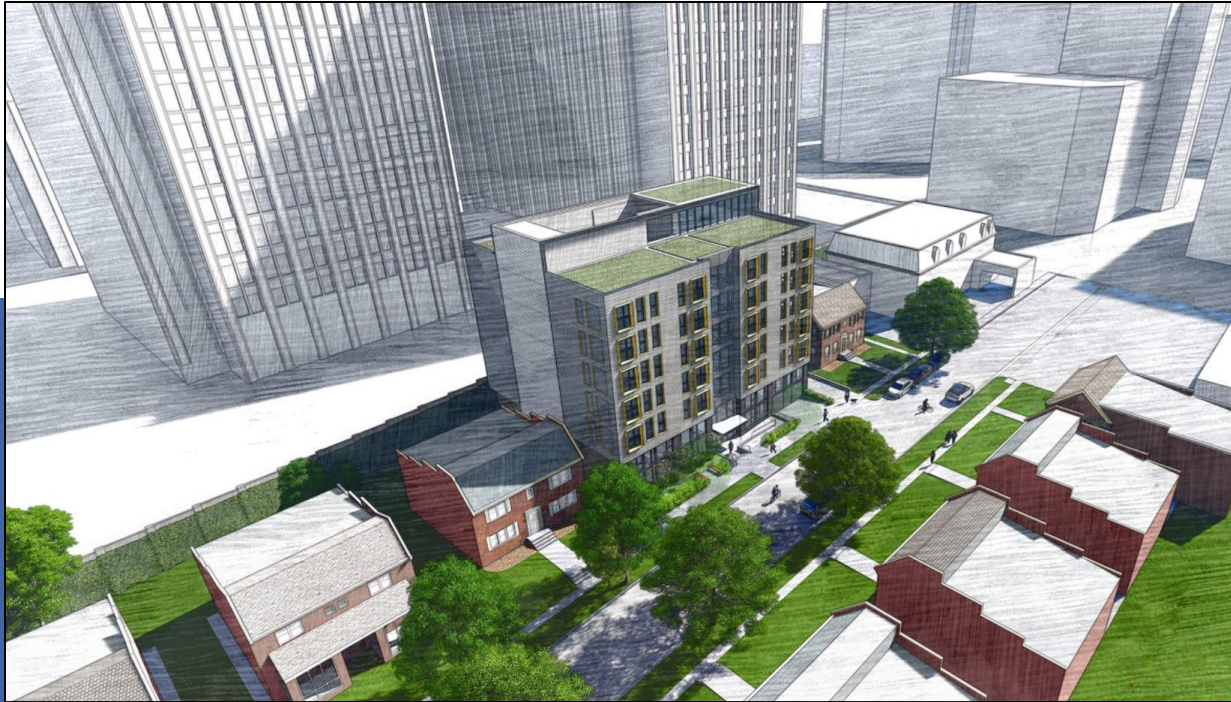


AVONDALE

PRELIMINARY PLAN AMENDMENT NO. 12020022A



Request to extend the validity period for the approved Preliminary Plan, the window during which the Applicant must record a plat for the property, from January 3, 2024, to January 3, 2026.

No. 12020022A

Completed: 4-01-2024

MCPB

Item No. 5

4-18-2024

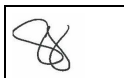
Montgomery County

Planning Board

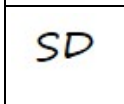
2425 Reedie Drive, Floor 14

Wheaton, MD 20902

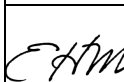
Planning Staff



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LOCATION/ADDRESS

Located on Avondale Street approximately 200 feet east of Wisconsin Avenue

MASTER PLAN

2017 *Bethesda Downtown Sector Plan*

ZONE

CR-1.5, C-0.25, R-1.5, H-70' and the Bethesda Overlay Zone

PROPERTY SIZE

0.33 Acres

APPLICANT

SJ Investment Corporation

ACCEPTANCE DATE

December 12, 2023

REVIEW BASIS

Chapter 50

Summary:

- Staff recommends approval of the Preliminary Plan Amendment with one new condition.
- In November of 2020, the Planning Board approved Preliminary Plan No. 120200220 to allow one lot for up to 60 multifamily residential units, with a validity period during which the Applicant must record a plat for the site of January 3, 2024.
- Before the end of the validity period, the Applicant requested, on December 12, 2023, to extend the period for recordation of the plat by two years, to January 3, 2026.
- Staff has not received any correspondence regarding the application.

TABLE OF CONTENTS

SECTION 1: RECOMMENDATIONS AND CONDITIONS	3
PRELIMINARY PLAN 12020022A.....	3
SECTION 2: SITE DESCRIPTION.....	3
VICINITY.....	3
PROPERTY DESCRIPTION.....	4
SECTION 3: PROJECT DESCRIPTION.....	5
PREVIOUS APPROVALS.....	5
PROPOSAL	8
SECTION 4: COMMUNITY OUTREACH	8
SECTION 6: PRELIMINARY PLAN AMENDMENT NO. 12020022A FINDINGS AND ANALYSIS	8
SECTION 9: CONCLUSION	12
ATTACHMENTS	12

SECTION 1: RECOMMENDATIONS AND CONDITIONS

PRELIMINARY PLAN 12020022A

Staff recommends approval, with a condition, of Preliminary Plan Amendment No. 12021001A to extend the validity period from January 3, 2024, to January 3, 2026. All site development elements shown on the latest electronic version of the Preliminary Plan Amendment No. 12021001A as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions. Condition 15 is in addition to all other conditions, which remain in full force and effect:

New Condition¹

15. The Preliminary Plan will remain valid for an additional two (2) years from its original initiation date (as defined in Montgomery County Code Section 50.4.2.G), or until January 3, 2026, and before the expiration date of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records or a request for an extension filed.

SECTION 2: SITE DESCRIPTION

VICINITY

The Property (“Subject Property” or “Property”) is located on Avondale Street, on the block east of Wisconsin Avenue (MD 355) and north of East-West Highway (MD 410). This block is currently developed with low-rise multi-family residential buildings on both sides of the street. Within close proximity of the Property, this portion of the Wisconsin Avenue Corridor district is developed with high-rise commercial buildings and the Bethesda Metro Station is located one block south. To the east is Our Lady of Lourdes Church and School, the Bethesda Chevy Chase High School, and the East Bethesda neighborhood to the north and farther east.

¹ Resolution No. 20-123 (included in Attachment A) did not include a condition for the validity period, it was referenced in the concluding paragraphs of the resolution, therefore there are no proposed modifications to previous conditions.

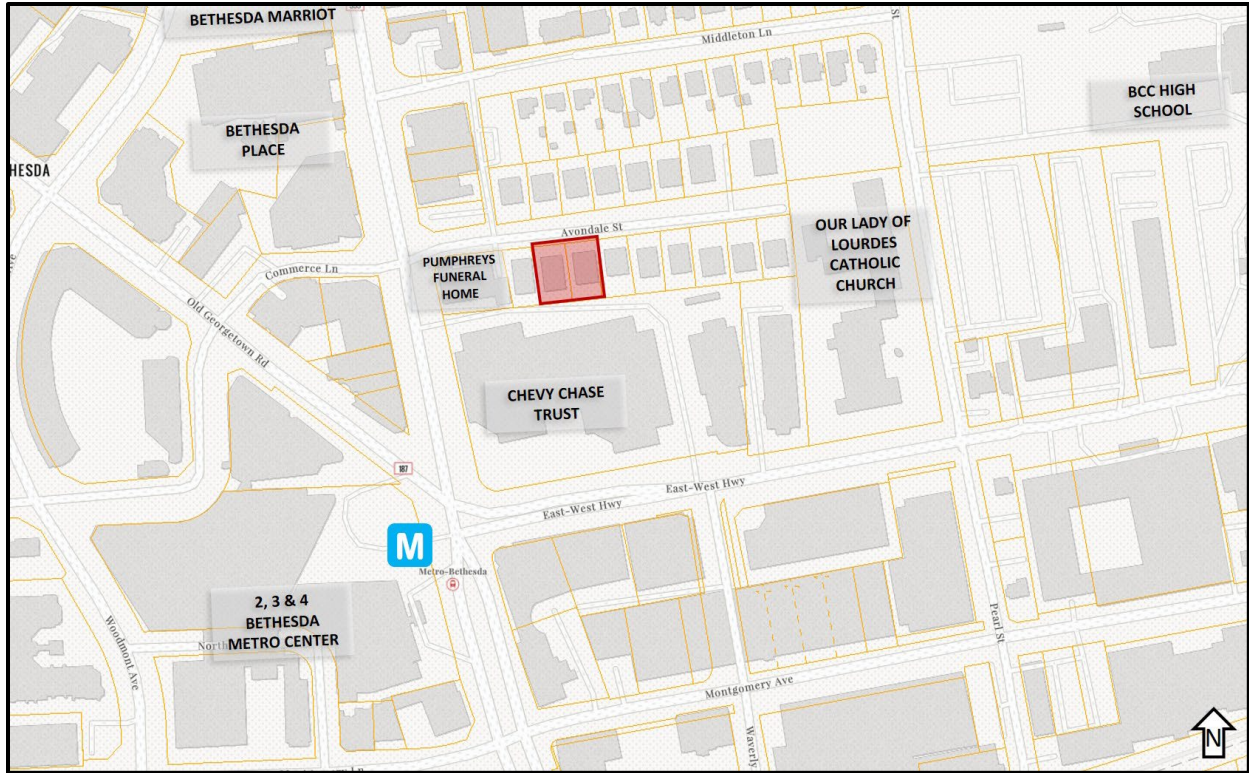


Figure 1 – Vicinity Map

PROPERTY DESCRIPTION

The Site is located east of Wisconsin Avenue within the 2017 *Bethesda Downtown Sector Plan* (Sector Plan). The Property is comprised of two lots created in 1935 by the George Bradley Subdivision, Plat No. 635. The total tract area is approximately 0.33 acres and is currently improved with two multi-family residential buildings.



Figure 2 – Aerial Map

The southern portion of Avondale Street was rezoned from R-10 to CR 1.5 C 0.25 R 1.5 H 70' and the north side of the street was rezoned to CRN 0.75 C 0.0 R 0.75 H 45' with the 2017 *Bethesda Downtown Sector Plan*. Avondale Street is a two-way street which terminates to the east of the Site, just before Pearl Street. Avondale Street has on-street residential permit parking along the north and south side of the street. The Site is outside the Bethesda Parking Lot District (PLD). The Property does not contain any forest, streams, or environmental buffers. There are no known rare, threatened, or endangered species on-site; there are no 100-year floodplains, stream buffers, or wetlands on-site. There are no historic properties on-site.

SECTION 3: PROJECT DESCRIPTION

PREVIOUS APPROVALS

On November 12, 2020, the Planning Board approved Sketch Plan No. 320200050 (MCPB Resolution No. 20-122) and Preliminary Plan No. 120200220 (MCPB Resolution No. 20-123) for the creation of one (1) lot for up to 55,000 square feet of residential uses (up to 60 multifamily dwelling units) and a future Bethesda Overlay Zone (BOZ) density allocation of up to 33,121 square feet. The Preliminary Plan

approved a validity period of 36 months from the initiation date, which was January 3, 2021. The validity period is the time within which a plat must be recorded for the subdivision.

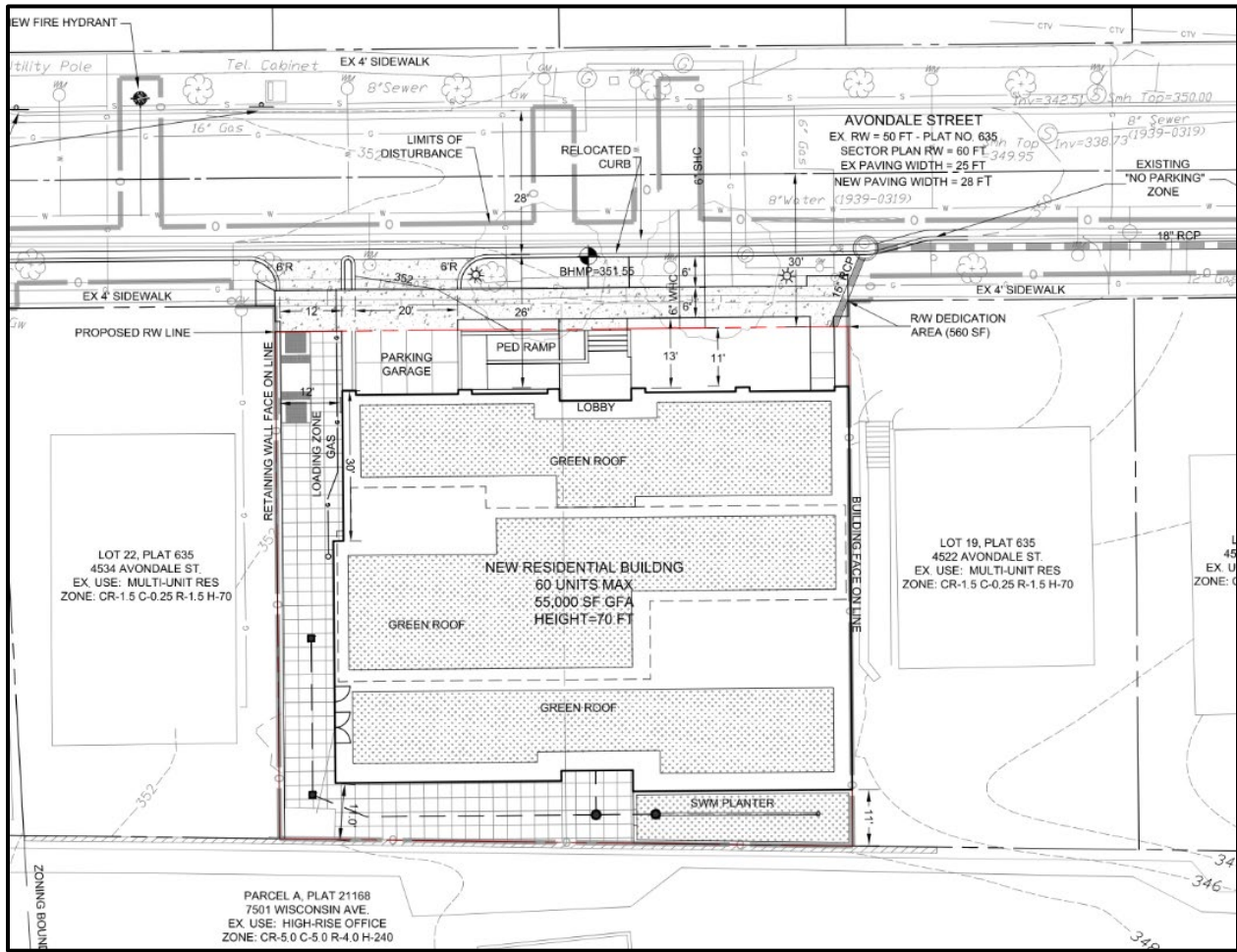


Figure 3 - Approved Preliminary Plan No. 120200220

On September 30, 2021, the Planning Board approved Site Plan No. 820210140 (MCPB Resolution No 21-108), to allow the construction of a 70-foot-tall residential building with a maximum density of up to 55,000 square feet and 33,121 square feet of BOZ density. Per Section 59.4.9.2.D.4 of the Zoning Ordinance, projects approved with Bethesda Overlay Zone Density must have a building permit application accepted by the Department of Permitting Services, that includes the core and shell of the principal building within two years of the date of the Planning Board's resolution. In June of 2023, County Council adopted ZTA 20-02, allowing those projects valid on July 2023 (including this Site Plan No. 820210140) an additional year to meet this requirement.



Figure 4 – Rendering of Avondale Street Frontage (Looking South) for Site Plan No. 820210140)

PROPOSAL

The Applicant requests to extend the validity period for the associated Preliminary Plan for two additional years. The approved validity period was for three years from the initiation date for MCPB Resolution No. 20-123 which would have expired on January 3, 2024. If granted, the two-year extension for the validity period would coincide with the associated Adequate Public Facilities validity period granted with the Preliminary Plan (five years from the initiation date for MCPB Resolution No. 20-123), expiring on January 3, 2026. The Applicant has provided a justification addressing the criteria in Section 50.4.2.H.3.a.ii of the Subdivision Ordinance, which states that the record plat has been delayed for two primary reasons:

- 1) The approval process for the Property coincided with the COVID-19 pandemic, which have created long lasting impacts and considerable market volatility due to rising interest rates. These events are beyond the Applicant's control and have resulted in significant increases to construction costs for the Project.
- 2) The Applicant had entered into a contract with a third-party developer to proceed with platting and construction on June 13, 2022. However, citing market volatility and difficulties in securing financing, the third party informed the Applicant in June of 2023 that they could not proceed with the purchase of the property. These events left the Applicant insufficient time to fulfill the platting prerequisites necessary to validate the plan and record the plat. These include full engineered design, permitting and bonding of upgrades to Avondale Street including road widening, public storm drain extensions, utility relocations, upgrades to sidewalks, street trees and streetlights. The Applicant anticipates an additional 12 months to complete this process.

SECTION 4: COMMUNITY OUTREACH

The Applicant has complied with all submittal and noticing requirements. As of date of this Staff Report, no correspondence has been received.

SECTION 5: PRELIMINARY PLAN AMENDMENT NO. 12020022A FINDINGS AND ANALYSIS

The Planning Board approved Preliminary Plan No. 120200220, MCPB No. 20-123, to create one lot for residential development for up to 60 units on the Subject Property with conditions and established a 36-month validity period from the initiation date as defined by Section 50.4.2.G of the Subdivision Ordinance.

Preliminary Plan Amendment No. 12020022A requests to extend the validity period from January 3, 2024, to January 3, 2026. The proposed Preliminary Plan Amendment does not alter the intent of the previous findings, which remain applicable.

In accordance with Section 4.2 of Chapter 50, to approve a Preliminary Plan validity extension, the Board must make the following analysis and findings as part of its approval.

1. Extension Requests

- a. Only the Board is authorized to extend the validity period. The applicant must submit a request to extend the validity period of an approved preliminary plan in writing before the previously established validity period expires.**

The Applicant submitted a timely plan validity extension request to the Planning Board which was filed on November 7, 2023 and accepted on December 12, 2023. Planning Board Resolution No. 20-123 (Attachment B) established a 36-month validity period for the Preliminary Plan, with an original expiration date of January 3, 2024 (based on the initiation date as defined in Section 50.4.2.G of the Subdivision Ordinance).

- b. The Director may approve a request to amend the validity period phasing schedule of an approved preliminary plan if the length of the total validity period of the preliminary plan is not extended. The applicant must submit the request in writing before the previously established validity period of the phase expires.**

Not applicable.

- c. The written request must detail all reasons to support the extension request and include the anticipated date by which the plan will be validated. The applicant must certify that the requested extension is the minimum additional time required to record all plats for the preliminary plan.**

The Applicant has provided a justification statement for the requested extension to the plan validity (Attachment B) which requests an additional two years to record the plat for the Preliminary Plan. The current validity period for Preliminary Plan No. 120200220 would have expired on January 3, 2024. The Applicant states this is the minimum time necessary, given that the third-party contractor began the record plat process, however final engineering must be completed prior to the plat being recorded.

2. Effect of failure to submit a timely extension request.

The request was received in a timely manner; therefore, the sub-sections herein do not apply.

3. Grounds for extension.

a. The Board may only grant a request to extend the validity period of a preliminary plan if the Board finds that:

i. delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or

The Applicant had entered into a contract with a third-party developer in June of 2022 to complete the platting process and proceed with construction. However, citing market volatility and difficulties in securing financing, the third party informed the Applicant in June of 2023 that they could not proceed with the purchase of the property. These events left the Applicant insufficient time to fulfill the platting prerequisites necessary to validate the plan and record the plat. These include full engineered design, permitting and bonding of upgrades to Avondale Street including road widening, public storm drain extensions, utility relocations, upgrades to sidewalks, street trees and streetlights.

ii. the occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended.

The Applicant's validity extension justification (Attachment B) states that significant, unusual and unanticipated events, beyond their control and not caused by the Applicant, have impaired their ability to validate the plan, and that an undue hardship would result if the validity period is not extended. Due to the significant and long-lasting economic difficulties posed by the COVID-19 pandemic including market uncertainty, rising interest rates, and rising construction costs have impacted the overall cost of the Project.

b. The applicant bears the burden of establishing the grounds in support of the requested extension.

The Applicant provided justification (Attachment B) outlining the validity extension request and the necessary justifications. These are found to qualify as a "significant, unusual and unanticipated event(s), beyond their control and not caused by the Applicant." This justification also details the progress the Applicant and third-party developer made prior to the third-party developer pulling out of the contract. This includes certification of the Preliminary Plan in June of 2021, approval from the Planning Board for the associated Site Plan (No. 820210140) in September of 2021, certification of the Site Plan in May of 2022, and submittal of a record plat application in April of 2023.

Permit drawings for the subsequent building permit application are also in the early stages of preparation.

4. Planning Board considerations for extension.

- a. The Board may condition the grant of an extension on a requirement that the applicant revise the plan to conform with changes to the requirements of this Chapter since the plan was approved.**

No major requirements have changed since approval of Preliminary Plan No. 120200220 that would necessitate a change to the approved plans.

- b. The Board may deny the extension request if it finds that the project, as approved and conditioned, is no longer viable. The Board must consider whether the project is capable of being financed, constructed, and marketed within a reasonable time frame. The Applicant must demonstrate the project's viability upon request by the Board or the Director.**

The Applicant states that the Project is still viable and as noted in Finding 3.b above, significant effort has been made to move the Project forward. The Applicant's statement of justification also references the Zoning Text Amendment ("ZTA") that was approved by County Council on June 27, 2023, which acknowledges that projects within the Bethesda Overlay Zone ("BOZ") are facing challenges due to continued inflation and rising interest rates as a result of the COVID 19 pandemic. ZTA 20-02 provides an extension of site plan implementation deadlines within the BOZ due to these market challenges. Based on provisions of the Zoning Ordinance for projects within the BOZ, this project is required to have an application accepted by the Montgomery County Department of Permitting Services ("MCPDS") within two years of the resolution mailing for the associated Site Plan (No. 820210140). ZTA 20-02 automatically extended this deadline, requiring this project to have a permit application accepted by MCPDS for the core and shell of the building to November 21, 2024 (three years from the date of resolution for Site Plan No. 820210140).

5. Planning Board action.

- a. After a duly noticed public hearing, the Board must determine whether it should grant a request for an extension. The requirements for noticing and conducting a public hearing must follow the requirements for a preliminary plan.**

The Preliminary Plan Amendment was properly noticed pursuant to the requirements of Chapter 50 and the latest Administrative Procedures for Development Review.

- b. If voting to approve an extension, the Planning Board must only grant the minimum time it deems necessary for the applicant to validate the plan.**

The Applicant has requested a two-year extension to the Preliminary Plan validity period which would coincide with the approved Adequate Public Facilities Period expiring on

January 3, 2026. This two-year extension would be the minimum necessary to complete the record plat.

- c. The Board may only grant an extension to a preliminary plan within the plan’s APFO validity period, unless a further extension is allowed by law.**

The associated Adequate Public Facilities approval was granted for five years from the initiation date of Planning Board Resolution No. 20-123, with an expiration of January 3, 2026, the requested validity extension would align with the existing APFO validity period.

- d. An applicant may request, and the Board may approve, more than one extension.**

This is the first request for a Preliminary Plan validity extension made for the original approval of Preliminary Plan No. 120200220.

- e. Once a phasing schedule is approved by the Board as part of a preliminary plan approval, the Board must treat any revision or alteration to the schedule other than an amendment approved under Section 4.3.J.7 as a minor amendment to the preliminary plan. Board approval of a revised phasing schedule is required to extend the total length of the validity period.**

Not applicable.

SECTION 7: CONCLUSION

As conditioned, the Preliminary Plan Amendment satisfies the findings of the Subdivision Regulations and substantially conform to the recommendations of the 2017 *Bethesda Downtown Sector Plan*. Therefore, Staff recommends approval of the Preliminary Plan Amendment No. 12020022A with the additional condition specified at the beginning of this report.

ATTACHMENTS

Attachment A: Prior Approval Resolutions

Attachment B: SOJ for Preliminary Plan Amendment No. 12021001A

Attachment C: Proposed Conditions for Resolution