conservation Area was to be considered by the City Council on June 5, 2007. Prior to the meeting staff received various questions and concerns from property owners within the proposed Conservation Area. At the request of Councilmember Liccardo, the Council hearing was deferred to August 14 in order to allow time for staff to meet with the affected property owners to address their concerns. This memo summarizes the results of that meeting, together with communications with other interested property owners.

### RECOMMENDATION

The Planning Commission voted 6-0-0, to recommend that the City Council approve the Martha Gardens Conservation Area. A Resolution is required.

### OUTCOME

Designation of the Conservation Area will establish the Martha Gardens Conservation Area in the Spartan Keys Strong Neighborhoods Initiative (SNI) area.

## **BACKGROUND**

On June 13, 2007 a meeting was held to address concerns identified by Mr. James D'Amico who owns four parcels within the proposed Conservation Area at the southwest corner of East Virginia and South Second Streets. Mr. D'Amico, Mr. Vincent Guasch, and Mr. ZhiLiang Lu, who are property owners in the proposed Conservation Area, attended the June 13, 2007 meeting as well as staff and the historic consultants from Archives and Architecture. Additionally, staff received a letter from Mr. Spencer Cashdan representing Mr. Daniel Pollack, who owns one property lying partially within the proposed Conservation Area, requesting clarification regarding the boundary of the proposed Conservation Area on his property. This memo describes the results of the June 13, 2007 meeting and includes staff's responses to the property owners.

## **ANALYSIS**

Mr. D'Amico owns four parcels within the proposed Conservation Area. Three of these parcels are part of Mr. D'Amico's business called D'Amico Tire Service Company, and one parcel contains a single-family residence with the historical name of the Dinsmore House. Mr. Guasch owns a former single-family residence at the northwest corner of East Virginia and South Second Streets with the historical name of the McLellan/Swithenby House, now housing his catering business. Mr. ZhiLiang Lu owns a duplex located almost mid-block on the west side of South Second Street between East Virginia and Martha Streets with the historical name of the Charles J. Desimone House. Of these structures, the current and former residential structures are identified as Contributing Structures within the proposed Conservation Area. Only the D'Amico Tire Service Company is a non-contributor to the proposed Conservation Area.

Mr. D'Amico expressed a number of concerns at the June 13 meeting including the Conservation Area timeline which he perceived as moving too fast, the definition of proposed easterly boundary of the Conservation Area, the definition of contributing and non-contributing structures, the implications of contiguous/adjacent properties to the proposed Conservation Area, and the issue of support from the City/benefits of the proposed Conservation Area. Staff and the consultant addressed these concerns during the meeting with the property owners. Staff's written response is attached.

On June 4, 2007, staff received the attached letter from Mr. Spencer Cashdan, representing Mr. Daniel Pollack, owner of the property at 828 South Third Street, adjacent to Lewis Street on the north and east extending to Martha Street. A small portion to the north of Lewis Street facing 3rd Street is within the proposed Conservation Area while the majority of the parcel to the east lies outside. The small portion is a parking lot for the industrial structures on the portion outside the Conservation Area boundary. These industrial buildings were not evaluated in this survey. The June 4, 2007 letter requests that staff consider one of two options: 1) Remove the entire property at 828 South Third Street from the proposed Conservation Area, or: 2) Specify in the record of the proposed Conservation Area that only the portion shown in the staff report (which is a small portion of a larger parcel) is to be included in the proposed Conservation Area. Staff's recommendation will correspond with the second option. Staff's written response is attached.

The proposed Martha Gardens Conservation Area is consistent with several General Plan policies intended to support historic preservation. The proposal would promote a greater sense

of historic awareness and community identity and enhance the quality of urban living in the Spartan Keyes SNI area and the City as a whole.

### **EVALUATION AND FOLLOW-UP**

Performance measures are not applicable.

### **POLICY ALTERNATIVES**

Not applicable.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The public outreach conducted thus far is outlined in the May 17, 2007 City Council memo which was prepared for the June 5, 2007 City Council meeting. Additional outreach which has taken place consists of the June 13, 2007 meeting and correspondence with the three property owners, as described in this memo. No further written correspondence has been received from the property owners within the proposed Conservation area.

### **COORDINATION**

This project was coordinated with the City Attorney, San Jose Redevelopment Agency, and Department of Parks, Recreation and Neighborhood Services.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable General Plan policies.

### **COST SUMMARY/IMPLICATIONS**

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

Re: Martha Gardens Conservation Area

July 31, 2007

Page 4

**CEQA**

CEQA: Exempt.

  
for JOSEPH MORWEDEL  
Director, Planning, Building and Code  
Enforcement

For questions please contact STAN KETCHUM, PRINCIPAL PLANNER, at 535-7876.

**Attachments:**

Response to Mr. Jim D'Amico w/attachments

Mr. Spencer Cashdan letter and response w/attachments

June 22, 2007

Mr. Jim D'Amico  
San Jose Commercial Properties  
P.O. Box 969  
San Jose, CA 95108-0969

RE: CA07-001  
Proposed Martha Gardens Conservation Area

Dear Mr. D'Amico:

Thank you for attending the June 13, 2007 meeting regarding the proposed Martha Gardens Conservation Area (CA07-001). The following is in response to your questions raised at the meeting:

1. Question: Is the proposed Martha Gardens Conservation Area moving along a fast timeline?

Response: The process has its origin in the 2002 Strong Neighborhoods Initiative (SNI) process. The City of San José, the Spartan Keyes Neighborhood Advisory Committee (NAC), Martha Gardens Specific Plan Advisory Committee, and the community collaboratively developed an *SNI Neighborhood Improvement Plan* in May 2002 and a *Specific Plan* for the East Gardner and Martha Gardens neighborhood areas, respectively in December 2003. The *Martha Gardens Specific Plan* established Neighborhood Design Guidelines for the area. Within those guidelines is Policy 2.7, which states that: "the City should prepare an intensive and comprehensive level historic resources survey of the Victorian Neighborhood Sub-Area, to identify historically and/or architecturally significant resources in this area." Furthermore, Policy 2.8 within the Plan calls to: "Conduct a feasibility study to determine whether designating all or part of the Victorian Neighborhood Sub-Area as a Historic District is warranted."

In June 2005, the City of San José hired historic consultants Archives and Architecture to: (1) conduct additional historic research in the Martha Gardens area; (2) determine whether the area would qualify as a City of San José Historic District or Conservation Area; and (3) determine the boundaries of the potential Area. A *Historic District Study* was compiled by the consultant and found that a large concentration of diverse historic resources qualified the area for Conservation Area designation.

The *Study* was distributed to the Spartan Keyes NAC, and presented and discussed at its February 13, 2007 meeting. At this meeting, members of the Spartan Keyes NAC indicated support for the designation process as long as there was property owner support.

The Department of Planning, Building and Code Enforcement sent all 97 property owners a notice of the proposed Conservation Area designation and a survey, requesting feedback on their level of support for the proposal. Fourteen survey ballots have been returned to-date,

nine in support, four opposed, and one unsure. Two of the four opposed ballots were submitted by you as you own two properties in the proposed Conservation Area.

Additionally, a property owner meeting was held on March 8, 2007. All property owners within the proposed Conservation Area were invited. Ten property owners or representatives attended. All property owners that attended were generally supportive of the proposed Conservation Area. Questions were raised about the permitting process required should a Conservation Area be established. Staff described the process.

Property owners were also interested in any financial incentives offered through the new designation. Staff described how property owners would be able to use the State Historic Building Code that may allow for some flexibility regarding adherence to non-life safety building code requirements for building modifications. Also, some property owners may be able to qualify for City Landmark status, which would provide property tax relief through the Mills Act Historical Property Contract. Recently, the property owner at 754 S. Third Street, which is within the proposed Conservation Area, has applied for City Landmark status (HL07-159).

At its April 19, 2007 NAC meeting, the Spartan Keyes NAC had a follow-up discussion on the proposed Martha Gardens Conservation Area. The NAC voted unanimously to support the proposed Conservation Area. Please see attached Spartan Keyes NAC letter of support. All public outreach on this proposal has been coordinated with the Spartan Keyes NAC. Some phone calls have been received by staff and no strong opposition has been expressed thus far.

On May 2, 2007 the Historic Landmarks Commission voted 6-0-1 (Thacker absent) to recommend that the Planning Commission recommend the City Council approve the designation of the subject area as the Martha Gardens Conservation Area. Please see attached addendum.

On May 16, 2007 the Planning Commission voted 6-0-0, to recommend that the City Council approve the Martha Gardens Conservation Area.

The proposed Conservation Area was scheduled to be heard by City Council at their June 5, 2007 meeting but subsequently was rescheduled for August 14, 2007.

2. Does the eastern boundary of the proposed Conservation Area include the area up to the abandoned railroad at South 4<sup>th</sup> Street as indicated in the project location on the public hearing notice?

Response: The reference to the "abandoned railroad at South 4<sup>th</sup> Street" was incorrect. The actual boundary to the east is generally the rear property lines of the properties fronting on the east side of South 3<sup>rd</sup> Street to the east. The project location should read "...on the east generally by the rear property lines of the lots on the east side of South 3<sup>rd</sup> Street...". Please see attached map. Thank you for bringing this error to our attention.

3. Question: Does the Victorian era include properties built up to the 1940's?

Response: The primarily residential area, located along South 2<sup>nd</sup> and South 3<sup>rd</sup> Streets has geographic boundaries clearly defined by Interstate 280, South First Street, industrial uses

along the railroad, and Martha Street. While the area includes a collection of Queen Anne Victorian houses along South 3<sup>rd</sup> Street it shares a diverse mix of nineteenth and early twentieth-century development patterns with older neighborhoods around San Jose State University, including Neoclassical, Craftsman bungalows, Art Moderne, and Spanish Eclectic. The reference to the Victorian era may be a misnomer. The reference to the Victorian sub-area began with the 2003 Martha Gardens Specific Plan which described the area as the "Victorian Neighborhood Sub-Area".

4. Question: It is not clear what the contributing and non-contributing designations mean. Is it the case that not all properties are treated the same?

Response: The few vacant properties, historic properties that lack integrity to their original construction, and properties with existing structures built since 1940 would be considered non-contributing. The non-contributing properties would still be considered part of the proposed contiguous boundaries of the Conservation Area. Planning permits for exterior changes to a non-contributing property would be reviewed in the context of the proposed Conservation Area. The Conservation Area designation would not, by itself, create the need for additional permits for other types of development projects, including commercial and non-single family residential projects.

5. Question: Is the alleyway adjacent to the rear of properties fronting on South 2<sup>nd</sup> Street part of the proposed Conservation Area? If so, are the properties between South 1<sup>st</sup> Street and the alleyway considered adjacent or "contiguous" to the proposed Conservation Area. If so, how are the properties on South 1<sup>st</sup> Street affected?

Response: The alleyway is not a part of the proposed Conservation Area. Please see western boundary on the enclosed map. The South 1<sup>st</sup> Street properties would be considered "across the alleyway" from the Conservation Area and would not, by itself, create the need for additional permits for development projects, including commercial and non-single-family residential projects such as along South 1<sup>st</sup> Street. New development projects or exterior modifications to structures across the alleyway would be reviewed by staff as part of the applicable permitting process as well as for compatibility with the General Plan goals of Urban Conservation/Preservation.

6. Question: What can the City do to support the area within the proposed Conservation Area?

Response: The General Plan designation supports the direction for development in the proposed Conservation Area. The General Plan Land Use designation within the area is Martha Gardens Specific Plan-Victorian Preservation/Mixed Use which encourages preservation of the Victorian-style buildings and identifies appropriate uses and densities for the Victorians as well as for the intervening non-historic properties. The area is intended to be primarily residential at a density of 8-20 DU/AC. A wider range of uses are allowed in Victorian era buildings only than would be allowed in standard residential zoning districts, including limited mixed uses and bed and breakfast establishments. Mixed uses within individual buildings should be primarily residential with up to 20 percent of the floor area committed to small, non-residential uses such as specialty food shops, professional offices, art galleries or other similar uses which can typically operate with little external visibility, including very limited signage. Non-residential uses should be entirely compatible with the residential uses as well as with the preservation of the residential character of the buildings and

neighborhood. At present there are no specific programs available to offer financial support to area property owners for renovation assistance.

7. Question: What are the benefits of the proposed Conservation Area?

Response: One benefit would be that property owners would be eligible to use the State Historical Building Code for Rehabilitation rather than having to strictly adhere to the current Uniform Building Code. Also, some property owners may be able to qualify for City Landmark status, which would provide property tax relief through the Mills Act Historical Property Contract and obtain some City building tax exemptions. As an example, the property owner at 754 South Third Street, which was surveyed as part of the proposed Conservation Area, has recently applied for a City Landmark nomination (HL07-159) and Historical Property Contract.

Within the proposed Conservation Area on South 3<sup>rd</sup> Street is located one of the finest small collections of Queen Anne Victorian houses in the City. The neighborhood, as a place, presents a unique and distinct experience of visual aspects of urban life in San José from the late nineteenth century that continues to exist in contemporary times. The proposed Conservation Area attempts to preserve this uniqueness. The neighborhood as a whole would benefit by the designation as a Conservation Area in order to encourage future development to maintain integrity to the historic nature of the area and to encourage compatible new design to be consistent with the character-defining materials and massing of the existing historic landscape.

8. What steps will the City take to encourage people to improve their properties?

Response: Some actions already undertaken by the City include the following:

- The City funded *Martha Gardens Specific Plan* lays out a blueprint for improving the area and carrying out the neighborhood vision.
- The City obtained Community Development Block Grant funds to study the Martha Gardens area and research every property. The completed historic forms inform the property owners as to the historic significance of their properties.
- The City developed *Your Old House Guide to Preserving San Jose Homes* which provides guidelines for exterior home rehabilitation in keeping with the character of the neighborhood.
- The City streamlined the process for Single Family House permits for historic properties. In many cases there is no public hearing required if the guidelines from *Your Old House* are applied to the project.
- The City has streamlined the Historic Preservation permit process by adding the Historic Preservation permit adjustment.
- Also, the San Jose 2020 General Plan alternative discretionary use policy provides for land uses other than those designated on the Land Use/Transportation Diagram may be allowed on sites with structures of significant historical or architectural merit

Mr. Jim D'Amico letter  
June 22, 2007  
Proposed Martha Gardens Conservation Area  
Page 5

if to do so would enhance the likelihood that the historic/architectural qualities would be preserved, and the use would not otherwise be incompatible with the surrounding area.

- Unfortunately there are no City funds available at this time to make available as rehabilitation grants. However, a Conservation Area designation could create a feeling of uniqueness to the area and encourage proactive maintenance of buildings in the area.

For your information, the proposed Martha Gardens Conservation Area is now scheduled to be heard by the City Council on August 14, 2007 at the Council Chambers at City Hall 200 E. Santa Clara Street.

If you have any additional questions pertaining to this matter, please contact me at (408) 535-7876 or via e-mail at stan.ketchum@sanjoseca.gov.

Sincerely,



Mr. Stan Ketchum  
Principal Planner

Attachments:  
Addendum  
Martha Gardens map  
Spartan Keyes NAC letter of support

Cc: Mr. Vince Guasch  
Mr. ZhiLiang Lu

Addendum –Selected Historic Landmarks Commission and Planning Commission Transcripts:

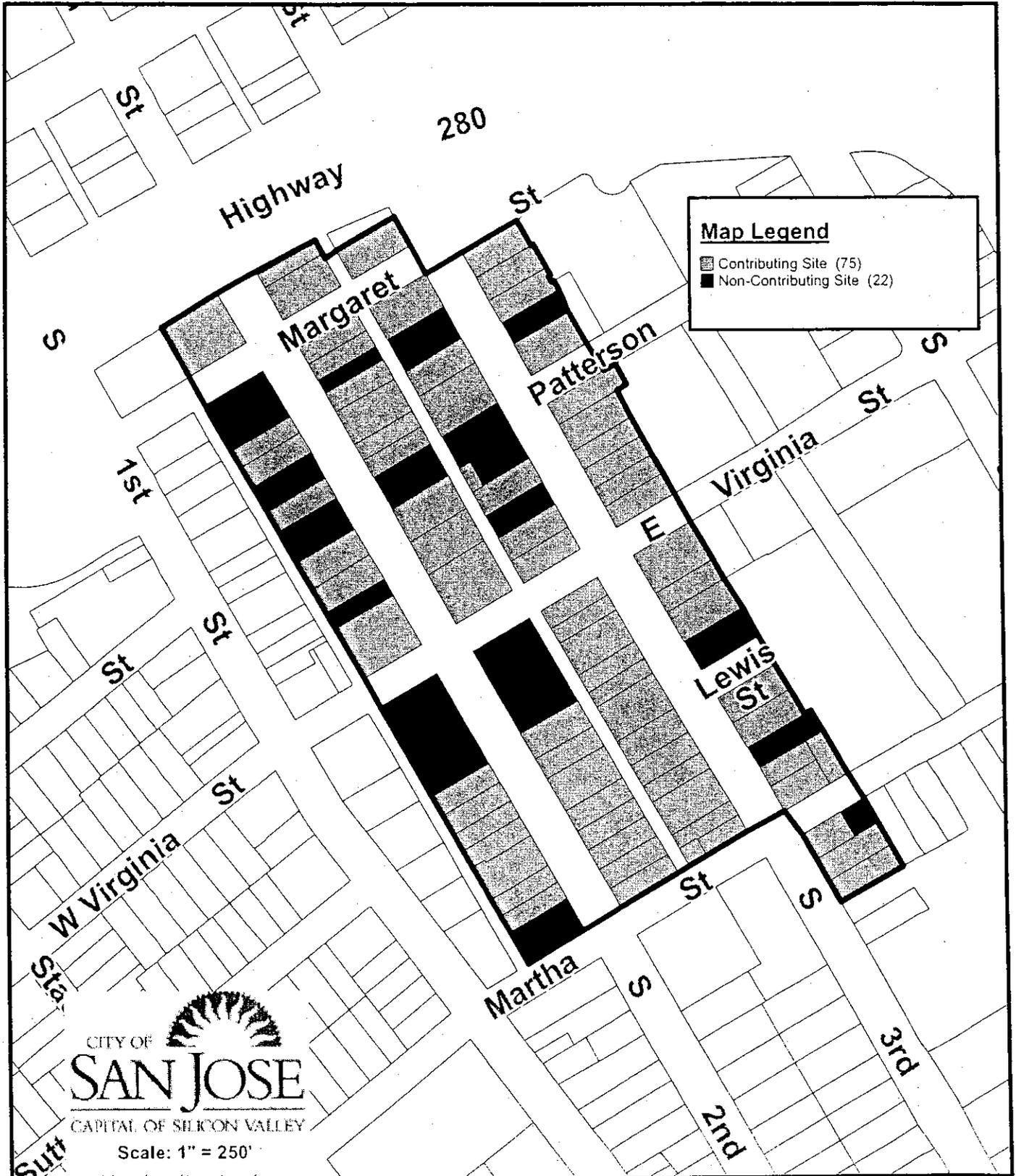
On May 2, 2007 the Historic Landmarks Commission voted 6-0-1 (Thacker absent) to recommend that the Planning Commission recommend the City Council approve the designation of the subject area as the Martha Gardens Conservation Area. Mr. D'Amico, who owns four parcels within the proposed Conservation Area at the southwest corner of East Virginia and South Second Streets, spoke at the meeting. Three of these parcels are part of Mr. D'Amico's business called D'Amico Tire Service Company, and one parcel contains a single family residence with the historical name of the Dinsmore House. Mr. D'Amico stated that he has photographed all of the properties and is opposed to the proposed conservation area designation. He stated that this is a broad brush approach and that there are a mixture of uses and non-Victorian parcels that are included in the proposed Conservation Area. Mr. D'Amico asked how businesses on South First Street would be affected by the proposed Conservation Area. Commissioner Colombe stated that all uses would continue to be allowed but adjacent properties (such as South First Street) to the Conservation Area could be affected when future development is proposed. Historic Preservation Officer Sally Zarnowitz added that external changes or new development on commercial properties within the conservation area or adjacent would be subject to design review regardless of whether the Conservation Area is established or not. The single-family houses would primarily be affected by the requirement of a Single-Family House permit. Commissioner Colombe stated that the Martha Gardens Specific Plan indicates Victorian Preservation/Mixed Use as the General Plan designation, and that therefore businesses would not be driven out.

On May 16, 2007 the Planning Commission voted 6-0-0, to recommend that the City Council approve the Martha Gardens Conservation Area. Mr. Jim D'Amico also spoke at this meeting in opposition to the proposed Conservation Area. Mr. D'Amico expressed his feeling that this was a preplanned project and was rushed to approval without adequate opportunity for public input. Mr. D'Amico also said that he had restored his Victorian house.

Commissioner Zito asked Mr. D'Amico what his concern with the proposed Conservation Area was. Mr. D'Amico stated that the area was industrialized now and overly commercial and he was concerned with bringing it back to single family residential. Commissioner Zito asked what Mr. D'Amico's intentions with his property were. Mr. D'Amico stated that he might develop some type of mixed use project in the future. Commissioner Zito asked for staff comment. Staff responded that the General Plan designation of Victorian Preservation/Mixed Use was one of the controlling factors of the future use of the site and described the uses allowed. Acting Deputy Director Jeannie Hamilton added that the proposed Conservation Area would not control the future uses of the area. Ms. Hamilton added that external changes or new development on commercial properties within the Conservation Area or on adjacent properties would be subject to design review regardless of whether the Conservation Area is established or not. The proposed Conservation Area designation would affect primarily the single-family houses by the requirement of a Single-Family House permit. Commissioner Zito also inquired about cutting properties out of the proposed Conservation Area. Ms. Hamilton explained this would create a gap toothed effect and affect the integrity of the area.

# City of San Jose

## Contributing Sites within Proposed Martha Gardens Conservation Area



**SPARTAN KEYES N.A.C.**

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136 W. Alma Ave.  
San Jose, CA 95110

(408) 297-9135

April 20, 2007

Ms. Patrice Shaffer, AICP  
Department of Planning, Building and Code Enforcement  
City of San Jose, CA 95113

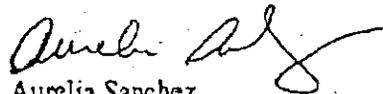
Dear Ms. Shaffer,

This letter is written on behalf of the Spartan Keyes Neighborhood in support of the Martha Gardens Conservation area.

Our community has voted to support this plan in order to help preserve and enhance the unique characteristics of the historical Victorian-era homes located in the Martha Gardens area.

We also would like to thank everyone involved in the preservation of historical homes in the downtown area. This action will help improve the quality of life in our area.

Sincerely,



Aurelia Sanchez  
Spartan Keyes N.A.C. President

CC: Hon. Sam Liccardo, San Jose Councilmember-District 3

July 2, 2007

Mr. Spencer W. Cashdan  
Law Offices  
Mariscal, Weeks, McIntyre & Friedlander, P.A.  
2901 North Central Avenue Ste. 200  
Phoenix, Arizona 85012-2705

RE: CA07-001 Proposed Martha Gardens Conservation Area

Dear Mr. Cashdan:

Thank you for your June 4, 2007 letter regarding 828 South Third Street (Assessor Parcel Number 472-18-014), of which a small portion is located within the proposed Martha Gardens Conservation Area. In case you are not aware, the June 5, 2007 San Jose City Council public hearing was deferred for this item. The anticipated City Council public hearing date is August 14, 2007.

In your June 4, 2007 letter, you asked staff to consider one of two options: 1) Remove the entire property at 828 South Third Street from the proposed Conservation Area, or: 2) Specify in the record of the proposed Conservation Area that only the portion shown in the staff report (which is a portion of a larger parcel) is to be included in the Conservation Area. Staff's recommendation will correspond with the second option.

Conservation Areas are geographically definable areas with identifiable attributes embodied by architecture, urban design, development patterns, setting, or geography; and history. The National Register guidelines for defining boundaries provide direction to include small areas that lack significance within the boundaries of the area as non-contributors when they are surrounded by eligible resources. The guidelines specifically state that gaps or "donut holes" within historic property listings are not allowed. In general, properties that lack integrity to their original construction, properties with existing structures built since 1940, and vacant lots would be considered non-contributing. This non-contributing category includes 828 South Third Street. The proposed Conservation Area includes a minority of non-residential and residential non-contributing structures. There are 22 non-contributing sites (including 4 vacant properties) out of the 97 properties within the proposed Conservation Area. Please see attached Contributing/Noncontributing Sites Map. The inclusion of these non-contributing establishments in the proposed Martha Gardens Conservation Area creates a more cohesive historic area and enables coordinated future land use decisions that affect contributing structures. Also, the portion of 828 South Third Street that is located within the proposed Martha Gardens Conservation Area is designated Victorian Preservation/Mixed Use in the San Jose 2020 General

Plan, which together with non-conforming use provisions in the Zoning Ordinance, allow other uses besides residential such that existing and new businesses would be allowed.

As stated earlier, staff's recommendation is that Option #2 for the subject property be approved. Please be assured that the legal description language for the proposed Martha Gardens Conservation Area, as attached, indicates that only a small portion of APN 472-18-014 is included in the proposed Conservation Area, and that the remainder of the subject property is not part of the proposed Conservation Area. The attached map also shows that the parcel is a non-contributor to the proposed Conservation Area.

For your information, your letter and our response will be included in the information packet that the City Council receives for the August 14, 2007 public hearing at the Council Chambers at 7:00 p.m. at City Hall 200 E. Santa Clara Street.

If you have any additional questions pertaining to this matter, please contact me at (408) 535-7888 or via e-mail at [patrice.shaffer@sanjoseca.gov](mailto:patrice.shaffer@sanjoseca.gov).

Sincerely,



Patrice Shaffer, AICP  
Planner II

Attachments:  
Martha Gardens Legal Description  
Contributing/Noncontributing Sites Map

Cc: Mr. Daniel Pollack

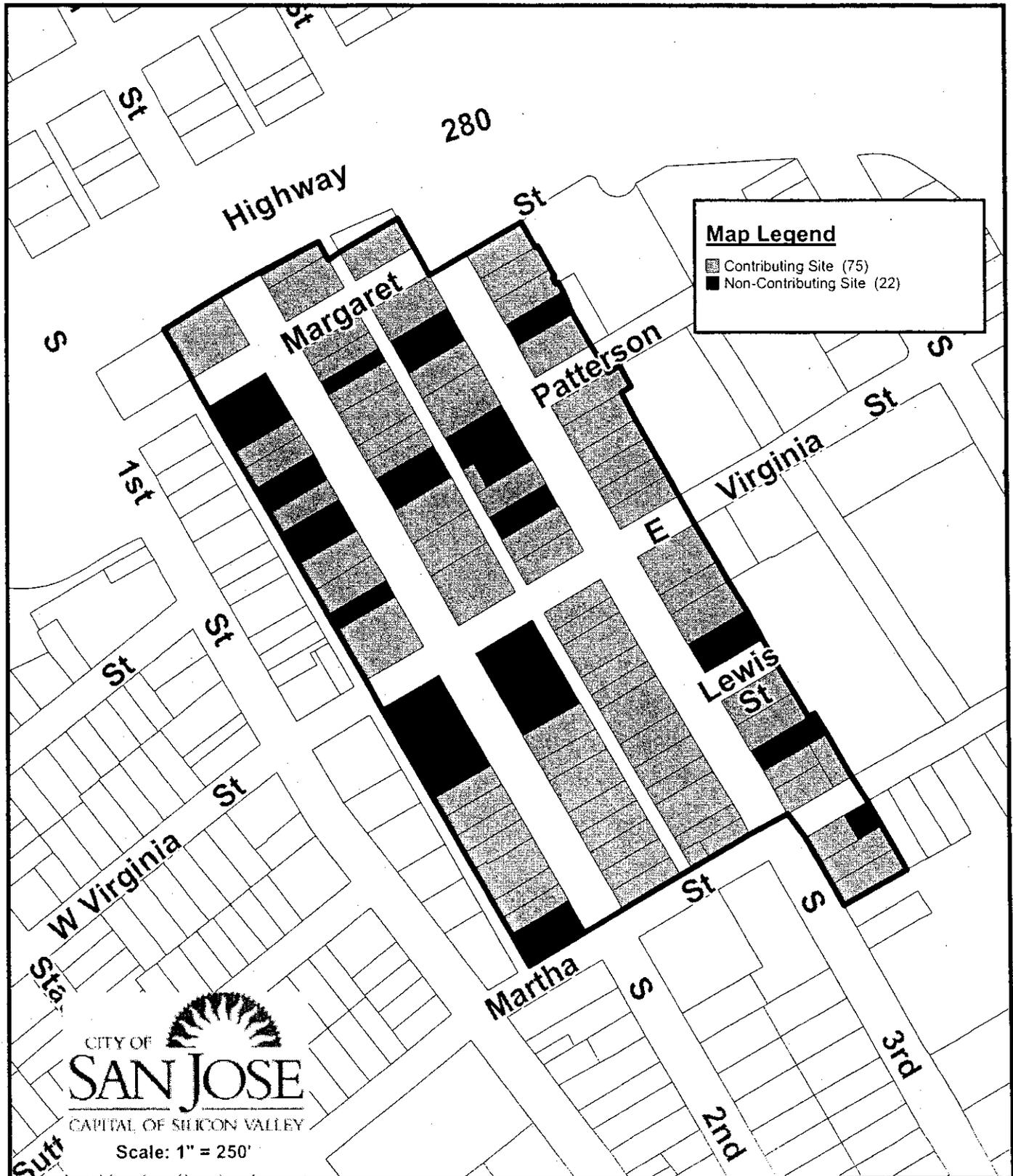
LEGAL DESCRIPTION FOR  
MARTHA GARDENS CONSERVATION AREA

Beginning at the intersection of the centerline of Martha Street with the southeasterly projection of the centerline of a 25-foot wide alley, the alignment of which is as shown upon Block 64, of the Reed Addition to the City of San Jose, filed for record on March 18, 1869 in Book "C" of Miscellaneous Records, Page 322, Records of Santa Clara County; thence northwesterly along said alley centerline and the projection thereof, parallel with and 137.84 feet southwesterly, measured at a right angle from the southwesterly line of South Second Street (80 feet wide) as shown on said Reed Addition, 1,402.00 feet more or less to the southeasterly line of Route 280, Sinclair Freeway as shown on the RIGHT-OF-WAY RECORD MAP R-134.13 filed in the Caltrans District 4 Right-of-Way Engineering Records Office; thence along said southeasterly line of Route 280 the following courses as shown on said RIGHT-OF-WAY RECORD MAP, N 59°05'05" E 93.21 feet; thence N 60°13'50" E 16.43 feet to the beginning of a tangent curve; thence along said tangent curve, to the right, concave southeasterly, having a radius of 2586.00 feet and a central angle of 0°20'53" for an arc length of 15.71 feet; thence N 62°56'04" E 80.10 feet; thence N 60°06'59" E 43.32 feet to the beginning of a tangent curve; thence along said tangent curve to the right, concave southeasterly, having a radius of 2586.00 feet and a central angle of 2°06'00" for an arc length of 94.78 feet to the centerline of a 25-foot wide alley, the alignment of which is as shown upon Block 56, of said Reed Addition; thence leaving said southeasterly line of Route 280, southeasterly along said alley centerline per Block 56, 35.4 feet more or less to the intersection thereof with the southwesterly projection of the northwesterly line of the Quit Claim Deed recorded on October 19, 2001, as Document No. 15918113, Official Records of Santa Clara County; thence northeasterly along said northwesterly line of Document No. 15918113 and its projection, 177.84 feet more or less to its intersection with the centerline of South Third Street as shown on said Reed Addition to the City of San Jose; thence southerly along said centerline of South Third Street, 80.00 feet more or less to the intersection thereof with the centerline of Margaret Street as shown on Tract No. 9539 as recorded on August 26, 2004 in Book 774, at Pages 21-22 Records of Santa Clara County; thence northeasterly along said centerline of Margaret Street, 160.00 feet

to the intersection thereof with the northwesterly projection of the most southwesterly line of Parcel A as shown on said Tract No. 9539; thence southeasterly along the northeasterly line of Lot 4 of Block 51A as shown on the Map of that part of the Reed Addition called the HOMESTEAD, recorded on April 21, 1876, in Book "A" of Maps at Page 9, Records of Santa Clara County, and its projection, 84.00 feet to the northwesterly line of that property described in the Grant Deed recorded on October 19, 1982 as Document No. 7494323, Official Records of Santa Clara County; thence northeasterly, along said northwesterly line of Document No. 7494323, at a right angle, 4.88 feet to the northerly corner of said Document No. 7494323; thence southeasterly, at a right angle, along the northeasterly line of said Document No. 7494323 and the northeasterly line of the property described in the Quit Claim Deed recorded on December 17, 2001 as Document No. 16015388, Official Records of Santa Clara County, 65.84 feet; thence southwesterly, at a right angle, 4.88 feet; thence continuing along said northeasterly line of Document No. 16015388 southeasterly, at a right angle 12.19 feet; thence northeasterly, at a right angle, 4.88 feet; thence southeasterly along said northeasterly line of Document No. 16015388 and its projection across the property described in the property described in the Interspousal Deed recorded on October 20, 2005 as Document No. 18632135, Official Records of Santa Clara County, 66.04 feet to the northwesterly line of the property described in the Grant Deed recorded on October 16, 2002 as Document No. 16541888, Official Records of Santa Clara County; thence northeasterly, at a right angle, 1.00 feet to the northerly corner of said Document No. 16541888; thence southerly along the northeasterly line of said Document No. 16541888 and its southerly projection 96.08 feet to the intersection thereof with the centerline of Patterson Street as shown on said HOMESTEAD; thence northeasterly along said centerline of Patterson Street 24.00 feet to the intersection thereof with the northerly projection of the northeasterly line of the property described in the Grant Deed recorded on January 31, 2000 as Document No. 15137001, Official Records of Santa Clara County; thence southerly along said northeasterly line of Document No. 15137001 and its projection, 75.00 feet to the easterly corner of said Document No. 15137001; thence, at a right angle, southwesterly along the southeasterly line of said Document No. 15137001, 25.00 feet to

the northeasterly line of Lot 2 as shown on the Map of the "ENRIGHT SUBDIVISION" filed for record on March 4, 1889, in Book "D" of Maps at Page 73, Records of Santa Clara County; thence at a right angle, southeasterly along said northeasterly line of Lot 2 and its southeasterly projection, 692.94 feet more or less to the northeasterly projection of the southeasterly line of Lot 20 of Block 52B as shown on said Map of HOMESTEAD; thence northeasterly, at a right angle, 12.84 feet to the northerly corner of the property described in the Grant Deed recorded on August 9, 2004 as Document No. 17939570, Official Records of Santa Clara County; thence, at a right angle, southeasterly along the northeasterly line of said Document No. 17939570 and the northeasterly line of the property described in the Interspousal Deed recorded on May 3, 2005 as Document No. 18351304, Official Records of Santa Clara County, and its southeasterly projection, 213.67 feet to the intersection thereof with the centerline of Martha Street as shown on said HOMESTEAD; thence northeasterly along said centerline of Martha Street, 2.16 feet to the intersection thereof with the northwesterly projection of the northeasterly lines of Lots 1, 2, and 3 as shown on the Map of the Morrison Subdivision recorded on September 7, 1881 in Book "B" of Maps at Page 81, Records of Santa Clara County; thence southeasterly along said northeasterly line of Lots 1, 2, and 3 and its projection, 171.50 feet to the easterly corner of said Lot 3; thence southwesterly along the southeasterly line of said Lot 3 and its projection, 180.00 feet to the centerline of South Third Street as shown on said Morrison Subdivision; thence northwesterly along said centerline of South Third Street, 171.50 feet to the intersection thereof with the centerline of said Martha Street; thence southwesterly along said centerline of Martha Street, 533.52 feet to the POINT OF BEGINNING.

# City of San Jose Contributing Sites within Proposed Martha Gardens Conservation Area



JAMES M. BARRONS  
TODD A. BAXTER  
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MARISCAL, WEEKS, McINTYRE & FRIEDLANDER, P.A.

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JUN - 5 2007

CITY OF SAN JOSE  
DEVELOPMENT SERVICES

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OUR FILE NO.: 10396-342

PHILLIP WEEKS (1936-1998)  
DONALD N. MCINTYRE (1932-1998)

June 4, 2007

*Via Facsimile and Federal Express*

CITY OF SAN JOSE  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San Jose, California 95113  
Attention: Ms. Patrice Shaffer

**Re: CA07-001 Conservation Area Designation**

Dear Ms. Shaffer:

Please consider this letter in connection with the public hearing on the referenced matter, which is scheduled for June 5, 2007 at 7:00 p.m. This firm represents Martha & 3<sup>rd</sup>, LLC, a California limited liability company ("Owner"), which is the owner of certain real property commonly known as 828 S. 3<sup>rd</sup> Street (APN# 472-18-014) (the "Property"). Currently, only a small portion of the Property is designated to be included in the Conservation Area, which portion is legally described on Schedule A attached to this letter (the "Included Land").

As you know, the purpose of creating the Conservation Area is to preserve the historic architecture for the single family homes located within the proposed Conservation Area. However, the Property is not a single family home -- it is an industrial building which has no historic value or appeal. Inclusion of the Included Land in the Conservation Area would not, in any way, serve to effect the purposes in establishing the Conservation Area, and would diminish the value of the Property as industrial real estate.

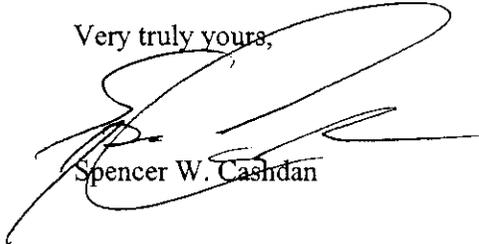
Accordingly, on behalf of Owner, I ask the following:

1. Please remove the entire Property (including the Included Land) from the Conservation Area.

2. If you do not agree with #1, above, please be sure to specifically state in your hearing and in any ruling based thereon, that only the Included Land is part of the Conservation Area, and that the remainder of the Property (which is legally described on Schedule B attached to this letter) is not a part of the Conservation Area.

Thank you for your consideration in this matter. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,



Spencer W. Cashdan

cc: Mr. Daniel Pollack (*via facsimile*)

Schedule A

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

BEGINNING at the point of intersection of the Northerly line of Lewis Street, with the Easterly line of Third Street; running thence from said point of beginning Northerly along the Easterly line of Third Street, 62.84 feet to the Southwesterly corner of that certain parcel of land described in the deed from George D. Toy to Berta L. Hammond, dated April 8, 1902, recorded April 29, 1902 in Book 253 of Deeds, page 478, Santa Clara County Records; running thence Easterly along the Southerly line of land so described in the Deed to said Toy, 125.00 feet to the Southeasterly corner thereof; said corner being on a line which is 125.00 feet Easterly from the Easterly line of Third Street; running thence Southerly and parallel with the said Easterly line of Third Street, for a distance of 62.84 feet, more or less, to a point on the said Northerly line of Lewis Street; running thence Westerly along the said Northerly line of Lewis Street, 125.00 feet to the point of beginning.

**Schedule B**

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

BEGINNING at the point of intersection of the Northerly line of Lewis Street, with the Easterly line of Third Street; running thence from said point of beginning Northerly along the Easterly line of Third Street, 62.84 feet to the Southwesterly corner of that certain parcel of land described in the deed from George D. Toy to Berta L. Hammond, dated April 8, 1902, recorded April 29, 1902 in Book 253 of Deeds, page 478, Santa Clara County Records; running thence Easterly along the Southerly line of land so described in the Deed to said Toy, 125.00 feet to the Southeasterly corner thereof; running thence Northerly along the Easterly line of said land of said Toy, 60.00 feet to the Northeasterly corner thereof on the Northerly line of Lot 8, in Block 52A, as said lot and block are shown upon the Map hereinafter referred to; running thence Easterly and along the Northerly line of Lot 8 and the Northerly line of Lot 9, of said Block 52A for a distance of 91.48 feet to the Northwesterly corner of that certain strip of land described in the Deed from J.F. Ulrichs and H.F. Ulrichs, to Seattle Brewing & Malting Company, a corporation, dated July 29, 1903, in Book 271 of Official Records, page 228, Santa Clara County Records; running thence Southerly along the Westerly line of said strip of land 1.81 feet at the Southwesterly corner thereof; running thence Easterly along the Southerly line of said strip of land 99.87 feet to the Southeasterly corner thereof on the Westerly line of the right of way of the Southern Pacific Railroad Company; running Southerly along the Westerly line of said right of way, 427 feet, more or less, to the Northerly line of Martha Street; running thence Westerly along the said Northerly line of Martha Street, 200.94 feet; thence Northerly and parallel with the Easterly line of Third Street, 137.84 feet; running thence Westerly and parallel with the Northerly line of Martha Street, 12.84 feet to a point that is distant on said line, 125.00 feet Easterly from the Easterly line of Third Street; running thence Northerly and parallel with the said Easterly line of Third Street and its Northerly prolongation, for a distance of 167.84 feet to a point on the said Northerly line of Lewis Street; running thence Westerly along the said Northerly line of Lewis Street, 125.00 feet to the point of beginning and being all of Lot 7 and a portion of Lots 6, 8, 9 and 10 in Block 52A and all of Lots 11, 12, 17 and a portion of 18, in Block 52B, as said lots and blocks are designated and delineated on that certain Map entitled, "Map of that part of the Reed Addition called the Homestead", and which Map was recorded in the office of the County Recorder of the County of Santa Clara, State of California, on April 21, 1876 in Book A of Maps, at page 9 and all of Lots 13 and 16 and a portion of an alley 25.00 feet in width (now abandoned) in Block 52, as shown upon that certain Map entitled, "City of San Jose, copied from the original map drawn by Sherman Day, Civil Engineer", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, in Book A of Maps, at pages 72 and 73, and a portion of Lewis Street (now abandoned) as described in the Deed from Clyde L. Fischer, as president of the City Council of the City of San Jose, a municipal corporation of the County of Santa Clara, and C.B. Goodwin, as City Manager of said City of San Jose, to Barron - Gray Packing Co., dated May 9, 1939, recorded May 12, 1939 in Book 936 of Official Records, page 31:

“TOGETHER WITH”

Those certain rights conveyed by Deed recorded on January 4, 1979 in Book E208 of Official Records, Page 150 and corrected by Deed recorded on April 18, 1894 in Book 1470 of Official Records Page 664; by Deed recorded on January 4, 1979 in Book E208 of Official Records Page 157; by Deed recorded on April 18, 1981 in Book 1470 of Official Records, Page 668.

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

BEGINNING at the point of intersection of the Northerly line of Lewis Street, with the Easterly line

of Third Street; running thence from said point of beginning Northerly along the Easterly line of Third Street, 62.84 feet to the Southwesterly corner of that certain parcel of land described in the deed from George D. Toy to Berta L. Hammond, dated April 8, 1902, recorded April 29, 1902 in Book 253 of Deeds, page 478, Santa Clara County Records; running thence Easterly along the Southerly line of land so described in the Deed to said Toy, 125.00 feet to the Southeasterly corner thereof; said corner being on a line which is 125.00 feet Easterly from the Easterly line of Third Street; running thence Southerly and parallel with the said Easterly line of Third Street, for a distance of 62.84 feet, more or less, to a point on the said Northerly line of Lewis Street; running thence Westerly along the said Northerly line of Lewis Street, 125.00 feet to the point of beginning.

