



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT: DEFERRED ANNEXATION  
AGREEMENT (LANDS OF VISO)**

**DATE:** May 16, 2011

Approved

Date

5/20/11

**COUNCIL DISTRICT:** 5  
**SNI AREA:** N/A

## **RECOMMENDATION**

It is recommended that the City Council authorize the City Clerk to execute Deferred Annexation Agreements with the present and/or prospective owners of the Lands of Viso and forward the Agreements to the County of Santa Clara for recordation.

## **OUTCOME**

Should the City Council authorize the City Clerk to execute the Deferred Annexation Agreements (see Attachments A and B), the annexation of the subject property to the City of San Jose will be initiated by the City of San Jose when it has been determined that annexation is feasible because it meets criteria to make a site eligible for annexation. The site is currently located more than 300 feet from City of San Jose annexed territory and is not eligible for annexation.

## **BACKGROUND**

Under the Santa Clara County/City of San Jose/Redevelopment Agency of the City of San Jose Agreement for the Allocation of Tax Increment Funds (City/County Agreement), Santa Clara County has agreed to certain conditions for the development of unincorporated property within the City of San Jose's Sphere of Influence. One of these conditions is to require developers of projects that can be approved in these unincorporated areas to agree to annex to the City of San Jose when the property becomes legally eligible for annexation by City.

On October 3, 2006, the County granted approval of a twenty lot subdivision with grading approval (County File No. 9160-48-74-05S-05G) for a site located at 507 Porter Lane (see

Attachment C). One of the conditions of approval imposed by the County is that the applicant enter into and record a Deferred Annexation Agreement with the County of Santa Clara and the City of San Jose agreeing that the parcel(s) would be annexed to the City when the City has determined that annexation is feasible.

### ANALYSIS

The subject site is approximately 4 acres. It has a Santa Clara County zoning designation of R1-6 One Family Residence with a minimum lot size of 6,000 square feet and a City of San Jose General Plan Designation of Medium Low Density Residential (8 DU/AC). The County-approved subdivision includes 19 lots of between 6,018 and 7,448 square feet and one 17,658 lot with an existing residence. The density of the development is consistent with the San Jose 2020 General Plan land use designation for the site.

The Director of Planning has determined that the appropriate CEQA clearance for this proposed action is the Mitigated Negative Declaration adopted on October 3, 2006 by the Santa Clara County Board of Supervisors in conjunction with the approval of the subdivision. Attached is a copy of the Board's Resolution with its attachments adopting the Mitigated Negative Declaration (Attachment D) for Council review and consideration.

### EVALUATION AND FOLLOW-UP

Not Applicable

### PUBLIC OUTREACH/INTEREST

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

The Santa Clara County Board of Supervisors held a public hearing for approval of the subdivision that is the subject of the Deferred Annexation Agreements. Development proposals in unincorporated areas of Santa Clara County are not subject to the Public Outreach Policy of the City of San Jose.

HONORABLE MAYOR AND CITY COUNCIL

May 16, 2011

**Subject: Deferred Annexation Agreement Lands of Viso**

Page 3

### **COORDINATION**

The preparation of this memorandum and the Deferred Annexation Agreements were coordinated with the City Attorney's Office and the Santa Clara County Office of Planning and Development and the Office of the County Surveyor.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with the San Jose 2020 General Plan, and City/County Agreement.

### **CEQA**

Mitigated Negative Declaration adopted by the Santa Clara County Board of Supervisors.

/s/

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Richard Buikema at 408-535-7835.

#### Attachments:

- a) Draft Deferred Annexation Agreement with Charles J. Viso & Cherry L. Viso
- b) Draft Deferred Annexation Agreement with Ponderosa Homes II, Inc.
- c) Location Map
- d) Resolution Adopting Mitigated Negative Declaration and Approving a Tentative Map and Grading Permit for 507 Porter Lane (File No. 9160-48-74-05S-05G).

**AGREEMENT FOR ANNEXATION OF TERRITORY  
(DEFERRED ANNEXATION AGREEMENT)**

County File Number: 9160-48-74-053 TRACT NO. 9885

Name of Developer: CHARLES J. VISO & CHERRY L. VISO

Assessor Parcel Number: 612-21-056-00 & 612-21-125-00

Site Address: 507 PORTER LANE, SAN JOSE, CA 95127

Mailing Address: 507 PORTER LANE, SAN JOSE, CA 95127

Type(s) of Improvements: ROAD, DRAINAGE AND RETAINING WALLS

This agreement is made and entered into on \_\_\_\_\_ between the COUNTY OF SANTA CLARA ("County"), the CITY OF SAN JOSE ("City") and CHARLES J. VISO & CHERRY L. VISO ("Owner"), relating to the annexation to City of certain real property in the unincorporated territory of County and within City's sphere of influence.

RECITALS

- A. County and City have adopted policies for the purpose of assuring that urban development, which requires urban services such as police and fire protection, sewers, streets, water, libraries and parks, occurs in the City to facilitate more efficient use of public resources and to prevent urban sprawl.
- B. To implement these policies, County and City have agreed to encourage annexation to City of developing unincorporated lands within City's sphere of influence so that they can be improved in accordance with City's land use plans and standards and contribute tax revenue to pay for City services.
- C. Owner desires to develop the property described in Exhibit A, attached hereto and incorporated herein by this reference (referred to herein as the "subject property" or "property"). The property is located in the unincorporated area of County and within the sphere of influence of City.
- D. At the present time the subject property cannot be annexed to City due to its distance from a City boundary. Development of the property may itself, or in conjunction with the development of other properties in the area, stimulate the need for urban services.
- E. To provide for the orderly expansion of City boundaries consistent with the ability of City to extend urban services to the proposed development on the subject

property and the surrounding area, it is necessary that the subject property be annexed to City whenever City determines this is feasible and desirable.

F. As a condition of development of the subject property, Owner has agreed to enter into this agreement to provide for the future annexation of the property to City. This agreement provides a substantial benefit to the property and lands within City's sphere of influence because it allows for the extension of governmental services to the area while providing the means of reimbursing the costs of such services through the payment of taxes and assessments on the property to City following annexation.

G. The parties intend that all of the covenants contained herein shall run with the land and shall bind the successive owners of the subject property and shall inure to the benefit of all the lands within City's sphere of influence.

IT IS AGREED by the parties as follows:

1. Owner Cooperation.

Owner agrees that annexation of the subject property to City is desirable and consents to such proceedings at such time as they may be commenced by City. Owner shall fully cooperate in the initiation and conduct of such annexation proceedings and waives any rights of protest under any law governing such proceedings.

2. City Initiation.

City agrees to initiate annexation proceedings for subject property at such time as City so elects after City has determined that annexation is feasible.

3. Payment of Taxes and Assessments.

Owner agrees to pay all property taxes and assessments levied on the subject property following annexation, subject to whatever right of administrative appeal and judicial review as be provided by law.

4. Release of Owner from Condition of Land Development Approval: County Reliance.

Upon execution and recording of this agreement, County shall release Owner from further compliance with condition number 69 of Owner's land development approval. It is understood that County relied upon this agreement when granting final approval for this project and will rely upon the agreement in the future when approving other development projects in the area.

5. Agreement Binding Upon Successors In Interest.

This agreement and the covenants contained herein shall run with the land and shall bind the successive owners of the subject property and shall inure to the benefit of all the lands within City's sphere of influence. For the purposes of this agreement, City's sphere of influence is that geographical area which extends outward from the City's incorporated territory and which represents the probable ultimate future physical

boundary and service area of City as most recently determined by the Local Agency Formation Commission prior to the execution of this agreement.

In the event the subject property is divided and sold, the terms of this agreement shall apply separately to each new parcel and the owner of each parcel shall succeed to the obligations imposed on Owner by this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on  
APR 26 2011

ATTEST:

Maria Marinov

Maria Marinov, Clerk of the Board

COUNTY OF SANTA CLARA

Dave Cortese

Dave Cortese, President

APPROVED AS TO FORM AND LEGALITY:

Lizanne Reynolds

Lizanne Reynolds, Deputy County Counsel

DEVELOPER

Charles J. Viso

Signature

Charles J. Viso

Name (Printed)

Owner

Title

CL Viso

Signature

CHERRY L VISO

Name (Printed)

owner

Title

CITY OF SAN JOSE

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

SEE ATTACHED  
MEMORANDUM

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of SANTA CLARA

On MARCH 31, 2011 before me, MICHELLE D. RAST, Notary Public

personally appeared CHARLES J. VISO & CHERRY L. VISO

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Michelle D. Rast  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: AGREEMENT FOR ANNEXATION OF TERRITORY

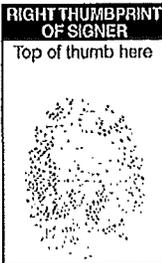
Document Date: TBD By Board of Supervisors Number of Pages: 4

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: CHARLES J. VISO

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: CHERRY L. VISO

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Santa Clara

On 4.26.11 before me, Melissa G. Miller, Notary Public  
(Here insert name and title of the officer)

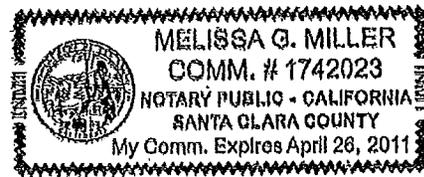
personally appeared Dave Cortese

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Melissa G. Miller  
 Signature of Notary Public



(Notary Seal)

## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

\_\_\_\_\_  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

\_\_\_\_\_  
(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

\_\_\_\_\_  
(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT "A"

All that certain parcel of land described in the Deed Charles J. Viso and Cherry L. Viso to Charles J. Viso and Cherry L. Viso recorded June 22, 2006 as Document: 18984917 Official Records, County of Santa Clara, State of California which description is by this reference incorporated herein;

And

All that certain parcel of land described in the Deed James J. Viso and Vincee M. Viso to Charles J. Viso and Cherry L. Viso recorded December 30, 1985 as Document: 8639624 Official Records, County of Santa Clara, State of California which description is by this reference incorporated herein.

**AGREEMENT FOR ANNEXATION OF TERRITORY  
(DEFERRED ANNEXATION AGREEMENT)**

County File Number: 9160-48-74-05S Tract No. 9885  
 Name of Developer: Ponderosa Homes II, Inc.  
 Assessor Parcel Number: 612-21-125  
 Site Address: 507 Porter Lane, San Jose, CA 95127  
 Mailing Address: 6671 Owens Drive, Pleasanton, CA 94588  
 Type(s) of Improvements: Road, Drainage and Retaining Walls

This agreement is made and entered into on \_\_\_\_\_ between the COUNTY OF SANTA CLARA ("County"), the CITY OF SAN JOSE ("City") and Ponderosa Homes II, Inc. ("Owner"), relating to the annexation to City of certain real property in the unincorporated territory of County and within City's sphere of influence.

RECITALS

- A. County and City have adopted policies for the purpose of assuring that urban development, which requires urban services such as police and fire protection, sewers, streets, water, libraries and parks, occurs in the City to facilitate more efficient use of public resources and to prevent urban sprawl.
- B. To implement these policies, County and City have agreed to encourage annexation to City of developing unincorporated lands within City's sphere of influence so that they can be improved in accordance with City's land use plans and standards and contribute tax revenue to pay for City services.
- C. Owner desires to develop the property described in Exhibit A, attached hereto and incorporated herein by this reference (referred to herein as the "subject property" or "property"). The property is located in the unincorporated area of County and within the sphere of influence of City.
- D. At the present time the subject property cannot be annexed to City due to its distance from a City boundary. Development of the property may itself, or in conjunction with the development of other properties in the area, stimulate the need for urban services.
- E. To provide for the orderly expansion of City boundaries consistent with the ability of City to extend urban services to the proposed development on the subject

property and the surrounding area, it is necessary that the subject property be annexed to City whenever City determines this is feasible and desirable.

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IN WITNESS WHEREOF, the parties hereto have executed this agreement on  
APR 26 2011

ATTEST:

COUNTY OF SANTA CLARA

Maria Marinos  
Maria Marinos, Clerk of the Board

Dave Cortese  
Dave Cortese, President

APPROVED AS TO FORM AND LEGALITY:

Lizanne Reynolds  
Lizanne Reynolds, Deputy County Counsel

DEVELOPER

Jeffrey C. Schneider  
Company Name  
Ponderosa Homes II, Inc.

Jeffrey C. Schneider  
Authorized Signer Name (Printed)

Sr. Vice President  
Title

CITY OF SAN JOSE

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Deputy City Attorney

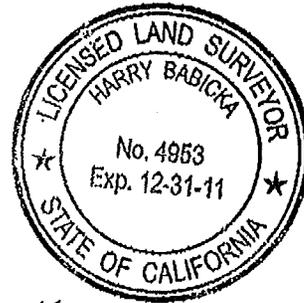


EXHIBIT "A"

*Harry Babicka*

All that real property situated in County of Santa Clara, State of California and being more particularly described as follows:

Beginning at a point on the Westerly rights of way line of Porter Lane said point being the Northerly most corner of said Parcel A as shown on the Parcel Map recorded in Book 487 of Maps at Page 50, Santa Clara county Records; thence along said rights of way line South 29 Degrees 25 Minutes 32 Seconds East a length of 330.02 feet; thence South 35 Degrees 40 Minutes 20 Seconds East a length of 50.01 feet; thence leaving said right of way line and along the Northwesterly boundary of parcel shown on the Record of Survey Map recorded in Book 9 Page 26, Santa Clara County Records South 26 Degrees 51 Minutes 43 Seconds West a length of 179.71 feet; thence leaving said Northwesterly line North 55 Degrees 34 Minutes 58 Seconds West a length of 64.05 feet; thence North 60 Degrees 29 Minutes 12 Seconds West a length of 50.88 feet; thence 40.86 feet along a non tangent curve to the right with radius of 88.00 feet, a delta of 26 Degrees 36 Minutes 10 Seconds and radial bearing North 36 Degrees 32 Minutes 07 Seconds West; thence South 10 Degrees 05 Minutes 30 Seconds East a length of 34.27 feet; thence South 26 Degrees 50 Minutes 00 Seconds West a length of 95.26 feet to the Northerly line of Tract 3208; thence along said Northerly line North 63 Degrees 10 Minutes 00 Seconds West a length of 146.88 feet; thence leaving said line North 26 Degrees 47 Minutes 00 Seconds East a length of 0.19 feet; thence 33.54 feet along a non-tangent curve to the right with radius of 203.21 feet, a delta of 9 Degrees 27 Minutes 21 Seconds and a radial bearing North 36 Degrees 35 Minutes 40 Seconds East; thence North 43 Degrees 56 Minutes 59 Seconds West a length of 71.78 feet; thence North 26 Degrees 27 Minutes 10 Seconds East a length of 16.08 feet; thence North 21 Degrees 37 Minutes 40 Seconds West a length of 124.33 feet; thence North 21 Degrees 37 Minutes 50 Seconds East a length of 197.96 feet; thence South 60 Degrees 57 Minutes 51 Seconds East a length of 140.85 feet; thence North 31 Degrees 53 Minutes 50 Seconds East a length of 207.18 feet to the point of beginning.

Containing 3.58 acres more or less.

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

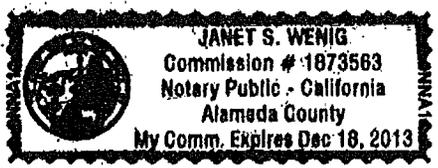
State of California

County of Alameda }

On 4-15-11 before me, Janet S. Wenig, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Jeffrey C. Schroeder  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)-is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Janet S. Wenig  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

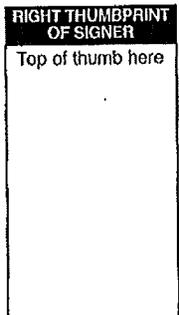
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

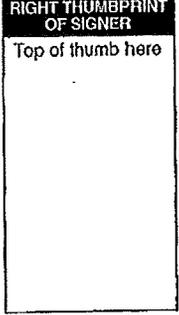
Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
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Signer Is Representing: \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Santa Clara

On 4.26.11 before me, Melissa G. Miller, Notary Public,  
(Here insert name and title of the officer)

personally appeared Dave Cortese

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

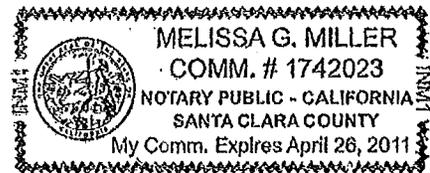
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Melissa G. Miller

Signature of Notary Public

(Notary Seal)



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

\_\_\_\_\_  
(Title or description of attached document)

\_\_\_\_\_  
(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

\_\_\_\_\_  
(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

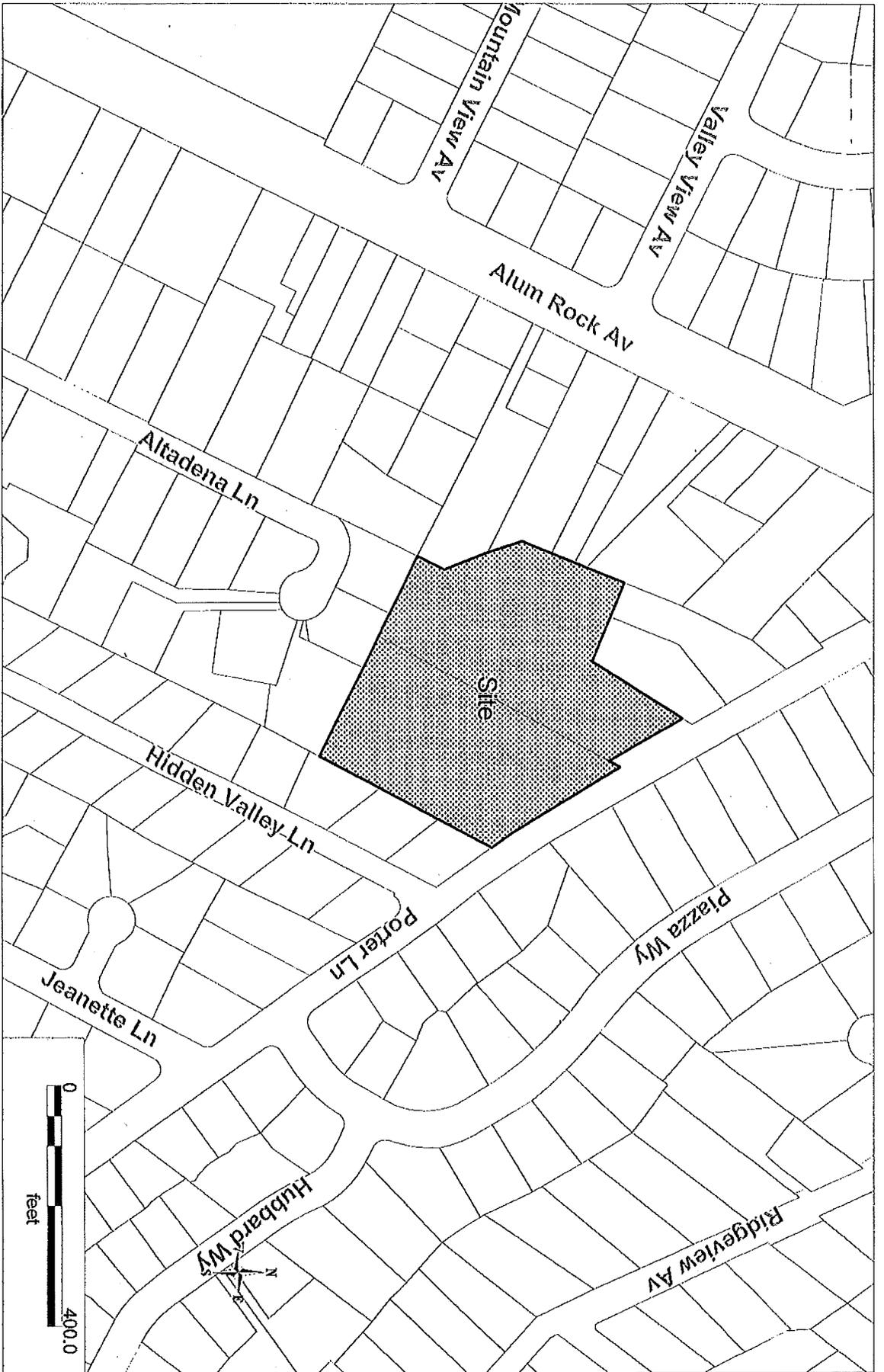
\_\_\_\_\_  
(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

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- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
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  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document



Deferred Annexation Agreement  
Lands of Viso

**RESOLUTION OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CLARA ADOPTING A  
MITIGATED NEGATIVE DECLARATION AND APPROVING A  
TENTATIVE MAP AND GRADING PERMIT FOR A 20-LOT SUBDIVISION  
AT 507 PORTER LANE IN UNINCORPORATED SAN JOSE  
(APNs 612-21-056, 120)**

(File No. 9160-48-74-05S-05G)

WHEREAS, the County received an application to subdivide approximately 4.06 acres (gross) at 507 Porter Lane into twenty parcels, Assessor's Parcel Numbers 612-21-056 and 120, as depicted on Exhibit A attached hereto; and

WHEREAS, the applications for the subdivision included a proposed tentative map and grading permit (the "Project"); and

WHEREAS, staff from various County departments have reviewed the applications and recommended approval of the Project, subject to the Conditions of Approval set forth in Exhibit B attached hereto; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), an Initial Study and Mitigated Negative Declaration (collectively, "Mitigated Negative Declaration") which is attached hereto as Exhibit C, and a Mitigation Monitoring and Reporting Program ("MMRP"), which is attached hereto as Exhibit D, were prepared for the Project; and

WHEREAS, at its regular meeting on September 7, 2006, the Santa Clara County Planning Commission convened a duly noticed public hearing to consider the Project and voted to send a favorable recommendation to the Board of Supervisors; and

WHEREAS, at its regular meeting of October 3, 2006, the Board of Supervisors convened a duly noticed public hearing to consider the proposed Project.

**THE BOARD OF SUPERVISORS HEREBY MAKES THE FOLLOWING  
FINDINGS WITH RESPECT TO CEQA:**

(a) The Board finds that the Mitigated Negative Declaration was prepared in accordance with all legal requirements, including all public notice and comment period requirements; and

(b) The Board declares that it has considered the Mitigated Negative Declaration and all comments received within the public comment period, as well as all written and oral comments received after the public comment period and prior to the date of this Resolution; and finds that the document reflects the County's independent judgment and analysis; and

(c) The Board finds that there is no substantial evidence in the record that the Project, as mitigated, will have a significant effect on the environment. Mitigation measures for visual

impacts have been incorporated into the Project to reduce impacts to a less-than-significant level; and

(d) A Mitigation Monitoring and Reporting Program has been prepared for the Project and is attached hereto as Exhibit D. To ensure that all mitigation measures will be implemented, the mitigation measures in the MMRP have been made enforceable by incorporating the mitigation measures into the Conditions of Approval (Exhibit B); and

(e) The Board designates the Clerk of the Board of Supervisors and the County Planning Office as the location and custodian of the documents and other material constituting the record of proceedings upon which this decision is based.

**THE BOARD OF SUPERVISORS FURTHER FINDS** that none of the findings set forth in Section C12-122 of the Ordinance Code of the County of Santa Clara and Section 66474 of the California Government Code apply to the proposed subdivision:

(a) The proposed subdivision map is consistent with applicable general and specific plans. The proposed subdivision would result in the division of two existing parcels totaling 4.06 acres (176,853 square feet) into twenty lots. Nineteen of the twenty lots are between 6,018 and 7,448 square feet in size (net), and the twentieth lot will be 17,658 square feet. Per General Plan policy U-LM 7, all subdivisions of unincorporated lands within a city's Urban Service Area shall conform to the applicable land use and density criteria of the city's General Plan. The proposed subdivision is located within the Urban Service Area of the City of San Jose. Based on correspondence received from the City of San Jose dated July 3, 2003 (Exhibit E attached hereto) the proposed subdivision is in conformity with the City's General Plan designation of Medium Low Density Residential (8 dwelling units per acre). The property is zoned R1-6, One Family Residence with a minimum lot size of 6,000 square feet; therefore, the proposed parcels would meet the minimum lot sizes prescribed in the County Zoning Ordinance.

(b) The design and improvement of the proposed subdivision, in accordance with the conditions listed in Exhibit B, will ensure that the development is consistent with the City of San Jose General Plan designation of Medium Low Density Residential with respect to allowed land uses and development density; therefore, pursuant to General Plan Policy U-LM 7, the subdivision would also be consistent with the County General Plan.

(c) The site is physically suited for development of single-family dwellings. No development may occur unless there is full compliance with all of the conditions listed in Exhibit B, which pertain to, among other things, drainage and access requirements.

(d) The 4.06-acre site is physically suitable for the proposed density of development, which will consist of twenty parcels for single-family units. The resulting density would be approximately six dwelling units per net acre, with an average lot size of 6,969 square feet. This density is consistent with the County and San Jose General Plans and the County Zoning Ordinance.

(e) The design of the subdivision and proposed improvements will not cause substantial environmental damage or substantially injure fish or wildlife or their habitat. While located within an urban area, the Project site does contain a substantial number of trees (over 60). Approximately 27 trees will be removed due to the subdivision. However, the majority of these trees are non-native to the area (palm & pine) and thus do not constitute important wildlife habitat. The on-site trees may provide habitat for nesting raptors (birds), and mitigation has been included within the conditions of approval (Exhibit B of the Resolution) to prevent harm during construction. Thus, the design and improvement of the proposed subdivision, in accordance with the conditions of approval, will ensure that development will not cause substantial environmental damage or unavoidably injure fish or wildlife or their habitat.

(f) The design of the subdivision and the proposed improvements will not cause any serious public health problems. The Project site is located in an urban area and does not contain any natural or man-made hazards.

(g) The design of the subdivision and proposed improvements, in accordance with the conditions listed in Exhibit B, will not conflict with any existing easements on the property.

**THE BOARD OF SUPERVISORS FURTHER FINDS** the following findings can be made with respect to the proposed grading permit per Section C12-427 of the County Grading Ordinance:

(a) The proposed grading is related to a use presently permitted by law on the property. Residential uses are allowed on the subject property and the proposed grading, which entails 993 cubic yards of cut and 3,901 cubic yards of fill, is to construct a road and building pads for the residential lots being created.

(b) The grading is necessary for establishment or maintenance of the use. The proposed grading is to construct the building pads on each of the nineteen undeveloped lots as part of the subdivision and to comply with County requirements related to road access.

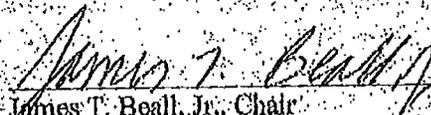
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(c) The design, scope and location of the grading is appropriate for the use and causes minimum disturbance to the terrain and natural features of the land. The Project site is nearly flat and the grading quantities are minimal and appropriate for the intended single-family use on each parcel.

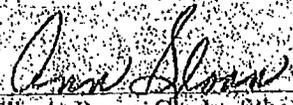
NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Santa Clara, State of California, based upon the oral and documentary evidence received, that the Mitigated Negative Declaration and the Mitigation Monitoring & Reporting Program are hereby adopted, and the proposed tentative subdivision map and grading permit are hereby approved. The tentative subdivision map will expire 36 months from the date of this Resolution.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California on OCT 03 2008 by the following vote:

AYES: ALVARADO, BEALL, CAGLE, KUTSEL, MCDUGG  
NOES: None  
ABSENT: None  
ABSTAIN: None

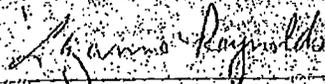
  
James T. Beall, Jr., Chair  
Board of Supervisors

ATTEST:

  
Phyllis A. Perez, Clerk of the Board

Ann Sloan  
Chief Deputy Clerk  
of the Board of  
Supervisors

APPROVED AS TO FORM AND LEGALITY:

  
Lizaine Reynolds, Deputy County Counsel

Attachments to this Resolution:

- Exhibit A - Tentative Subdivision Map
- Exhibit B - Conditions of Approval
- Exhibit C - Mitigated Negative Declaration
- Exhibit D - Mitigation Monitoring & Reporting Program
- Exhibit E - General Plan Conformance Correspondence from City of San Jose

Resolution Approving Mitigated Negative Declaration, MMRP, Tentative Subdivision Map and Grading Permit for 507 Porter Lane (File No. 9160-48-74-05S-05G)

# County of Santa Clara

Department of Planning and Development  
 County Planning Office  
 County Government Center, East Wing, 7<sup>th</sup> Floor  
 70 West Hedding Street  
 San Jose, California 95110-1705  
 (408) 299-5770 FAX (408) 288-9198  
 www.sccplanning.org



## Notice of Intent to Adopt a Mitigated Negative Declaration

A notice, pursuant to the California Environmental Quality Act of 1970, as amended (Public Resources Code 21,000, et sec.) that the following project will not have a significant effect on the environment.

916048-74-055	347	612-21-056, 120	8/17/06
Viso Subdivision		Residential Subdivision	
Charles Viso		Same	
Project Location			
507 Porter Lane, San Jose			
Project Description			
<p>Proposed 20 lot subdivision of a 4.06 acre property located on the west side of Porter Lane in unincorporated San Jose. Nineteen of the twenty lots are between 6,018 and 7,448 square feet in size (net) with the remaining lot being 17,658 square feet in size and will contain the existing residence on the property. Access to a majority of the lots will be provided by a new access road to be built and dedicated as a public road. The lots will be provided sanitary sewer from County Sanitation District 2 / 3, connecting to an existing sewer line which crosses the southwestern edge of the property. Water will be provided by San Jose Water. Storm drainage from a majority of the project site will be captured and directed to existing facilities in Altadena Lane and Fleming Avenue southwest of the project site. In order to mitigate for additional stormwater runoff and related water quality impacts, retention trenches will be installed within the on-site drainage system. Subdivision improvements will result in the demolition of several outbuildings and a tennis court on the property along with the removal of 17 ordinance sized trees, of which 12 are palm trees.</p>			
Purpose of Notice			
<p>The purpose of this notice is to inform you that the County Planning Staff has recommended that a Mitigated Negative Declaration be approved for this project. County of Santa Clara Planning Staff has reviewed the Initial Study for the project, and based upon substantial evidence in the record, finds that although the proposed project could initially have a significant effect on the environment, changes or alterations have been incorporated into the project to avoid or reduce impacts to a point where clearly no significant effects will occur.</p>			
<p>A public hearing for the proposed project is tentatively scheduled for the Planning Commission on September 4<sup>th</sup>, 2006 in the County Government Center, Board of Supervisors Chambers. It should be noted that the approval of a Mitigated Negative Declaration does not constitute approval of the project under consideration. The decision to approve or deny the project will be made separately.</p>			
Public Review Period			
<p>Public Comments regarding the correctness, completeness, or adequacy of this negative declaration are invited and must be received on or before the hearing date. Such comments should be based on specific environmental concerns. Written comments should be addressed to the County of Santa Clara Planning</p>			

Board of Supervisors: Blanca Alvarado, Donald F. Gage, Pete McHugh, James T. Beall Jr., Liz Kniss  
 Acting County Executive: Pete Kutras, Jr.

Exhibit C

Office, County Government Center, 70 W. Hedding Street, San Jose, CA 95110, Tel: (408) 299-5770  
Oral comments may be made at the hearing. A file containing additional information on this project may be reviewed at the Planning Office under the file number appearing at the top of this form. For additional information regarding this project and the Mitigated Negative Declaration, please contact Rob Eastwood at (408) 299-5792.

The Mitigated Negative Declaration and Initial Study are available at the following locations:

- (1) Santa Clara County Planning Office, 70 West Hedding Street, East Wing, 7<sup>th</sup> Floor, San Jose, CA 95110
- (2) Planning Office Website [www.sccplanning.org](http://www.sccplanning.org) (Environmental Documents under "Find it Fast")
- (3) Alum Rock Library 75 South White Road, San Jose CA

Responsible Agencies sent a copy of this document:

None

Mitigation Measures shall be implemented to reduce potential significant impacts less than significant.

**AIR QUALITY**

The following dust control measures will be adhered to during construction for all subdivision improvements. Final improvement plans / grading plans for the subdivision improvements must contain language requiring that the following control measures be implemented.

- Water all active construction areas at least twice daily.
- 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 three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
- Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.)
- 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 exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
- Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.

**BIOLOGICAL IMPACTS**

*Tree Removal*

All ordinance sized trees to be removed on the project site will be replaced at the following ratios:

- 3:1 ratio replacement for the removal of native trees, with the planting of 36" box native trees.
- 1:1 ratio replacement for the removal of non-native trees, with the planting of 36" box native trees.

Final improvement plans for the subdivision improvements shall show all ordinance trees proposed for removal and their replacement at the ratios specified above. Replacement trees may be planted as street trees for the new access road or on individual lots. All replacement trees shall be irrigated and adequately maintained for a period of three years to ensure survival.

For trees which may be removed as part of individual site development, tree removal shall be shown on individual building plans with tree replacement per the ratios listed above.

The 14" oak located along the western property line of lot six shall be retained unless a report by a certified arborist submitted for approval by the Planning Office as part of development of the individual site recommends its removal.

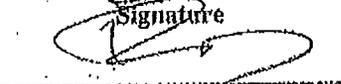
If any of the preserved trees are proposed for removal in the future, a tree removal permit shall be required.

**Nesting Raptors**

If possible, tree removal and construction should be scheduled 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 that may be disturbed during project implementation. 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 removal. Between May and August (inclusive), pre-construction surveys more than thirty (30) days prior to the initiation of these activities. 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 California Department of Fish & Game, designate a construction free buffer zone (typically 250 feet) around the nest.

The applicant shall evidence of a contract with a qualified ornithologist to conduct the preconstruction surveys prior to issuance of final grading permits and the ornithologist must submit a report indicating the result of the survey and any designated buffer zones to the satisfaction of the Planning Office prior to the issuance of final occupancy.

Any reporting or monitoring program must be approved by the State Water Resources Control Board. The State Water Resources Control Board Declaration is approved. Section 21081.5 of the Public Resources Code.

Prepared by: Rob Eastwood, Senior Planner, AICP	 Signature	8/17/00 Date
Approved by: Rob Eastwood, Senior Planner, AICP	 Signature	8/17/00 Date