

(a) Conforming Rezoning of a Real Property Located at 3550 San Felipe Road.



CITY COUNCIL STAFF REPORT

File No.	C16-029
Applicant	William Mabry, Oakmont Senior Living
Location	3550 San Felipe Road
Existing Zoning	A Agricultural
Council District	8
Historic Resource	Yes
Annexation Date	July 27, 1981
CEQA	Mitigated Negative Declaration for Oakmont of Evergreen Assisted Living

APPLICATION SUMMARY:

Conforming Rezoning from the A Agricultural and R-1-5 Single Family Residential Zoning Districts to the CN Commercial Neighborhood Zoning District on an approximately 4.9 acre site.

RECOMMENDATION:

Staff recommends that the City Council consider and adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Report Program for the Oakmont of Evergreen Assisted Living project and approve the proposed rezoning subject to the findings made in this staff report.

PROJECT DATA			
GENERAL PLAN CONSISTENCY			
General Plan Designation		Neighborhood /Community Commercial <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
Consistent Policies		IP-8.2	
Inconsistent Policies		None	
SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	Neighborhood/Community Commercial	A Agriculture, CO Commercial Office	Church
South	Neighborhood/Community Commercial, Residential Neighborhood	A Agriculture	Single-family residences, beauty salon
East	Residential Neighborhood	R-1-5 Single Family Residence, and CG Commercial General	Single-family residences
West	Residential Neighborhood	R-1-5 Single Family Residence, and A(PD) Planned Development	Single-family residences
RELATED APPROVALS			
Date	Action		
07/27/81	Site annexed into the City of San José (Evergreen No. 144).		

PROJECT DESCRIPTION

On June 16, 2016, a rezoning application was filed for the property located on the northeast side of San Felipe at 3550 San Felipe Road, from the A Agricultural and R-1-5 Single

Family Residence Zoning Districts to the CN Commercial Neighborhood Zoning District. If the rezoning is approved by the City Council, the CN Commercial Neighborhood Zoning District will allow commercial uses on the site. The applicant has also filed a Historic Preservation Permit (file no. HP16-004) and a Conditional Use Permit (file no. CP16-029) to relocate the historic Smith House, a historic landmark, and associated ancillary buildings to facilitate the construction of an approximately 91,714 square foot residential care facility. The Historic Preservation Permit will be heard at a Planning Director's hearing on February 8, 2017, and March 29, 2017, and the CUP will be considered by the Planning Commission on March 22, 2017, after the City Council considers the environmental clearance and rezoning for the site.

Site Description

The site is comprised of three parcels (APNs 659-04-015, 659-04-016, and 659-04-017) totaling approximately 4.9 acres. The property includes the Smith House, a historic landmark, as well as associated ancillary buildings. Outside of the historic buildings, the properties are vacant and relatively level. These parcels are shown in Figure 1, below.

The site is bordered by a church and vacant land to the north, single family residences to the east, west, and south, as well as a beauty salon to the south.



Figure 1: Project Site

ANALYSIS

The proposed Conforming Rezoning was analyzed for conformance with: 1) the Envision San José 2040 General Plan; 2) the Evergreen-East Hills Development Policy; 3) the Zoning Ordinance; and 4) the California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

The subject property is designated as Neighborhood/Community Commercial on the General Plan Land Use/Transportation Diagram (see Figure 2), which allows a mix of neighborhood-serving uses. This designation is intended for commercial uses to provide services and amenities for the nearby community and for these uses to be designed to promote an appropriate urban form.

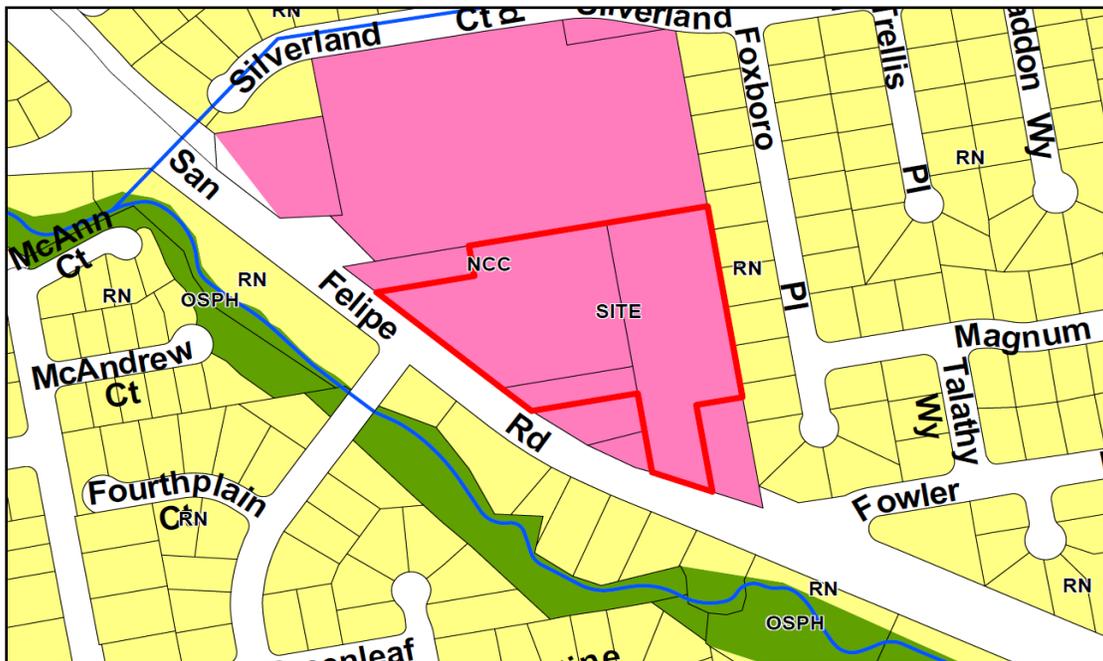


Figure 2: General Plan Land Use/Transportation Diagram

The proposed rezoning to CG Commercial General supports the goals of this designation in that commercial uses are an intended use within this General Plan Designation.

This conforming rezoning is also consistent with the following General Plan policy:

1. Implementation Policy IP-8.2: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective Envision General Plan land use designations, while providing greater detail to the appropriate land uses and form of development.

Analysis: The proposed rezoning would utilize a conventional zoning district that is consistent with the subject property's General Plan land use designation of Neighborhood/Community Commercial.

As for the specific project, the Conditional Use Permit, and related Historic Preservation Permit, on file are to facilitate a 91,714 square foot, 94-unit residential care facility. Zoning Ordinance Section 20.200.1030 defines a residential care facility as a "facility licensed by the state of California where care, services or treatment is provided to persons living in a community residential setting." While residential care facilities are conditional uses in various residential and commercial zoning districts, the facilities are considered commercial uses if they are "an establishment where for a minimum of 40 hours per week, in-patient nursing care, including bed care, is provided and where other medical care may be provided for persons who are ill, injured, or infirmed (physically or mentally), but excluding persons with communicable disease," as defined by Section 20.200.250. The applicant has documented in the CUP application submittal that the proposed residential care facility will include the aforementioned commercial-based services. Planning staff has determined that the facility is commercial in nature and, therefore, the rezoning and CUP are consistent with the Neighborhood/Community Commercial land use designation.

Evergreen-East Hills Development Policy

The Evergreen-East Hills Development Policy establishes the policy framework for facilitating new residential, office, and commercial development within the policy area and to promote the long-term vitality of the Evergreen-East Hills area by linking together new development with supporting transportation infrastructure. Commercial uses, such as those that would be allowed with this rezoning including residential care facilities, are considered by the policy within the land use designation as well as the traffic trips generated by commercial uses. Further policy conformance of specific projects is analyzed in more detail as a part of the Conditional Use Permit. The review of this project found the proposed rezoning to be in conformance with the Evergreen-East Hills Development Policy.

Zoning Ordinance Conformance

The CN Commercial Neighborhood Zoning District is intended for a full range of retail and commercial uses with a minimum one-acre lot size. Any future project that is constructed will be required to conform to the development standards of the CN Commercial Neighborhood Zoning District. The CN Commercial Neighborhood Zoning District allows a broad range of retail and commercial uses intended to serve the needs of the surrounding area. The proposed rezoning would ensure future uses that would be consistent with the existing surrounding properties. The development standards of the CN Commercial Neighborhood Zoning District are similar to the development standards of the adjacent CG Commercial General Zoning District however the CN Commercial Neighborhood Zoning District development standards require a smaller front setback and a lower height than the adjacent CG Commercial General Zoning District.

As analyzed in the General Plan conformance section above, the Conditional Use Permit concurrently on file proposes a 94-unit residential care facility. A residential care facility is a

conditional use in the CN Commercial Neighborhood Zoning District. The CUP will be considered by the Planning Commission on March 22, 2017.

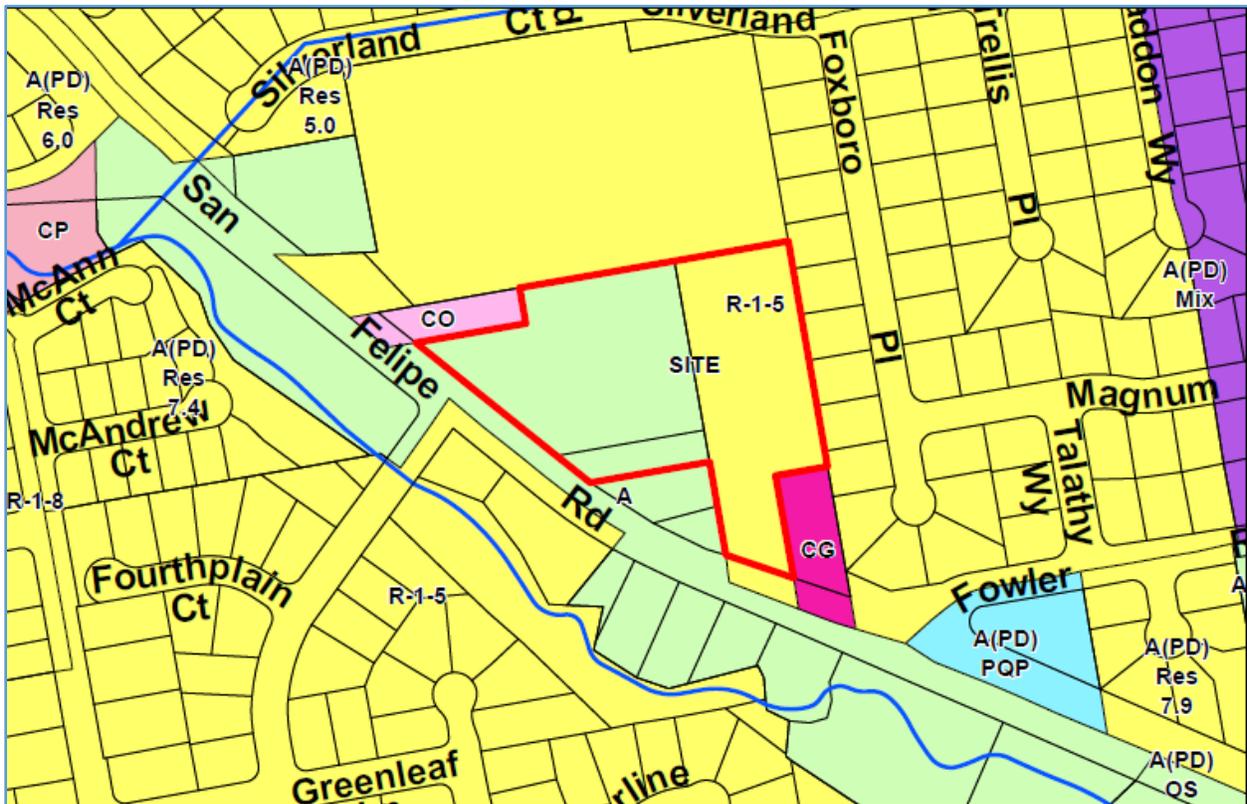


Figure 3: Existing Zoning District Designation

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A Mitigated Negative Declaration for the Oakmont of Evergreen Assisted Living Facility was prepared, all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended. The document was circulated for public review from December 12, 2016, to January 18, 2017, and one comment from VTA was received. The Mitigated Negative Declaration for the proposed rezoning, Historic Preservation Permit, and Conditional Use Permit identified mitigation measures related to air quality, biological resources, cultural resources, hazards and hazardous materials, and noise and vibration. The entire Mitigated Negative Declaration and other related environmental documents are available at: <http://www.sanjoseca.gov/index.aspx?NID=5317>.

Specifically related to cultural resources, the Initial Study included a historical assessment technical report that analyzed potential impacts of the proposed 94-unit residential care facility and proposed relocation of the City Landmark Smith House and associated tank house, pump house and aviary approximately 85 feet from their original location. The project proposes the preservation of landscape features and spatial relationships of the Smith House and associated buildings, the separation of the new residential care facility building from the historic buildings, and the design of the proposed facility takes cues from the Smith House. The historical assessment found the historic buildings and design of the proposed facility to be compatible in terms of scale and materials. During and after relocation of the historic buildings, the Smith

House will be preserved per a preservation plan required as part of the Historic Preservation Permit, and will retain its east/west alignment and continue to face San Felipe Road. The Smith House's ancillary buildings (tank house, pump house and aviary) will be moved with the house and placed to maintain the original setting. These buildings will be painted to match the Smith House. The Smith House and ancillary buildings will be separate from the proposed residential care facility in an effort to ensure its setting retains an independent ambiance. A use of the Smith House is not proposed at this time, though the building will be restored as part of its relocation.

The Initial Study identifies project-specific cultural resources mitigation measures resulting from the Smith House relocation to reduce potentially significant effects to a less than significant level. The mitigation measures include an existing conditions study prior to the Smith House relocation, a structural engineer-prepared shoring/relocation plan to protect the structural integrity of the Smith House during its relocation, engaging a building mover who has experience moving similar historic structures, and limiting access to the building until such time rehabilitation of the structure is complete. These mitigation measures, along with all others, will be incorporated as conditions of approval for the Conditional Use Permit and Historic Preservation Permit, if approved by the Planning Commission and Planning Director.

PUBLIC HEARING NOTIFICATION

In order to inform the public of the proposed project, staff followed Council Policy 6-30: Public Outreach Policy. A community meeting was held for this project on October 18, 2016, at the church on the adjacent property. Approximately 20 people were in attendance and questions primarily addressed the proposed residential care facility and the historic structures on the site. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The Council Staff Report is also posted on the City's website. Staff has been available to respond to questions from the public.

Approved by: /s/ Harry Freitas, Director, Planning, Building and Code Enforcement

Attachments: Legal Description
Plot Plan

For questions, please contact Steve McHarris, Planning Official, at (408) 535-7819.

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 659-04-015, 659-04-016 and 659-04-017

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

Portion of Rancho Yerba Buena Y Socayre, also being portion of 2.834 acre tract shown upon Map of Record of Survey filed April 25, 1966 in Book 208 of Maps, Page 38, Santa Clara County Records, described as follows:

Beginning at a point in the center line of Dry Creek or San Felipe Road distant thereon South 52 deg 03' 33" East 80.34 feet from the intersection of said center line with the Southwest line of parcel of land firstly described in Deed to the Conference Board of Missions of the California-Nevada Annual Conference of the Methodist Church, a Corporation, recorded December 26, 1961, Book 5409 of Official Records, Page 10; thence from said Point of Beginning North 79 degrees 37' 22" East along a line parallel with and distant Southeast 60 feet, measured at right angle to said Southeast line, 246.86 feet; thence North 10 degrees 22' 38" West 60 feet to said Southeast line of said parcel, thence North 79 degrees 37' 22" East along said line 260.50 feet to the Southwest line of Parcel of land conveyed to Felix F. Fleischer at ux by Deed recorded December 2, 1959 in Book 4623 Official Records, Page 307, thence South 10 degrees 23' 29" East along said line, 284.49 feet to the Northwest line of 1 acre parcel of land described in Deed to Charles Stevens recorded in Book 32 of Deeds, page 145; then South 79 degrees 47' 29" West along said line 308.37 feet to said center line of Dry Creek or San Felipe Road; thence North 52 degrees 03' 33" West along said line 299.37 feet to the Point of Beginning, being a portion of land of Catherine R. Smith shown on the Record of Survey recorded April 25, 1966 in Book 208 of Maps, at Page 38, Santa Clara County Records.

Excepting therefrom that portion described in the Deed to the County of Santa Clara recorded June 21, 1982, Document No. 7393981, in the Office of the County Recorder of Santa Clara County.

APN: 659-04-016

PARCEL NO. 2:

Beginning at the Northeast corner of that certain one acre tract of land conveyed by Charles C. Smith to Charles Stevens by Deed dated March 28, 1874 and recorded April 15, 1874 in Book 32 of Deeds, Page 145, Santa Clara County Records; thence along the Northwesterly line of said one acre tract South 79 degrees 47' 29" West 268.09 feet to the point of intersection thereof with the Northeasterly line of San Felipe Road; thence along the Northeasterly line of San Felipe Road South 52 degrees 02' 33" feet 67.00 feet to a 3/4 inch iron pipe; thence North 80 degrees 43' 47" East 223.59 feet to 3/4 inch iron pipe set in a fence corner in the Northeasterly line of said one acre Tract; thence along said Northeasterly line of said one acre tract North 10 degrees 23' 29" West 53.57 feet to the Point of Beginning, being lands of Fred Della Maggiori shown on the Record of Survey recorded April 25, 1966 in Book 208 of Maps, at Page 38, Santa Clara County Records.

Excepting therefrom that portion described in the Deed to the County of Santa Clara recorded June 21, 1982, Document No. 7393982, in the Office of the County Recorder of Santa Clara County.

APN: 659-04-015

PARCEL NO. 3:

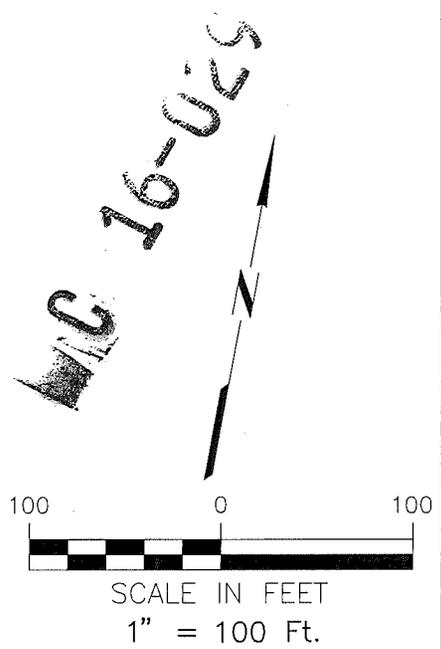
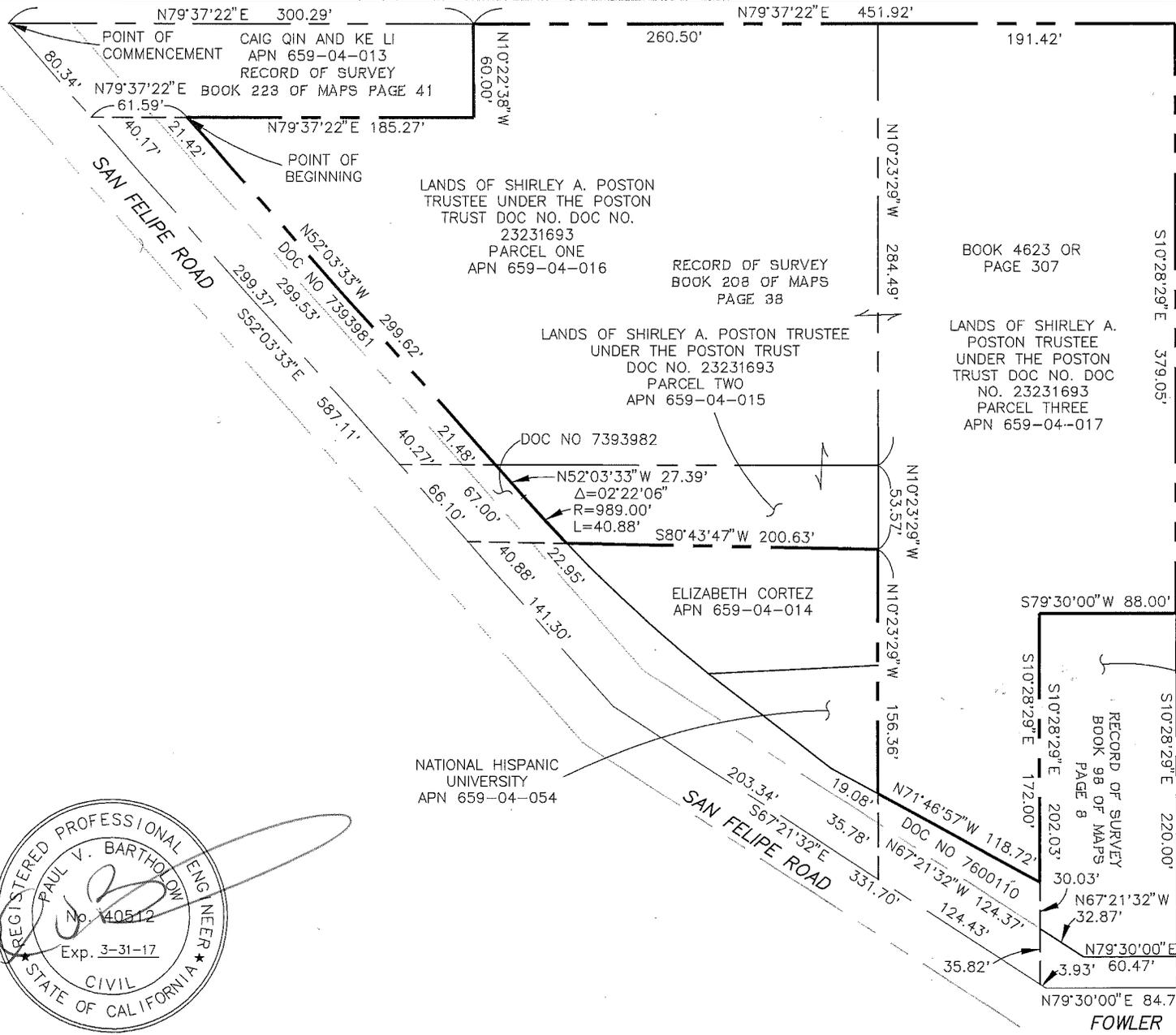
Portion of Lot 1 as shown upon that certain Map entitled, "C.C. Smith Tract", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on January 10, 1898 in Book I of Maps, at Page 85, and more particularly described as follows:

EXHIBIT "A"
Legal Description
(continued)

Beginning at a point in the Northeasterly line of San Felipe Road, also known as Dry Creek Road, as said Road is shown upon the Map above referred to, at the Southwesterly corner of that certain tract of land described in the Deed from John L. Walsh at ux, to Jack Merlin Johnson, et ux, dated February 2, 1959, recorded February 5, 1959 in Book 4314 Official Records, Page 36, Santa Clara County Records; thence from said Point of Beginning North 67 degrees 21' West along said Northeasterly line of San Felipe Road 124.56 feet to a Southwesterly corner of that certain 9.312 acre tract of land described in the Deed from Melvin Frances Manville, et ux, to John L. Walsh, et ux, dated May 29, 1952 in Book 2428 Official Records, at Page 405 Santa Clara County Records; thence North 10 degrees 26' West along a Westerly line of said 9.312 acre tract 513.40 feet to a stake marked 55; thence North 79 degrees 39' East to the point of intersection thereof with the Easterly line of said 9.312 acre tract; thence South 10 degrees 30' East along said last mentioned line to the Northeasterly corner of land so described in the Deed to said Johnson; thence South 79 degrees 30' West along the Northerly line of land so described in the Deed to said Johnson 88.00 feet to the Northwesterly corner thereof; thence South 10 degrees 30' East along the Westerly line of land so described in the Deed to said Johnson 202.03 feet to the Point of Beginning, being Lands of Felix Fleischer, et ux, shown on the Record of Survey recorded April 25, 1966 in Book 208 of Maps, at Page 38, Santa Clara County Records.

Excepting therefrom that portion described in the Deed to the City of San Jose, a Municipal corporation, recorded June 21, 1982, Document No. 7600110, in the Office of the County Recorder of Santa Clara County.

APN: 659-04-017



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3550 SAN FELIPE ROAD
SAN JOSE, CALIFORNIA
 MERGER EXHIBIT
 APRIL 2016

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE OAKMONT OF EVERGREEN ASSISTED LIVING FACILITY PROJECT MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for Oakmont of Evergreen Assisted Living Facility Project under Planning File Nos. C16-029, CP16-029, and HP16-004 (the “Initial Study/Mitigated Negative Declaration”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

WHEREAS, the Oakmont of Evergreen Assisted Living Facility Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Conforming Rezoning from the A Agricultural Zoning District and R-1-5 Zoning District to the CG Commercial General Zoning District, and the relocation of a Historic City Landmark (Smith House), to allow the construction of a 91,714 square foot, 94-unit Residential Care Facility on a 4.9 gross acre site located on the northeast side of San Felipe Road approximately 200 feet north of Fowler Road at 3550 San Felipe Road in San José; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in certain significant effects on the

environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the "Mitigation Monitoring and Reporting Program"); and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José,

California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

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

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/ Mitigated Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File Nos. C16-029, CP16-029, and HP16-004). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and (2) available for inspection by any interested person.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

**Oakmont of Evergreen Assisted Living Facility
File Nos. C16-029, CP16-029, and HP16-004**

**CITY OF SAN JOSE
February 2017**



**EXHIBIT "A"
(File Nos. C16-029; CP16-029; HP16-004)**

P R E F A C E

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration prepared for the Oakmont of Evergreen Assisted Living Facility concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program (MMRP) addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the Initial Study/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

I, William Mabry, the applicant, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of an initial study for my proposed project. I understand that these Mitigation Measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level, where feasible.

Project Applicant's Signature 

Date 2/6/17

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
AIR QUALITY					
Impact AIR-1: Construction of the proposed project would affect nearby sensitive receptors that would result in adverse health risks above the Bay Area Air Quality Management District (BAAQMD) thresholds.					
<p>MM AIR-1: The developer shall ensure all off-road construction equipment in excess of 50 horsepower used on-site by the developer or contractors is equipped with engines meeting the EPA Tier IV offroad engine emission standards. The project applicant shall submit to the Department of Planning, Building, and Code Enforcement (PBCE) a construction operations plan that includes specifications of the equipment to be used during construction.</p> <p>The plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set forth in these mitigation measures. The plan shall be submitted to the Supervising Environmental Planner, PBCE for review and approval prior to issuance of grading permits.</p> <p>The construction contractor shall maintain a log of equipment to be used at the construction site with make, model, serial number, and certification level of each piece of construction equipment. The log shall be available for review by the Supervising Environmental Planner, PBCE, and other appropriate City staff.</p>	All measures shall be printed on all construction documents, contracts, and project plans.	Prior to issuance of any grading permit.	PBCE Supervising Environmental Planner	Ensure the measures are on all construction documents, contracts, and project plans prior to the issuance of any grading permit.	Prior to issuance of any grading permit.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
BIOLOGICAL RESOURCES					
Impact BIO-1: Development of the proposed project could result in direct impacts to nesting birds, if present on the site at the time of construction.					
<p>MM BIO-1: Nesting Birds and Raptors To prevent impacts to Federal Migratory Bird Treaty Act (MBTA)-protected birds, nesting raptors, and their nests, removal of trees shall be limited to only those necessary to construct the proposed Project.</p> <ul style="list-style-type: none"> If any tree removal is necessary, it shall occur outside the nesting season between September 1 and January 31. During the early part of the breeding season (February 1 to May 31), pre-construction surveys shall be performed by a qualified ornithologist no more than 14 days prior to the start of ground disturbance, construction, or tree removal. During the latter part of the breeding season (June 1 to August 31), pre-construction surveys shall be conducted by a qualified ornithologist no more than 30 days prior to the start of ground disturbance, construction or tree removal. All large trees within 250 feet of the limits of grading shall be inspected by the qualified ornithologist as construction occurs on the project site. A report summarizing results of the pre-construction survey and subsequent efforts to protect migratory birds (if found to be present) shall be submitted to the Supervising Environmental Planner, PBCE, prior to the issuance of any tree removal and grading permits. If an active nest(s) is located during pre-construction surveys, the U.S. Fish and Wildlife Service (USFWS) and/or California Department of Fish and Wildlife (CDFW) (as appropriate) shall be notified regarding the status of the nest(s). Construction activities shall be restricted as necessary to avoid disturbance of the nest(s) until it is abandoned or the agencies deem disturbance potential to be minimal. 	<p>Avoidance of construction activities during nesting season. If not possible, pre-construction surveys shall be conducted by a qualified ornithologist and construction-free buffer zones shall be designated by a qualified biologist around active nests.</p> <p>Submit a report indicating the results of the survey and any designated buffer zones to the PBCE Supervising Environmental Planner.</p>	<p>Prior to the issuance of tree removal and grading permits.</p>	<p>PBCE Supervising Environmental Planner</p>	<p>Review and accept a report indicating the results of the survey and any designated buffer zones.</p> <p>Review and accept pre-construction survey and subsequent reports, as applicable.</p>	<p>Prior to issuance of tree removal and grading permits.</p>

EXHIBIT "A"

(File Nos. C16-029; CP16-029; HP16-004)

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
BIOLOGICAL RESOURCES					
Continued					
<ul style="list-style-type: none"> Restrictions may include establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of 100 feet around an active raptor nest and a 50-foot radius around an active migratory bird nest) or alteration of the construction schedule. A qualified biologist shall delineate the buffer using Environmentally Sensitive Area fencing, pin flags, and or yellow caution tape. The buffer zone shall be maintained around the active nest site(s) until the young have fledged and are foraging independently. 					

EXHIBIT "A"

(File Nos. C16-029; CP16-029; HP16-004)

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Cultural Resources					
Impact CUL-1: Relocation of the Smith House could impair the structural integrity of the building and/or damage or destroy character-defining features of the building.					
<p>MM CUL 1-1: A historic preservation architect and a structural engineer shall undertake an existing conditions study of the historic Smith House prior to relocation. The purpose of the study shall be to establish the baseline condition of the building prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those physical characteristics of the resource that convey its historic significance and must be protected and preserved, and recommendations for preservation. A report of the findings shall be reviewed and approved by the Supervising Environmental Planner, PBCE, and the City's Historic Preservation Officer prior to issuance of any grading or building permits for the relocated Smith House.</p> <p>MM CUL 1-2: After submittal of the baseline report existing conditions study (pursuant to MM CUL 1-1) but prior to issuance of any grading or building permits for the relocated Smith House, a structural engineer shall prepare a detailed shoring/relocation plan that includes measures to protect the structural integrity of the building during the move. This plan shall include detailed calculations to justify the proposed sizes of shoring beams and columns as well as the phasing of the relocation process. The structural engineer shall submit the report to the Supervising Environmental Planner, PBCE, and the City's Historic Preservation Officer for review and approval prior to the approval of any grading or building permits for the relocated Smith House.</p>	<p>Submit an existing conditions study/baseline report of the Smith House</p> <p>After approval of the existing conditions study/baseline report, submit a detailed shoring/relocation plan.</p>	<p>Prior to issuance of grading and building permits</p>	<p>PBCE Supervising Environmental Planner and Historic Preservation Officer</p>	<p>Review and accept the existing conditions study/baseline report and detailed shoring/relocation plan.</p>	<p>Prior to issuance of grading and building permits</p>

EXHIBIT "A"

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
CULTURAL RESOURCES					
Continued					
<p>MM CUL 1-3: To protect the historic resource building during its relocations, the project applicant shall engage a building mover who has experience moving similar historic structures. The name and qualifications of the mover shall be provided to the Supervising Environmental Planner, PBCE, the City's Historic Preservation Officer, and the Chief Building Official for approval prior to issuance of the permits for each phase of relocation of the building.</p> <p>MM CUL 1-4: During preparation of the building for relocation, during relocation, and during the subsequent rehabilitation of the Smith House, only authorized persons shall have access to the building until such time as rehabilitation of the structure is complete. Protective fencing and other methods shall be used to protect the building from further damage and deterioration during this process. If the historic preservation architect or structural engineer observes any new damage after relocation of the structure or during the rehabilitation process, an assessment shall be made of the severity of such damage and repairs undertaken if necessary. This assessment shall be provided immediately within five business days after discovery of the damage to the Supervising Environmental Planner, PBCE, and the City's Historic Preservation Officer. Construction materials shall be stored a minimum of 100 feet away from the Smith House.</p>	<p>Select a qualified specialist qualified to move the Smith House and provide the specialist's contact information and experience to the Supervising Environmental Planner, PBCE.</p> <p>Secure the project site to allow only authorized persons access to the Smith House.</p> <p>Provide assessment of the Smith House's relocation process by the qualified historic preservation architect or structural engineer.</p> <p>Print on all construction documents, contracts, and project plans that construction materials shall be stored a minimum of 100 feet away from the Smith House.</p>	<p>Prior to approval of permits to relocate the Smith House</p> <p>After relocation of the Smith House and prior to next phase of construction</p>	<p>PBCE Supervising Environmental Planner, Historic Preservation Officer, and Building Official</p> <p>PBCE Supervising Environmental Planner and Historic Preservation Officer</p>	<p>Review and accept the qualified specialist to relocate historic structures.</p> <p>Review assessment of relocation of the historic structure.</p>	<p>Prior to approval of permits to relocate the Smith House</p> <p>Prior to approval of the next phase of construction</p>

EXHIBIT "A"

(File Nos. C16-029; CP16-029; HP16-004)

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
CULTURAL RESOURCES					
Impact CUL-2: The project could result in a significant impact to paleontological resources, if encountered.					
<p>MM CUL-2: A professional paleontologist shall perform a weekly inspection of the site during each phase of the excavations. Prior to any earth-disturbing activities, the construction crew shall be made aware that such fossils may be very fragile and that non-qualified paleontologists do not attempt to move any fossils or artifact out of the way. Instead, all construction activity shall be diverted away from the discovery until a professional paleontologist evaluates it and applies any necessary procedures to avoid irreparable damage (i.e., shattering) upon removal. All recovered specimens are to be deposited in an appropriate repository as determined by the City's Historic Preservation Officer and to the satisfaction of the Supervising Environmental Planner, PBCE.</p>	<p>Print measures on all construction documents, contracts, and project plans and provide trainings to construction workers about how to proceed when fossils are encountered at the direction of the professional paleontologist.</p>	<p>All measures shall be incorporated into all construction documents, contracts, and project plans prior to the issuance of any grading permit.</p>	<p>Historic Preservation Officer and Supervising Environmental Planner.</p>	<p>Ensure the measures are on all construction documents, contracts, and project plans prior to the issuance of any grading permit.</p>	<p>All measures shall be incorporated into all construction documents, contracts, and project plans prior to the issuance of any grading permit.</p>

EXHIBIT "A"

(File Nos. C16-029; CP16-029; HP16-004)

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: Demolition of existing structures could potentially release asbestos-containing materials and lead-based paint.					
<p>MM HAZ-1: Prior to issuance of demolition permits, the project applicant shall retain a hazardous materials contractor to inspect the property for the presence of asbestos-containing materials and lead-based paint. If these materials are determined not to be present, no further action is necessary. If these materials are determined to be present, they shall be removed and disposed of by a registered asbestos abatement contractor in accordance with applicable federal, state, and local regulations including Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1 and Cal/OSHA standards contained in Title 8 of CCR, Section 1529. The applicant shall submit documentation to the Supervising Environmental Planner, PBCE, and Chief of the City's Building Division, verifying that each property has been inspected as part of the demolition permit application.</p>	<p>A visual inspection/pre-demolition survey and sampling of the existing on-site buildings to determine the presence of asbestos-containing materials and/or lead-based paint.</p>	<p>Prior to the issuance of any demolition permits.</p>	<p>Building Division of City of San José Department of Planning, Building, and Code Enforcement</p>	<p>Receipt and review of a report identifying methodologies and findings of the visual inspection/pre-demolition survey and sampling.</p>	<p>Prior to demolition.</p>

EXHIBIT "A"

(File Nos. C16-029; CP16-029; HP16-004)

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-2: Construction of the project may encounter the presence of organochlorine pesticides (OCPs) using EPA test Method 8081A and pesticide-based metals (arsenic and lead) in the soil.					
<p>MM HAZ-2: Prior to issuance of a grading permit, the project applicant shall perform a series of soil samplings, pursuant to a soil sampling and analysis plan prepared by the project applicant, to test for the presence of organochlorine pesticides (OCPs) using U.S. Environmental Protection Agency (EPA) Test Method 8081A and pesticide-based metals (arsenic and lead) concentrations. The soil sampling and analysis plan shall be submitted for review and approval by the City's Environmental Services Department and the Supervising Environmental Planner, PBCE. If the analytical results show pesticide or metals concentration above regulatory environmental screening levels, regulatory oversight would be conducted by Santa Clara County Department of Environmental Health (SCCDEH) under the County's voluntary cleanup program. The contamination must be fully mitigated, confirmed by receipt of a no further action letter, or equivalent, from SCCDEH.</p>	<p>Test soil samples for the presence of organochlorine pesticides (OCPs) using EPA Test Method 8081A and pesticide-based metals (arsenic and lead). If samples show concentrations above regulatory environmental screening levels, contamination must be mitigated to the final approval of a "no further action letter" or equivalent.</p>	<p>Prior to the issuance of any grading permit.</p>	<p>SCCDEH for contamination mitigation. PBCE Supervising Environmental Planner in coordination with the Environmental Services Department (ESD) Compliance Officer for approval.</p>	<p>Receive a No Further Action letter (or equivalent assurance) from SCCDEH Receive a soil sampling and analysis plan and review and approval.</p>	<p>Prior to the issuance of any grading permit.</p>

EXHIBIT "A"

(File Nos. C16-029; CP16-029; HP16-004)

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
NOISE AND VIBRATION					
NOI-1: Project construction could result in significant construction-related groundborne vibration impacts to nearby buildings.					
<p>MM NOI-1.1: Prior to the issuance of grading permits, the project applicant shall conduct a pre-project crack survey of the existing residential building, located at 3600 San Felipe Road, immediately south of the site to document existing conditions. A Construction Vibration Monitoring Plan shall be submitted to the Supervising Environmental Planner, PBCE, for approval.</p> <p>Ground vibration levels outside the residential building shall be monitored during construction activities when heavy equipment operates within 50 feet of the building to confirm vibration levels are below the allowable level of 0.20 in/sec PPV. If vibration levels exceed the allowable level, a post-construction crack survey shall be completed and any cosmetic damage resulting from the project shall be repaired. Report of ground vibration levels and associated post-construction crack survey shall be submitted to the Supervising Environmental Planner, PBCE.</p>	<p>A Construction Vibration Monitoring Plan (Plan) shall be implemented to document conditions prior to, during, and after vibration generating construction activities</p> <p>The project proponent shall submit a report summarizing the result of the vibration monitoring process during all demolition and construction phases.</p>	<p>Prior to the issuance of any grading permit</p> <p>During all demolition and construction phases.</p>	<p>Supervising Planner of the Department of Planning, Building, and Code Enforcement's Environmental Review Team</p>	<p>Review Construction Vibration Monitoring Plan</p> <p>Receive and review vibration monitoring process report summarizing results of the vibration monitoring process during all demolition and construction phases</p>	<p>Prior to the issuance of any grading permit</p> <p>During construction</p>

EXHIBIT "A"

(File Nos. C16-029; CP16-029; HP16-004)

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
NOISE AND VIBRATION					
NOI-2: Project construction could result in significant construction-related groundborne vibration impacts to the Smith House on-site.					
<p>MM NOI-2.1: Prior to the issuance of any grading permits, the project applicant shall conduct a pre-project crack survey of the relocated Smith House structure to document existing conditions. A Construction Vibration Monitoring Plan shall be submitted to the Supervising Environmental Planner, PBCE for approval.</p> <p>Ground vibration levels outside this building shall be monitored during construction activities when heavy equipment operates within 50 feet of the building to confirm vibration levels are below the allowable level of 0.08 in/sec PPV. If vibration levels exceed the allowable level, a post-construction crack survey shall be completed and any cosmetic and structural damage resulting from the Project shall be repaired. Report of ground vibration levels and associated post-construction crack survey shall be submitted to the Supervising Planner of the Department of Planning, Building, and Code Enforcement's Environmental Review Team</p>	<p>A Construction Vibration Monitoring Plan (Plan) shall be implemented to document conditions prior to, during, and after vibration generating construction activities</p> <p>The project proponent shall submit a report summarizing the result of the vibration monitoring process during all demolition and construction phases.</p>	<p>Prior to the issuance of any grading permit</p> <p>During all demolition and construction phases. Reports of results of vibration</p>	<p>Supervising Planner of the Department of Planning, Building, and Code Enforcement's Environmental Review Team</p>	<p>Review and approve Construction Vibration Monitoring Plan.</p> <p>Receive and review vibration monitoring process report summarizing results of the vibration monitoring process during all demolition and construction phases</p>	<p>Prior to the issuance of any grading permit</p> <p>During construction</p>

Source: Oakmont of Evergreen Assisted Living Facility Initial Study, December 2016.

EXHIBIT "A"
(File Nos. C16-029; CP16-029; HP16-004)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE REZONING CERTAIN REAL PROPERTY OF APPROXIMATELY 4.9 ACRES, SITUATED ON THE NORTHEAST SIDE OF SAN FELIPE ROAD (3550 SAN FELIPE ROAD) FROM THE A AGRICULTURAL AND R-1-5 SINGLE FAMILY RESIDENCE ZONING DISTRICT TO THE CN COMMERCIAL NEIGHBORHOOD ZONING DISTRICT

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, a Mitigated Negative Declaration was prepared in conformance with the California Environmental Quality Act of 1970, as amended, for the subject rezoning to CN Commercial Neighborhood Zoning District under File Number C16-029 (the "MND"); and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to the CN Commercial Neighborhood Zoning District; and

WHEREAS, this Council of the City of San José has considered and approved and adopted said MND and related Mitigation Monitoring and Reporting Program under separate Council resolution prior to taking any approval actions on this project;

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

SECTION 1. The recitals above are incorporated herein.

SECTION 2. All that real property hereinafter described in this section, hereinafter

referred to as "subject property," is hereby rezoned as CN Commercial Neighborhood Zoning District.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.

SECTION 3. The district map of the City is hereby amended accordingly.

SECTION 4. The land development approval that is the subject of City File No. C16-029 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

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PASSED FOR PUBLICATION of title this _____ day of _____, 2017 by the following
vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 659-04-015, 659-04-016 and 659-04-017

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

Portion of Rancho Yerba Buena Y Socayre, also being portion of 2.834 acre tract shown upon Map of Record of Survey filed April 25, 1966 in Book 208 of Maps, Page 38, Santa Clara County Records, described as follows:

Beginning at a point in the center line of Dry Creek or San Felipe Road distant thereon South 52 deg 03' 33" East 80.34 feet from the intersection of said center line with the Southwest line of parcel of land firstly described in Deed to the Conference Board of Missions of the California-Nevada Annual Conference of the Methodist Church, a Corporation, recorded December 26, 1961, Book 5409 of Official Records, Page 10; thence from said Point of Beginning North 79 degrees 37' 22" East along a line parallel with and distant Southeast 60 feet, measured at right angle to said Southeast line, 246.86 feet; thence North 10 degrees 22' 38" West 60 feet to said Southeast line of said parcel, thence North 79 degrees 37' 22" East along said line 260.50 feet to the Southwest line of Parcel of land conveyed to Felix F. Fleischer at ux by Deed recorded December 2, 1959 in Book 4623 Official Records, Page 307, thence South 10 degrees 23' 29" East along said line, 284.49 feet to the Northwest line of 1 acre parcel of land described in Deed to Charles Stevens recorded in Book 32 of Deeds, page 145; then South 79 degrees 47' 29" West along said line 308.37 feet to said center line of Dry Creek or San Felipe Road; thence North 52 degrees 03' 33" West along said line 299.37 feet to the Point of Beginning, being a portion of land of Catherine R. Smith shown on the Record of Survey recorded April 25, 1966 in Book 208 of Maps, at Page 38, Santa Clara County Records.

Excepting therefrom that portion described in the Deed to the County of Santa Clara recorded June 21, 1982, Document No. 7393981, in the Office of the County Recorder of Santa Clara County.

APN: 659-04-016

PARCEL NO. 2:

Beginning at the Northeast corner of that certain one acre tract of land conveyed by Charles C. Smith to Charles Stevens by Deed dated March 28, 1874 and recorded April 15, 1874 in Book 32 of Deeds, Page 145, Santa Clara County Records; thence along the Northwesterly line of said one acre tract South 79 degrees 47' 29" West 268.09 feet to the point of intersection thereof with the Northeasterly line of San Felipe Road; thence along the Northeasterly line of San Felipe Road South 52 degrees 02' 33" West 67.00 feet to a 3/4 inch iron pipe; thence North 80 degrees 43' 47" East 223.59 feet to 3/4 inch iron pipe set in a fence corner in the Northeasterly line of said one acre Tract; thence along said Northeasterly line of said one acre tract North 10 degrees 23' 29" West 53.57 feet to the Point of Beginning, being lands of Fred Della Maggiori shown on the Record of Survey recorded April 25, 1966 in Book 208 of Maps, at Page 38, Santa Clara County Records.

Excepting therefrom that portion described in the Deed to the County of Santa Clara recorded June 21, 1982, Document No. 7393982, in the Office of the County Recorder of Santa Clara County.

APN: 659-04-015

PARCEL NO. 3:

Portion of Lot 1 as shown upon that certain Map entitled, "C.C. Smith Tract", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on January 10, 1898 in Book I of Maps, at Page 85, and more particularly described as follows:

EXHIBIT "A"
Legal Description
(continued)

Beginning at a point in the Northeasterly line of San Felipe Road, also known as Dry Creek Road, as said Road is shown upon the Map above referred to, at the Southwesterly corner of that certain tract of land described in the Deed from John L. Walsh at ux, to Jack Merlin Johnson, et ux, dated February 2, 1959, recorded February 5, 1959 in Book 4314 Official Records, Page 36, Santa Clara County Records; thence from said Point of Beginning North 67 degrees 21' West along said Northeasterly line of San Felipe Road 124.56 feet to a Southwesterly corner of that certain 9.312 acre tract of land described in the Deed from Melvin Frances Manville, et ux, to John L. Walsh, et ux, dated May 29, 1952 in Book 2428 Official Records, at Page 405 Santa Clara County Records; thence North 10 degrees 26' West along a Westerly line of said 9.312 acre tract 513.40 feet to a stake marked 55; thence North 79 degrees 39' East to the point of intersection thereof with the Easterly line of said 9.312 acre tract; thence South 10 degrees 30' East along said last mentioned line to the Northeasterly corner of land so described in the Deed to said Johnson; thence South 79 degrees 30' West along the Northerly line of land so described in the Deed to said Johnson 88.00 feet to the Northwesterly corner thereof; thence South 10 degrees 30' East along the Westerly line of land so described in the Deed to said Johnson 202.03 feet to the Point of Beginning, being Lands of Felix Fleischer, et ux, shown on the Record of Survey recorded April 25, 1966 in Book 208 of Maps, at Page 38, Santa Clara County Records.

Excepting therefrom that portion described in the Deed to the City of San Jose, a Municipal corporation, recorded June 21, 1982, Document No. 7600110, in the Office of the County Recorder of Santa Clara County.

APN: 659-04-017