



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 16, 2008

COUNCIL DISTRICT: 4
SNI AREA: N/A

SUBJECT: PDC07-033 PLANNED DEVELOPMENT REZONING FROM THE A-AGRICULTURE DISTRICT AND R-1-5(PD) TO A(PD)PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW THE DEVELOPMENT OF UP TO 379 SINGLE FAMILY DETACHED RESIDENCES & 30,000 SQUARE FEET OF RETAIL, THE DEMOLITION OF TWO SINGLE FAMILY RESIDENCES AND SEVERAL ACCESSORY BUILDINGS, AND THE PRESERVATION OF ONE SINGLE-FAMILY RESIDENCE AND ONE FRUIT STAND ON A 20.52 GROSS ACRE SITE.

RECOMMENDATION

The Planning Commission voted 6-0-1 (Kinman absent) to recommend conditional approval of the subject Planned Development Rezoning with the condition that the project meeting the Residential Guidelines. The project, as proposed does not conform to the Residential Design Guidelines in respect to its provision of common open space, internal separation between buildings, and setbacks from single-family residential rear yards.

OUTCOME

If approved, the proposed Planned Development rezoning would facilitate the development of up to 379 residential units, 30,000 square feet of retail, and the demolition two single family residences and several accessory buildings and the on the subject project site. If the project were to fully conform to the Residential Design Guidelines, as recommended by the Planning Commission, the project would need to be redesigned to provide more common open space, create more separation between the new units and adjacent existing single-family rear yards, and provide larger paseos between buildings. This would require a reduction in the number of residential units if the same garden-townhome product type was proposed.

BACKGROUND

On May 14, 2008, the Planning Commission held a public hearing to consider the proposed Planned Development Rezoning. This item was deferred from the Planning Commission hearing of April 21, 2008. Staff had continued the item in order to respond to comments received on the Mitigated

Negative Declaration. The Director of Planning, Building and Code Enforcement recommended approval of the proposed rezoning which was recently revised, during the deferral period of the originally scheduled Planning Commission hearing, to include more open space, provide greater front setbacks from Berryessa Road, and provide a larger minimum setback from the adjacent existing single family residences.

ANALYSIS

Planning staff explained that the project was revised during the deferral period and that an addendum to the original staff report and a memorandum explaining staff's response to comments received on the Mitigated Negative Declaration were included in the Planning Commission packet.

The applicant's representative, Erik Schoennauer gave a description of the project scope and explained how additional open space has been provided on the project site.

A community member commented that she supported the General Plan Amendment on this site in 2006 and at that time with the understanding that the project would fully comply with the Residential Design Guidelines. She noted that at the General Plan Amendment stage, there was discussion by the applicant about providing a quality gathering space that would be provided on this site, which could be accessible to those outside the new development. She noted that the revised site plan still did not provide adequate amounts of common open space.

The applicant's representative, Erik Schoennauer, responded to the comment that there was insufficient common open space by showing the configuration of the proposed open space. He commented that the common open space totals 67,000 square feet and is 1.54 acres of land. He noted that the common open space works together with the pedestrian connections on the site and that all the open space is now linked, through pedestrian accessibility together.

Commissioner Kalra asked the applicant if the open space area that will now potentially include the relocated historic Vincent Nola house has been enlarged. Staff responded that that portion of open space has not been enlarged.

Commissioner Zito commented that open space # 3 did not seem to function as open space and it seemed like a Paseo. The applicant's representative, Erik Schoennauer, responded that open space #3 is much larger than a Paseo and it will not function like a paeso. He stated that bocce ball courts and barbeque grills will be placed in that area.

Commissioner Zito asked where all the additional 39,000 square feet of open space has been added in the revised site plan. The applicant's representative, Erik Schoennauer, responded that open space #5 is brand new and that before staff did not count some spaces because they were isolated or oddly configured, but the revised site plan connected these spaces and improved them so they are now being counted.

Commissioner Kamkar asked the applicant for the percentage of tandem spaces provided by the project. He also asked about the total parking and what the width of the garages was for the non-tandem garages. The applicant's representative, Erik Schoennauer, responded that of the 1,003 parking spaces, 322 are tandem, resulting in 32% of the spaces. Mr. Schoennauer also indicated that the garage width for non-tandem garages was 18 feet.

May 16, 2008

Subject: PDC07-033

Page 3

Commissioner Jensen asked the applicant whether the footprint of the relocated historic house was being considered in the open space calculations. Staff responded that the footprint, which was over 2,000 square feet was being considered open space. Commissioner Jensen also asked the applicant what green building strategies were proposed. The applicant's representative, Erik Schoennauer, responded that the project is working off the build it green checklist. Commissioner Jensen commented that this community is void of trees and the proposed project should plant several on site.

Staff commented that based on some comments received the day before from community member Kerri Hamilton, the project will also including traffic calming measures on the new private street that will connect Berryessa Road and Jackson Avenue. Staff also commented that at the PD permit stage, staff will work with the applicant to determine the number of residential units which will be conditioned to have the issuance of building permits withheld until the full development of the commercial component is complete.

Commissioner Zito asked staff what this project is providing to meet the PDO/PIO credit. Parks Staff commented that the project will be paying in lieu fees to develop an adjacent park.

Commissioner Zito asked staff whether open space areas are consulted with the Parks Department. Staff commented that open space is evaluated based on criteria listed in the Residential Design Guidelines, including common open space's accessibility, distribution, size, and functionality. Staff commented that the Parks Department evaluates a project's open space for whether it receives credit for PDO/PIO requirements, but not for the functionality of open space which does not receive credit.

Commissioner Zito used a football analogy to comment that the project started out poor and now it is better, but it still is not a good project. He stated that this site is approximately 20 acres in size with no real issues from keeping it from fully meeting the Residential Design Guidelines. Commissioner Zito made a motion to approve the project with the condition that it conforms to the Residential Design Guidelines.

Staff asked for clarification as there are several criteria in the Residential Design Guidelines and that the project specifically did not conform to the Guidelines standards for separation of three story structures from single-family rear yards(the Guidelines call for a separation of 2 feet horizontal separation for every 1 foot of building height of the third story building, and the proposed project is providing a 50 foot aggregate setback and a 30 foot minimum setback in one location) for provision of common open space (the Guidelines call for 200 square feet per unit, only 175 square feet per unit are being provided by the proposed project), and for internal separation between three-story buildings (the Guidelines call for 30 feet of separation, only 20-26 feet of separation are being provided by the proposed project).

Commissioner Zito clarified his motion was for the project to meet all the Residential Design Guidelines as well as better deal with the separation between the commercial portion of the site and the commercial portion. Commissioner Zito's motion passed 6-0-1 (Kinman absent).

POLICY ALTERNATIVES

Should the City Council choose to deny the subject project, the existing zoning allowing up to 147 dwelling units on the site would remain in place.

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)**

The revised site plan and the addendum to the Staff Report have been posted on the Planning Division's website and emailed to those community members who attend the Community Meeting. The revised site plan provides several improvements from the site plan shown to the community at the community meeting, which are articulated in this addendum.

The project was presented at a Community Meeting on November 15, 2007 at the Vinci Park Elementary School in order to discuss the proposed project and solicit feedback from the community. Approximately eight members of the community attended the meeting. Project-related comments included concerns construction impacts, particularly related to any impact on water pressure in the neighborhood, and the appropriateness of three story residences next to single-family residences.

Signage has been posted at the site to notify the neighbors and public of the proposed rezoning. Notices of the public hearing before the Planning Commission and City Council were published, posted on the City of San Jose website and distributed to the owners and tenants of all properties located within 1,000 feet of the project site. A notice indicating the public review period of Draft Mitigated Negative Declaration (MND) for the project was also mailed to property owners and tenants within 1,000 feet of the project site. Both the MND and copies of this staff report were posted on the City web site. Staff has been available to discuss the project with members of the public.

COORDINATION

This project was coordinated with Public Works, Parks, Recreation, and Neighborhood Services, and City Attorney.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan goals and policies as further discussed in attached staff report.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

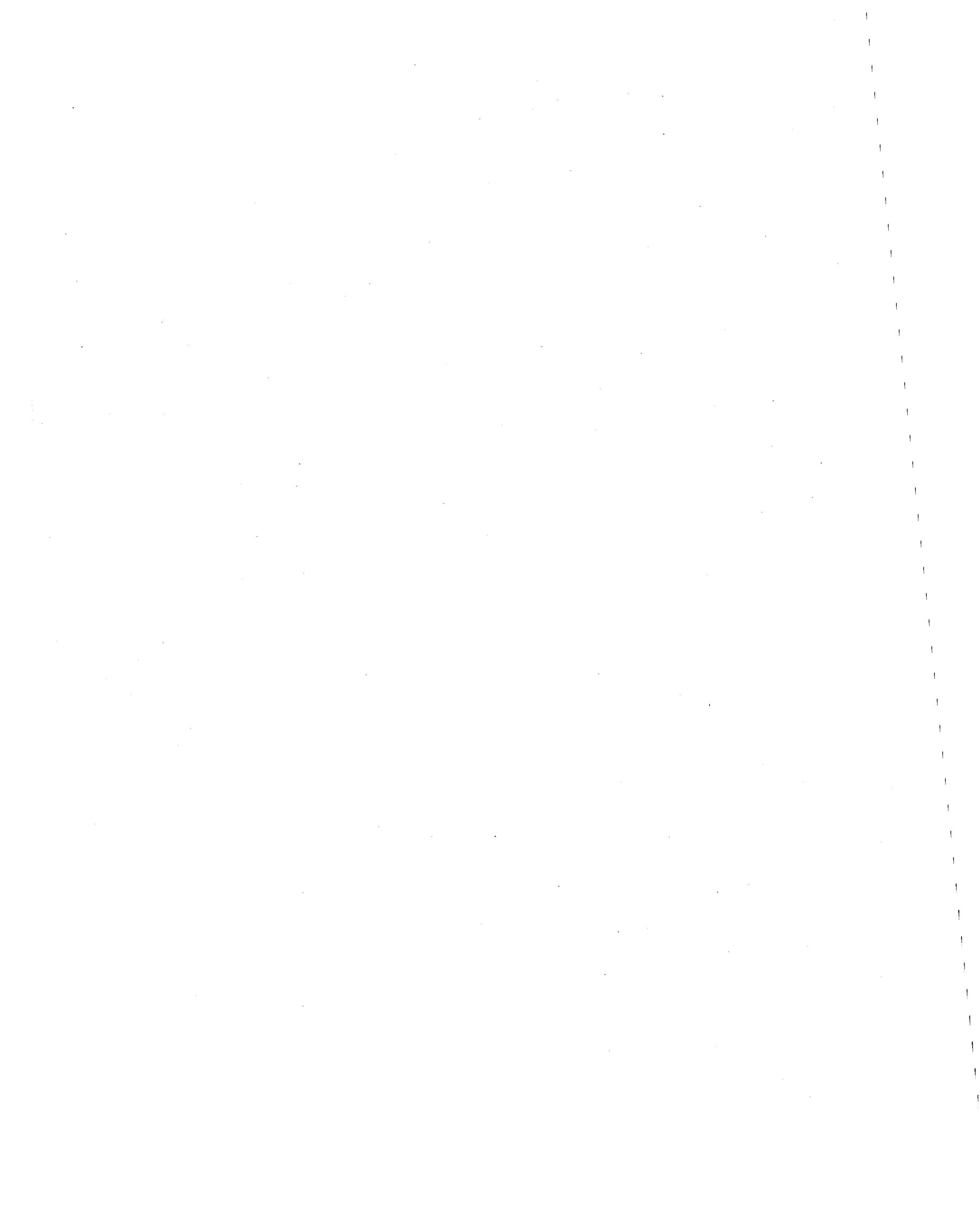
Not applicable.

CEQA

Planning Director responded to comments received by the Santa Clara Valley Water District and Pacific Gas & Electric on the Draft Mitigated Negative Declaration. The Mitigated Negative Declaration was adopted by the Planning Director May 7, 2008. The Mitigated Negative Declaration indicates that the project will not result in a significant environmental impact when the identified mitigations are implemented. The Mitigated Negative Declaration addressed a multitude of issues. The section below highlights the key issue of cultural resources associated with this development. For the purposes of obtaining clearance through a Mitigated Negative Declaration under the California Environmental Quality Act, a project shall not result in significant unmitigated impacts. With the implementation of the proposed mitigation measures, which include, related mitigation for air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, and noise, the project will not have a significant impact on the environment. A more comprehensive accounting of the environmental mitigation measures required as part of this project can be found in the project's Initial Study. The full text of the Initial Study is available online at:
<http://www.sanjoseca.gov/planning/eir/MND.asp>


FOR JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Jeannie Hamilton, Department of Planning, Building and Code Enforcement at 535-7850.





PC AGENDA: 5/14/08
ITEM: 4E

Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: May 7, 2008

COUNCIL DISTRICT: 4

SUBJECT: PDC07-033, Planned Development Rezoning from the A-Agriculture District and R-1-5(PD) to A(PD)Planned Development Zoning District to allow the development of up to 379 single family detached residences & 30,000 square feet of retail, the demolition of two single family residences and several accessory buildings, and the preservation of one single-family residence and one fruit stand on a 20.52 gross acre site.

SUPPLEMENTAL

This memo transmits the Planning Director's responses to comments received on the Draft Mitigated Negative Declaration and associated text revisions to the Initial Study prepared for the project. The responses were provided to the commentors May 7, 2008. The Mitigated Negative Declaration was adopted by the Planning Director May 7, 2008.

Joseph Horwedel
Joseph Horwedel, Director
Planning, Building and Code Enforcement

Attachments

1. Revisions to text of Initial Study
2. Responses to comments from Samuel Yung, Santa Clara Valley Water District April 15, 2008
3. Responses to comments from Alfred Poon, Pacific Gas and Electric, April 17, 2008
4. Copies of comment letters from SCVWD and PG&E



REVISIONS TO THE TEXT OF THE INITIAL STUDY

The following revisions are proposed to the text of the *Pepper Lane PD Rezoning Initial Study*, dated May 7, 2008. Revised or new language is underlined. All deletions are shown ~~with a line through the text~~.

Page 39 The first paragraph of the page within Section F Geology and Soils will be revised as follows:

~~The project will require the import of approximately 70,000 cubic yards of material to construct the development above the floodplain.~~

Based on research of detailed hydrologic and hydraulic information available from the original Soil Conservation Service, it has been determined that the site should not be located in the AO-2 flood plain (depth 2 feet), as designated on the existing FEMA Flood Insurance Rate Map. The applicant will obtain a Letter of Map Revision (LOMR) in order to document the more accurate FEMA designation to Flood Zone B. The project's consulting Professional Engineer has indicated that if a Letter of Map Revision is obtained from FEMA, the amount of imported material required to construct development above the flood plain is approximately 35,000 cubic yards.

Page 44 The second paragraph of the page within section H Hydrology and Water Quality will be revised to include the following additional information:

Based on a letter dated April 29, 2008, authored by Professional Engineer, Kirk R. Wheeler, the designation of ZONE AO on the Flood Insurance Rate Maps prepared by FEMA appears to be an inaccurate designation. The current FEMA FIRM flood plain maps, which indicate the site as being in Zone AO were based on a Soil Conservation Service (SCS) study performed in 1985. The FIRM did not include the development of Tract 9026, which is a tract of single family homes located just northeast of the site, between the Pepper Lane site and the Highway 680. Based on the site's topography and the 100-year sheet flow flowrate, it appears that the Zone AO (depth 2 feet) flood zone is not accurate for the site and rather that the Pepper Lane site should be in Flood Zone B with average depths less than one foot deep. This information confirms the proposed fill on the site would not affect the flood conditions on adjacent properties. The proposed fill at the property line is at or below the adjacent property elevations. The project has been conditioned to obtain a Conditional Letter of Map Revision to formalize the accurate FEMA FIRM Zone designation.

Page 44 The fourth paragraph of the page within section H Hydrology and Water Quality will be revised as follows:

The project site is located within the watershed of the ~~Guadalupe River~~ Upper Penitencia Creek, which ultimately flows into South San Francisco Bay and is within the jurisdiction of the San Francisco Regional Water Quality Control Board (RWQCB).

Page 77 The second paragraph of the page within section P Utilities and Service Systems will be revised to include the following:

Electric overhead transmission lines are located along the frontage of Berryessa Road and a utility pole is located on the roadway pork chop located on the North East corner of the Berryessa Road and Jackson Avenue intersection. The project will modify the traffic signal at the intersection of Berryessa Road and Jackson Avenue. The design of the signal modification will be done in such a manner as not to disturb the existing utility pole on the roadway intersection pork chop. As is a standard measure, the project will have the choice in either paying a in lieu fee of its fair share contribution toward citywide undergrounding efforts or will underground the transmission lines along Berryessa Road.

May 7, 2008

Santa Clara Valley Water District
Attn: Samuel Yung
5750 Almaden Expressway
San Jose, CA 95118-3686

RE: Response to Comments regarding Draft Mitigated Negative Declaration
for PDC07-033, Pepper Lane, located on SE corner of Berryessa & Jackson

Dear Mr. Yung,

Thank you for your comment letter dated April 15, 2008 on the Draft Mitigated Negative Declaration prepared for the above-reference residential development application. You raised concerns for the potential of proposed project's impact on increasing the flooding potential on adjacent properties. Specifically, you raised this concern based on the Initial Study information that the subject site is within Zone AO on the current Federal Emergency Management Agency (FEMA) maps and that the project was proposing to import approximately 70,000 cubic yards of fill to construct the development above the floodplain.

In response to your comment letter, a consulting engineer evaluated the existing and project flood conditions on the site. This evaluation (see attached Schaaf and Wheeler memo dated April 29, 2008) was reviewed and accepted by the City's Floodplain Manager. Essentially, it was determined that the current FEMA FIRM flood plain maps, which indicate the site as being in Zone AO were based on a Soil Conservation Service (SCS) study performed in 1985. The FIRM did not include the development of Tract 9026, which is a tract of single family homes located just northeast of the site, between the Pepper Lane site and Highway 680. Based on the site's topography and the 100-year sheetflow flowrate, it appears that the Zone AO (depth 2 feet) flood zone is not accurate for the site, and rather that the Pepper Lane site should be in Flood Zone B with average depths less than one foot deep. It was recommended in the engineer's report that the project should obtain a Conditional Letter of Map Revision to resolve the discrepancies.

Based on the assumption that Letter of Map Revision can be obtained from FEMA to revise the flood zone from AO (2 feet dept) to Zone B (1 foot depth), it is anticipated that only 35,000 cubic yards of fill will be imported to the site, as opposed to the 75,000 cubic yards stated in the Initial Study (see attached Civil Engineering Associates memo dated April 29, 2008). This information confirms the proposed fill on the site would not affect the flood conditions on adjacent properties. The proposed fill at the property line is at or below the adjacent property elevations. Staff has noted this additional information as revised text in the Initial Study.

This rezoning has been conditioned so that prior to issuance of Public Works Clearance, the applicant shall obtain a Conditional Letter of Map Revision (CLOMR).

The Initial Study has been revised per your comment to correctly note that the site is located within the Upper Penitencia Creek watershed. With this additional information responding to your comments incorporated into the Initial Study, the Director of Planning May 7, 2008 adopted the Mitigated Negative Declaration for the project, and the project is scheduled for a public hearing before the Planning Commission May 14 and City Council June 6, 2008.

Feel free to contact me at (408)535-7844 if you have any questions.

Regards,



Reena Mathew
Project Manager
City of San Jose
Department of Planning, Building & Code Enforcement

Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

James R. Schaaf, PE
Kirk R. Wheeler, PE
David A. Foote, PE
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Offices in
Monterey Bay Area
Sacramento
San Francisco

April 29, 2008

Akoni Danielsen
Planning Division
City of San Jose
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

Re: Pepper Lane Townhomes, San Jose, Flood Conditions

Dear Mr. Danielsen:

Per your request, we have reviewed the existing and project flood conditions for your proposed Pepper Lane Townhomes development at Berryessa Road and Jackson Avenue in San Jose in response to the comment letter from the Santa Clara Valley Water District dated April 15, 2008.

We have researched the detailed hydrologic and hydraulic information available from the original Soil Conservation Service (SCS) analyses which were used to define the effective Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) to evaluate the accuracy of the existing flood zone designation on the site. We also reviewed the grading plans for the two residential tracts upstream of the site, as well as the project grading plans.

Effective FIRM

The effective FEMA FIRM flood plains are based on a study by the SCS in 1985. The applicable hydrology calculations are included in a technical document titled Upper Penitencia Creek Flood Plain Management Study Hydrology, Book 2, January 1985. The calculations detail the flow rates and flow splits within the flood plain, as well as estimated flood depths at significant locations within the flood plain area. The calculations were then used to define the flood plain on a separate work map at a scale of 1"=200' using 2-foot contour interval topography.

The SCS hydrology analysis shows a 100-year flow rate of 930 cfs for the sheetflow area upstream of Highway 680 just south of Berryessa Road. The flow is an overflow from Upper Penitencia Creek farther upstream. At Highway 680, part of the flow crosses the highway south of the Berryessa Road overcrossing. An estimated 400 cfs would flow northward along the highway toward Hostetter Road, and 530 cfs would flow westward toward the project site south of Berryessa Road. The flood plain area extends approximately 850 feet south of Berryessa

Road, and is designated a Flood Zone B, shallow flooding with average depth less than one foot deep.

At Jackson Avenue, the estimated 530 cfs 100-year flow is split again between three flow paths. Approximately 100 cfs would flow northward along Flickinger Avenue north of Berryessa Road, 85 cfs westerly along Berryessa Road, and 345 cfs westerly along Edison Way parallel to Berryessa Road. The estimated depth of flow along all three flow paths was less than one foot deep.

The FIRM flood plains and flood zones in the Jackson Avenue area are inconsistent with the SCS hydrology calculations. This may be due to some change in the mapping during the review process, and may be documented in the FEMA study files, which are not immediately available. The Pepper Lane site is shown as a Zone AO (depth 2 ft) on the FIRM. Based on the work map topography, the site is relatively flat perpendicular to the flow direction but slightly lower along Berryessa Road. The site slopes down from the Highway 680 end toward Jackson Avenue at a slope of almost 1 percent. Normal depth for the estimated 100-year flow would be approximately 0.75 feet deep at the south edge of Berryessa Road. Based on the current site topography, the 100-year flood plain would include the south side of Berryessa Road, with water levels at or above the center median. The only area which would have depths over 1 foot deep would be along the Jackson Avenue frontage where the ground is lower than the street and the flow over the street is near 1 foot deep. Similarly, the area downstream of Jackson Avenue shows a Zone B area from Berryessa Road south to Bluejacket Way, a distance of approximately 1000 feet with an elevation change of over 3 feet. Based on the estimated 100-year sheetflow flowrate and the site topography, we do not believe that the Zone AO (depth 2 feet) flood zone is accurate for the site.

Tract 9026

The effective FIRM did not include Tract 9026, a tract of single family homes located between the Pepper Lane site and Highway 680. The tract was completed in 2000. The tract includes house pad fills and sound walls on the Pepper Lane property line, along the Berryessa Road onramp to Highway 680, and along Highway 680.

FEMA does not recognize soundwalls as flood protection unless the wall has been constructed as a floodwall. However, the house pad grading would redirect sheetflow through the site. FEMA study guidelines recommend that landscaping berms and soundwalls be treated as non-certified levees. The flood conditions should be evaluated for both the 'levee holds' case and the 'levee fails' case and the highest water surface condition should be included in the flood plain mapping.

Based on the tract grading plans, the project did not include significant fill along Highway 680 or the Berryessa Road ramp. Therefore, the project would not affect the 100-year flow leaving Highway 680, assuming the soundwall fails or is undermined. The streets within the tract would channel the flow southward along Ivy Glen Drive to Port Way in Tract 8967 and down Port Way to Jackson Avenue south of the Pepper Drive site. It appears that the route along Ivy Glen Drive and Port Way is the designed overland release from the subdivision to allow overland flow for storm events which exceed the capacity of the storm drain system. Based on the grading plans,

the tract fill at the Pepper Drive site property line is approximately 1.2 feet higher than the top of curb elevations along Ivy Glen Drive. The estimated capacity of the street right of way with floodwater 1.2 feet deep is approximately 300 cfs. That is at the flood level which could overflow into the Pepper Lane site if the soundwall were not there. The Port Way portion has a steeper street slope, and would have a higher capacity.

Berryessa Road

We estimate that the Berryessa Road ramp and the eastbound lanes of Berryessa Road have capacity for 100 to 530 cfs with flood depths of 1 to 1.9 feet. This suggests that if the east soundwall holds at Tract 9026, the flow along the Berryessa Road ramp and part of Berryessa Road would be 1 to 2 feet deep, and would spill over the median on Berryessa Road. If the east soundwall fails, then the majority of the 100-year flow would flow through Tract 9026, and around the Pepper Lane site and the flow rates on Berryessa Road would be lower.

We estimate that the 100-year flood depths on the south side of Berryessa Road for both the existing and project condition would average less than one foot deep. The Pepper Lane project includes widening Berryessa Road and adding a side walk and fill outside the new road right of way. The project improvements may affect the depth of flow on the north side of Berryessa Road. However, the depth of flow would be continue to be less than one foot deep at the north curb, and would not affect neighboring properties. Based on the existing topography, the existing properties on the north side of Berryessa have a retaining wall/fence along Berryessa Road and are over a one foot above the curb along Berryessa Road. Therefore the Pepper Lane project would not add additional area to the flood plain or affect the flood conditions on the Berryessa Road properties.

Conclusions

Based on our review we can make the following conclusions:

1. The existing FIRM flood plain does not seem to accurately reflect the flood risk on the site based on the hydrology and topography from the original flood study. The Pepper Lane site should be a Flood Zone B with average depths less than one foot deep, and not Zone AO (depth 2 feet).
2. The project should apply for a Conditional Letter of Map Revision (CLOMR) to resolve the existing flood plain conditions. This would include obtaining any available detailed study records from FEMA archives.
3. The construction of the upstream subdivision Tract 9026 included grading which contains flood flows in the streets east and south of the site. With average flow depths in the streets near one foot, there is likely to be very little flow into the Pepper Lane site from Tract 9026, even if the Tract 9026 soundwalls were assumed to fail.
4. Because of the limited potential for flow from the upstream property onto the site if the Tract 9026 soundwalls are assumed to fail, the proposed fill on the site would not affect

the flood conditions on the adjacent properties. The proposed fill at the property line is at or below the adjacent property elevations.

5. We should note that the streets south of the site which may contain a portion of the 100-year flow (Port Way and Bluejacket Way) if the Tract 9026 soundwall are assumed to fail are within the Zone B area on the effective map. Therefore, if the CLOMR shows the potential flow down those streets as near 1 foot deep, the map may not require a revision to add properties to the flood plain. For our last LOMR with similar conditions, FEMA considered changing properties from Zone B to Zone AO (depth 1 foot) only if the depth on the property averages 1 foot, not if it was 1 foot deep in the street.
6. If the Tract 9026 soundwalls are assumed to hold, the 100-year sheetflow from Highway 690 would be directed onto Berryessa Road. For both existing and project conditions, the flow would spill over the Berryessa Road median. The project improvements may affect the distribution of flow between the north and south sides of Berryessa Road. The average flood depths would be less than one foot deep for both the existing and project conditions. Based on the existing topography, the existing properties on the north side of Berryessa Road would continue to be above the flood water on Berryessa Road and would not be in the 100-year flood plain.

This initial review did not include detailed topography for the area or the FEMA files for the map process, which are not readily accessible. All decisions regarding map revisions are based on FEMA staff interpretation of the flood plain conditions and mapping guidelines. However, we have provided our best estimate of the flood conditions and potential flood conditions based on the existing information, which support the findings in the City's IS/MND.

Please contact me if you have any questions.

Very truly yours,
SCHAAF & WHEELER



Kirk R. Wheeler, PE
Principal

cc Maria Angeles, Public Works
Dan Carroll, Pulte Homes





Civil Engineering Associates, Inc.

Civil Engineers • Planners • Surveyors

Peter B. McMorrow, P.E.
Donald V. Utz

April 29, 2008

06-114

Reena Mathew
City of San Jose
200 E. Santa Clara Street, 3rd Floor
San Jose, CA 95113

Re Pepper Lane
PDC 07-033

Dear Reena:

I am writing you in regard to the Pepper Lane townhomes located at the southeast corner of Berryessa Road and Jackson Avenue.

Based on the letter prepared by Kirk Wheeler of Schaaf and Wheeler, dated April 29, 2008, the existing Flood Zone designation of AO (depth 2 feet) does not appear to be accurate. This property should be Flood Zone B with average depths less than one foot deep.

The Conceptual Grading Plan was prepared assuming the Zone designation of AO-2. This resulted in 70,000 cubic yards of imported fill material to raise the site out of the flood plain. If a Letter of Map Revision (LOMR) is obtained from FEMA to revise the designation to Flood Zone B the amount of imported material required to grade this property will be approximately 35,000 cubic yards.

If you have any questions, please feel free to contact me.

Sincerely,

Peter B. McMorrow, PE



cc: Vivian Tom, City of San Jose

May 7, 2008

PG&E Land Services
Alfred Poon, Land Agent
111 Almaden Blvd., Rm. 814
San Jose, CA 95115

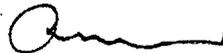
RE: Response to Comment of Draft Mitigated Negative Declaration
For PDC07-033, Pepper Lane, located on SE corner of Berryessa & Jackson

Dear Mr. Poon,

Thank you for your comment letter dated April 17th on the Draft Mitigated Negative Declaration. You raised concerns for the potential of proposed project's impact on existing transmission lines across North Jackson Avenue and Berryessa Road and the coordination needed with PG&E and California Public Utilities Commission if a relocation of PG&E transmission and substation facilities are required. Electric overhead transmission lines are located along the frontage of Berryessa Road and a utility pole is located on the roadway pork chop located on the North East corner of the Berryessa Road and Jackson Avenue intersection. The project will modify the traffic signal at the intersection of Berryessa Road and Jackson Avenue. The design of the signal modification will be done in such a manner as not to disturb the existing utility pole on the roadway intersection pork chop. As is a standard measure, the project will have the choice in either paying a in lieu fee of its fair share contribution toward citywide undergrounding efforts or will underground the transmission lines along Berryessa Road. The Initial Study for this project has been modified to include this additional information.

Feel free to contact me at (408) 535-7844 if you have any questions.

Regards,



Reena Mathew, Project Manager
City of San Jose
Department of Planning, Building & Code Enforcement



Land Services, 111 Almaden Blvd., Rm. 814, San Jose, CA 95115

April 17, 2008

City of San Jose
Department of Planning, Building and Code Enforcement.
200 E Santa Clara St., Tower 3rd Floor
San Jose, CA 95113
Attn: Reena Mathew
Fax: 408-292-6055

RE: Review of Draft Mitigated Negative Declaration (MND)
For: Pepper Lane – Pulte Homes
LOC: SE corner of Berryessa & Jackson Ave., San Jose
City's Ref: PDC07-033
PG&E File : SJ 102 (Land)

Dear Mr. Mathew,

Thank you for this opportunity to comment on this Draft Mitigated Negative Declaration (MND) for the above Project. PG&E has the following comments to offer:

PG&E owns and operates gas and electric facilities which are located within and adjacent to the proposed project. To promote the safe and reliable maintenance and operation of utility facilities, the California Public Utilities Commission (CPUC) has mandated specific clearance requirements between utility facilities and surrounding objects or construction activities. To ensure compliance with these standards, project proponents should coordinate with PG&E early in the development of their project plans. Any proposed development plans should provide for unrestricted utility access and prevent easement encroachments that might impair the safe and reliable maintenance and operation of PG&E's facilities.

PG&E has the Maybury 115 KV Tap Electric Transmission Line located across the N. Jackson Avenue and Berryessa Road intersection from southwest corner of the site. PG&E's Line 300 A & B natural gas pipelines and Dixon Landing-McKee 115 KV Transmission Line are also located within 1000 feet of the project vicinity. These facilities should not be impacted unless the proposed project requires road improvements to N. Jackson Avenue or Berryessa Road.

The developers will be responsible for the costs associated with the relocation of existing PG&E facilities to accommodate their proposed development. Because facilities relocation's require long lead times and are not always feasible, the developers should be encouraged to consult with PG&E as early in their planning stages as possible.

Relocations of PG&E's electric transmission and substation facilities (50,000 volts and above) could also require formal approval from the California Public Utilities Commission. If required, this approval process could take up to two years to complete. Proponents with development plans which could affect such electric transmission facilities should be referred to PG&E for additional information and assistance in the development of their project schedules.

We would also like to note that continued development consistent with the City's General Plans will have a cumulative impact on PG&E's gas and electric systems and may require on-site and off-site additions and improvements to the facilities which supply these services. Because utility facilities are operated as an integrated system, the presence of an existing gas or electric transmission or distribution facility does not necessarily mean the facility has capacity to connect new loads.

Expansion of distribution and transmission lines and related facilities is a necessary consequence of growth and development. In addition to adding new distribution feeders, the range of electric system improvements needed to accommodate growth may include upgrading existing substation and transmission line equipment, expanding existing substations to their ultimate buildout capacity, and building new substations and interconnecting transmission lines. Comparable upgrades or additions needed to accommodate additional load on the gas system could include facilities such as regulator stations, odorizer stations, valve lots, distribution and transmission lines.

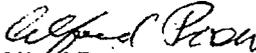
It is recommended that environmental documents for proposed development projects include adequate evaluation of cumulative impacts of utility systems; the utility facilities necessary to serve those developments and any potential environmental issues associated with extending utility service to the proposed project. This will assure the project's compliance with CEQA and reduce potential delays to the project schedule.

PG&E remains committed to working with the City to provide timely, reliable and cost effective gas and electric service to the planned area. We would also appreciate being copied on future correspondence regarding this subject as this project develops.

The California Constitution vests in the California Public Utilities Commission (CPUC) exclusive power and sole authority with respect to the regulation of privately owned or investor owned public utilities such as PG&E. This exclusive power extends to all aspects of the location, design, construction, maintenance and operation of public utility facilities. Nevertheless, the CPUC has provisions for regulated utilities to work closely with local governments and give due consideration to their concerns. PG&E must balance our commitment to provide due consideration to local concerns with our obligation to provide the public with a safe, reliable, cost-effective energy supply in compliance with the rules and tariffs of the CPUC.

Should you require any additional information or have any questions, please call me at (408) 282-7544.

Sincerely,


Alfred Poon
Land Agent
Land Rights Protection
Southern Area

File: 31124
Central Pipeline

April 15, 2008

Ms. Reena Mathew
Planning Division
Department of Planning, Building, & Code Enforcement
City of San Jose
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

Subject: Pepper Lane Draft Mitigated Negative Declaration / Initial Study
City File No. PDC07-033

Dear Ms. Mathew:

The Santa Clara Valley Water District (District) has reviewed the subject Draft Mitigated Negative Declaration/Initial Study related to the development of a mixed-use development of 379 residential units and approximately 30,000 square feet of retail space.

The District's 66-inch diameter Central Pipeline is located in an easement within Berryessa Road. Per District Ordinance 06-1, project related improvements within the District easement must be submitted to the District for review and permitting.

Current Federal Emergency Management Agency (FEMA) maps show that a majority of the site is within Zone AO and would be subject to flood inundation to two feet in depth in the event of a 1 percent flood. Site grades must be designed to allow for the passage and storage of floodwaters within the site such that neighboring properties are not adversely impacted from project grading.

Page 45 in the Initial Study (*Section H. Hydrology and Water Quality, Discussion, Drainage/Flooding*) notes that "the addition of new structures into the floodplain would not impede or redirect flood flows"; however, page 35 in the report (*Section F., Geology and Soils, Discussion*) notes that 70,000 cubic yards of fill would be imported "to construct the development above the floodplain." Fill within the floodplain may increase the flooding potential on adjacent properties. The Initial Study should discuss how the fill would be distributed throughout the site and include a floodplain analysis evaluating its effects within the floodplain. Mitigation measures should be provided, if appropriate.

The site is located within the Upper Penitencia Creek watershed and not the Guadalupe River watershed as indicated on page 44 of the Initial Study (*Section H. Hydrology and Water Quality, Water Quality*). Please revise.

Ms. Reena Mathew
Page 2
April 15, 2008

District records show one well on the site. The well should be properly maintained or destroyed in accordance with the District's standards. Property owners or their representatives should call the Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information regarding well permits and registration or destruction of any wells.

Please reference District File No. 31124 on future correspondence regarding this project. If you have any questions or comments, you can contact me at (408) 265-2607, extension 3174 or at syung@valleywater.org.

Sincerely,



Samuel Yung
Associate Civil Engineer
Community Projects Review Unit

cc: Ms. Maria Angeles
Transportation & Development Division
Department of Public Works
City of San Jose
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

S. Tippetts, S. Yung, T. Hipol, M. Klemencic, File (2)

31124_50567sy04-14



Memorandum

TO: PLANNING COMMISSION
SUBJECT: SEE BELOW

FROM: Joseph Horwedel
DATE: May 7, 2008

STAFF REPORT ADDENDUM

SUBJECT: PDC07-033. Planned Development Rezoning from the A-Agriculture District and R-1-5(PD) to A(PD)Planned Development Zoning District to allow the development of up to 379 single family detached residences & 30,000 square feet of retail, the demolition of two single family residences and several accessory buildings, and the preservation of one single-family residence and one fruit stand on a 20.52 gross acre site.

This item was deferred from the Planning Commission hearing of April 21, 2008. Staff had continued the item in order to respond to comments received on the Mitigated Negative Declaration. In a separate memo, staff has discussed the responses to the Mitigated Negative Declaration comments.

During the deferral period, the applicant had expressed a desire to modify the site plan to address many of the issues raised by staff through the course of review of the application and articulated in the staff report. In particular, staff identified that the proposed application provided inadequate open space, insufficient setbacks of the new three story buildings adjacent to single-family rear yards, insufficient front setbacks of the new residences fronting on to Jackson Avenue, and few pedestrian connections throughout the site. Staff met with the applicants on April 28th and May 1st in order to develop solutions to the aforementioned issues raised. The applicant has modified the plans to better address these issues. Attached is a copy of the revised site plans. Below is a description of changes made to the site plan. Staff believes these changes are substantial improvements from the site plan presented to the Planning Commission with the initial staff report and has included modifications to the Draft Development Standards, as indicated below, to accommodate the improved site design. Staff is pleased to see the incorporation of these changes, and feels as if the project as proposed now provides adequate recreational areas on-site and will foster a sense of community with the incorporation of pedestrian linkages.

Common Open Space

As indicated in the original staff report, the previous site plan of common open space met approximately half of the of the amount of common open space needed to meet the Residential Design Guidelines provisions of 200 square feet per unit. The applicants have revised the site

plan to include open space areas so that there are a total of approximately 67,000 square feet of common open space. In particular, the revised site plan includes an additional open space area within the northeast corner of the site, a re-oriented and widened an open space area that located in the northwest corner of the site, behind the commercial area, and a reorientation of an open space area that runs lengthwise along the eastern half of the project site.

The new open space area proposed in the northeast corner of the site is located adjacent to Buildings 17-20 and labeled on the revised site plan as Open Space Area 5. This new open space area distributes recreational areas to this corner of the site that was previously void of any open space areas. In addition, the orientation of the new Open Space Area 5 is such that it links to a pedestrian walkway, which connects the open space area 5 to a larger common open space area, labeled Open Space Area 3, which is located to the south, in front of Buildings 23-25.

The previous site plan had an open space area located in the northwest corner, located between the main private road and the front yards of Building 6. The revised site plan has relocated and widened this open space area between Buildings 4 & 5, and has been labeled on the revised site plan as Open Space Area 1. This reorientation is an improvement because before the open space area was located in an area, based on its orientation that seemed as if it would be the exclusive use of residents of Building #6. By relocating the open space area between both Buildings #4 & 5, the area does not function as front yards, but rather as common area. In addition, by shifting the open space area further west as it is proposed in the redesign, more recreation area is distributed towards the western portion of the plan, where it was currently lacking.

The site plan also includes a re-orientation of the common open space which was previously proposed between Buildings #24-26 and Buildings #38-40, which functioned as an elongated paseo between these buildings. This open space area in the revised site plan has been re-oriented so that it is not straddled between buildings, but it is a long open space strip, which has Buildings #23-25 fronting on to it. This open space area is labeled area 3 on the revised site plan. In addition, in the revised site plan, a building was removed which blocked the connection between this open space area and another triangular open space area, labeled Open Space 4, to the south. The removal of this building allows for the connection of Open Space Areas 3 & 4, which results in these areas to be more functional.

The total 67,000 square feet of common open space equates to approximately 175 square feet per unit of common open space. While the Residential Design Guideline standard is 200 square feet per unit of common open space, Staff believes that the open space as provided meets the intent of the common open space requirement as the open space areas have been reconfigured to optimize the usability and linkages are provided between the open space areas. In addition, the open space areas are now distributed throughout the site. Staff has amended the Development Standards to include a 175 square feet of common open space per a unit, which equates to the approximate amount of common open space as proposed in the revised site plan.

Pedestrian Circulation

The original staff report also pointed out that the previous site plan had very poor pedestrian linkages throughout the site, in particular to the open space areas of the site. The revised site plan as a whole has been improved in this regard as pedestrian areas now are connected together through pedestrian walkways. In addition, buildings have been removed where they previously blocked the pedestrian circulation to open space areas. On the revised site plan, units were removed between Buildings 15 and 22, which had previously prevented pedestrian access from the western portion of the site to the commercial portion of the site. Now residents will be able to walk to the commercial area via pedestrian areas rather than through drive aisles.

Setback from Adjacent Single Family Residences

With the revised site plan as with the previous site plan, there is only one area, which is on the southern portion of the site, closest to Jackson Avenue, where there is a severe deviation from the aggregate 55 foot setback provided along the southeast property line, which abuts existing single family rear yards. The previous site layout included a minimum 15 foot setback from the new residences to the southeasterly property line at this pinch point. The revised site plan has increased the minimum setback to 30 feet of separation at this location, and the aggregate 55 foot setback along the southeast property line has been unchanged. With the relationship between three story structures and single-family rear yards, the Residential Design Guidelines calls for a 2:1 (2 feet of setback for every 1 foot of building height) separation standard. Applying the proposed building heights to the Guideline's separation standard, would mean that the proposed buildings should be setback between 78 and 84 feet from the existing single-family rear yards.

In the interest of maximizing density on this site and meeting the privacy protection intent of the Guidelines, staff believes that the revised site plan's proposal of a minimum setback of 30 feet at one location is acceptable. However staff has revised the development standards so that any 2nd and 3rd story facades, which are located less than 50 feet from the property line and are facing toward the single-family residences, are unable to have balconies and are treated architecturally to minimize any privacy impacts on single-family residences. Such architectural treatments could include stepping back the second and third stories, reducing the number of windows, or locating windows with more sensitive angles or heights.

Setback from Jackson Road

The previous site plan also provided inadequate buffering of the proposed townhomes facing Jackson Avenue. The buffer proposed in the previous site plan between the townhomes and Jackson Avenue, which is a 4-lane roadway at this stretch, included a 10-foot setback and another 12 feet for the sidewalk and tree wells. Staff indicated in the original staff report that a 15-foot front setback from Jackson Avenue, rather than the 10 feet proposed, would contribute to a better degree of buffering between the townhomes and the roadway. The revised site plan includes a front setback of 15 feet along Jackson Avenue, which adequately responded to staff's concern.

Public Outreach

The revised site plan and the addendum to the Staff Report have been posted on the Planning Division's website and emailed to those community members who attend the Community Meeting. The revised site plan provides several improvements from the site plan shown to the community at the community meeting, which are articulated in this addendum.

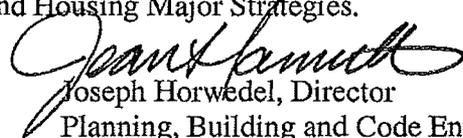
The project was presented at a Community Meeting on November 15, 2007 at the Vinci Park Elementary School in order to discuss the proposed project and solicit feedback from the community. Approximately eight members of the community attended the meeting. Project-related comments included concerns construction impacts, particularly related to any impact on water pressure in the neighborhood, and the appropriateness of three story residences next to single-family residences.

Signage has been posted at the site to notify the neighbors and public of the proposed rezoning. Notices of the public hearing before the Planning Commission and City Council were published, posted on the City of San Jose website and distributed to the owners and tenants of all properties located within 1,000 feet of the project site. A notice indicating the public review period of Draft Mitigated Negative Declaration (MND) for the project was also mailed to property owners and tenants within 1,000 feet of the project site. Both the MND and copies of this staff report were posted on the City web site. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

Planning staff recommends that the City Council approve the subject rezoning for the following reasons:

1. The proposed project is consistent the *San Jose 2020 General Plan* Land Use/Transportation Diagram designations for the site of Medium High Density Residential (12-25 DU/AC), Medium Density Residential (8-16 DU/AC), and Neighborhood/ Community Commercial.
2. The proposed zoning is compatible with existing uses on the adjacent and neighboring properties.
3. The project, including staff's recommended conditions, conforms to the Residential Design Guidelines.
4. The project conforms to the *San Jose 2020 General Plan* Urban Conservation/Preservation, Economic Growth, Growth Management, and Housing Major Strategies.


Joseph Horwedel, Director
Planning, Building and Code Enforcement

cc: Erika Salum, Berryessa-Jackson Partners LLC
5000 Hopyard Road Suite 170
Pleasanton, CA 94588

PDC07-033 DRAFT DEVELOPMENT STANDARDS

USE ALLOWANCES:

RESIDENTIAL AREA:

Up to 379 single family attached residences
Single-family attached residential uses are permitted.

COMMERCIAL AREA:

Up to 30,000 square feet for commercial development
Uses of the CN-Commercial Neighborhood Zoning District are permitted. Conditional and Special Uses in the CN District are to be evaluated through a Planned Development Permit.

RESIDENTIAL DEVELOPMENT STANDARDS

MINIMUM PERIMETER SETBACKS:

Southeast property line (single-family residences): buildings: 1st story-15 ft
2nd story-20 ft
3rd story-50 ft
parking: 7 ft

Easterly property line (single-family residences): buildings : 1st story-15 ft
2nd story-20 ft
3rd story-50 ft
parking: 7 ft

Northerly property line (along Berryessa Road): buildings: 20 ft

South property line (along Jackson Ave.): buildings: 15 ft

MINIMUM INTERNAL SETBACKS: Due to the narrow separation between units that is less than the Residential Design Guidelines recommendations, additional 2nd and 3rd story setbacks will be provided at the PD Permit stage to the satisfaction of the Director of Planning, Building and Code Enforcement.

MAXIMUM BUILDING HEIGHT: 45 ft

ANY SECOND AND THIRD STORY FACADES FACING THE SOUTHEASTERN PROPERTY LINE WITH LESS THAN A 50 FOOT SETBACK FROM THE SOUTHEASTERLY PROPERTY LINE (ABUTTING SINGLE FAMILY RESIDENCES): shall

have no balconies on the second and third stories and shall be designed to minimize privacy impacts on adjacent existing single family residences to the satisfaction of the Director of Planning, Building, and Code Enforcement.

VEHICLE PARKING REQUIRED PER UNIT:

Units with 2-car side-by-side garage

<u>no. of bedrooms</u>	<u>spaces per unit</u>
1 bedroom unit	2.3
2 bedroom unit	2.5
3 bedroom unit	2.6
3 bedroom+	+0.15 per bedroom

Units with 2-car tandem garage

<u>no. of bedrooms</u>	<u>spaces per unit</u>
1 bedroom unit	2.5
2 bedroom unit	2.7
3 bedroom unit	2.8
3 bedroom+	+0.15 per bedroom

A reduction of up to 5% of the on-site parking spaces may be accommodated if an off-setting number of parking spaces are provided within the new private (or public) street.

NOTE: Minor architectural projections, such as chimneys and bay windows, may project into any setback or building separation by no more than 2'-0" for a horizontal distance not to exceed 10'-0" in length, no more than 20% of the building elevation length.

OPEN SPACE, MINIMUM SQUARE FOOTAGE PER UNIT:

Private open space 60 square feet
Common open space 175 square feet

RETAIL DEVELOPMENT STANDARDS

MINIMUM PERIMETER SETBACKS:

South property line (along Jackson Ave.): buildings: 14 ft

Southeast property line (adjacent to residential): buildings: 10 ft
parking: 5 ft

Easterly property line (adjacent to new internal roadway): buildings: 10 ft

Northerly property line (along Berryessa Road): buildings: 14 ft
parking: 10 ft

MAXIMUM BUILDING HEIGHT: 45 feet

ARCHITECTURE: A condition has been noted in the Draft Development Standards, that the design of the commercial buildings shall conform to the Commercial Design Guidelines to the satisfaction of the Director of Planning, Building, and Code Enforcement.

PARKING STANDARDS:

Per Title 20 of the Zoning Ordinance, as amended

GENERAL NOTES

Environmental Conditions

AIR QUALITY -

The contractor for the project shall implement the following measures during all phases of construction:

- Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site. Active areas adjacent to existing uses shall be kept damp at all times or shall be treated with non-toxic stabilizers or dust palliatives.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Sweep daily (or more often if necessary) all paved access roads, parking areas, and staging areas at construction sites to prevent visible dust from leaving the site, preferably with water sweepers; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.
- Sweep streets daily (or more often if necessary) if visible soil material is carried onto adjacent public streets, preferably with water sweepers.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- Enclose, cover, water at least twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) to prevent visible dust from leaving the site.
- Limit traffic speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.
- Install wheel washers for all existing trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Suspend excavation and grading activities when winds have instantaneous gusts that exceed 25 mph.
- Limit the area subject to excavation, grading, and other construction activities at any one time.
- Clearly post signs at the construction site indicating that diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to

deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite.

- Stage construction equipment away from any sensitive uses.
- Install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g., compressors).
- A "disturbance coordinator" will be assigned to the project when active construction is occurring within 200 feet of residences. This coordinator will confirm that all air quality construction mitigation measures are enforced. In addition, the coordinator will respond to complaints from the public regarding air quality issues in a timely manner. The contact information for the coordinator shall be posted in plain view at the project site.

At the PD Permit stage, the applicant shall submit plans that indicate the following:

- Provision of bicycle amenities including secure residential and employee bicycle parking, bicycle racks for retail customers and visitors, and bike lane connections. (The project shall provide one bicycle space for every four residential units as per the City's Zoning Ordinance.)
- Pedestrian facilities that include easy access and signage to bus stops and roadways that serve the major site uses (e.g. retail and residential uses).
- Traffic calming measures in traffic circulation and roadway connection designs.

BIOLOGICAL RESOURCES --

- The applicant shall retain a qualified biologist to conduct a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Fish and Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (March through August). Prior to the issuance of any grading or building permits, the developer shall submit a biologist's report to the City's Environmental Principal Planner to the satisfaction of the Director of Planning indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.
- If possible, schedule construction between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests on the site. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist shall, in consultation with the CDFG, designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall

submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to issuance of any grading or building permit.

CULTURAL RESOURCES –

- Relocate the Vincent Nola House to a residential setting as set forth below. All relocation and rehabilitation activities shall be conducted in accordance with the *Secretary of Interior's Standards for Rehabilitating Historic Property* in order to reduce the impact to the historic resource to a less-than-significant level. Relocation plans shall be submitted to the City's Historic Preservation Officer prior to issuance of the appropriate permits as set forth below, to the satisfaction of the Director of Planning, Building, and Code Enforcement and the Director of Public Works.
 - Relocate to Open Space Park Area Onsite: Relocate the house to the proposed 25,000 square foot open space area on the site and reuse as the clubhouse for the residential development, to be maintained by the homeowner's association. The house shall be sited in accordance with the plan shown in the supplemental historic evaluation in Appendix D. This option is preferred by the applicant.
 - Retain on Original Site: Retain the house at its original location onsite. Create a parcel that allows sufficient buffer area providing a setback of 25 feet on each side, 35 feet in the rear, and retaining the 30 foot setback in the front. The house shall be retained in accordance with the plan shown in the supplemental historic evaluation in Appendix D. This would require elevating the structure to match the proposed site grades above the flood elevation.
 - Relocate to an Undetermined Site: Relocate the house to a site that meets the criteria for relocation and receiver sites approved by the City. This criteria is specified in the amendment to the historic report in Appendix D. This alternative would require additional evaluation, review, and environmental clearance.
- No PD permit shall be issued on the Vincent Nola House parcel (delineated in the historic supplement and shown in Appendix D) until relocation plans are approved and entitlements issued by the City of San Jose Department of Planning, Building, and Code Enforcement. The City would identify triggers for the timing of final occupancy permits for the rehabilitation work.
- Prior to disposing of artifacts associated with the Nola Ranch that are not wanted by the Nola, Genco, and Territo families, the Vincent Nola house and site shall be maintained and made available for salvage. The project applicant shall coordinate a salvage tour with History San Jose, Preservation Action Council of San Jose, Victorian Preservation, and the Historic Landmarks Commission by placing the salvage tour on a Historic Landmarks Commission agenda. Representatives shall tour the site in order to identify elements that warrant salvage for public information or for reuse in other locations. The applicant shall

be responsible for providing access to the site, including lighting, prior to the removal of any elements from the site, and to facilitate removal and transfer for the identified elements to the above entities. Any elements not identified through this effort for salvage shall be made available to salvage companies facilitating the reuse of historic building materials.

- Prior to any actions to relocate or remove buildings or sheds on the site, the project applicant shall submit photographic documentation as specified by the professional staff at History San Jose. The documentation modes, level, and number/orientation of views shall be approved by the City's Historic Preservation Officer. Two copies of the completed documentation shall be submitted to the City's Historic Preservation Officer. One copy should be retained by History San Jose for their archives. The photo documentation shall conform to the City's standard requirements set forth below.

Provide selected black and white views of the existing building according to the following standards:

- *Cover sheet* – The documentation shall include a cover sheet identifying the photographer, providing the address of building, common or historic name of the building, date of construction, date of photographs, and description of photographs.
 - *Camera* – A 35mm camera.
 - *Lenses* – No soft focus lenses. Lenses may include normal focus length, wide angle and telephoto.
 - *Filters* – Photographer's choice. Use of a pola screen is encouraged.
 - *Film* – Must use black and white film; tri-X, Plus-X, or T-Max film is recommended.
 - *View* – perspective view-front and other elevations. All photographs shall be composed to give primary consideration to the architectural and/or engineering features of the structure with aesthetic considerations necessary, but secondary.
 - *Lighting* – Sunlight is usually preferred for exteriors, especially of the front façade. Light overcast days, however, may provide more satisfactory lighting for some structures. A flash may be needed to cast light into porch areas or overhangs.
 - *Technical* – All areas of the photograph must be in sharp focus.
 - *Submission of Photo-Documentation:* Provide three copies of the documentation, including the original prints and negatives, to the Historic Preservation Officer for approval and distribution to History San Jose (Jim Reed, History San Jose, 1650 Senter Road, San Jose, CA 95112-2599, (408) 287-2290), the California Room at the MLK Jr. Library (Bob Johnson, Dr. MLK Jr. Library, California Room, 150 E. San Fernando St., San Jose, CA 95112, (408) 808-2136), and the Northwest Information Center at Sonoma State University. Digital photos may be provided as a supplement to the above photo-documentation, but not in place of it. Digital photography shall be recorded on a CD and submitted with the above.
-
- If possible, documentation of the site should also include video of interviews with the Nola, Territo, and Genco families regarding their memories of the ranch operations and family.

- The “roadside” fruit stand shall be incorporated into the proposed development to maintain a connection with the site's past use and the history of Grace Nola and the Nola Orchard. The stand should be maintained until it is relocated on the project property (e.g., within the proposed park or retail areas).
- Relocation.: Prior to issuance of Public Works clearance, the structure(s) shall be advertised for relocation. A dollar amount equal to the estimated cost of demolition as certified by a licensed contractor shall be offered to the recipient of the building. The project applicant shall provide evidence to the Historic Preservation Officer that an advertisement has been placed in a newspaper of general circulation, posted on a website, and posted at the site for a period of no less than 30 days.

HAZARDS AND HAZARDOUS MATERIALS –

- A remedial work plan shall be prepared and submitted to the Director of Planning, Building and Code Enforcement, and the Municipal Environmental Compliance Officer prior to the issuance of Public Works clearance. The plan shall be implemented to reduce contamination below Environmental Screening Levels for residential uses, assure the safety of construction workers and future site users, and assure proper management of contaminated materials in accordance with state and local regulatory requirements. This plan shall incorporate the following:
 - Soil sampling in areas adjacent to painted structures for lead and pesticide residuals. If results indicate the presence of such materials in excess of the Environmental Screening Levels for residential uses, site remediation shall be completed to reduce contamination to acceptable levels.
 - A soil management component to establish the management practices for handling any items encountered during construction such as buried debris, impacted soil, and/or burn pits.
- All remaining hazardous materials that may be stored on the site shall be removed and properly disposed of prior to commencement of construction activities on the site.
- The existing wells and septic systems shall be properly abandoned in accordance with all applicable regulations.

NOISE –

- All new multi-family housing is subject to the requirements of the 2007 California Building Code (Chapter 12, Appendix Section 1207.11.2). Since noise levels exceed 60 dBA DNL on the site, an analysis detailing the treatments incorporated in the building plans shall be submitted to the City Building Department prior to issuance of a building permit. The report shall demonstrate that the design would achieve an interior DNL of 45 or less in all habitable residential areas. Typically, where the exterior noise levels are between 60-70 dBA DNL, treatments include forced-air mechanical ventilation or air conditioning to achieve a habitat interior environment with the

windows closed. The noise study for the project identified the need for sound-rated windows and exterior door assemblies for some units, as presented in Appendix G.

- Mitigation shall be provided for outdoor use areas for balconies and patios of residences exposed to noise levels of 76 dBA DNL or greater (i.e., along Berryessa Road). This could include partial height or full "greenhouse-type" noise barriers. The specific treatments shall be determined on a unit-by-unit basis. Results of the unit-by-unit acoustical analysis, including the description of the necessary noise control treatments, shall be submitted to the City prior to issuance of PD permit.
- Prior to development of the proposed commercial uses, prepare a project-specific acoustical analysis to evaluate noise sources at the proposed retail center and implement recommendations to assure that exterior noise levels at adjacent residential uses are not exceeded, in accordance with the standards in the City's Zoning Ordinance.

TRANSPORTATION / TRAFFIC -

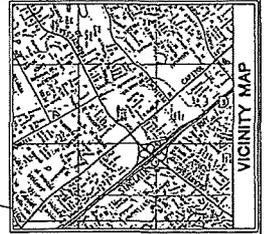
Project Mitigation

- **US 101 Northbound Ramp/Old Oakland Road Intersection.** The recommended improvement measure for this intersection is consistent with the planned roadway improvements identified as part of the North San Jose Development Plan and the Flea Market Development Project. These improvements consist of adding a second southbound right-turn lane and a second northbound left-turn lane. This improvement would require significant modification to the existing structure. The project developer shall implement the following:
 - Participate in the City's US 101/Oakland/Mabury Transportation Development Policy. The City of San Jose has an adopted transportation policy for the US 101/Oakland/Mabury transportation corridor that will allow developments to pay a traffic impact fee based on the amount of project traffic traveling through this corridor. The policy includes improvements on the US 101/Oakland Road interchange, improvements to maximize capacity at the intersections of Old Oakland/Commercial Street and Berryessa Road/Commercial Street, and construction of a new US-101/Mabury interchange. The intent of the policy is to allow more projects to develop and temporarily allow traffic congestion in excess of the City's LOS standard for a limited time prior to construction of the required transportation improvements. The new policy includes a fee requiring all new developments to pay a fair share contribution for using a portion of the interchange capacity that would be created with the buildout of the US 101/Oakland Road interchange and construction of a new US 101/Mabury Road interchange. Based on the new available capacity that would be created, each new development would be required to contribute \$30,000 for each new PM peak hour vehicle trip that it would add to the US 101/Oakland Road interchange.
 - **Commercial Street/Old Oakland Road Intersection.** The addition of a second westbound left-turn lane would improve conditions to an acceptable level. This improvement measure is consistent with the planned roadway improvements identified as

part of the North San Jose Development Policy and the Flea Market development project and is also identified in the US 101/Oakland/Mabury Transportation Development Policy, within which the project proposes to participate (see above).

Cumulative Mitigation

- **Berryessa Road/Capitol Avenue.** Converting the southbound approach to provide one through lane, one shared through/right-turn lane, and one right-turn only lane would improve the operating conditions to an acceptable LOS D. The overlapping right-turn phasing for the southbound approach may need to be removed, however the intersection would continue to operate at acceptable levels of service with the recommended change in striping. The estimated cost for this improvement is approximately \$10,000 or less, and would not require modification to the existing curb line. The Pepper Lane project will make a fair share contribution toward improvements to this intersection.



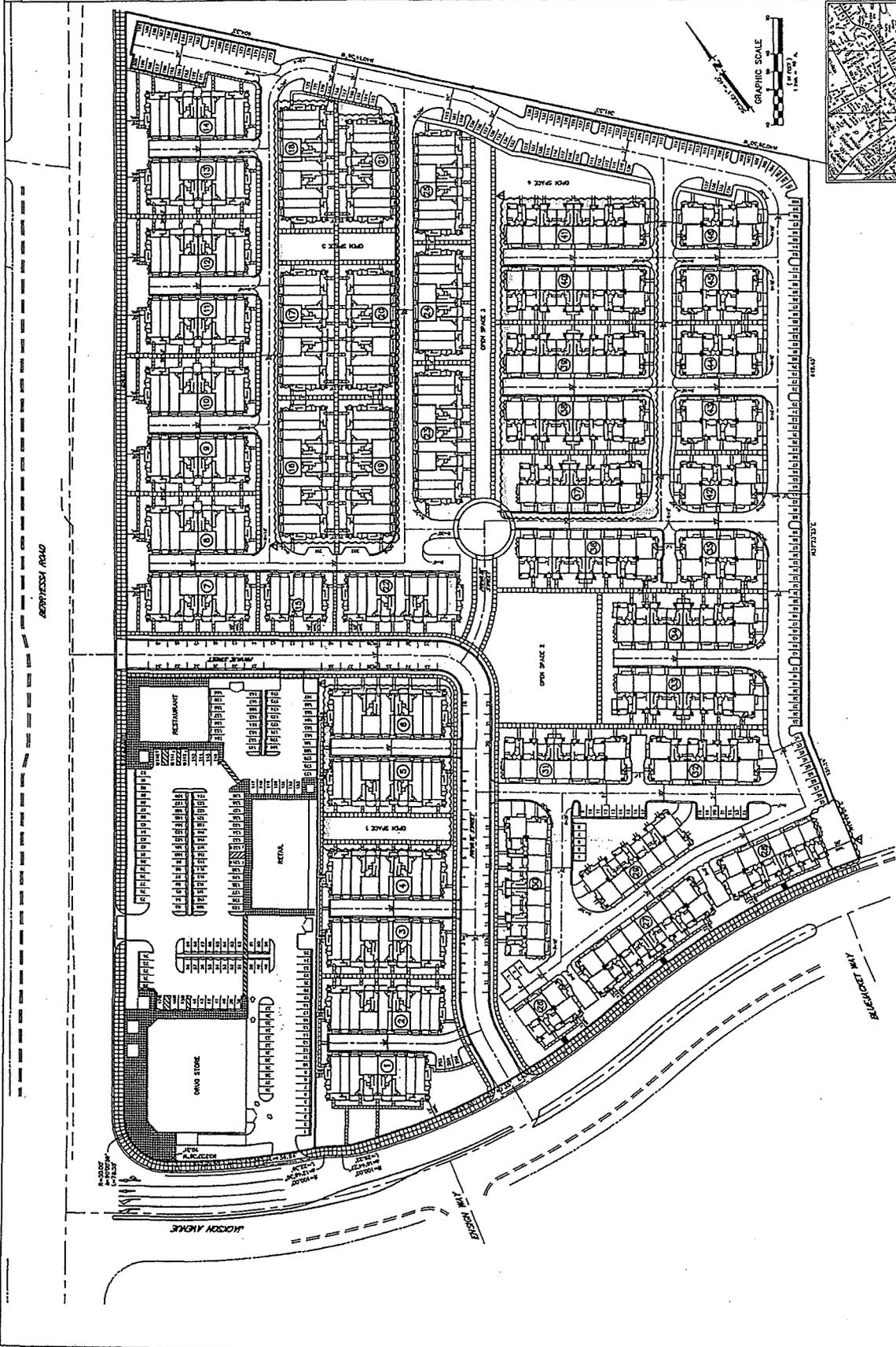
**GENERAL DEVELOPMENT PLAN
EXHIBIT 'C'
CONCEPTUAL SITE PLAN**



PREPARED FOR
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DATE	DESCRIPTION
11/11/03	ISSUED FOR PERMITS



DEPRESSURE ROAD

BLUESHOPPER WAY

WILSON AVENUE

17th STREET

18th STREET

19th STREET

20th STREET

21st STREET

22nd STREET

23rd STREET

24th STREET

25th STREET

26th STREET

27th STREET

28th STREET

29th STREET

30th STREET

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