

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A PLANNED DEVELOPMENT PERMIT, SUBJECT TO CONDITIONS, TO ALLOW DEVELOPMENT OF A 3,867 SQUARE FOOT PUBLIC EATING ESTABLISHMENT (IN-N-OUT BURGER) WITH DRIVE-THROUGH USE ON A 2.4 GROSS ACRE SITE LOCATED AT THE NORTHEAST CORNER OF COTTLE ROAD AND GREAT OAKS PARKWAY (5550 COTTLE ROAD)

FILE NOS. PDC 17-003 & PD17-001

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 30, 2017, an application (File Nos. PD17-001 and PD17-001) was filed by the applicant, In-n-Out Burger, for a Planned Development Permit to allow development of a 3,867 square foot public eating establishment with drive-through use on a 2.4 gross acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located at the northeast corner of Cottle Road and Great Oaks Parkway (5550 Cottle Road, San José, which real property is sometimes referred to herein as the ~~%~~subject property+); and

WHEREAS, the subject property is all that real property more particularly described and depicted in Exhibit "A", entitled ~~%~~Legal Description,+ which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on June 14, 2017, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled %n-n-Out Burger Planned Development Permit PD17-001 Cottle Road San José, CA,+ last revised April 26, 2017, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

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

1. Site Description and Surrounding Uses. The project site is located on the

northeast corner of Cottle Road and Great Oaks Parkway and is surrounded by Endicott Boulevard and railroad tracks to the north, retail uses to the south across Great Oaks Parkway, a park and undeveloped land to the east, and a community center and self-storage facility to the west across Cottle Road. The 17.4 acre project site is developed with an approximately 170,000 square foot Lowe's Home Improvement and Garden Center Warehouse and associated parking lot. The current Planned Development Zoning of the subject site was approved by City Council in 2007 (File No. PDC06-003) which allows a home improvement center and garden center between 170,000 square feet and 180,000 square feet as well as other commercial uses between 24,600 square feet and 34,800 square feet, consistent with the uses of the CP Commercial Pedestrian Zoning District.

2. **Project Description.** The proposed Planned Development (PD) Zoning would include a drive-through use on the subject site. The current PD Zoning of the subject site (File No. PDC06-003) approved in 2007 allows a home improvement center and garden center between 170,000 square feet and 180,000 square feet as well as other commercial uses between 24,600 square feet and 34,800 square feet consistent with the uses of the CP Commercial Pedestrian Zoning District. Drive-through uses are not permitted in the CP Commercial Pedestrian Zoning District and the current PD Zoning specifically prohibits drive-through uses. The proposed PD Zoning would leave a majority of the current development standards unchanged, while allowing a single drive-through restaurant on the subject site. The home improvement center (Lowe's) permitted by the current PD Zoning is already constructed and in operation.

The project proposes a Planned Development Rezoning of the entire 17.4 acre Lowe's shopping center property to allow an In-N-Out Burger fast-food restaurant with drive-thru. The project also proposes a Planned Development Permit to allow the construction of the approximately 3,867 square foot restaurant with drive-thru, with queueing for 22 vehicles that includes 1,298 square feet of indoor dining with 77 seats and an outdoor patio with seating for 48, and 46 parking spaces. The building will be a maximum of 23 feet in height (top of parapet). The restaurant is proposed on an approximately 2.4 gross acre portion of the larger Lowe's site.

The restaurant will operate seven days a week, with hours from 10:30 AM - 1:00 AM Sunday through Thursday, and 10:30 AM - 1:30 AM on Friday and Saturday. The restaurant, drive-through, and adjacent parking lot will be well-lit and regularly maintained. The restaurant will have a staff of 10 to 12 employees per shift, with three shifts per day, for a total of approximately 60 employees.

3. **General Plan and Specific Plan Conformance.**

The project is designated Combined Industrial/Commercial on the Envision San José 2040 General Plan Land Use / Transportation Diagram. The project is consistent with this designation as it allows for a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses. In addition, the project

is consistent with the following goal and policy of the General Plan:

- Goal LU-6.7 . Industrial Lands: Encourage supportive and compatible commercial uses in industrial areas designated to those uses.

Analysis: The proposed project would introduce a new viable commercial use to a currently vacant property. The proposed project is compatible with the commercial use of the area, which includes the Lowes Shopping Center, a Target shopping Center across the street, and an AutoZone. The restaurant would support the economic vitality of the area.

- Policy EC-1.8: Allow commercial drive-through uses only when consistency with the City's exterior noise level guidelines and compatibility with adjacent land uses can be demonstrated.

Analysis: Pursuant to the General Plan, the project meets the City's noise standards. The proposed use is compatible with nearby automobile-oriented uses, including the existing large format retail establishment (Lowe's) to the north. The proposed restaurant and drive-through are located away from noise sensitive receptors. The expected decibel level of the proposed project would be approximately between 65-70 dBA. The nearest residence is located more than 700 feet southwest of the site. At this distance, the estimated decibels of the proposed restaurant, drive-through and associated delivery and traffic with intervening fencing and vegetation, are expected to diminish below the normally accepted noise standard of 60 dBA. Noise levels during construction would be reduced through standard noise abatement measures that limit the hours of construction and utilize "quiet" models of air compressors and other stationary noise sources.

4. Planned Development Zoning Conformance.

a. Land Use

As noted above, drive-through uses are not permitted in the current PD Zoning District. The proposed PD Zoning would permit this in conjunction with a PD Permit, while keeping the other development standards the same.

b. Parking

Pursuant to Section 20.90.060 of the San José Municipal Code, parking for public eating establishments is required at a rate of one parking space per 2.5 seats or one parking space per 40 square feet of dining space, whichever is greater. Based on 77 seats, 31 parking spaces are required, while based on 1,298 square feet of dining area 33 parking spaces would be required. Parking for outdoor seating is required at a rate of one parking space per 2.5 seats over 25. Based on 48 seats, 9 parking spaces are required. Therefore, a total of 42 parking spaces are required for the proposed In & Out restaurant. The restaurant site will provide 46 parking spaces and therefore meets the parking requirement under the Zoning Code.

c. Setbacks and Height

The General Development Plan requires that buildings be a maximum of 50 feet in height. The proposed building is a maximum of 23 feet in height (top of parapet) and therefore, meets this requirement.

The General Development plan requires a minimum of front setback for buildings from the property line of 10 feet, while the front setback for parking is a minimum of 25 feet. There is no side or rear setback requirement. The building and parking areas are a minimum of 25 feet from the property line on both frontages and therefore, meet the setback requirement.

5. **Environmental Review.** An Addendum to the San José Lowe's Final Environmental Impact Report (City Council Resolution No. 73814) was prepared for the project under the provisions of the environmental review requirements the California Environmental Quality Act (CEQA) of 1970, as amended (CEQA), including the state and local implementing regulations. Further, the project relies upon the Envision San José 2040 General Plan Environmental Impact Report, as supplemented (City Council Resolution Nos. 76041 and 77617). The project was determined to be consistent with the above-referenced EIRs. The Addendum evaluated the potential impacts to biological resources, transportation and traffic, noise, and air quality, and finds that the project would not result in new or more significant environmental impacts. The location of the restaurant on the project site, along with noise buffering landscaping, is such that noise levels would not significantly impact residential uses. The Addendum and related environmental documents are available online at <http://www.sanjoseca.gov/index.aspx?nid=2434>
6. **Planned Development Permit Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Planned Development Permit.
 - a. The Planned Development Permit, as issued, furthers the policies of the general plan.
 - i. As discussed above, the project is consistent with the site's Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Combined Industrial/ Commercial which allows a significant amount of flexibility for the development of a varied mixture of compatible commercial and industrial uses. Properties with this designation are intended for commercial, office, or industrial developments or a compatible mix of these uses.
 - 1) Consistent with Land Use Goal LU-6.7: The proposed project would introduce a new viable commercial use to a currently vacant property. The proposed project is compatible with the commercial use of the area and would support the economic vitality of the area.
 - 2) Consistent with Environmental Considerations Policy 1.8: Per the Addendum prepared for the project, the project meets the city's noise

standards. The proposed use is compatible with nearby automobile-oriented uses, including the existing large format retail establishment (Lowe's) to the north.

- b. The Planned Development Permit, as issued, conforms in all respects to the planned development zoning of the property.
 - i. As discussed above, the proposed project conforms to the approved General Development Plan in terms of use, height, setbacks, and parking.
- c. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.
 - i. The placement and scale of the proposed buildings is integrated and harmonious. The proposed building mimics the style and material of the existing building on the site.
 - ii. The project is consistent with the Commercial Design Guidelines in that:
 - 1) The project conforms to the intent of these guidelines in that the policy recommends that primary ingress and egress for a drive-through should be from a four lane major street; Cottle Road is a major arterial street. Sufficient stacking is provided in the drive-through lane (13 cars) and it is physically separated from the parking lot by the building. In addition, pedestrian access to the building does not cross the stacking lane. The use of an architecturally-integrated overhead roof canopy adds the overall quality of the architecture along the south façade on which the drive-through window is located.
- d. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.
 - i. An Addendum to the San José Lowe's Final Environmental Impact Report (City Council Resolution No. 73814), and the Envision San José 2040 General Plan Environmental Impact Report, as supplemented (City Council Resolution Nos. 76041 and 77617) was prepared for the project under the provisions of the environmental review requirements the California Environmental Quality Act (CEQA) of 1970, as amended (CEQA), including the state and local implementing regulations. As discussed above, the project was determined to be consistent with the EIRs.

In accordance with the findings set forth above, a Planned Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. This City Council expressly declares that it would not have granted this permit and determination except upon and subject to

each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use permitted hereby.

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the permittee for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity

of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, ~~%n-n-Out Burger~~ Planned Development Permit PD17-001 Cottle Road San José, CA, ~~last~~ revised April 26, 2017, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the ~~%Approved Plan Set+or %approved plans.+~~
6. **Use Authorization.** This Planned Development Permit authorizes the following uses to be implemented on the property subject to the terms of this permit:
 - a. A public eating establishment with one drive-through located on the northeast corner of Cottle Road and Great Oaks Parkway on approximately 2.43 gross acres.
7. **Hour of Operation.** The public eating establishment shall only operate between the hours of 10:30 AM - 1:00 AM Sunday through Thursday, and 10:30 AM - 1:30 AM on Friday and Saturday.
8. **Speaker Noise.** Drive-through speakers shall not be audible from adjacent residentially used, zoned, or General Planned properties.
9. **Permit Adjustment Required.** Prior to the issuance of a Building Permit, the Developer shall secure and agree to implement a Permit Adjustment to the satisfaction of the Director of Planning which addresses the following concerns:
 - a. A six-foot, solid barrier shall be constructed along the southern boundary of the outdoor seating area. The design of the barrier shall be consistent with the architectural design of the building, to the satisfaction of the Director of Planning.
 - b. A sign shall be placed adjacent to the drive-through driveway stating ~~%To~~ minimize engine emissions, please consider turning your vehicle off while waiting to pull forward toward the order window+or similar language, subject to approval of the Director of Planning. The height, location and size of the sign shall also be subject to review and approval by the Director
10. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
11. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The

Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.

12. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
13. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
14. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping and drained to the sanitary sewer system.
15. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
16. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
17. **Trash Enclosures.** Provide a properly designed enclosure detail. Enclosure areas should be plumbed to the sanitary sewer and surrounding areas graded away as per City Council Policy 6-29. More information is also outlined, per Municipal Code section 15.14.515, in the Solid Waste Enclosure Area Guidelines for New Construction and Redevelopment. Access to these resources can be found in the following links:

Municipal Code:
https://www.municode.com/library/ca/san_jose/codes/code_of_ordinances?nodeId=SAJOMUCOVOI2000

Solid Waste Enclosure Area Guidelines:
<https://www.sanjoseca.gov/DocumentCenter/Home/View/437>
18. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
19. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
20. **New Signage.** All attached signage shown on the plans are conceptual only and shall be subject to separate review and approval to the satisfaction of the Director of Planning.
21. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include,

but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.

22. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
23. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
24. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
25. **Generators.** This permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
26. **Green Building Requirements for Tier 1 Non Residential Development (<25,000 square feet).** This development is subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009 for the construction of buildings approved through the scope of this permit, the permittee shall submit a LEED green building checklist for said buildings.
27. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
28. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines
29. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
30. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

31. Building Division Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, PD17-001, shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

32. Recycling. Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

33. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:

<http://www.sanjoseca.gov/index.aspx?nid=2246>.

- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
- b. **Transportation:** A traffic impact analysis was completed for the Lowes project (PDC06-003 & PD07-063) which included the proposed project. The analysis identified public improvements at two intersections that were required for the Lowes project to address increase in traffic as a result of the development. The Lowes project applicant was required to make and did make a fair share contributions toward the planned improvements to the satisfaction of the Director of Public Works. Implementation of the mitigation measures resulted in reducing impacts at the two intersections to less than significant levels.

A Traffic Operations Study was prepared by Hexagon Transportation Consultants on May 4, 2017, to assess traffic circulation and parking for the proposed project (Appendix B in the Addendum prepared for the project). The study concluded that the project has adequate site access and on-site circulation for passenger vehicles, trucks, pedestrians and bicyclists. The proposed drive-through design would provide adequate on-site vehicle stacking, adequate parking would be provided on-site, and no operational issues would be expected to occur on or off the site as a result of the proposed In-N-Out restaurant.

c. Grading/Geology:

- i. A grading permit is required prior to the issuance of any Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or are being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10 year storm event.
- iii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

d. Stormwater Runoff Pollution Control Measures: Stormwater Runoff Pollution Control Measures: This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- i. Final inspection and maintenance information on the post-construction treatment control measures must be included on the final Stormwater Control Plan.

- ii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
- e. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- f. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
- g. **Assessments:** This project is located within the boundaries of Maintenance District 9 (Santa Teresa - Great Oaks), which maintains the enhanced street island landscaping on Santa Teresa Boulevard, Great Oaks Boulevard/Great Oaks Parkway, San Ignacio Avenue, and Cottle Road. Benefitting properties within the district pay for the maintenance through annual assessments placed on the County property tax bills, which are adjusted annually by the Consumer Price Index. The 2016-17 assessment for Assessor's Parcel No. 706-06-019 is \$3,079.86, which is calculated at approximately \$202 per acre minus any credits for this fiscal year. The assessment is based on acreage and proximity to the maintained areas. Future year assessments will continue to be collected through the County property tax bills listed under Tax Code 931 "S J MAINT DIST #9".
- h. **Street Improvements:** Show on plans dedication at the northwest corner of Great Oaks Parkway and Charlotte Drive the existing wheel chair ramp on private property.
 - i. Dedication will be required at the northwest corner of Great Oaks Parkway/Charlotte Drive for the portion of the existing wheel chair that is outside the City right-of-way.
 - ii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - iii. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage.
- i. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.

j. Street Trees:

- i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current %Guidelines for Planning, Design, and Construction of City Streetscape Projects+. Street trees shall be installed in park strip. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
- ii. Replace any missing street trees in empty tree wells or park strips along Great Oaks Parkway and match existing trees per City standards; refer to the current %Guidelines for Planning, Design, and Construction of City Streetscape Projects+. Obtain a DOT street tree planting permit for any proposed street tree plantings.
- iii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed

34. Standard Environmental Mitigation Measures

a. Air Quality

- i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- iii. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- vi. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- vii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be

checked by a certified mechanic and determined to be running in proper condition prior to operation.

- viii. A publicly visible sign shall be posted at the site with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

b. Biological

Tree Mitigation Measures

Any tree to be removed will be replaced with new trees in accordance with the City's Tree Replacement Ratios, as set forth below.

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12-17 inches	3:1	2:1	none	24-inch box
Less than 12 inches	1:1	1:1	none	15-gallon container
x:x = tree replacement to tree loss ratio Note: Trees greater than 18" diameter shall not be removed unless a tree removal permit, or equivalent, has been approved for the removal of such trees. Replacement trees are to be above and beyond standard landscaping; required street trees do not count as replacement trees.				

In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the City's Environmental Supervising Planner, prior to issuance of any building permit:

- The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
- Identify an alternative site(s) for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement. Contact PRNS Landscape Maintenance Manager for specific park locations in need of trees.
- Donate \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and

maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to issuance of any building permit.

To safeguard the health of any trees to be retained, the permittee shall follow the tree protection guidelines provided in Section 13.32.130 of the San José Municipal Code during all phases of development.

a. Nitrogen Deposition Fee

The permittee is required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement for approval and payment of the nitrogen deposition fee prior to the issuance of any grading permit.

b. Cultural Resources

- i. In the event that prehistoric, historic, or cultural resources are encountered during excavation and/or grading of the site, all activities within a 50-foot radius of the find shall be stopped, the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified archaeologist shall examine the find and make appropriate recommendations prior to issuance of any building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring shall be submitted to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement prior to issuance of any building permits.
- ii. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts.

- iii. If one of the following conditions occurs, the permittee shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance: 1) the Native American Heritage Commission is unable to identify a most likely descendant or the most likely descendant failed to make a recommendation within 24 hours after being notified by the commission; 2) the descendant identified fails to make a recommendation; or 3) the permittee rejects the recommendation of the descendant, the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

c. Geology and Soil

- i. Prior to the issuance of any site-specific grading or building permits, a design-level geotechnical investigation shall be prepared and submitted to the City of San José Public Works Department for review and confirmation that the proposed development complies with the California Building Code and the requirements of applicable City Ordinance No. 25015 and Building Division Policy SJMC 24.02.310-4-94. The report shall determine the project site's surface geotechnical conditions and address potential seismic hazards such as seismicity, expansive soils, and liquefaction. The report shall identify building techniques appropriate to minimize seismic damage. In addition, the following requirement for the geotechnical and soils report shall be met:
- ii. Analysis presented in the geotechnical report shall conform to the California Division of Mines and Geology recommendations presented in the ~~%~~Guidelines for Evaluating Seismic Hazards in California.+

d. Hazards and Hazardous Material

- i. The permittee shall share the site development plans with RWQCB and include a detailed summary of the risk of potential impacts to construction workers, future employees, and/or the environment during earth working activities and implement the approved SMP as applicable for work affecting any capped soils. Requirements of the SMP include: 1) a work plan, 2) a site-specific health and safety plan, 3) dust control measures, 4) runoff management measures, and 5) appropriate soil disposal methods.

e. Hydrology and Water Quality

Construction Measures

Prior to the commencement of any clearing, grading or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the Director of Public Works, as follows:

- i. The permittee shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities.
- ii. The permittee shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with construction activities. Examples of BMPs are contained in the publication Blueprint for a Clean Bay, and include preventing spills and leaks, cleaning up spills immediately after they happen, storing materials under cover, and covering and maintaining dumpsters. Prior to the issuance of any grading permit, the permittee may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, 200 East Santa Clara Street, San José, California, 95113. The Erosion Control Plan may include BMPs as specified in ABAG's Manual of Standards Erosion & Sediment Control Measures for reducing impacts on the City's storm drainage system from construction activities.

The permittee shall comply with the City of San José Grading Ordinance, including erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:

- i. Restriction of grading to the dry season (April 30 through October 1) or meet City requirements for grading during the rainy season;
- ii. Utilize on-site sediment control BMPs to retain sediment on the project site;
- iii. Utilize stabilized construction entrances and/or wash racks;
- iv. Implement damp street sweeping;
- v. Provide temporary cover of disturbed surfaces to help control erosion during construction; and
- vi. Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

Post-Construction

The project shall comply with applicable provisions of the following City Policies: City Council Policy 6-29 Post-Construction Urban Runoff Management and City Council Policy 8-14 Post-Construction Hydromodification Management.

Details of specific Site Design, Pollutant Source Control, Stormwater Treatment Control, and Hydromodification Control measures demonstrating compliance with Provision C.3 of the MRP (NPDES Permit Number CAS612008), shall be included in the project design, to the satisfaction of the Director of Planning, Building and Code Enforcement.

f. Noise

- i. Construction activities shall be limited to the hours between 7:00 am and 7:00 pm, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
- ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iv. Unnecessary idling of internal combustion engines shall be strictly prohibited. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. Temporary noise barriers could reduce construction noise levels by 5 dBA.
- v. Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- vi. Control noise from construction workers/radios to a point where they are not audible at existing residences bordering the project site.
- vii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of noisy construction activities to the adjacent land uses and nearby residences.
- viii. Erect a temporary noise control blanket barrier, if necessary, along building façades facing construction sites. This mitigation would only be necessary if conflicts occurred that were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- ix. Designate a "disturbance coordinator" responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and

will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.

35. Revocation, Suspension, Modification. This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a Planned Development permit to use the subject property for said purpose specified above is hereby approved.

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EFFECTIVE DATE

The effective date of this Permit shall be the effective date of the Planned Development Zoning Ordinance for File No. PDC17-003 approved for publication on June 27, 2017 (the ~~%Planned Development Zoning Ordinance+~~) and shall be no earlier than the effective date of said Planned Development Zoning Ordinance.

APPROVED this ____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

PARCEL MAP

A SUBDIVISION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED IN THE GRANT DEED TO LOWE'S HW, INC., RECORDED JUNE 19, 2008 AS DOCUMENT NO. 19882067, OFFICIAL RECORDS OF SANTA CLARA COUNTY, STATE OF CALIFORNIA, AND LYING WITHIN THE

CITY OF SAN JOSE
SANTA CLARA COUNTY, CALIFORNIA

SEPTEMBER, 2015
CONSISTING OF 3 SHEETS



associates, inc.
801 YGNACIO VALLEY ROAD
SUITE 220
WALNUT CREEK, CA. 94596



GRAPHIC SCALE
0 80
1"=60'

LINE TABLE

LINE	BEARING	DISTANCE
L1	S63°34'56"W	39.97' (39.98') (R2)
L2	S34°37'23"W	27.45'
L3	S13°17'21"W	24.94'

NOTES:

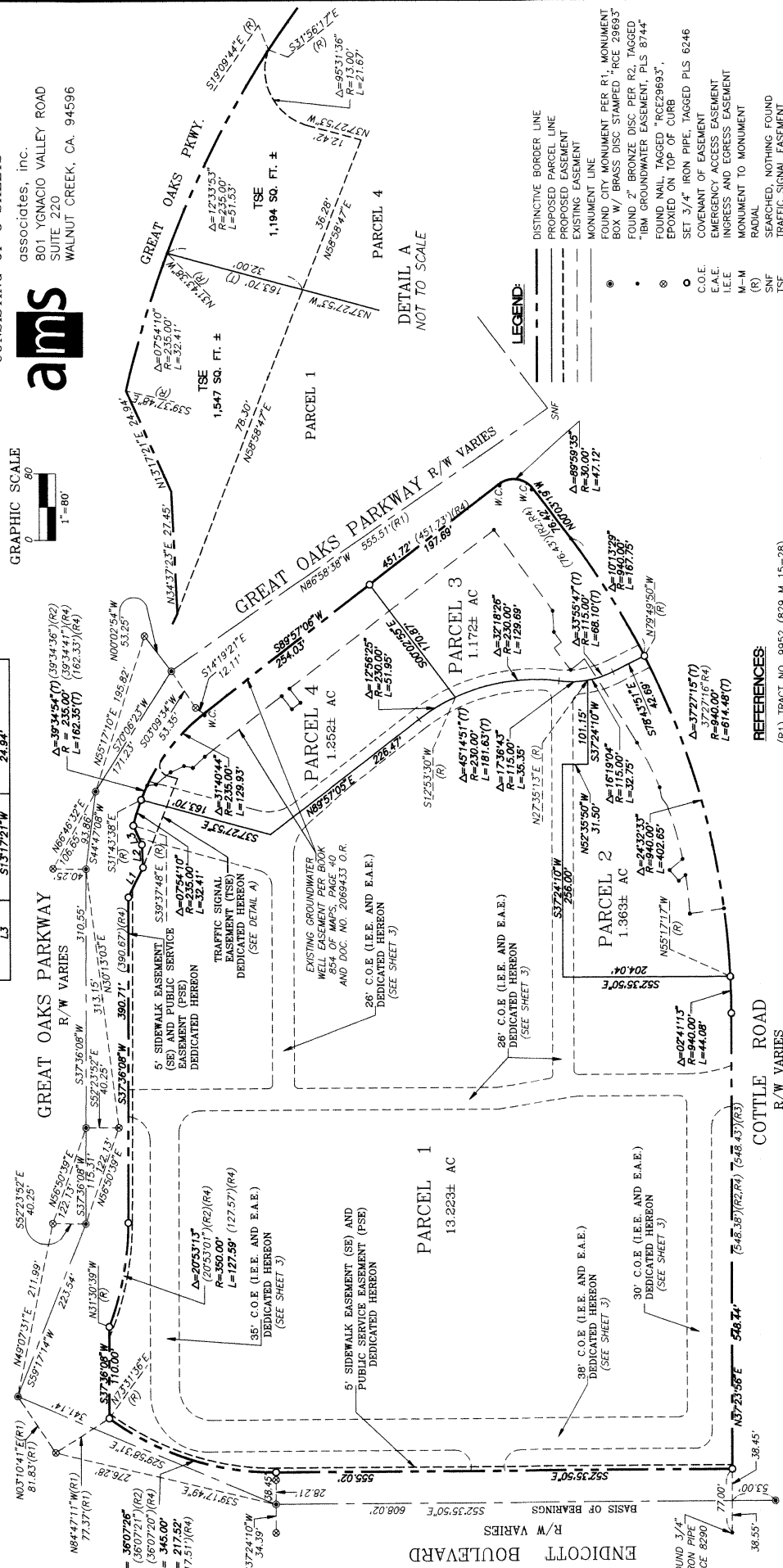
- ALL DISTANCES AND DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
- THE AREA WITHIN THE DISTINCTIVE BORDER LINE IS 17.01 ACRES, MORE OR LESS.
- THE DISTINCTIVE BORDER LINE DENOTES THE BOUNDARY OF THE SUBDIVISION.
- ALL FOUND MONUMENTS, REFERENCE MONUMENTS, BRONZE DISCS AND WITNESS CORNERS ARE THE SAME AS SHOWN ON R1. THEIR POSITIONS WERE FIELD SURVEYED AND ACCEPTED FOR PURPOSES OF THIS PARCEL MAP.

EXISTING EASEMENTS NOT SHOWN:

EX. EASEMENT FOR PERMANENT TELECOMMUNICATION, RECORDED FEBRUARY 13, 2014 AS INSTRUMENT NO. 22518872, O.R.
EXACT LOCATION NOT DISCLOSED OF RECORD.

EXISTING EASEMENTS NOT SHOWN:

EX. EASEMENT FOR PERMANENT TELECOMMUNICATION, RECORDED FEBRUARY 13, 2014 AS INSTRUMENT NO. 22518872, O.R.
EXACT LOCATION NOT DISCLOSED OF RECORD.



LEGEND:
DISTINCTIVE BORDER LINE
PROPOSED PARCEL LINE
EXISTING EASEMENT
MONUMENT LINE
FOUND CITY MONUMENT PER R1, MONUMENT BOX W/ BRASS DISC STAMPED "RCE 29693"
FOUND 2" BRONZE DISC PER R2, TAGGED "1BM GROUNDWATER EASEMENT, PLS 8744"
FOUND NAIL TAGGED "RCE29693", EPOXIED ON TOP OF CURB
SET 3/4" IRON PIPE, TAGGED PLS 8246
COVENANT OF EASEMENT
EMERGENCY ACCESS EASEMENT
INGRESS AND EGRESS EASEMENT
MONUMENT TO MONUMENT
RADIAL
SEARCHED, NOTHING FOUND
TRAFFIC SIGNAL EASEMENT
TOTAL
WITNESS CORNER, 2" BRONZE DISC, FOUND PERPENDICULAR TO PROPERTY CORNER, 2.00' FROM ACTUAL CORNER

REFERENCES:

- (R1) TRACT NO. 9952 (829 M 15-28)
- (R2) RECORD OF SURVEY (854 M 40)
- (R3) RECORD OF SURVEY (265 M 1)
- (R4) LOT LINE ADJUSTMENT-DOC. NO. 19307509

SHEET 2 OF 3 SHEETS

3-18887

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

Description:
Order: 751676 Comment:

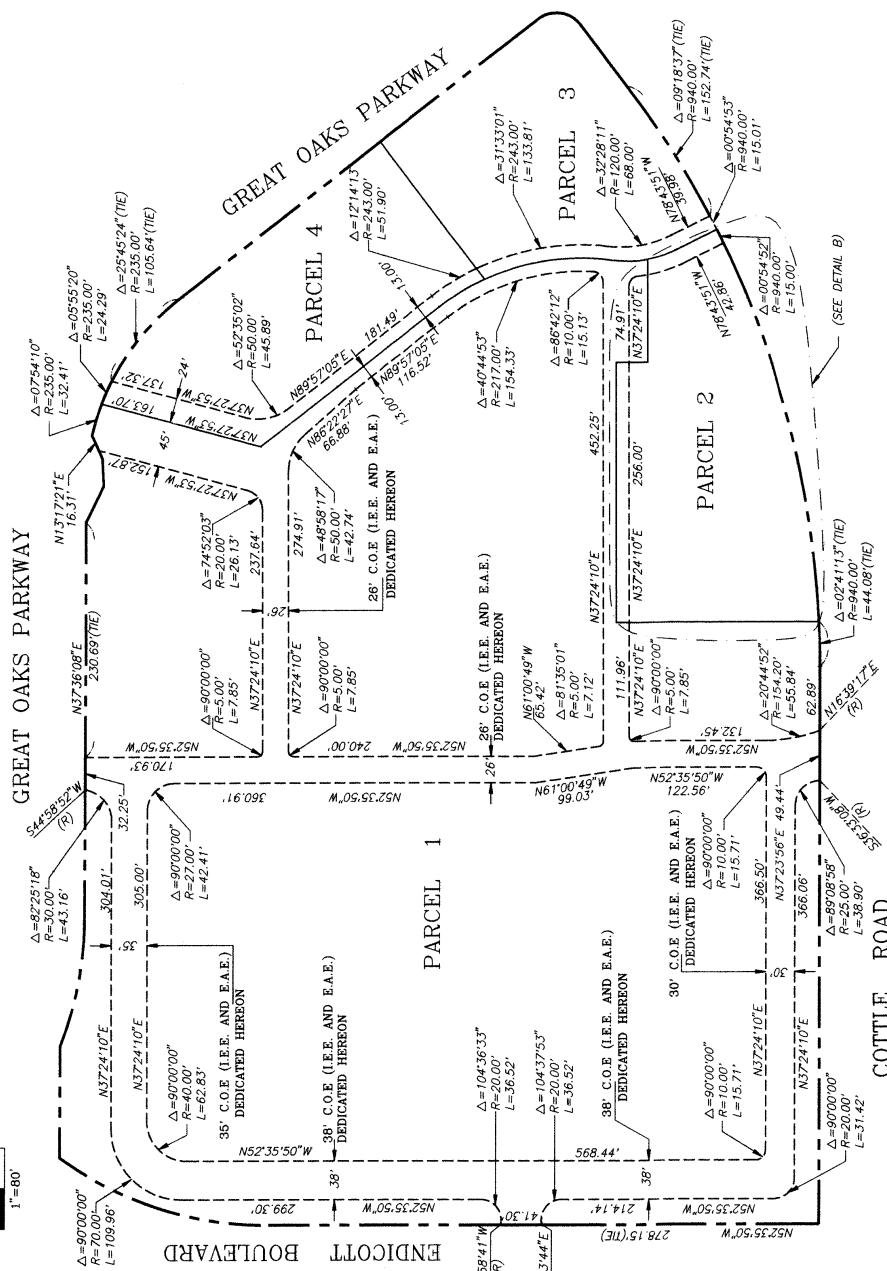
A SUBDIVISION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED IN THE GRANT DEED TO LOWE'S HIW, INC., RECORDED JUNE 19, 2008 AS DOCUMENT NO. 19892067, OFFICIAL RECORDS OF SANTA CLARA COUNTY, STATE OF CALIFORNIA, AND LYING WITHIN THE

CITY OF SAN JOSE
SANTA CLARA COUNTY, CALIFORNIA

SEPTEMBER, 2015
CONSISTING OF 3 SHEETS

associates, inc.

ams



DETAIL. B

SCALE: 1"=80'

LEGEND:

DISTINCTIVE BORDER LINE
 PROPOSED PARCEL LINE
 PROPOSED PARCEL LINE
 PROPOSED EASEMENT
 EXISTING EASEMENT
 MONUMENT LINE

- FOUND CITY MONUMENT PER R1. MONUMENT
 BOX W/ BRASS DISC STAMPED "RCE 29693"
 FOUND 2ND BRONZE DISC PER R2. TAGGED
 "IBM GROUNDWATER EASEMENT. PLS 8744"
 FOUND NAIL TAGGED "RCE29693".
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 COVENANT OF EASEMENT
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 INGRESS AND EGRESS EASEMENT
 MONUMENT TO MONUMENT
 RADIAL
 SEARCHED. NOTHING FOUND
 TRAFFIC SIGNAL EASEMENT
 TOTAL
 WITNESS CORNER. 2ND BRONZE DISC.
 FOUND. PERFORMED TO PROPERTY
 CORNER. 2.00' FROM ACTUAL CORNER
 W.C.

COVENANT OF EASEMENT (C.O.E.)
I.E.E. AND E.A.E.

DETAIL SHEET

3-18687

SHEET 3 OF 3 SHEETS