

RD:JVP:JMD
2/14/2020

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING AN APPEAL AND APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF THREE EXISTING ACADEMIC BUILDINGS AND A PORTION OF AN AUDITORIUM/GYM BUILDING TOTALING APPROXIMATELY 19,000 SQUARE FEET AND THE CONSTRUCTION OF AN APPROXIMATELY 39,000-SQUARE FOOT, 2-STORY CLASSROOM BUILDING, AN ADDITION TO THE EXISTING AUDITORIUM/GYM RESULTING IN AN APPROXIMATELY 20,542 SQUARE FOOT BUILDING AND SITE IMPROVEMENTS INCLUDING THE REMOVAL OF FIFTEEN ORDINANCE-SIZE TREES, CIRCULATION IMPROVEMENTS INCLUDING THE INSTALLATION OF A TRAFFIC LIGHT ON UNION AVENUE, LANDSCAPING, AND THE ADDITION OF SPORTS COURTS AND A FIELD FOR A PRIVATE MIDDLE SCHOOL WITH UP TO 600 STUDENTS, ON AN APPROXIMATELY 7.7-GROSS ACRE SITE, ON THE WEST SIDE OF UNION AVENUE, 100 FEET SOUTHERLY OF BARRETT AVENUE (4525 UNION AVENUE)

FILE NO. PD18-040

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on October 16, 2018 an application (File No. PD18-040) was filed by Harker School with the City of San José for a Planned Development Permit to allow the demolition of three existing academic buildings and a portion of an auditorium/gym building totaling approximately 19,000 square feet and the construction of an approximately 39,000-square foot, 2-story classroom building, an addition to the existing auditorium/gym resulting in an approximately 20,542 square foot building, and site improvements including the removal of fifteen ordinance-size trees, circulation improvements including installation of a traffic light on Union Avenue, landscaping, and the addition of sports courts and a field for a private middle school with up to 600 students on an approximately 7.7-goss-acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located on the west side of Union Avenue, 100 feet southerly of Barrett Avenue (4525 Union Avenue, San

José, which real property is sometimes referred to herein as the “subject property”); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Director of Planning, Building and Code Enforcement (“Director”) conducted a hearing on said application on November 13, 2019, notice of which was duly given; and

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

WHEREAS, at said hearing, the Director approved the requested Planned Development Permit, for which decision an appeal to the City Council was timely filed by neighbors of the subject property; and

WHEREAS, on November 18, 2019, a timely appeal of the Director’s approval of the Planned Development Permit was filed by Brian Ahr, Maria Arellano, Kiran Kadambi, Sonia Tomar, and Sujatha Venkatraman; and

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

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

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

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "PD Permit for Harker School" dated January 2019, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

1. **Site Description and Surrounding Uses.** The 7.7-gross acre project site is located at 4525 Union Avenue, approximately 100 feet south of the intersection of Union Avenue and Barrett Avenue. The site is currently used as the Harker Preschool Campus with an enrollment of up to 120 preschool students. Existing development on the site includes: five one-story, 4,877-square-foot classroom buildings; a two-story 11,340-square-foot gymnasium; a one-story, 10,121-square-foot music/drama class building; three connected administration buildings totaling 27,854 square feet varying in height from one to two stories (which front Union Avenue); a paved parking lot; and a student drop-off area. The preschool campus also includes playgrounds, basketball courts, turf fields, and landscaping. There is an existing Planned Development Permit (File No. PD12-027) which permitted site improvements, the existing preschool use, and a kindergarten through 5th grade elementary school on-site with a maximum enrollment of 600 students.

Development in the project area is a mix of single-family residential and light industrial office buildings. The properties north, west, and east of the site have a Residential Neighborhood General Plan land use designation and the properties to the south of the site have a CIC Combined Industrial Commercial Land Use/Transportation Diagram designation. The properties to the north and west of the site are in the R-1-8

Single-Family Residence Zoning District and are developed with predominantly single-story, single-family residences. The properties to the south of the site are in the A(PD) Planned Development Zoning District (PDC01-009) and are developed with two-story light industrial office buildings. The properties to the east of the site are in unincorporated County land and are developed with duplexes and single-family residences.

2. **Project Description.** A Planned Development Permit is requested to accommodate a middle school with a maximum enrollment of 600 middle school students (grades 6 through 8) on an approximately 7.7-gross acre site. Physical development described in the Planned Development Permit includes:
 - a. The demolition of three (3) of the five (5) existing 4,877-square foot classroom buildings,
 - b. The demolition of approximately 4,000 square feet of the north and east end of the gymnasium/auditorium building and remodel of the gymnasium/auditorium building. The existing gymnasium building is 11,340 square feet in size and 32 feet in height and it is located at the southwest corner of the existing campus. The remodeled and expanded gymnasium/auditorium building would be approximately 20,542 square feet and would have a maximum height of 34 feet. The expansion would allow for the addition of lockers, changing rooms, storage facilities, and a new interior basketball court.
 - c. Construction of a two-story, approximately 39,000-square foot classroom building with 34 classrooms and ancillary offices and storage spaces, located along the northern property line.
 - d. Removal of forty-six (46) trees, including fifteen (15) ordinance-sized trees,
 - e. Site improvements including the reconfiguration of the existing sport field located in the center of the site, relocation of the three existing outdoor basketball courts and addition of one outdoor basketball court for a total of four exterior basketball courts on-site, and
 - f. Circulation improvements including:
 - i. Modifications to the landscaping and pedestrian walkways,
 - ii. Addition of a 26-foot emergency vehicle access (EVA) driveway,
 - iii. Paving of a 21-foot wide drive aisle along the southern property line,
 - iv. The relocation of the northern driveway on Union Avenue, 150 feet south along the eastern property line and installation of a traffic signal at the relocated driveway
 - v. Reconfiguration of the parking lot and student pick-up and drop-off zones.

Project Operations

The school's hours of operation would be from 7:00 a.m. to 6:00 p.m. Monday through Friday, with student drop-off anticipated to occur from 7:00 a.m. to 8:00 a.m. and after school pick-up between 3:00 p.m. and 6:00 p.m. Vans and buses would use the main parking lot for pick-up and drop-off, while individual student pick-up and drop-off would be at the drive-aisle along the southern property line. Extra-curricular, after-school activities, which could include sports games, theater dance, art and academic activities, could last until 9:00 p.m. and occasional special events would end no later than 10:00 p.m. The school would employ approximately 104 employees, including but not limited to teachers, administrative staff, and maintenance staff. The project anticipates three night-time custodians and one to two security personnel in the evening. Occasional special events would occur on weekends and overflow parking would be made available on the outdoor basketball courts, as needed.

- 3. General Plan Conformance.** The Envision San José 2040 General Plan Land Use/Transportation Diagram designation for the subject site is Public/Quasi-Public. This land use designation is intended for uses including schools, colleges, corporation yards, homeless shelters, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices, and airports. The project middle school use would be consistent with the General Plan land use designation.

Additionally, the project would conform to the following General Plan goals and policies:

Vibrant Neighborhoods Policy VN-1.1: Include services and facilities within each neighborhood to meet the daily needs of neighborhood residents with the goal that all San José residents be provided with the opportunity to live within a ½ mile walking distance of schools, parks, and retail services.

Analysis: The project site is located within walking distance from many residences. The private middle school would provide another educational opportunity for sixth through eighth grade students to live and attend school near their neighborhood. The nearest middle school to the project site is Union Middle School in Los Gatos, located approximately one mile from the project site. The additional educational facility advances the depth of educational services available for the City's and region's populations.

Education Goal ES-1: Promote the operation of high-quality education facilities throughout San José as a vital element to advance the City's vision and goals for community building, economic development, social equity, and environmental leadership.

Educational Policy ES-1.7: Support efficient use of land through consideration of smaller school sites and alternative school configurations (e.g. multi-story buildings, underground parking, placement of recreation space over parking areas or on rooftops) to support the needs of each community.

Analysis: The project would utilize an existing pre-school campus for the middle school campus. The school would reutilize two existing classroom buildings, the administrative buildings, music/drama classroom building, and gymnasium. The project development would allow the construction of additional high-quality educational facilities to update the campus, provide improved circulation throughout the campus, and enhance the outdoor spaces for the future students. The outdoor basketball courts would be designed to be re-purposed as parking areas, should additional parking be needed during a special event on the campus. The new classroom building's roof is designed to accommodate future photovoltaic cells (solar power) on the roof.

4. **Zoning Conformance.** The subject site is in the A(PD) Planned Development Zoning District established per Planned Development Rezoning File No. PDC91-077. PD Zoning Districts are typically used for projects that require specific development standards or land use controls to ensure compatibility with the surrounding area. Each PD Zoning District is separate and unique. This district, established with Planned Development Zoning File No. PDC91-077, was approved to allow a “children’s homeless shelter or other uses similar in intensity and character such as a school, living quarters, recreation building or child services center”. The project development is consistent with the Planned Development standards as described in more detail below:

A. Use. The private school use is a permitted use per the General Development Standards “Allowed Building Uses”, which were established under File No. PDC91-077. The Planned Development Zoning permits children’s homeless shelters, cottages for living quarters, a school, recreational buildings, and a child service center.

B. Development Standards: The table below outlines the development standard including, building separation, public street setbacks, property line setbacks, and maximum heights required in the A(PD) Zoning District.

Standards	PDC91-077 Development Standards
Building Separations (excluding porches)	25 feet
Public Street Setbacks	20 feet
Structure Setback from Property Line	20 feet
Building Height	34 feet

The existing administrative building is the closest building to the public street, Union Avenue, and it is set back 128 feet from the public-right-of-way in conformance with the public street setback requirement.

The new classroom building would be located on the northern property line between an existing classroom building, “Building B1” on the east and the drama/music building “Building D” to the west of the new building. The new classroom building would be 30 feet from “Building D”, 25 feet, 3 inches from “Building B1, and a minimum of 21 feet, 9 inches from the northern property line in conformance with the required building separations and property line setbacks.

The renovated gymnasium/auditorium, located along the western property line, would be a minimum of 20 feet, 2 inches from the western property line and a minimum 23 feet from the southern property line in conformance with the development standards.

Consistent with the height limitations, the renovated gymnasium/auditorium and new classroom building would be a maximum of 34 feet in height.

C. Parking: Per the A(PD) Planned Development Zoning District, one (1) parking space per 250 square feet of office space and one (1) parking space per institutional uses staff should be provided. The project site would have a total of 11,000 square feet of office space and up to 60 “institutional staff” (teachers) requiring a total of 104 parking spaces. The project would provide 107 parking spaces. The Planned Development Permit does not have any required bicycle parking spaces. The project provides twelve (12) bicycle racks on the site.

D. Tree Removal—The General Development Standards require ordinance-size trees which are removed to be replaced at a ratio of 4:1, trees 12 to 18 inches in diameter replaced at a ratio of 2:1 and trees under 12 inches replaced at a ratio of 1:1. The project site has 154 trees. The project would remove a total of 46 trees including two (2) trees with a diameter above 18 inches, fourteen (14) trees with a diameter between 12 and 18 inches, and thirty (30) trees under 12 inches in diameter. The removed trees would accommodate the site improvements. The project would require a total of 67 replacement trees. Thirty-four trees would be replaced on-site and the remainder of the trees would be replaced through an in-lieu tree replacement fee.

5. Environmental Review. An Initial Study and Mitigated Negative Declaration (IS/MND) entitled “Harker Middle School Expansion Project was prepared by the Director of Planning, Building, and Code Enforcement for the subject Planned Development Permit. The IS/MND was completed in compliance with the California Environmental Quality Act (CEQA) to reflect an independent judgment and analysis of the project.

The IS/MND identified potentially significant environmental impacts and determined that the project would not have a significant effect on the environment with the incorporation of certain mitigation measures. The primary environmental issues addressed in the IS/MND were the potential impacts to air quality, biological resources, hazards and hazardous materials, noise and vibration, and traffic and transportation. The MND includes mitigation measures for the previously stated resource areas that would reduce

these potentially significant impacts to less than significant levels. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) and in the associated permit as a part of the project.

The IS/MND was circulated for public comment August 2 through August 22, 2019, for a 20-day comment period.

A total of eleven comment letters were received from community members, the Santa Clara Road and Airports Department and Valley Transportation Authority.

The IS/MND, supporting technical documents, Response to Comments, and other related environmental documents are available on the Planning website at: <https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies>

6. Planned Development Permit Findings. Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Planned Development Permit.

- a. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan.

Analysis: As noted above, the project site has a Land Use/Transportation Diagram Designation of Public/Quasi-Public in the General Plan. The project is consistent with the land use designation and would further the General Plan's goals and policies for school facilities in the City.

- b. The Planned Development Permit, as issued, conforms in all respects to the planned development zoning of the property.

Analysis: As detailed above, the project complies with the General Development Standards of the Planned Development Zoning, File No. PDC91-077. The middle school is consistent with the uses allowed in the Planned Development Zoning District. The project development would comply with all setback, height, tree removal, and parking standards set forth in the General Development Standards of PDC91-077.

- c. The Planned Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project is consistent with all applicable City Council policies. Compliant with Council Policy 6-30: Public Outreach Policy, a notice of the public hearing and community meeting were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. A community meeting was held on December 13, 2019 to introduce the project and receive community input.

- d. The interrelationship between the orientation, location, mass and scale of building volume, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: The new classroom building and renovated gym/auditorium are architecturally compatible with existing buildings on-site including gabled roofs to match the existing sloped roofs of the other campus buildings. The new construction includes building materials such as cement siding in alternating colors and a shaded walkway along the site's interior to integrate with the other existing building on-site. The site improvements maintain a similar site orientation with the outdoor student area (field and basketball courts), located in the center of the building towards the south of the site. The heights of the new classroom building and gym/auditorium (maximum height of 34 feet) are slightly increased from the tallest height (32 feet) existing on-site today.

- e. The orientation, location, and elevation of the proposed buildings and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The buildings are setback from the shared property lines in accordance with the Planned Development Zoning District standards. The classroom building along the northern property line has a ground floor setback of 23 feet, 8 inches, and the second story is setback from the shared property line 35 feet, 8 inches. The additional setback is intended to reduce the second floor's presence along the single-family backyards adjacent to the site. Eight 36-inch box trees are along the classroom building between the property line and new development which would further buffer the new classroom from the adjacent single-family residences. The remodeled gym/auditorium would increase in height by two feet. None of the mature trees along the western property line would be removed and the gym remodeling would be largely shielded from the mature trees.

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The project would be located within an urbanized area and would not contribute any significant negative effects to the surrounding environment. The project will be required to adhere to standard building and grading permit conditions as well as air and water quality conditions of approval during the construction phase, which will minimize related impacts during this project phase. This permit includes conditions of approval for the school to maintain a community outreach liaison responsible for implementation of the conditions of this permit and available to address public concerns regarding the operation of the school. As the project is in close proximity to residential uses, construction hours would be from 7a.m. to 7p.m., Monday through Friday. No odors are associated with the operation of the school.

The project will incorporate stormwater control measures including beneficial landscaping.

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: The project building would maintain the existing trash facilities on the project site. Landscaping would occur throughout the site including new trees and a new grass field. The project would maintain 108 of the existing trees on-site and would remove only those necessary for the site improvements.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: The project conforms to the parking requirements set forth in the Planned Development Zoning District, as described above. This site is accessible by two driveways. The southern drive aisle is designed to allow pick-up and drop-off to queue on the long drive aisle on-site.

- 9. **Demolition Findings:** Pursuant to Section 20.80.460 of the San José Municipal Code, prior to the issuance of the Planned Development Permit, the Director shall determine whether the benefits of permitting the demolition of the existing buildings outweigh the impacts of the demolition. In making such a determination, the following criteria shall be considered:

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: The existing classrooms and portion of the gym/auditorium on-site are not buildings of historical significance as they were constructed in the 1990s and are not listed on the City's Historic Resources Inventory. The demolition of the existing buildings would facilitate the construction of the project consistent with the goals and policies of the General Plan and the Zoning District, as noted above. The demolition would not result in a nuisance, blight, or dangerous condition nor would the demolition jeopardize public health, safety or welfare as the demolition would allow for the construction of updated school facilities and would be required

to comply with all applicable City requirements to maintain a safe demolition site. No residential units would be demolished, therefore, the demolition would not result in a change in the supply of the existing housing stock. The project will reuse some of the buildings on-site, however, the project requires demolition of the three classrooms and a portion of the gym/auditorium in order to meet the Middle School's classroom size and outdoor activity space needs on the project site.

10. **Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Tree Removal Permit, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.
- a. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
 - b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
 - c. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

Analysis: The project would remove a total of forty-six (46) trees, of which fifteen (15) trees are ordinance size trees. These trees are located in or too close to the future developments' footprint. The locations of the existing trees that will be removed would conflict with the development of the project. The project would replace the trees through on-site replacement or payment of an off-site tree replacement fee consistent with the City's tree replacement ratios and as conditioned in the permit.

In accordance with the facts and findings set forth above, a Planned Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:

- a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by this City Council, if within such two (2) year time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager 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 on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Conformance to Plans.** The development of the site shall conform to the approved

Planned Development Permit plans entitled, "PD Permit for Harker School" dated January 2019, on file with the Department of Planning, Building and Code Enforcement as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set

6. **Scope and Use Authorization of the Planned Development Permit.** Subject to all conditions herein, this Planned Development Permit allows a Middle School use with a maximum enrollment of 600 students and site improvements including:
 - a. The demolition of three (3) of the five (5) existing 4,877-square foot classroom buildings,
 - b. The demolition of approximately 4,000 square feet of the north and east end of the gymnasium/auditorium building and remodel of the gymnasium/auditorium building. The existing gymnasium building is 11,340 square feet in size and 32 feet in height and it is located at the southwest corner of the existing campus. The remodeled and expanded gymnasium/auditorium building would be approximately 20,542 square feet and would have a maximum height of 34 feet. The expansion would allow for the addition of lockers, changing rooms, storage facilities, and a new interior basketball court.
 - c. Construction of a two-story, approximately 39,000-square foot classroom building with 34 classrooms and ancillary offices and storage spaces, located along the northern property line.
 - d. Removal of forty-six (46) trees, including fifteen (15) ordinance-sized trees,
 - e. Site improvements including the reconfiguration of the existing sport field located in the center of the site, relocation of the three existing outdoor basketball courts and addition of one outdoor basketball court for a total of four exterior basketball courts on-site, and
 - f. Circulation improvements including:
 - 1) Modifications to the landscaping and pedestrian walkways,
 - 2) Addition of a 26-foot emergency vehicle access (EVA) driveway,
 - 3) Paving of a 21-foot wide drive aisle along the southern property line,
 - 4) The relocation of the northern driveway on Union Avenue, 150 feet south along the eastern property line and installation of a traffic signal at the relocated driveway
 - 5) Reconfiguration of the parking lot and student pick-up and drop-off zones.

7. **Number of Students and Staff.** This school shall be limited to a maximum of 600 6th through 8th grade students and 104 teachers/staff.

8. **Weekday Hours.** With the exception of those activities permitted in Conditions 9 and 9 below, the daily arrival and pick-up of students shall occur no earlier than 7:00 a.m. and no later than 9:00 p.m., respectively. All other weekday activity shall begin no earlier than 6:00 a.m. and end no later than 10:00 p.m.
9. **Weekend Activities.** Weekend activities utilizing the athletic fields and basketball courts may only occur between 9:00 a.m. and 7:00 p.m.
10. **Special Events.** The school may have up to twelve (12) special events per year, including but not limited to graduation, public workshops, and open houses. Special events on weekends or weekdays shall begin no earlier than 9:00 a.m. and end no later than 10:00 p.m. Vehicle parking for special events shall be accommodated on-site in the main parking lot and on the athletic field/special event parking area. As part of the school's ongoing coordination efforts, a schedule of special events shall be provided to the neighborhood. The school shall solicit and maintain a mailing/email list of neighborhood residents to inform nearby residents of upcoming events pursuant to this Condition or other conditions herein requiring notifications.
11. **Neighborhood Coordination.** A neighborhood liaison shall be designated for the school and contact information (name, phone number, email) shared with the neighborhood and displayed on a weather-proof sign on the project site's Union Avenue frontage. The sign should be legible from the sidewalk. The neighborhood liaison shall be responsible for ensuring compliance with this permit. The school shall implement on-going and continual outreach and communication to address neighborhood concerns. The school shall maintain a mailing list and email list of neighborhood residents that would like to be kept informed of school activities, including special events.
12. **Traffic Coordinator.** The school shall designate and provide a traffic coordinator whose responsibilities shall include overseeing traffic operations and providing outreach to the public, employees, and parents.
13. **Annual Neighborhood Meeting.** In addition to on-going and continual neighborhood outreach, the school shall conduct an annual Neighborhood Meeting to engage the surrounding neighborhood in discussions related to the operation of the school site and any concerns the area residents may have. Notification of the neighborhood residents of this meeting shall occur at least two (2) weeks prior to the scheduled meeting and be done in writing and distributed in a manner sufficient to accomplish notification including contacting the mailing list, emailing list (maintained per Condition 11), and all adjacent property owners/tenants. Summary of notes shall be provided to the Director of Planning, Building and Code Enforcement and Department of Transportation within 30 days of meetings.
14. **No Sign Approval:** Any signage shown on the approved plan set are conceptual only. No signs are approved at this time. Any additional signage shall be subject to the review and approval by the Director of Planning through a subsequent Permit Adjustment.
15. **Pedestrian Counts:** The permittee shall conduct counts of the number of pedestrians

entering and existing the site. Such counts shall be conducted four times a year, twice during the fall semester and twice during the spring semester, and shall fall on days when driveway traffic counts (as outlined in the Transportation Demand Management Plan) are also being conducted. Such counts shall not be used to determine whether the permittee is meeting their trip cap, but shall instead be advisory to the permittee as a means to determine whether additional efforts should be made to communicate with parents about proper student drop-off and pick-up procedures.

16. **Transportation Demand Management Plan:** Implement Transportation Demand Management (TDM) Plan. The Transportation Demand Management plan (“TDM Plan”), prepared by Hexagon Transportation Consultants, Inc., dated January 20, 2020, is on file with the Department of Public Works and is incorporated fully herein by this reference. The project is required to submit an annual monitoring report (and pay associated administrative costs for the City’s time to review) that measures the effectiveness of the approved TDM plan, in a form approved by the Director of Public Works. The report shall be provided to the City on or before each June 30 for the reporting period of the prior calendar year. Additional TDM measures, or changes to the existing TDM measures, may be required or reduced enrollment in the next academic year at the discretion of the Director of Public Works, if the TDM measures are not effective in meeting the trip cap. (Enrollment shall only be increased back to previously approved level with the issuance of a Planned Development Permit Amendment.)
17. **Public Use of School Facilities.** The school shall receive and consider (but shall not be obliged to grant) requests for public use of the facility.
18. **Neighborhood Intrusion.** The school shall collect periodic data of the Average Daily Traffic (ADT) volumes on nearby residential streets prior to the occupation of the school and during the school session to measure traffic volume change. Such data shall be collected Tuesday, Wednesday, or Thursday under normal school traffic conditions. At least one such data collection shall be conducted during the first year of the Middle School operation. Such data collection should be advisory to the permittee as a means to determine whether additional efforts should be made to community with parents about proper student drop-off and pick-up procedures.
19. **Neighborhood Improvements.** The permittee shall contribute \$75,000 to the City to be used to fund any traffic calming or pedestrian improvements in the surrounding area (such as radar signs, crosswalks or islands) that, in consultation with the neighborhood and the Neighborhood Intrusion data from Condition No. 19, may be deemed appropriate. The fee shall be paid upon submittal of the first annual TDM monitoring report.
20. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
21. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.

22. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
23. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
24. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
25. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
26. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
27. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
28. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
29. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
30. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code. The Code addresses the use of reclaimed water including the requirement that an irrigation system be designed to allow for the current and future use of reclaimed water for all landscaped cumulative areas in excess of ten thousand (10,000) square feet.
31. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
32. **Storm Drain Protection.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet. The storm drain system flows to the Bay.
33. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the

Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

34. Public Works Clearance for Building Permit(s) or Map Approval.: Prior to the issuance of Building permits, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <https://www.sanjoseca.gov/home/showdocument?id=20035>.

a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

b. **Transportation:**

- 1) The project's Traffic Analysis has been approved. See separate Traffic memo dated 03/25/2019 for additional information.
- 2) Install New Traffic Signal at the northern project driveway along the Union Ave project frontage.
- 3) Install raised median along the Union Avenue project frontage to restrict right-turn movements out of the southern driveway.
- 4) The Department of Transportation is evaluating a northbound bus stop location near the project frontage. If a feasible location is determined, the project shall be required to construct a new bus stop which includes constructing a new bus pad, landing, and shelter.

c. **Grading/Geology:**

- 1) A grading permit is required prior to the issuance of a Public Works Clearance.
- 2) All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm

- drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- 3) If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - 4) Because this project involves a land disturbance of one or more acres, the permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - 5) A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to foundation, earthwork, utility trenching, retaining and drainage recommendations.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- 1) The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - 2) Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - 3) A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

- f. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- h. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Union Avenue prior to the issuance of a Public Works Clearance. 100% of the base fee is place at the time of payment will be due. Currently, the 2019 base fee is \$489 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
- i. **Street Improvements:**
 - 1) Remove and replace curb, gutter, and sidewalk along the Union Avenue project frontage with a 10-foot wide ADA compliant attached sidewalk.
 - 2) 5--foot' by 4-foot tree wells will be required to be constructed. Location of tree wells will be further reviewed at the Public Improvement Plan review stage.
 - 3) Northerly driveway width to be 32 feet wide per City Standard Detail R-6.
 - 4) Southerly driveway width to be 26 feet wide per City Standard Detail R-6.
 - 5) Closure of the existing most northerly driveway per City Standards.
 - 6) Coordinate with VTA to relocate the existing bus stop to be south of the new traffic signal and install new bus pad and shelter.
 - 7) Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - 8) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - 9) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- j. **Sanitary:** If proposed, the project is required to submit plan and profile of sewer lateral locations for final review and comment prior to construction.

- k. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - l. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall we installed. Street tree locations will be further evaluated at the Public Improvement Plan review stage. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - m. **Median Island Improvements:** Developer is required to construct Type 1 raised landscaped median along Union Avenue project frontage per City standards; refer to the current "Guidelines for the Planning, Design and Construction of City Streetscape Projects".
 - n. **Referrals:** This project should be referred to the Santa Clara County Roads and Airports Department and the Santa Clara Valley Transportation Authority (VTA).
35. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. _____.

36. **Standard Permit Conditions**

a. **Air Quality.**

- 1) Water active construction areas at least twice daily or as often as needed to control dust emissions.
- 2) Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- 3) Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- 4) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
- 5) Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- 6) Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- 7) Replant vegetation in disturbed areas as quickly as possible.

- 8) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- 9) Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- 10) Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- 11) Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. Biology:

- 1) The trees removed by the project would be replaced according to the City's required replacement ratios, as provided in Table 4.4-2 below or alternative measures listed below:

Table 4.4-2: Tree Replacement Ratios				
Circumference of Tree to be Removed¹	Type of Tree to be Removed²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more ³	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon

¹ As measured 4.5 feet above ground level
² X:X = tree replacement to tree loss ratio
³ Ordinance-sized tree

Notes: Trees greater than or equal to 38 inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a Tree Removal Permit is required for removal of trees of any size.
A 38-inch tree equals 12 inches in diameter.
A 24-inch box tree = two 15-gallon trees
Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.

- 1) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.

- 2) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- 2) The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning or Director's designee of the City of San José Department of Planning, Building, and Code Enforcement (PBCE) for review and shall complete subsequent forms, reports, and/or studies as needed prior to the issuance of grading permits. The Habitat Plan and supporting materials can be viewed at www.scv-habitatplan.org.

c. Cultural Resources.

- 1) In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement will be notified, and a qualified archaeologist will examine the find. The archaeologist will 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. If the finds do not meet the definition of a historical or archaeological resources, no further study or protection is necessary prior to project implementation. If the find(s) does meet the definition of a historical or archaeological resource, then it should be avoided by project activities. Project personnel should not collect or move any cultural material. Fill soils that may be used for construction purposes should not contain archaeological materials.
- 2) If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American.
- 3) If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely

Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts.

- 4) If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
- 5) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- 6) The MLD identified fails to make a recommendation; or
- 7) The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.

d. Geology and Soils.

- 1) To avoid or minimize potential damage from seismic shaking, the project would be built using standard engineering and seismic safety design techniques. Building design and construction at the site will be completed in conformance with the recommendations of a design-level geotechnical investigation. The structural designs for the development will account for repeatable horizontal ground accelerations. The report shall be reviewed and approved by the City of San José Department of Planning, Building and Code Enforcement as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes, including the 2016 California Building Code Chapter 16, Section 1613, as adopted or updated by the City.
- 2) **Stop Work.** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee will be responsible for ensuring the recommendations of the paleontological monitor regarding treatment and reporting are implemented. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement prior to continuation of ground-disturbing activities.

e. Hazards and Hazardous Materials

- 1) In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-

- site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
- 2) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
 - 3) All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
 - 4) A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
 - 5) Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
 - 6) Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
 - 7) Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
 - 8) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
 - 9) Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

f. **Hydrology**

- 1) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- 2) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.

- 3) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
 - 4) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
 - 5) All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
 - 6) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - 7) Vegetation in disturbed areas shall be replanted as quickly as possible.
 - 8) All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - 9) The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- (i)

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

- a. Construction Plans. This permit file number, PD18-040 shall be printed on all construction plans submitted to the Building Division.
- b. Americans with Disabilities Act. The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. Emergency Address Card. The Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. Construction Plan Conformance. A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- e. Common Interest Development. Prior to issuance of any certificate of occupancy (temporary or final), or release for occupancy, the Permittee shall provide a self-certified statement to the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San José Common Interest Development standards.
- f. Other. Such other requirements as may be specified by the Chief Building Official.

38. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the project must comply with the 2016 California Fire Code, as adopted or updated by the City.
39. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

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

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

RD:JVP:JMD
2/14/2020

T-39008.005/1694205

Council Date: _____

Item No.: _____

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