



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: September 14, 2006

COUNCIL DISTRICT: 2
SNI AREA: None

SUBJECT: PDC04-091. PLANNED DEVELOPMENT REZONING FROM THE R-1-5 RESIDENCE ZONING DISTRICT TO THE A (PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW ONE EXISTING AND FIVE NEW SINGLE-FAMILY DETACHED RESIDENCES ON AN APPROXIMATELY 1.7 ACRE SITE.

RECOMMENDATION

The Planning Commission voted 4-1-2, Commissioner Kalra, opposed, Commissioners Pham and Platten absent, to recommend that the City Council approve the proposed Planned Development Rezoning from the R-1-5 Residence Zoning District to the A (PD) Planned Development Zoning District to allow a maximum of (4) four single-family detached residences on an approximately 1.7 gross acre site.

OUTCOME

Should the City Council approve the Planned Development Rezoning as recommended by the Planning Commission, up to (4) single-family attached residences may be built on the subject 1.7 gross-acre site, consistent with the attached revised Development Standards for the subject rezoning. This future development would be subject to additional Development Permits and subdivision maps.

BACKGROUND

On September 13, 2006, the Planning Commission held a public hearing to consider a Planned Development Prezoning from the R-1-5 Residence Zoning District to the A (PD) Planned Development Zoning District to allow one existing and five new single-family detached residences on a 1.7 gross-acre site. The Director of Planning recommended conditional approval of the project for a maximum of (3) three units on the site.

Staff made a brief summary of the written staff report. Richard Hartman, the project architect spoke in favor of the project as originally proposed. He indicated that many other lots in the area were smaller than the lots proposed by the applicant, and that he believed that the proposal should be eligible for the General Plan Two-Acre Rule, as the site was located near bus lines, and because the house design would "dig" the houses into the hill.

Several neighborhood residents spoke and urged the Commission to only support (3) three units total per staff recommendation, and stated that houses near the intersection of Eberly Drive and Neilson Court would tower over houses to the south of the site. Other residents indicated that the proposal for six units would change the character of the neighborhood.

The applicant's architect stated existing Eucalyptus trees would provide screening, and that the proposed homes were above average quality homes, and urged the Commission to recommend six units. In response to Commissioner Kalra, staff identified the lots that staff believes were appropriate for constructing houses. In response to Commissioner Zito, regarding whether the new house proposed on Lot No. 4 would be possible based on staff's criteria (see original staff report). Staff indicated that placing a unit on Lot No. 4 would not be consistent with their criteria.

Commissioner Kamkar asked for clarification on whether the applicant would find a four-house project acceptable, and the applicant indicated that six houses would be preferred. Commissioner Kamkar then proposed (4) four units on the site and the City Attorney asked for other Commission input.

Commissioner Campos asked for clarification on whether findings had been made for an exceptional project and use of the "Two-Acre Rule." Staff noted that a combination of concerns regarding tree preservation, grading and building design had led to the recommendation for only (3) three units. Staff also explained possible creative responses to privacy issues. Commissioner Kalra commented that (3) three units was the right level of development for the site. Staff noted that the area was designated Very Low Density Residential (2 DU/AC) on the General Plan and that the large lot (i.e., project site) was possibly a result of some density transfer in the past, and that staff believes that (3) three units total on the site would be appropriate.

Commissioner Zito, stated that he felt four houses could fit on the site, and Commissioner Dhillon indicated that he believed that 5-units would be acceptable.

Commissioner Kamkar restated a recommendation motion for up to a maximum of (4) four units total, with attention to privacy issues, noting exceptional design of homes would be possible, with minimal grading and a respect for site topography, which could provide findings for use of the *Discretionary Alternate Use Policy: Two Acre Rule*.

The public hearing was then closed.

ANALYSIS

The proposed rezoning of the site from the R-1-5 Residence Zoning District to the A (PD) Planned Development Zoning District, as conditioned by staff, is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Low Density Residential (2 DU/AC) without application of the *Two Acre Rule*, and provides an opportunity to further important goals and strategies of the General Plan.

The Planning Commission's proposal would require the application of the *Discretionary Alternate Use Policy: Two Acre Rule* to find the project in conformance with the General Plan, as the resulting density of the project would exceed two dwelling units per acre.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 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)**
- Criteria 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)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The rezoning was also published in a local newspaper, the Post Record. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

A Community Meeting was held at the Boys and Girls Club in the area on August 30, 2005, which was well attended and the community reiterated concerns about the project. These concerns included the negative impact that the project would have on the neighborhood and property values, traffic congestion in the neighborhood, and statements that the project was too dense (i.e., the number of units should be reduced) for the neighborhood, and had setbacks that were less than the "actual building separations in the neighborhood". All correspondence received to date has been attached to this report.

COORDINATION

This project was coordinated with the Department of Public Works, Fire Department, Police Department, Environmental Services Department and the City Attorney.

FISCAL/POLICY ALIGNMENT

As conditioned by staff and the Planning Commission, this project is consistent with applicable General Plan policies as further discussed in attached staff report.

COST SUMMARY/IMPLICATIONS

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

Date: September 14, 2006

Subject: PDC 04-091

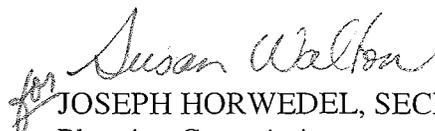
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BUDGET REFERENCE

Not applicable.

CEQA

Mitigated Negative Declaration adopted on September 5, 2006.


JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Susan Walton at 408-535-7847.

Attachments:

Development Standards as recommended by the Planning Commission

Correspondence received from applicant's attorney September 12, 2006

cc: Rick and Holly Hartman, Hometec Architecture, 619 North First Street, San Jose, CA 95112
Kenny Wong, KW Eng. Inc., 516 A Valley Way, Milpitas, CA 95035
Joan R. Gallo, Hopkins & Carley, P .O. Box 1469, San Jose CA 95109-1469
Will Burns, David J. Powers and Associates, 1885 The Alameda, Suite 204, San Jose, CA
95126
Darlene Thorne, 4984 Eberly Drive, San Jose, CA 95111

DRAFT GENERAL DEVELOPMENT PLAN NOTES
(PER PLANNING COMMISSION RECOMMENDATION)

PDC 04-091

Development Standards

Permitted Uses:	Permitted uses shall be up to (4) four single-family detached residential units (total).
Maximum. Building Height:	The maximum building height shall not exceed 30 feet and two (2) stories
Minimum Lot Size:	12,830 square feet
Parking Requirements:	Single-family detached residential: (2) covered spaces per unit.
Front Setbacks:	30 Feet
Rear Setbacks:	25 Feet
Side Setbacks	
(Interior):	5 Feet
(Corner):	15 Feet

Additions, pools, spas, decks, accessory structures, and similar structures shall only be placed on the flat portions of the site, and are subject to separate review and approval, to the satisfaction of the Director of Planning.

General Notes

Water Pollution Control Plant

Pursuant to Part 2.75 of Chapter 15.12 of the San Jose Municipal Code, no vested right to a building permit shall accrue as the result of the granting of any land development approvals and applications when and if the city manager makes a determination that the cumulative sewage treatment demand on the San Jose – Santa Clara water plant will cause the total sewage treatment demand to meet or exceed the capacity of the San Jose – 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 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 approving authority.

DRAFT GENERAL DEVELOPMENT PLAN NOTES
(PER PLANNING COMMISSION RECOMMENDATION)

Archaeology

Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California 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 Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

Tree Mitigation

Each tree to be removed from the site shall be mitigated at the following ratios:

- Each tree removed less than 12" in diameter shall be replaced by one 15-gallon tree.
- Each tree removed less than 12" up to 18" in diameter shall be replaced by two 24-inch box trees.
- Each tree removed 18" in diameter or larger shall be replaced by four 24-inch box trees.

Parkland Dedication Ordinance

The project shall conform to the requirements of the Parkland Dedication Ordinance.

Last revised on 9/14/06

THE LETITIA BUILDING
70 S FIRST STREET
SAN JOSE CA 95113-2406

MAILING ADDRESS
P O BOX 1469
SAN JOSE CA 95109-1469



HOPKINS & CARLEY

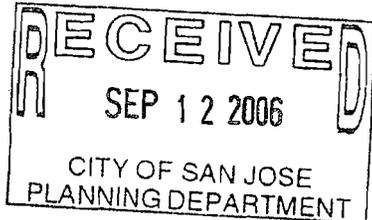
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**Agenda 9/13/06
Item 4f**

September 12, 2006

San Jose City Planning Commission
200 East Santa Clara Street, Tower 3
San Jose, CA. 95113

Re: Neilson Court: PDC04-091

Dear Commission Members:

The applicants Mr. and Mrs. Giani Smith have owned and lived on the 1.7 acre parcel of land on the corner of Neilson Court and Eberly Drive for the past five years. They will continue to live on the property after the proposed new adjacent homes are built. Therefore, they are especially interested in a project that is compatible with their neighborhood and are taking care to ensure that their new immediate neighbors have high quality homes.

Originally, in the pre-application stage discussions with Planning staff, the owner proposed 9 lots, which would be allowable under the two-acre rule. However, based on concerns expressed by the Planning staff and neighbors, they substantially reduced their proposal to 6 lots.

Neighborhood Compatibility

This is an infill neighborhood. The proposed P.D. zoning would create 6 lots, ranging from 7,600 sq. ft. to 22,640 sq. ft. in size. It is largely surrounded by lots which are 7,900 sq. ft. or less in size. There are lots in the immediate vicinity which are only 3,000 sq. ft. or less. This project cannot be considered too dense. The zoning is R-1-5 or 5 lots to an acre while this project proposes 3.5 to an acre. Almost 70% of the land will remain in open space.

The property is transit convenient. It is within walking distance (300 ft) of the bus stop at Branham Lane and Eberly and is two miles each from the CalTrain stations at Monterey Highway and Capitol Expressway to the north and Monterey Highway and Blossom Hill to the south. Light rail is 2 miles from the property at Branham Lane and Highway 87.

I have attached an exhibit for your convenience showing the relative size of the surrounding development.

Grading

The grading plan involves a total cut of 124 cubic yards and total fill of 48 cubic yards for 6 lots. The maximum cut on any of the three disputed eastern lots is 19 cubic yards. The maximum fill on any lot is 26 cubic yards. According to Vien Vo, P.E., President of United Soil Engineering, Inc., grading is considered minimal when it amounts to less than 50 cubic yards of cut and fill. Indeed, a number of cities do not even require a grading permit if less than 100 cubic yards of soil is moved.

Please note that all of the contours of the hillside are carefully preserved. There is no change in the topography except as minimally required for front yard drainage.

The Two Acre Rule

The design meets the test of being exceptional for purposes of the two acre rule. The houses were designed to fit the contours of the hillside. The layout is a second story "step down" which fits the structure into the hillside rather than making the hillside fit the house. Rather than monster houses on large lots, the houses will range from 3170 sq ft to 3273 sq. ft and will be compatible with the surrounding houses. These houses were specifically designed for these lots. They are sensitively designed and will be of very high quality. The existing trees at the rear property line will be retained to provide privacy for the downhill neighbors.

Conclusion

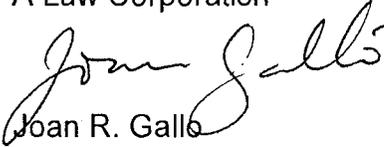
This project proposes to a PD rezoning for 6 lot infill subdivision. The neighborhood, with the exception of a few very large lots, are all relatively small lot subdivisions. The project is near transit and, while neighbors often object to any increase in density in the neighborhood, this property is clearly suitable for infill. The project has been designed to maintain the contours of the hillside and grading is minimal. The houses are sensitively designed to fit into and be part of the hillside.

San Jose City Planning Commission
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Therefore, we ask for your recommendation of approval. Thank you for your consideration.

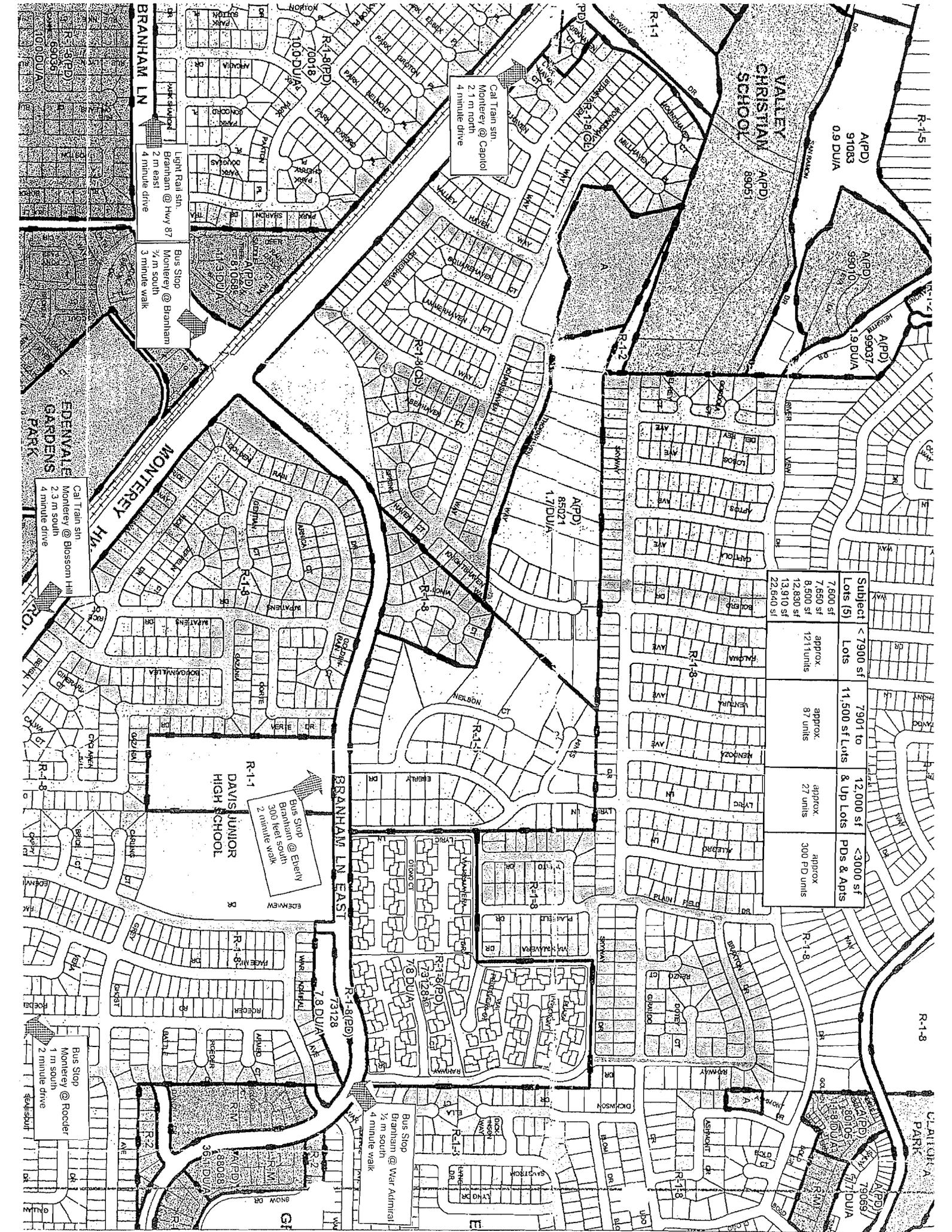
Sincerely,

HOPKINS & CARLEY
A Law Corporation


Joan R. Gallo

JRG/bm

cc: Giani Smith
Richard Hartman
Vien Vo
Jeff Roche



Cal Train stn
Monterey @ Capitol
2.1 m north
4 minute drive

Light Rail stn.
Branham @ Hwy 87
2 m east
4 minute drive

Bus Stop
Monterey @ Branham
3/4 m south
3 minute walk

Cal Train stn
Monterey @ Blossom Hill
2.3 m south
4 minute drive

R-1-1
BUS STOP
Branham south
300 feet south
2 minute walk

R-1-1
DAVIS JUNIOR
HIGH SCHOOL

Bus Stop
Branham @ Ver Admiral
1/2 m south
4 minute walk

Bus Stop
Monterey @ Roeder
1 m south
2 minute drive

Subject < 7900 sf Lots (5)	7901 to 11,500 sf Lots	12,000 sf & Up Lots	<3000 sf PDs & Apts
7,600 sf	approx. 87 units	approx. 27 units	approx. 300 PD units
7,650 sf	approx. 121 units		
8,500 sf			
12,830 sf			
13,910 sf			
22,640 sf			

BRANHAM LN
EDENVALE GARDENS PARK
MONTEREY HWY
R-1-8(PD) 91083 0.9 DU/A
R-1-8(PD) 99010 1.9 DU/A
R-1-8(PD) 99037 1.9 DU/A
R-1-11
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