

RESOLUTION NO. 73507

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ,
GRANTING, SUBJECT TO CONDITIONS, A PLANNED
DEVELOPMENT PERMIT TO ALLOW THE USE OF CERTAIN REAL
PROPERTY DESCRIBED HEREIN FOR CONSTRUCTION OF SIXTY
(60) EFFICIENCY RESIDENTIAL UNITS**

FILE NO. PD06-047

WHEREAS, pursuant to the provisions of Chapter 20.100.900 of Title 20 of the San José Municipal Code, on March 30, 2006, an application (File No. PD06-022) was filed for a Planned Development Permit to (1) demolish an existing residential structure containing 60 Single Room Occupancy (SRO) living units, and (2) construct a multiple-dwelling residential building containing 60 efficiency living units that includes one manager's unit on the subject site, situated in the A(PD) Planned Development Zoning District and located on the west side of South 9th Street approximately 90 feet south of East William Street, San José, and

WHEREAS, the subject property is all of that certain real property described in Exhibit "A," 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, this City Council has reviewed and considered an Exemption from environmental review for said project; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "The reconstruction of Casa Feliz, 525 South 9th Street, San Jose, California," dated October 23, 2006. 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, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

Section 1. Facts.

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

1. On September 11, 2006 the applicant, First Community Housing, filed a Planned Development Rezoning file no. PDC06-099 to rezone the subject site from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District and Planned Development Permit file no. PD06-047 to (1) demolish an existing residential structure containing 60 SRO living units, and (1) add one efficiency living unit to 59 previously-approved efficiency living units that include one manager's unit for a total of 60 efficiency living units on the subject site.
2. The existing residential structure is a former sorority building constructed in the 1960s.
3. The subject site is flat and rectangular in shape except for a notch at the northwest corner of the site. It has approximately 92 feet of frontage on S. 9th Street.
4. The subject site is located in the University SNI area.
5. Surrounding land uses consist of multi-family residential uses to the north, east and south; and single-family residential to the west.
6. Each of the 60 proposed units would be 100 percent affordable, and 35 percent of the units would be reserved for individuals with developmental disabilities. Each efficiency living unit contains kitchen and bathroom facilities.
7. The building entrance on S. 9th Street takes access from a common open space area flanked by two building masses. The new building contains four floors and one below-grade parking level. Exterior building materials include cement fiber lap siding, stucco, and fabric awnings.

8. The maximum building height is 45 feet, except for the mechanical penthouse that extends to 53 feet.
9. Setbacks are 15 feet front, 5 feet sides, and 25 feet rear with provisions for minor incursions such as stairs, patio trellis, and balcony.
10. In addition to the outdoor common open space at the southwest corner of the site, interior common open space is also proposed on each floor.
11. A total of 22 parking spaces are proposed in a below-grade level beneath the proposed structure, as well as ten motorcycle parking spaces, and 16 bicycle parking spaces.
12. The Director of Planning, Building, and Code Enforcement determined that the project is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15280. Section 15280 applies to
13. The Director of Planning, Building, and Code Enforcement determined the existing building, built in 1960, does not qualify for the National Register of Historic Places or California Register of Historic Resources because it is less than 50 years old, and it does not meet any of the criteria for listing on those registers. In addition, it would not qualify as a City Landmark based on preliminary review of the City's historic evaluation criteria.
14. The project conforms to the General Plan based on the "Locations of Projects Proposing 100% Affordable Housing" Discretionary Alternate Use Policy. This policy allows for development of housing at any density if the housing is (1) 100 percent affordable, (2) proposed for a site and density compatible with surrounding land use designations, and (3) located on a site consistent with the housing distribution policies of the plan.
15. General Plan Housing Policies encourage the provision of housing opportunities to meet the needs of lower-income members of the community in a stable neighborhood where adequate urban services are already provided.
16. Pursuant to San Jose Municipal Code Section 20.80.460, the City Council shall determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation. In making such a determination, the following shall be considered:
 - a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
 - b. The failure to approve the permit would jeopardize public health, safety or welfare;

- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San Jose;
- e. Both inventoried and non- inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Section 2. Findings.

Based on the above facts, the City Council concludes and finds that:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan in that:
 - a. The zoning for the property is consistent with the General Plan based on the “Locations of Projects Proposing 100% Affordable Housing” Discretionary Alternate Use Policy. This policy allows for development of housing at any density if the housing is (1) affordable, (2) proposed for a site and density compatible with surrounding land use designations, and (3) located on a site consistent with the housing distribution policies of the plan. The proposed project is compatible with the surrounding area that has multi-family residential General Plan designations, Zoning designations, and uses because the proposed residential use will function much like the surrounding multi-family residential uses.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development zoning of the property in that the building location, setbacks, density, number of units, type 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 structure are integrated into a unified design.
 - b. The proposed project is architecturally compatible with existing and planned development in the area.
4. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. The Director of Planning, Building, and Code Enforcement determined that the

project is exempt from California Environmental Quality Act (CEQA) review under the Statutory Exemption in Section 15280 of the State Guidelines for Implementation of the CEQA. Section 15280 applies to lower-income housing projects that meet certain criteria, and the Director of Planning, Building, and Code Enforcement determined that the project meets these criteria.

- b. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.
5. The benefits of permitting the demolition, removal or relocation of the existing building outweigh the impacts of the demolition, removal or relocation in that the reconstruction of Casa Feliz would replace a dilapidated residential building with a modern residential building that maintains the existing supply of 60 efficiency units in a way that is compatible with the surrounding neighborhood.

Section 3. Conditions.

The City Council hereby approves the Planned Development Permit subject to the following conditions:

1. **Acceptance of Permit.** Pursuant to San Jose Municipal Code 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.
2. **Deadline for Commencing Construction.** This Planned Development Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council if within such two-year period, construction of buildings has not commenced, pursuant to and in accordance with, the provisions of this Site Development Permit. The date of issuance is the date this Permit is approved by the City Council; PROVIDED, HOWEVER, that in no event shall the date of issuance of this Planned Development Permit be any earlier than the effective date of Planned Development Rezoning PDC06-099. The Director of Planning, Building and Code Enforcement may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San Jose Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.

3. **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.
4. **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.
5. **Conformance with Plans.** Construction and development shall conform to the approved development plans entitled, "The Reconstruction of Casa Feliz, 525 South 9th Street, San Jose, California" dated October 23, 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).
6. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
7. **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.
8. **Construction Impact Mitigation Measures.** The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical conditions to minimize noise created by faulty or poorly maintained engine, drive-train and other components. The project developer shall ensure that the following construction impact mitigation measures are implemented throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, their contractors or

subcontractors shall be cause for shutdown of the project site until the City ensures compliance with the following conditions:

- a. *Construction Hours.* Construction activities shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site construction activities located within 500 feet of any residential unit. Interior work that does not result in any audible noise from outside the structure is permitted on Saturday between the hours of 8:00 a.m. and 7:00 p.m. Exceptions to the construction hours may be administratively approved on a case-by-case basis subject to mailed notification to the surrounding neighborhood to the satisfaction of the Director of Planning, Building, and Code Enforcement.
- b. *Construction Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the said construction times to prevent the disruption of nearby residents.
- c. *Construction Employees.* Workers shall not arrive to the site more than 15 minutes prior to said construction times.
- d. *Plans.* The construction hours shall be printed on all plans for the project used to construct the project.
- e. *Mitigation Measure Disclosure.* These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors. In addition, the project developer is responsible to ensure the following occur prior to the issuance of a Building Permit for the project.
- f. *Disturbance Coordinator.* The developer shall identify a disturbance coordinator. The disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other conditions in this permit. The name and phone number of the disturbance coordinator shall be posted on the project site so it is legible from the public street.
- g. *Daily Log.* The disturbance coordinator shall maintain a log of daily activities on the project, including but not limited to, verification of site closure activities, project cleanliness, complaints on site activities and conditions and dates and times of the coordinators visits to the project if the coordinator is not solely responsible for this project site.
- h. *Telephone Contact.* A phone with answering machine for non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents.
- i. *Signage.* The name and phone number of the disturbance coordinator, the hours of construction limitations, City File Number PD 06-047, city contact person and phone number, and shall be displayed on a weatherproof sign posted at each

entrance to the project site.

9. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set and the Permit Adjustment as required by condition number 1. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
10. **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.
11. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect. The tot lot shall be removed and landscaping and irrigation shall be provided within that area at the northeast corner of the site.
12. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.
13. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with the San José Municipal Code.
14. **Street Cleaning and Dust Control/Air Quality.** The project shall incorporate City of San José practices to mitigate dust during all phases of construction. These practices meet or exceed the Bay Area Air Quality Management District's (BAAQMD) feasible construction dust control measures to reduce construction impacts to a level that is less-than-significant. 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. The following construction practices will 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 that can be blown by the wind.

- c. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- d. Water or use soil stabilizers on haul routes, parking, and staging areas.
- e. Damp sweep daily (or as often as necessary) to keep the adjoining streets, private streets, paved access roads, parking areas and staging areas within and adjoining the construction site free of dust and debris.
- f. 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.
- g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- h. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- i. Replant vegetation in disturbed areas as quickly as possible.
- j. Hydroseed areas where grading is complete or inactive.
- k. Establish vehicle speed controls on the site.

15. **Public Works Clearance.** Prior to the issuance of Building Permits, the applicant will be required to have satisfied all of the following Public Works conditions (3-06356) to the satisfaction of the Director of Public Works. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Prior to the approval of the tract or parcel map by the Director of Public Works, the applicant will be required to have satisfied all of the following Public Works conditions.

- a. *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.
- b. *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) The Project site is within the State of California Seismic Hazard Zone. A soil

- investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- c. *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.
 - d. *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.
 - e. *Electrical:* The existing electroliers will be evaluated at the public improvement stage and any necessary street lighting requirements will be included as part of the improvement plans.
 - f. *Site Design:* Provide a 20-foot minimum stacking area at the driveway entrance to avoid obstructing the pedestrian sidewalk.
 - g. *Street Improvements.*
 - 1) Replace curb, gutter, and sidewalk along project frontage.
 - 2) 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.
 - h. *Street Trees.* Install street trees within the public right-of-way along the entire street frontage per City standards. Trees shall be installed in cut-outs at the back of curb. Trees shall be 15-gallon Platanus Acer folia 'Yarwood' Sycamores in accordance with the tree removal permit issued by the City Arborist.

16. **Lighting.** Proposed lighting shall conform to the following criteria.

- a. On-site, uncovered exterior lighting shall use Low-Pressure Sodium fixtures.
- b. All lighting shall be designed, controlled, and maintained so that no light source is visible from outside of the property. No light trespass onto adjacent properties is permitted.

- c. Pedestrian level lighting is exempt from the low-pressure sodium requirement; however, it must be fully cut-off and fully shielded.
17. **Roof Equipment.** Any proposed roof equipment shall be screened from view and shall be subject to separate approvals and to the discretion of the Director of Planning, Building, and Code Enforcement.
18. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
19. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set and in the provided colors and materials submittals. No copper or nickel exterior materials are permitted.
20. **Fire Department Comments.** The project shall conform to all Fire Department comments at the Plan Review stage, including but not limited to those comments contained in the memorandum from Nadia Naum-Stoian dated March 16, 2005 for the subject project. Comments shall be completed to the satisfaction of the Fire Chief.
21. **Street Numbers.** Street numbers shall be visible day and night from the nearest street, either by means of illumination or by the use of reflective materials. Street numbers shall be displayed both on the front of each unit and on the rear, garage elevation of each unit.
22. **Sign Approval.** The attached building signage ("Casa Feliz") shown on the front elevation is hereby approved. No other signage, other than the directory signage, is approved with this permit. Any proposed signage shall be approved by the Director of Planning, Building, and Code Enforcement.
23. **Manager's Information.** Contact information for the on-site manager shall be posted in a prominent location at the entry to the building.
24. **Tree Removals.** No ordinance-sized trees are authorized for removal with this permit. Two non-ordinance sized trees (a Silk tree and an Italian Stone Pine tree measuring approximately 13" and 15" in circumference at two feet above grade, respectively) are approved for removal with this permit. The two ordinance sized trees in the public right-of-way will need to go through a separate approval process for their removal through the City Arborist. No tree larger than 56 inches in circumference, measured at a height of 24 inches above the natural grade, shall be removed without a Planned Development Permit Amendment or a Tree Removal Permit issued by the Director of Planning, Building and Code Enforcement. Removal of trees less than 56 inches in circumference shall require approval of the Director of Planning, Building and Code Enforcement through issuance of a Permit Adjustment.
25. **Permeable Pavement.** Permeable paving materials shall be used whenever

feasible, particularly for pedestrian paths.

26. **Disconnected Downspouts.** Whenever feasible, disconnected downspouts shall be used to direct water to landscaped areas or pervious surfaces before entering public storm drains.
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, PD 06-047, 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.* Number of the building shall be easily visible at all times, day and night.
 - e. *Lock Boxes.* The project developer shall provide lock boxes for all gates to the satisfaction of the Chief Building Official and the Fire Chief.
 - f. *Mechanical Equipment.* No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55db DNL at the residential property line.
 - g. *Vehicular Entry.* The keypad entry for vehicular access to the garage shall be at least 20' from the front property line to ensure that vehicles do not block the public right-of-way.
28. **Police Department Requirements.** The following requirements shall be provided to the satisfaction of the Director of Planning, Building, and Code Enforcement:
 - a. *Address Numbers.* All buildings shall be clearly marked by address numbers at both the front porch and rear garage areas.
 - b. *Exterior Lighting.* Adequate lighting should be installed in the vehicle access lanes where the garages are located.

29. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
30. **Enclosures/Screening.** Utility structures shall be enclosed or screened to match existing/proposed fencing, screening or landscaping. The Director of Planning, Building, and Code Enforcement shall approve installation of such structures or screening.
31. **American Disabilities Act.** The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
32. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
33. **Walls/Fence Height/Location.** Walls and fencing for the project shall conform to the design standards shown in the approved Planned Development Permit plans.
34. **Garage Parking Spaces.** All garage parking spaces shown on the approved Planned Development Permit plans are to be used only as such and shall be kept free and clear of all obstructions.
35. **Management Plan.** The applicant shall present a management plan to the City of San Jose Department of Housing for approval by the Director of Housing.
36. **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 applicant shall re-enter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
37. **Archaeological Monitor.** Any clearing, grading, excavation and/or construction work shall be monitored by a qualified professional archaeologist to inspect for the presence of prehistoric (and/or historic) cultural resources. Should evidence of prehistoric (and/or historic) cultural resources be discovered during monitoring, work within the immediate area of the discovery shall be stopped to allow adequate time for evaluation and mitigation; the material shall be evaluated; and if significant, a

mitigation program including collection and analysis of the materials prior to the resumption of grading, preparation of a report and curation of the materials at a recognized storage facility shall be developed and implemented under the direction of the Director of Planning, Building and Code Enforcement.

38. **Affordability and Developmentally Disabled Criteria.** The project shall include 21 units designated for developmentally disabled residents, one unit for the manager at 60% of the area median income, and 38 units reserved for individuals making 20 to 30 percent of the area median income.
39. While this Planned Development Permit has been adopted by the City Council as of the date set forth hereinbelow, the effective date of this Permit shall be no earlier than the effective date of Planned Development Rezoning PDC06-099.

ADOPTED this 14th day of November, 2006 by the following vote:

AYES: CHAVEZ, CHIRCO, LeZOTTE, NGUYEN, PYLE,
REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: CAMPOS, CORTESE

DISQUALIFIED: NONE

RON GONZALES
Mayor

LEE PRICE, MMC
City Clerk