

## **RESOLUTION PC22-06**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN PABLO APPROVING MAJOR DESIGN REVIEW, CONDITIONAL USE PERMIT FOR DEVELOPMENT WITHIN 50 FEET OF A CREEK, DENSITY BONUS WITH CONCESSIONS/WAIVERS, AND VARIANCES TO ALLOW AN INCREASE IN THE NUMBER OF UNITS, HEIGHT AND NUMBER OF STORIES, A REDUCTION IN THE SIDE YARD SETBACK, AND ENCROACHMENT WITHIN A CREEK SETBACK, AND FURTHER DETERMINING THAT THE POTENTIAL ENVIRONMENTAL EFFECTS OF THE DEVELOPMENT HAVE BEEN PREVIOUSLY EVALUATED AS PART OF THE ENVIRONMENTAL IMPACT REPORTS FOR THE SAN PABLO GENERAL PLAN AND SAN PABLO AVENUE SPECIFIC PLAN AND NO FURTHER ENVIRONMENTAL REVIEW IS NEEDED, FOR A MULTIFAMILY RESIDENTIAL PROJECT CONTAINING 64 UNITS, INCLUDING SIX AFFORDABLE UNITS, IN THE SP-2 HIGH DENSITY RESIDENTIAL DISTRICT TO BE LOCATED AT 2364 ROAD 20, SAN PABLO, (APN: 416-120-029)**

**WHEREAS**, an application has been submitted by Adriana Cook of Arris Studio, on behalf of San Pablo Road 20, LLC, for approval of Major Design Review; Conditional Use Permit for development within 50 feet of a creek, and a Density Bonus with concessions/waivers and Variances to allow an increase in density, height, and number of stories, and a reduction in the side yard setback, and encroachment within a creek setback for a 123,924 square-foot five-story Multi-Family Residential building on a 45,302 square-foot lot at 2364 Road 20; and

**WHEREAS**, the applicant has requested Density Bonus Concessions to increase the project height from 45 feet to 65 feet-4 inches and to reduce the side yard setback from 10 feet to 8 feet; and has further requested Density Bonus Waivers and Variances to increase the number of stories from four to five, and to allow encroachments into the 30-foot setback from top of bank of San Pablo Creek of up to five feet for a second-level overhang and up to 13 feet for placement of building support pillars for first-level surface parking; and

**WHEREAS**, the project site at 2364 Road 20 currently consists of a mostly vacant parcel containing a single-family residence and shed structure located in the High Density Residential district of the San Pablo Avenue Specific Plan (SP-2) area with a General Plan land use designation of High Density Residential/Potential Park Location; and

**WHEREAS**, the 45,302-square foot project site extends along the south side of Road 20 adjacent to San Pablo Creek and bordering San Pablo Avenue on the west; and

**WHEREAS**, the project site is privately owned and is proposed to be developed with 64 residential units, with six of the residential units designated for Very Low-Income residents in order for the project to earn a 32.5% density bonus and two Density Bonus

concessions, and

**WHEREAS**, the proposed development is located within the San Pablo Avenue Specific Plan area and is required to conform to the Land Use Designations and Development Regulations of this plan and to consider its Design Guidelines; and

**WHEREAS**, Section 17.20.030.B of the Zoning Code requires major design review by the Planning Commission for multiple-family residential development with five or more residences; and

**WHEREAS**, in recommending approval, the Planning Commission shall determine that the project under consideration adequately meets the requirement of the applicable design guidelines; and

**WHEREAS**, Section 17.32.030.B.2. of the Zoning Code requires a Use Permit for development within 50 feet of any stream to ensure that the development adequately avoids impacts to wetland features or woodlands, reduces impacts to the creek, and prevents degradation of riparian and wetland features from urban pollutants, pursuant to the relevant policies and actions related to creeks within the General Plan; and

**WHEREAS**, to approve the Conditional Use Permit, the Planning Commission shall make findings that the establishment, maintenance or operation of the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City; and

**WHEREAS**, pursuant to California Density Bonus Law, Section 17.60.020 of the Zoning Code allows incentives or concessions to be offered to developments that are eligible for Density Bonus, including reductions in site development standards or a modification of zoning code requirements or architectural design requirements, such as setback or square footage reductions, reduced parking, reduced outdoor living area, increased height, etc.; and

**WHEREAS**, Section 17.60.020.Q of the Zoning Code states that in considering density bonuses, incentives, waivers or modifications, the City must find that the density bonus is based all or in part on donation of land, all or in part on the inclusion of a child care facility, includes mixed use development, or that the developer has shown by substantial evidence that the waiver or modification is necessary to make the housing units economically feasible; and

**WHEREAS**, recent amendments to Government Code Section 65915(d)(1) require the City to grant a requested concession or incentive requested by a developer who qualifies for a density bonus unless the City makes specific findings that the concession or incentive results in no identifiable cost reductions to provide affordable

housing or there is a specific adverse impact on public health and safety, or on real property designated as a historical resource; and

**WHEREAS**, Density Bonus Law now also requires waivers or reductions of development standards for projects that qualify for a density bonus if the standards would physically prevent the project from being built at the permitted density and with the granted concessions/incentives, provided, however, that the City is not required to waive or reduce development standards that would cause a public health or safety problem, cause an environmental problem, harm historical property, or would otherwise be contrary to law; and

**WHEREAS**, Section 17.20.050 of the Zoning Code allows the Planning Commission to grant a Variance in order to provide relief to applicants where practical difficulties, unnecessary hardships, and results inconsistent with the general purpose of the General Plan may result from the strict application of certain provisions of thereof; and

**WHEREAS**, in granting approval of a Variance, the Planning Commission shall determine that there are exceptional or extraordinary circumstances or conditions applying to the land or building referred to in the application, including size, shape, topography, location or surroundings, which circumstances or conditions do not apply generally to land, buildings and/or uses in the same district; and because of these exceptional or extraordinary circumstances or conditions, the strict application of this title deprives the property of privileges enjoyed by other properties in the vicinity and within the same zoning district; and the granting of the application is necessary for the preservation and enjoyment of substantial property rights of the petitioner; and the granting of such application will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood; and

**WHEREAS**, the potential environmental effects of development of the site have been previously evaluated in Environmental Impact Reports (EIRs) prepared for the San Pablo General Plan 2030 (adopted on April 18, 2011 by Resolution 2011-045) and San Pablo Avenue Specific Plan (adopted on September 19, 2011 by Resolution 2011-104), and the City, pursuant to CEQA Guidelines 15162 and 15164, having prepared Addenda to the Environmental Impact Reports for the San Pablo General Plan 2030 and the San Pablo Avenue Specific Plan in response to the proposed increase in height, number of stories, density, and setback encroachment on the site, has determined that the potential environmental effects of development of the site would be consistent with the land use and zoning designations for the site and would not result in an increase in the severity of impacts identified in the prior EIRs or any new impacts not previously considered in the prior EIRs, and that the circumstances under which the project would be undertaken have not substantially changed such that new or substantially increased impacts would occur; and

**WHEREAS**, a public hearing notice has been provided by mail to the applicant, local affected agencies and to all property owners within 300 feet of the subject property, and has been published in the West County Times newspaper (West Contra Costa edition of the East Bay Times) in accordance with the requirements of Government Code Section 65091, and a public hearing was held on September 27, 2022, at which public testimony was considered.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of San Pablo has reviewed the proposed project and hereby determines that no further environmental review is necessary pursuant to the prepared EIR Addenda for the project and further hereby grants approval of the Major Design Review, Conditional Use Permit, Density Bonus with Concessions and Waivers and Variance for PLAN2109-0012, based on the above recitals which are true and correct and incorporated herein, all information contained in the staff report and administrative record for this project, and the following findings:

### **Addenda to the Existing Environmental Documents**

- A. The City of San Pablo adopted EIRs for the General Plan and San Pablo Avenue Specific Plan and these documents anticipated that the site would be developed with high-density residential use. Due to the proposed increase in the height, number of stories, density, and setback encroachments at the site, the City has prepared Addenda to the two EIRs to identify these changes in the environmental documentation. According to the Addenda, the proposed development would continue to be consistent with the land use and zoning designations for the site and would not result in an increase in the severity of impacts identified in the prior EIRs or any new impacts not previously considered in the prior EIRs, pursuant to CEQA Guidelines 15162 and 15164. The circumstances under which the project would be undertaken have not substantially changed such that new or substantially increased impacts would occur. Further, there is nothing peculiar about the project or the project site that would result in impacts substantially greater than discussed in the prior EIRs. Therefore, no further environmental analysis is required for the project as memorialized in the Addenda to the Environmental Impact Reports (EIRs) prepared for the San Pablo General Plan 2030 (adopted on April 18, 2011 by Resolution 2011-045) and San Pablo Avenue Specific Plan (adopted on September 19, 2011 by Resolution 2011-104), which Addenda are attached to and incorporated in the accompanying staff report.

### **General Plan Conformance**

- B. The proposed project is responsive to General Plan policies calling for planned land uses that are compatible with existing uses, the creation of safe, walkable and attractive urban environments, encouragement of new residential development in a manner which fosters day and nighttime activity and visual presence on the street level, protecting and enhancing the quality of life in the City's residential neighborhoods, and promoting a variety of housing types and prices within

neighborhoods that offer a range of amenities, including public and private open space, landscaping, and direct access to commercial services, public transit, and community gathering areas.

*The proposed project would be responsive to these policies by developing 64 studio, one-, two-, and three-bedroom residential units with parking for 71 cars, most of which would be located in three-level park lifts, and provision of an enclosed bicycle parking room. This multi-family development is located on a site that will be well-integrated into its surroundings, and in close proximity to amenities, such as transit, Contra Costa College, the San Pablo Community Center, Davis Park, and a variety of commercial uses. The design of the project promotes a pedestrian-scale street front and preserves the biological resources around San Pablo Creek. Outdoor open spaces and private balconies provide quality-of-life amenities for the residents.*

- C. The proposed project would also be responsive to Housing Element policies calling for the provision of a diversity of housing types to meet the needs of all economic segments and family types in San Pablo, to encourage and assist with the development of affordable housing units for lower income households.

*The project would include six units that would be affordable to very low-income residents. The project would also add new urban-scale rental apartments, a housing choice that has not been developed in San Pablo in recent years. In addition, the project would provide for significant progress in meeting the City's Regional Housing Needs Allocation (RHNA) numbers which are to be implemented by the Housing Element.*

### **Specific Plan and Zoning Conformance**

- D. The proposed project is located within the San Pablo Avenue Specific Plan. The project would be consistent with the San Pablo Avenue Specific Plan guiding and implementing policies promoting pedestrian- and transit-friendly development, providing a diverse range of housing for all income levels and household types, encouraging structured parking, integrating pedestrian and bicycle connections to transit, open space, and key destinations; and designing building facades at a pedestrian scale to heighten pedestrian comfort to enhance pedestrian comfort.

*The proposed project would be consistent with the guiding goals and implementing policies of the San Pablo Avenue Specific Plan. The development would be well integrated into the established pedestrian-oriented context by creating a solid street wall with pleasing landscaping and a street-facing lobby entrance along Road 20. The project is in close proximity to AC Transit stops on San Pablo Avenue just south of Road 20 and north of Purisima Street, and on Road 20 across from Helms Middle School. Bicycle use would be promoted with the provision of enclosed bicycle parking at the project. The project would also provide a diversity of housing affordability options, offering both market rate and*

*very low-income units. There would be good proximity to open space due to the site's location nearby Kennedy Plaza and Davis Park.*

- E. The project complies with the development standards of the San Pablo Avenue Specific Plan and Zoning Code, with the exceptions of the Density Bonus requests for increased density, height, and number of stories, and a reduction in the side yard setback and encroachment within a creek setback.

## **Major Design Review**

- F. The project is consistent with the applicable Design Guidelines for San Pablo Avenue Specific Plan and with the land use, physical design, economic development element and open space elements of the General Plan.

*The project would fit well within the San Pablo Avenue Specific Plan by offering new housing choices in an attractive setting with high-quality design and lifestyle features. The architectural design of the structure and its colors and material choices would be visually harmonious with the surrounding contemporary development patterns. This residential development is located on a site that will be well-integrated into its surroundings, and in close proximity to amenities, such as transit, the San Pablo Community Center, Davis Park, Contra Costa College, and a variety of commercial uses.*

- G. The location and design of the proposed development gives particular consideration to privacy, views, and sunlight to adjoining properties and fosters the orderly and harmonious development and preservation of the public health and welfare of the city neighborhoods.

*As shown in the building elevations, the front elevation of the building would be articulated to appear as a several smaller structures rather than as a continuous façade with repetitive fenestration. The façade takes the form of narrow “towers” of windows broken up by stacks of recessed balconies. Façade materials and colors change at the fifth level, creating the appearance of reduced height. The front yard and rear open spaces would be extensively landscaped with drought-tolerant plant materials and trees. The project would have would have minimal impact on privacy and views.*

- H. The architectural design, materials and colors of the proposed building are visually harmonious with surrounding development, landforms, and vegetation.

*The project's overall compliance with the San Pablo General Plan and the San Pablo Avenue Specific Plan are addressed above. Several of the policies within these plans are aimed at fostering the orderly and harmonious development and preservation of the public health and welfare of the city and its neighborhoods. The project would fit well within the San Pablo Avenue corridor by offering a new housing choice in an attractive setting with high-quality design and lifestyle*

*features. The architectural design of the structures and their colors and materials would be visually harmonious with the surrounding contemporary development patterns. The development is in close proximity to a range of commercial, recreational, cultural, and institutional amenities, and does not negatively impact any of these resources.*

### **Conditional Use Permit**

- I. The proposed multi-family residential project is allowed by right in the High Density Residential district of the SP-2 San Pablo Avenue Specific Plan, with additional density allowed by Density Bonus due to the provision of affordable housing units.
- J. The project complies with the development regulations of the Zoning Code and San Pablo Avenue Specific Plan, with the exception of density (number of units), height, number of stories, side yard setback on the east, and encroachments into the 30-foot setback from the top-of-creekbank to allow for supporting pillars and second level overhang. The increased density and height and two-foot reduction in the side yard setback would be provided through the use of Density Bonus and Density Bonus Concessions, while the increase in the number of stories and encroachment into the 30-foot setback would require Density Bonus Waivers and/or Variances.
- K. The site is physically suited for the type, density, and intensity of the proposed use, with adequate roadway and utility access and the absence of any physical constraints to development.
- L. The applicant has submitted a Traffic Impact Analysis Report showing that all of the study intersections would continue to operate within applicable jurisdictional Level of Service D standards, with no modifications to the circulation recommended.
- M. The applicant has submitted a Soils Report which found no concerns with arsenic levels or hazardous waste. The applicant will be required to prepare a Geotechnical Report prior to Plan Check to ensure project safety from a geotechnical standpoint and to help protect the structural integrity of the adjacent San Pablo Creek.
- N. The applicant has submitted a Biological Resources Report that assesses site conditions and evaluates the potential for the site to support special status species and habitat, and which shows that the project is designed to minimize impacts through re-use of previously developed areas, will avoid significant disturbance of riparian habitat or areas below the top of bank, is unlikely to affect special status species, and would not impact riparian habitat or other jurisdictional areas surrounding San Pablo Creek.

- O. As indicated by the Biological Report and the proposed Stormwater Management Plan, the project would adequately avoid impact to wetland features or woodlands, would avoid impacts on the creek, and would prevent degradation of riparian and wetland features from potential urban pollutants.
- P. The applicant has submitted a Cultural Resources Study which found that no historical or cultural resources have been identified on the project site and no cultural materials or anthropogenic soils were identified during a site survey. Sensitivity for cultural resources in the form of archaeological sites is considered moderate at this location and conditions of approval will require protection of any resources that are detected on the site.
- Q. Granting the permit would not be detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity in which the project is located. The site has long been planned for redevelopment with high-density residential development.
- R. Granting of the requested Conditional Use Permit will not materially adversely affect the health or safety of persons residing or working in the neighborhood of the property and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. The site fits well into the context of its surrounding and would not create a visual or safety impediment to any surrounding uses.

### **Density Bonus**

- S. The request for Density Bonus in exchange for providing 10% of the maximum number of otherwise allowable units (six units, as calculated per Density Bonus Law instructions), to be affordable at the Very Low-Income level would allow the project to be developed with 64 units (61.54 units per acre), rather than the 62.4 units (60 units per acre) that would otherwise be allowed in this location and would grant the project with two concessions, which will be used to allow for the increase in height from 45 feet to 65 feet-4 inches and for a reduction in the side yard setback from 10 feet to 8 feet.
- T. Density Bonus Law requires the City to grant a requested concession or incentive unless it makes specific findings that the concession or incentive results in no identifiable cost reductions to provide for affordable housing, or there is a specific adverse impact on public health and safety or on real property designated as a historical resource, and there is no evidence to support such findings.
- U. Density Bonus Law also requires waivers or reductions of development standards for projects that qualify for a density bonus if those standards would physically prevent the project from being built at the permitted density and with the granted concessions/incentives; provided, however, that the City is not required to waive or reduce development standards if the City finds that doing so would cause a



public health or safety problem, cause an environmental problem, harm historical property, or otherwise be contrary to law.

- V. In addition to the Density Bonus Concessions, the applicant has requested Density Bonus Waivers to allow an increase in the maximum number of stories from four to five and to allow encroachments into the setback from top of creekbank to accommodate a second level overhang and building support pillars at the ground level.
- W. Granting of the requested Density Bonus Waivers in this case would not cause a public health or safety problem, environmental problem, harm to historical property, or otherwise be contrary to law.

## **Variance**

- X. The Applicant has additionally requested Variances for the Density Bonus Waivers in order to seek relief where practical difficulties, unnecessary hardships, and results inconsistent with the general purpose of the General Plan may result from the strict application of certain provisions of the Zoning Code.
- Y. Due to special and unique concerns related to the site configuration and the relative shallowness of the site, minor encroachments are requested to allow for areas of second-level overhang and for placement of five building support columns that will intrude into the required 30-foot setback from the top of bank of San Pablo Creek. The shallowness of the site and the need to incorporate design measures to protect the area adjacent to the creek reflect exceptional or extraordinary circumstances which impact the use and developability of the site and are not found in other locations.
- Z. A second variance is also requested to allow for an increase in the number of stories for the project from four to five. This increase in number of stories is necessary to accommodate the proposed density for the project and due to the constraints posed by the shallowness of the site and the need to protect the adjacent San Pablo Creek. In addition, not allowing the number of stories to increase would physically preclude the construction of the project at its permitted density and with the proposed concessions and may be contrary to Density Bonus Law.
- AA. There are exceptional or extraordinary circumstances or conditions applying to the land or building referred to in the application, including size, shape, topography, location or surroundings, which circumstances or conditions do not apply generally to land, buildings and/or uses in the same district.
- BB. Because of these exceptional or extraordinary circumstances or conditions, the strict application of the Zoning Code would deprive the property of privileges enjoyed by other properties in the vicinity and within the same zoning district.

- CC. Granting of the Variances is necessary for the preservation and enjoyment of substantial property rights, related to the applicant's expectation to build on the site to provide both market-rate and affordable housing in accordance with City plans and State Density Bonus Law.
- DD. The requested setback encroachments would not impact the creek and would help to accommodate a design that pulls the project footprint away from the creek.
- EE. Because the project is allowed an increase in height as a Density Bonus concession, not being allowed to the number of stories would pose a practical difficulty and hardship, and would be contrary to the intended benefit of the Density Bonus Law.
- FF. Granting of the requested variances will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

### **Legal and Public Notice**

- GG. Public notice of the hearing has been provided by mail to the applicants, local affected agencies, and all property owners within 300 feet of the subject property and has been published in the West County Times newspaper (West Contra Costa edition of the East Bay Times), in accordance with the requirements of Government Code Section 65905.

**BE IT FURTHER RESOLVED** that the Planning Commission of the City of San Pablo hereby further makes the approval of the Major Design Review and Conditional Use Permit for PLAN2109-0012 contingent upon the following Conditions of Approval:

### **General Conditions**

1. The proposed use and project construction shall be conducted in substantial compliance with the planning submittal, including the site plans, floor plans; elevations, renderings, details/rendering and landscape plan submitted to Planning Staff on September 29, 2021, as revised on July 15, 2022, which are on file with the Community Development Department, under PLAN 2109-0012.
2. Minor amendments to this approval and modifications to the design review may be approved by the Zoning Administrator, if the proposed changes generally comply with the overall intent of the permit and/or are in response to revisions required by other approving agencies.
3. The applicant shall obtain all necessary City of San Pablo Building and Public

Works permits as well as any outside agency permits for water, waste, fire and any proposed work and shall submit payment of fees and agency permits and approval from relevant agencies for any proposed work.

4. The design review approval shall expire if building permits have not been issued within one year from the date of final approval. A time extension not exceeding one year beyond the initial one-year period may be granted by the Zoning Administrator.
5. If the use granted by this Conditional Use Permit is discontinued for a period of six consecutive months, the Use Permit shall automatically expire.
6. The applicant shall install interior and exterior security cameras to enhance on-site security and crime prevention. The applicant shall submit a plan showing security camera locations and details and any other security measures to the San Pablo Police Department for review and approval. The security system shall be monitored by facility staff on a 24-hour daily basis. The system shall be used to enhance project security and to support potential investigations. For any public-facing exterior cameras, the applicant/operator shall utilize a system that is compatible with the Milestone camera platform and shall provide access of this footage, if available, to the San Pablo Police Department. Monitoring of cameras shall be the sole responsibility of the applicant/operator. The San Pablo Police Department does not monitor the cameras 24/7 and should not be relied upon to do so.
7. The owner/operator shall submit evidence to the City of San Pablo that the project complies with the affordable housing provisions of the Density Bonus Law by means of a recorded agreement that restricts the affordable rental units with the allowable maximum incomes and rents for those units. The City shall be added as a party from whom approval will be needed before the Affordable Housing Agreement is modified or terminated.
8. The development shall pay any applicable Subregional Transportation Mitigation Program (STMP) and School District Impact Fees.
9. The applicant shall obtain any permits and licenses needed for the proposed use.
10. All roof-mounted and other mechanical equipment, if any, shall be screened from view from adjacent public rights-of-way as well as from adjoining properties, subject to the review and approval during the Plan Check review process.
11. The site shall be kept clean of all debris (boxes, junk, garbage, etc.) at all times. All scrap materials shall be stored in a container and shall be removed regularly.
12. All construction improvements shall be designed by the appropriately licensed design professional. The standards imposed by the City for the private improvements shall be considered as minimum requirements and the standards

may be increased by the design professional where judgment and prudence dictate.

13. Applicant shall submit joint trench and/or utility undergrounding plans to City's Public Works Engineering Division for review prior to the work. Plans shall be prepared and signed by the appropriate professional.
14. After construction is complete, Applicant shall provide City with bound copies of grading, improvement, joint trench, and landscaping plans. Plans must be the final approved versions, with red lines denoting any as-built deviations from the plans. Additionally, CADD files of said plans shall be provided to City.
15. Prior to construction, Applicant shall submit to City's Public Works Engineering Division, product and material cut sheets for key components, including storm drain pipes, manholes, inlets, street lights and pull boxes, if applicable.
16. All abandoned pipes and other abandoned miscellaneous improvements shall be removed.
17. All equipment such as backflow prevention devices, meters and transformers shall be screened with landscaping or other means, and not visible from the public right of way.
18. In the event of the encounter of subsurface materials suspected to be an archaeological or paleontological nature, all grading or excavation shall cease in the immediate area and the find left untouched. Applicant shall select and provide a qualified professional archaeologist certified by the Register of Professional Archaeologists or paleontologist with a degree in paleontology or geology, to evaluate. The recommendation of the qualified professional shall be implemented before work may proceed. The applicant shall be liable for all costs associated therewith.
19. The applicant shall obtain any necessary permits from the Contra Costa County Flood Control District for any work conducted in or near the District's San Pablo Creek flood control easement area.
20. All applicable ordinances, regulations and requirements of Federal, State and local governments shall be met, including all the requirements of the City of San Pablo Municipal Code. All noise, building permit and grading permit requirements shall be met as applicable.
21. Failure to comply with any of the terms or conditions of this Use Permit is considered to be a violation of the City of San Pablo Municipal Code and is subject to the enforcement provisions prescribed by Chapter 17.10, Enforcement, and any and all other penalties and remedies that may be provided by law.
22. Any Use Permit granted in accordance with the terms of the City of San Pablo Municipal Code may be revoked if any of the conditions or terms of such permit are violated, the use is discontinued, or if any law or ordinance is violated in

connection therewith.

23. Indemnification: Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless the City of San Pablo and its agents, officers, or employees from any claim to attack, set aside, void or annul, the City's approval concerning this planning application, which action is brought within the time period provided for in Section 66499.37. The City will promptly notify the applicant of any such claim, action, or proceeding and cooperate fully in the defense.

### **Building Division Conditions**

24. The project plans shall comply with accessibility requirements for persons with disabilities, as applicable.
25. All electrical equipment needs to be listed and labeled by an approved laboratory. The listing information shall be approved by the Building Official.
26. For portions of the project located in Flood Zone AE, the design shall comply with the requirements of the California Building Codes for structures located in the flood hazard area.
27. Noise and construction hours shall be observed as required by Chapter 17 of the San Pablo Municipal Code
28. All construction documents shall be prepared in accordance with the applicable 2019 California Building Codes.
29. Special inspectors shall be registered with the City for the specific job to be undertaken.
30. Special inspection reports shall be required for all applicable items that are part of this design in accordance with Chapter 17 of the 2019 California Building Code.
31. Structural observations will be required in accordance with the engineer's design and applicable risk category
32. The applicant shall submit complete sets of electronic plans, including the following: Plot Plan; Foundation Plan; Floor Plan; Ceiling and roof framing plan; Electrical Plans including size of main switch, number and size of service entrance conductors, circuit schedule and demand load; Plumbing and sewer plan and isometric, including underground diagram, water piping diagram, sewer location, fixture units, gas piping and vents, and heating and air conditioning diagram; Landscape and Irrigation plans. Landscape plans shall be compliant with the San Pablo MWELO requirements and approved prior to the issuance of any Building Permits.

33. The applicant shall submit electronic sets of structural calculations, energy conservation calculations and soils reports. Architects/Engineers stamp and wet signature is required prior to submittal of plan check.
34. All contractors shall be licensed by the State of California and shall obtain City of San Pablo business licenses.
35. No work shall be performed until the required permits are obtained.
36. All fees shall be paid before the permit is issued
37. No structure shall be occupied until a Certificate of Occupancy issued by the Building Official has been granted.
38. It is the responsibility of the person doing the work to call for the required inspections.
39. Changes or deviation from the approved set of plans shall be resubmitted for plan check.
40. All work shall remain accessible until inspected and approved by the Building Official.
41. Best management practices shall be observed during construction to avoid pollutants from entering the storm drain system.
42. At the time of plan check, the applicant shall incorporate the required California Green Code Mandatory Measures, such as E.V. Ready, clean air vehicle parking, bicycle parking, best management practices and storm water pollution prevention, light pollution reduction, energy efficiency, indoor and outdoor water usage efficiency etc.
43. Cal Green mandatory measures shall be observed during construction for example:
  - water efficiency and conservation
  - construction waste reduction, disposal and recycling
  - All other applicable codes for the efficient construction and operation of the new structure.
44. Applicable deferred submittals shall be clearly identified on the building plans. This includes submittals such as: Photovoltaic, fire sprinklers, fire alarms, trusses, etc.
45. All building permits shall expire by limitation 12 months after the issuance date. One or more extensions may be granted by the Building Official. Extensions shall be requested in writing prior to the expiration of the building permit.

### **Fire Protection**

46. Provide emergency apparatus roadways with all-weather (paved) driving

surfaces of not less than 20-feet unobstructed width, and not less than 13 feet 6 inches of vertical clearance, to within 150 feet of travel distance to all portions of the exterior walls of every building. Access shall have a minimum outside turning radius of 45 feet and must be capable of supporting the imposed fire apparatus loading of 37 tons. Access roadways shall not exceed 20% grade. Grades exceeding 16% shall be constructed of grooved concrete per the attached Fire District standard. (503) CFC.

47. Aerial Fire Apparatus Access is required where the vertical distance between grade plan and highest roof surface exceeds 30 feet and measured in accordance with Appendix D, Section 105 of the 2019 CFC. Aerial access roads shall have a minimum unobstructed width of 26 feet, exclusive of shoulders, in the immediate vicinity of the building or portion thereof. At least one of the required routes shall be positioned parallel to one entire side of the building. Overhead utility and power lines shall not be located over the aerial fire apparatus access road or between the aerial fire apparatus road and building.
48. Access roadways of less than 28-feet unobstructed width shall have signs posted or curbs painted red with the words "NO PARKING - FIRE LANE" clearly marked. (22500.1) CVC, (503.3) CFC
49. Access roadways of 28 feet or greater, but less than 36-feet unobstructed width shall have "NO PARKING - FIRE LANE" signs posted, allowing for parking on one side only or curbs painted red with the words "NO PARKING - FIRE LANE" clearly marked. (22500.1) CVC, (503.3) CFC
50. Access gates for Fire District apparatus shall be a minimum of 20-feet wide. Access gates shall slide horizontally or swing inward and shall be located a minimum of 30 feet from the street. Electrically operated gates shall be equipped with a Knox Company key-operated switch. Manually operated gates shall be equipped with a non-casehardened lock or approved Fire District lock. Contact the Fire District for information on ordering the key operated switch. (0103.5) CFC.
51. The developer shall provide an adequate and reliable water supply for fire protection as set forth in the California Fire Code. (507.1) CFC
52. The developer shall provide hydrants of the East Bay type in compliance with Chapter 5 and Appendix B and C of the California Fire Code. (C103.1) CFC
53. Ground ladder access to rear of building not provided if type V construction. Provide emergency escape and rescue openings in Group R occupancies of type V construction. Basements and sleeping rooms below the fourth story above grade plane shall have at least one exterior emergency escape and rescue opening. Such openings shall open directly into a public way or to a yard or court that opens to a public way. Landscaping, signage and other obstructions must not hinder the positioning of firefighting ground ladders from apparatus access to the rescue windows.

54. A land development permit is required for access and water supply review and approval prior to submitting building construction plans. The developer shall submit a minimum of two (2) copies of full size, scaled site improvement plans indicating:
- a. All existing or proposed hydrant locations,
  - b. Fire apparatus access,
  - c. Aerial fire apparatus access,
  - d. Elevations of building,
  - e. Size of building and type of construction,
  - f. Striping and signage plan
  - g. Provide drawings for paths from the public way to under emergency escape and rescue openings showing a proposed clear path and clear space under these openings that allow for the placement of ground ladders at a climbing angle of 70 to 75 degrees and a minimum of 18-inch clearance from the base of the ladder to any obstruction (see attached ground ladder access standard) for review and approval prior to obtaining a building permit.

This is a separate submittal from the building construction plans. These plans shall be approved prior to submitting building plans for review. (501.3) CFC

55. Emergency apparatus access roadways and hydrants shall be installed, in service, and inspected by the Fire District prior to construction or combustible storage on site. (501.4) CFC [Note: A temporary aggregate base or asphalt grindings roadway is not considered an all-weather surface for emergency apparatus access. The first lift of asphalt concrete paving shall be installed as the minimum roadway material and must be engineered to support the designated gross vehicle weight of 37 tons.]
56. New buildings shall have approved radio coverage for emergency responders. An emergency responder radio coverage system shall be installed when the conditions of CFC 510.4.1 are not met. Testing shall be conducted and the results submitted to the Fire District prior to the building final. (510.1) CFC
57. The developer shall provide traffic signal pre-emption systems (Opticom) on any new or modified traffic signals installed with this development. (21351) CVC
58. Flammable or combustible liquid storage tanks shall not be located on the site without obtaining approval and necessary permits from the Fire District. (3401.4) CFC
59. The owner shall cut down and remove all weeds, grass, vines, or other growth that is capable of being ignited and endangering property. (304.1.2) CFC
60. The owner or the owner's authorized agent shall be responsible for the development, implementation and maintenance of a written plan establishing a fire prevention program at the project site applicable throughout all phases of the



construction. The plan shall be made available for review by the fire code official upon request. (Ch.33) CFC

61. The fire prevention program superintendent shall develop and maintain an approved pre-fire plan in cooperation with the fire chief. The fire chief and fire code official shall be notified of changes affecting the utilization of information contained in such pre-fire plans. (Ch.33) CFC

62. The developer shall submit a minimum of two (2) complete sets of building construction plans and specifications for the subject project to the Fire District. After the new construction I tenant improvement plans are approved, plans and specifications for all deferred submittals shall be submitted, including, but not limited to the following.

- Private underground fire service water mains
- Fire sprinklers
- Standpipe
- Fire alarm
- Fire pump if required
- Emergency generator if required (PG&E is not considered reliable power)
- Emergency Responder Radio Coverage System (ERRCS)

Plans shall be submitted to the Fire District for review and approval prior to construction of the building or installation of the systems to ensure compliance with minimum requirements related to fire and life safety. Plan review and inspection fees shall be submitted at the time of plan review submittal. (105.4.1) CFC, (901.2) CFC, (107) CBC

### **Garbage and Recycling Area**

63. The project shall comply with the requirements of the Republic Services, and shall place containers within the areas set forth on the approved plans.

64. The project must provide equal space for recyclables as for garbage containers which are adequate, accessible and convenient areas for collecting and loading of both recyclable and garbage materials. Driveways and/or travel aisles shall, at a minimum, conform to local building-code requirements for garbage collection access and clearance. The driveways and/or travel aisles must provide unobstructed access for collection vehicles and personnel. Areas for collecting and loading recyclable materials must be adjacent to the solid waste collection areas. The builder should make their "best effort" to use recycled materials wherever possible.

### **Drainage and Stormwater**

65. The applicant shall be required to comply with all rules, regulations, and procedures of the National Pollutant Discharge Elimination System (NPDES) permit for municipal, construction and industrial activities as promulgated by the California State Water Resources Control Board or any of its Regional Water Quality Control Boards (San Francisco Bay-Regional II). If applicable, the project

shall comply with requirements of the NPDES *Municipal Regional Permit* Section C.3, and the Contra Costa Clean Water Program *Stormwater C.3 Guidebook* (*Stormwater C.3 Guidebook*), current versions.

66. A Stormwater Control Plan, and Operations & Maintenance Plan and Agreement shall be required for the parcel; the Agreement must be recorded prior to a certificate of occupancy.
67. A hydrology or hydraulics report to show whether the existing and proposed storm drain system can accommodate runoff from the subject site after the improvement. This report typically includes drainage design, system capacity, and other relevant information related to hydrology or hydraulic study.
68. The applicant shall submit grading, drainage improvement plans, sediment and erosion control plans and to the Public Works Engineering Division for approval. All of these plans shall be prepared by a California-registered Civil Engineer and approved by the City prior to submission for a building permit.
69. All improvement plans, landscaping plans and joint trench and/or utility undergrounding plans shall include a separate section with a copy of the City Standard Notes, without alteration of the numbers or content, as presented in the Appendix, and a full-size plan sheet with the "Pollution Prevention" plan sheet developed by the NPDES/Clean Water program (electronic copies are available from the City).
70. The applicant shall agree to provide repairs, upgrades or connection to public storm drain facilities which will be necessary to accommodate the proposed storm water generated by the project as required by the City Engineer.

### **Signs**

71. No illegal signs, pennants, banners, balloons, flags, or streamers are to be used on this site at any time.
72. Prior to the installation of any signs, the applicant shall obtain design review approval from the Planning Division and building permits from the Building Division. The design, color, and location of any project sign at the entrance to the property shall be reviewed and approved by the Community Development Department.

### **Lighting**

73. A lighting site plan and contour plan shall be submitted for approval of the Zoning Administrator consistent with required standards. All lighting on the property shall be oriented or screened so as to prevent glare and direct light from reaching adjacent properties.

### **Utilities**

74. Water, gas, electrical, telephone, and sanitary sewer utilities shall be constructed to the minimum standards of the respective utility companies. However, the trench details, pipe slope and other details shown the City's Standard Details shall also be met as minimum requirements. All requirements of the applicable utility companies and departments and the fire district shall be met, including fees and administrative requirements.
75. All proposed overhead wires shall be undergrounded.
76. Contractor shall call 811 before construction for the location of any underground services.

### **Sanitary Sewer**

77. A Plot Plan showing the locations of sewer laterals and connections shall be submitted, reviewed and approved by West County Wastewater District (WCWD), along with a related fee estimate. The plot plan shall be drawn to scale and shall show assessor parcel numbers, easements, locations of structures in relation to parcels, location of parcels in relation to streets, locations of rooms/areas drainage fixture units in relation to structures if modification is necessary or proposed, north arrow, sidewalks, and street names.
78. A will-serve letter from the WCWD shall be submitted prior to submission for a building permit.
79. The project shall comply with the conditions of WCWD.
80. Improvement plans shall require WCWD approval.
81. WCWD approval is required prior to finalizing the permit or prior to granting certificate of occupancy.

### **Water**

82. A will-serve letter from EBMUD shall be submitted prior to submission for a building permit.
83. Water conservation measures for both internal and external use must be incorporated into the design and construction of the proposed project. EBMUD encourages the use of equipment, devices, and methodology that furthers water conservation and provides for long-term efficient water use. EBMUD recommends the use of drought-resistant plantings, use of inert materials, and minimum use of turf areas.
84. All private lot landscaping shall consist of non-invasive, drought-tolerant low-water use plant species.
85. Effective January 1, 2018, water service for new multi-unit structures shall be individually metered or sub-metered in compliance with Section 537 of California's

Water Code & Section 1954.201-219 of California's Civil Code, which encourages conservation of water in multifamily residential and mixed-use multi-family and commercial buildings by requiring metering infrastructure for each dwelling unit, including appropriate water billing safeguards for both tenants and landlords. EBMUD water services shall be conditioned for all development projects that are subject to these metering requirements and will be released only after the project sponsor has satisfied all requirements and provided evidence of conformance with Section 537 of California's Water Code & Section 1954.201-2019 of California's Civil Code.

86. Because the property is located on a street or road with three or more traffic lanes and curb parking, or with four or more traffic lanes, or which is divided, or which contains a subsurface structure or facility that could interfere with the normal installation of a service lateral; a parallel water main, to be installed at the project sponsor's expense, may be required to serve the property.
87. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine the costs and conditions of providing water service to the development. Engineering and installation of water mains and meters requires substantial lead time, which should be provided for in the project sponsor's development schedule.
88. No water meters are allowed to be located in driveways.
89. The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.
90. Due to EBMUD's limited water supply, all customers should plan for shortages in time of drought.

### **Biological Resources**

91. The project footprint is planned outside of both the top of bank and the canopy of the riparian woodland along San Pablo Creek at the southern edge of the project site. This riparian woodland would be considered a jurisdictional wetland by the California Department of Fish and Wildlife (CDFW) to the edge of the canopy. Any development or ground disturbance within the riparian canopy and any disturbance to vegetation (tree removal or trimming) may trigger the need for a Streambed Alteration Agreement with CDFW. The applicant shall ensure that any necessary permits or agreements with CDFW are obtained prior to start of construction.
92. The proposed project footprint does not appear to impact riparian woodland or areas below the top of bank. However, the San Francisco Bay Regional Water Quality Control Board (RWQCB) may take jurisdiction of the riparian woodland and any impacts to riparian vegetation are likely to trigger compliance through a Waste Discharge Requirement. The applicant shall verify that any requirements are met prior to start of construction.

93. The project footprint as designed would not impact riparian habitat or other biological resource jurisdictional areas surrounding San Pablo Creek. If any trees or vegetation must be impacted as part of construction, the applicant shall schedule construction and vegetation removal outside of nesting bird season or conduct a preconstruction nesting bird survey, in accordance with the City of San Pablo's General Plan Implementing Policy OSC-I-8.
94. If any removal of mature trees is required, the applicant shall conduct a preconstruction acoustic survey to determine if bats are present, in accordance with the General Plan Implementing Policy OSC I-9.
95. Any disturbance to San Pablo Creek water quality through removal of the deck structures shall be avoided through implementation of best management practices, such as a stormwater pollution prevention plan, as required by Implementing Policy OSC I-9 in the General Plan and the Municipal Code (Chapter 17.40).

### **Environmental Hazards**

96. If applicable, any existing or abandoned monitoring wells shall be destroyed pursuant to Contra Costa Environmental Health requirements. Appropriate permits and inspections for this work shall be obtained.
97. If applicable, prior to commencement of site grading or the issuance of a building permit, the applicant shall have the site inspected by a competent hazardous waste materials expert who shall submit a report for the City's review attesting to the removal of any hazardous waste materials on site.
98. The project shall comply with the requirements of the Health Services Department, Environmental Health Division.
99. Soil analytical results obtained for the project site shall be provided to any waste facilities prior to acceptance of off-haul material and these results should be screened by the facility for acceptance or further testing requirements, as applicable. The results shall be reviewed by a properly certified professional geotechnical or soils engineer to determine whether any additional testing or extraction requirements are warranted.

### **Geotechnical**

100. The applicant shall submit a Geotechnical Report and the project shall follow all conditions set forth in the submitted report, including those pertaining to site preparation and grading, foundation, concrete slabs on grade, post-tensioned slab foundation, trench backfill, driveway, and general construction requirements.
101. The applicable geotechnical report for the project shall be noted on improvement plans. For any structures that are within the creek setback zone shown in the preliminary site plan, the geotechnical report shall confirm that the creek bank is stable and will support said buildings. The geotechnical report shall be signed off by a licensed engineer.

102. The applicant shall commission a licensed engineer to inspect all grading operations and submit a report to the City, if applicable.
103. High levels of ground shaking may occur during future large magnitude Bay Area earthquakes, particularly on the Hayward fault. All structures and other improvements on the property will be subjected to this shaking and could be seriously damaged if not properly designed. This potential impact could be reduced to a level of less than significant through ensuring that the structural design of all buildings is performed by knowledgeable structural engineers familiar with conservative seismic design principles. Other on-site improvements should also incorporate conservative elements of good design practice to minimize damage.
104. Prior to issuance of building permits, applicant shall submit an as-graded report of the engineering geologist or the geotechnical engineer to the Community Development Department with an as-graded map showing final plan and grades if required by the City Engineer. The applicant shall submit grading plans for review and approval of the Community Development Department and City Engineer prior to issuance of grading permits.

### **Landscaping**

105. The property owner or manager for the development shall be responsible for maintaining site landscaping. Landscaping shall be maintained to professional standards on a regular basis.
106. At the back of sidewalks, where the slope of the planting bed may allow soil, mulch or other materials to migrate onto the walkway, appropriate durable bender boards shall be placed, or concrete curbs shall be used.
107. Landscaping and irrigation shall be part of the final design drawings (improvement plans).
108. Plants and vegetation that are drought tolerant with a minimal use of pesticide and fertilizer (Bay friendly) are required. See C.3 Guidebook Section B-1-1 for a list of approved plants. List all trees that will be cut or remove and check for any disturbances of natural habitat (nests, etc.) before the removal of any trees or vegetation.
109. An on-site inspection shall be made by the Community Development Department (or Public Works Department) to determine compliance with the approved landscape plan.
110. The property owner or manager will be responsible for sidewalk and landscaping strip maintenance and the CC&R's shall include this requirement. Root barriers needed to be installed in the landscaping area per City Standards.

### **Streets & Sidewalks**

111. All private curb ramps and sidewalks within the property shall meet current Americans with Disabilities Act Title II (ADA Title II) Regulations. Existing public curb ramps along the project frontage which do not meet current ADA Title II requirements shall be upgraded. Tripping hazards and severe cracks in public sidewalks shall be corrected by replacing the offending sections. City inspector may require additional work in the Public Right-of-Way, if deemed necessary for public safety and interest.
112. If unused or altered, existing driveway and curb cut along the project frontage shall be replaced with appropriate sidewalk, curb and gutter. New driveway location(s) shall be reviewed and approved by the Public Works Department.
113. The applicant shall provide for public street improvements as necessitated by the project, including but not limited to median modifications, striping and other pavement markings, curb ramps, sidewalk repairs, monuments, fire hydrants, electroliers/lighting facilities, along the frontage and adjacent properties, if applicable.
114. The applicant shall insure that improvements near intersections do not obstruct the sight distance to oncoming traffic. Sight distance between vehicles travelling eastbound on Road 20 and vehicles exiting the project site is slightly obstructed by the horizontal curvature of Road 20, west of the project site. As a result, the applicant and project manager shall ensure that any landscaping in this area is maintained to be below eye level to avoid further obstructing sight distance west of the project site.
115. Circulation aisles shown on the site plan appear to satisfy the minimum 22 feet requirement from the City of San Pablo Municipal Code. The applicant shall perform additional truck turning analysis to confirm a variety of trucks, including garbage trucks and emergency vehicles, can circulate on-site.

#### **TDM & Growth Management**

116. The developer shall comply with applicable provisions of Measure J, including any regional traffic improvements that may be required by the Contra Costa County Transportation Authority (Congestion Management Agency) for projects generating more than 100 peak hour trips, if applicable.

#### **Waste Minimization/Energy Conservation**

117. Incorporate design features wherever feasible to protect solar access. Inclusion of these measures would not be part of Title 24 compliance, but rather an additional conservation measure.
118. All outdoor lighting shall be LED.

#### **Construction**

119. Construction activity shall be limited between the hours of 7:00 am and 6:00 pm Monday through Friday and from 9:00 am to 5:00 pm on Saturday. Construction is not permitted on Sundays.
120. At least 50% of construction waste must be recycled.
121. The project shall be subject to performance bonds for all on-site and off-site improvement, including grading, stormwater facilities including C3, public utility facilities, and all improvements in the Public Right-of-way. The Engineer's estimate for the performance bond shall be approved by Public Works Department.
122. At least one week prior to commencement of grading, the applicant shall post the site and mail to the owners of property within 300 feet of the exterior boundary of the project site notice that construction work will commence. The notice shall include a list of contact persons with name, title, phone number and area of responsibility. The person responsible for maintaining the list shall be included. The list shall be kept current at all times and shall consist of persons with authority to indicate and implement corrective actions in their area of responsibility. The names of individuals responsible for noise and litter control, tree protection, construction traffic and vehicles, erosion control, and the 24-hour emergency number, shall be expressly identified in the notice. The notice shall be re-issued with each phase of major grading and construction activity.
123. A copy of the notice shall be concurrently transmitted to the Building Official in the Community Development. The notice shall be accompanied by a list of the names and addresses of the property owners noticed, and a map identifying the area noticed.
124. A staging plan for construction must be submitted to the Community Development Department during Plan Check. The plan must include a described narrative on how and where construction staging will occur.
125. A dust and litter control program shall be submitted for the review and approval of the City. Any violation of the approved program or applicable ordinances shall require an immediate work stoppage. Construction work shall not be allowed to resume until, if necessary, an appropriate construction bond has been posted.
126. The applicant shall make a good-faith effort to avoid interference with existing neighborhood traffic flows. Prior to issuance of building permits, the proposed roads serving this development shall be constructed to provide access as required by the City Engineer.
127. The site shall be maintained in an orderly fashion. Following the cessation of construction activity, all construction debris shall be removed from the site.
128. A Site Improvement (and/or Encroachment) Permit will be required from Public Works Department for all on-site and off-site improvement, including grading, stormwater facilities including C3, public utility facilities, and all improvement on Public Right-of-way.



129. Separate permits will be required from Public Works for the following work: grading, joint trench and site improvements.

130. Truck routes for hauling materials shall be submitted for City approval.

**BE IT FURTHER RESOLVED** that the foregoing recitations are true and correct and are included herein by reference as findings.

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Adopted this 27th day of September 2022, by the following vote:

AYES: COMMISSIONERS:  
NOES: COMMISSIONERS:  
ABSENT: COMMISSIONERS:  
ABSTAIN: COMMISSIONERS:

ATTEST:

APPROVED:

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Elizabeth Tyler, Secretary

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Roberta Feliciano, Chair

Exhibit A:

CEQA Documents: Addenda to General Plan EIR, San Pablo Avenue Specific Plan EIR