

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE REZONING CERTAIN REAL PROPERTY OF APPROXIMATELY 64.59 ACRES SITUATED NORTHWEST OF STATE ROUTE 237 AND MCCARTHY BOULEVARD (1657 ALVISO-MILPITAS ROAD) FROM THE A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO THE LI LIGHT INDUSTRIAL ZONING DISTRICT**

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

**WHEREAS**, the approximately 64.59 gross acre site encompassed by the proposed rezoning was that subject of that certain Draft Environmental Impact Report and First Amendment to the Draft Environmental Impact Report, collectively the Final Environmental Impact Report, for the 237 Industrial Center project (File Numbers C15-054, SP16-053 and V17-004) (“FEIR”), which evaluated the impacts of two development scenarios on a 64.59 gross acre site located northwest of State Route 237 and McCarthy Boulevard (1657 Alviso-Milpitas Road, Assessor’s Parcel Number 015-31-054) that includes: Scenario 1 – Development of approximately 1.2 million square feet of light industrial uses across the entire project site (“Scenario 1”); or Scenario 2 – Development of a data center of up to approximately 436,880 square feet and a PG&E electrical substation on 26.5 acres in Phase 1, and approximately 728,000 square feet of light industrial uses in Phase 2 on the remaining approximately 39 acres (“Scenario 2”), and removal of trees from the site, a reduction in the off-street parking requirements, and 49 acres of off-site improvements, which FEIR was certified and for which findings were adopted by the City Council on October 24, 2017; and

**WHEREAS**, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to the LI Light Industrial Zoning District; and

**WHEREAS**, this Council of the City of San José has considered and approves said information contained in the FEIR and related City Council Resolution No. \_\_\_\_ and the determination of consistency therewith prior to acting upon or approving the subject rezoning;

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

**SECTION 1.** The recitals above are incorporated herein.

**SECTION 2.** All that real property hereinafter described in this section, hereinafter referred to as "subject site," is hereby rezoned as LI Light Industrial Zoning District.

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

**SECTION 2.** The district map of the City is hereby amended accordingly.

**SECTION 3.** The land development approval that is the subject of City File No. C15-054 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional

Water Quality Control Board for the San Francisco Bay Region.

**PASSED FOR PUBLICATION** of title this 24<sup>th</sup> day of October, 2017 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

SAM LICCARDO  
Mayor

ATTEST:

---

TONI J. TABER, CMC  
City Clerk

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO REMOVE EIGHT ORDINANCE SIZED TREES AND 14 NON-ORDINANCE SIZED TREES AND TO ALLOW THE CONSTRUCTION OF SIX BUILDINGS FOR A DATA CENTER USE TOTALING APPROXIMATELY 376,510 SQUARE FEET WITH ASSOCIATED SITE IMPROVEMENTS AND 14 GENERATORS, AND A DEVELOPMENT EXCEPTION TO ALLOW A REDUCTION TO THE OFF-STREET PARKING REQUIREMENTS, LOCATED NORTHWEST OF STATE ROUTE 237 AND MCCARTHY BOULEVARD (1657 ALVISO-MILPITAS ROAD, APN: 015-31-054)**

**FILE NOS. SP16-053 and V17-004**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on November 4, 2016, an application (File No. SP16-053) was filed by the applicant, Microsoft Corporation, with the City of San José for a Special Use Permit to allow the removal of eight ordinance sized and 14 non-ordinance sized trees, and to allow the construction of six buildings for a data center use totaling approximately 376,519 square feet with associated site improvements and 14 generators; and on June 28, 2017, an application (File No. V17-004) was filed by the applicant with the City of San José pursuant to Section 20.100.1320 of the San José Municipal Code for a Development Exception to allow a reduction to the off-street parking requirements, all on an approximately 64.59 gross acre site on that certain real property situated in the A(PD) Planned Development Zoning District and located northwest of State Route 237 and McCarthy Boulevard (1657 Alviso-Milpitas Road, APN 015-31-054, San José, which real property is sometimes referred to as the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described and depicted in Exhibit "A," entitled “Legal Description,” which is attached hereto and made

a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on October 11, 2017, notice of which was duly given; and

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

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

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

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

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

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Special Use Permit SP16-053 Alviso Milpitas Road," dated received on September 22, 2017, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said 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

**WHEREAS**, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

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

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

1. **Project Description.** On October 9, 2015, the applicant applied for a Conforming Rezoning from the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District. On November 4, 2016, the applicant applied for a Special Use Permit to remove eight ordinance sized and 14 non-ordinance sized trees and to allow construction of six buildings for a data center use totaling approximately 376,519 square feet, 14 generators, a paved off-street parking lot with 97 parking spaces, and bicycle parking, and site improvements on an approximately 64.59 gross acre site. The data center would have minimal employees and would operate 24-hours a day.

On June 19, 2017, the applicant requested a Development Exception to reduce off-street parking requirements for the data center project. The project also includes construction of new off-site public infrastructure including, but not limited to, a new public street (Nortech Parkway extension) with stormwater treatment methods and a sidewalk with a park strip, a new storm drain line, a pump station and a new outfall at Coyote Creek on an additional 49 acres.

2. **Site Description and Surrounding Uses.** The proposed project is in the Alviso/North San José area, north of California State Route 237 between Zanker Road and Coyote Creek. The site is a largely vacant site except for four existing structures consisting of two single-family residences, a prefabricated house and accessory structures located on the southern portion of the project site. The southern portion of the project site is not proposed for development at this time, and therefore, the four structures would remain. Adjacent to the project site are Coyote Creek, office buildings, and the City of

Milpitas to the east, San José-Santa Clara Regional Wastewater Facility biosolid drying beds to the north, Los Esteros Energy Center to the west, and California State Route 237 to the south. The project site is located on the eastern edge within the Alviso Master Plan area and is not part of the Regional Wastewater Facility Master Plan area.

3. **General Plan Conformance.** The proposed project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Light Industrial. This category is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects. Warehousing, wholesaling, and light manufacturing are examples of typical uses in this designation. The proposed Conforming Rezoning, Special Use Permit and Development Exception would allow a use that will provide telecommunication services and cloud storage, and is consistent with the following General Plan policies:
  - a. Implementation Policy IP-1.6: Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram and advance Envision General Plan vision, goals, and policies.
  - b. Implementation Policy IP-1.7: Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics that require special consideration due to those constraints.
  - c. Implementation Policy IP-8.2: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective Envision General Plan land use designations, while providing greater detail as to the appropriate land uses and form of development.
  - d. Land Use Policy LU-6.5: Maintain and create Light Industrial and Heavy Industrial designated sites that are at least one acre in size in order to facilitate viable industrial uses.
  - e. Land Use Policy LU-6.8: Reserve industrial areas for industrial and compatible support uses, while recognizing that industrial uses come in a variety of types and forms. Allow non-industrial uses which are only incidental to and totally compatible with primary industrial uses in exclusively industrial areas. Consider allowing supportive, non-industrial activities, such as retail sales of materials manufactured or stored on site.

*Analysis for IP-1.6, IP-1.7, IP-8.2 and LU-6.5, LU-6.8: The Rezoning application is to rezone the property from a Planned Development Zoning to a conventional and standard zoning district of LI Light Industrial. The rezoning application conforms to and furthers the General Plan goals and policies. Table 20-270 contained in Section 20.120.110 of the San Jose Municipal Code states that the conforming zoning district to the General Plan land use designation of Light Industrial is the LI Light Industrial Zoning District. The LI Light Industrial Zoning District will allow for a range of industrial uses, such as, manufacturing and assembly, research and development, warehousing and distribution and data centers. The proposed project will facilitate the development of a data center.*

- f. Riparian Corridors Policy ER-2.2: Ensure that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.
- g. Riparian Corridors Policy ER-2.3: Design new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise and toxic substances into the riparian zone.
- h. Attractive City Policy CD-1.25: Apply Riparian Corridor Goals and Policies of this Plan when reviewing development adjacent to creeks. Development adjacent to creekside areas should incorporate compatible design and landscaping, including appropriate setbacks and plant species that are native to the area or are compatible with native species. Development should maximize visual and physical access to creeks from the public right-of-way while protecting the natural ecosystem. Consider whether designs could incorporate linear parks along creeks or accommodate them in the future.
- i. Community Forest Policy MS-21.10: Prohibit London plane trees from being planted in the Coyote Planning Area, which is located near the most significant stands of sycamore alluvial woodland in the City. Planting of this species is discouraged elsewhere, particularly near riparian areas. Prohibit holly-leaved oaks from being planted in areas containing stands of native oaks or in proximity to native oak woodland habitat.

*Analysis for MS-21.10, ER-2.2, ER-2.3, and CD-1.25: Because the site is located adjacent to Coyote Creek, development of the project site shall incorporate a 100-foot setback from the riparian habitat, pursuant to the General Plan Riparian Corridor policies and the Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design. No London Plane trees will be planted on the subject site. All site lighting will be directed downward and away from riparian areas, in compliance with the above General Plan policies as well as the Council Policy 4-3 Outdoor Lighting on Private Developments. The photometric plan sheets contained in the project plan set largely indicates 0.00 lumens at the riparian setback area. Additional analysis is provided in the Riparian Corridor Policy Study and Riparian Corridor Protection and Bird-Safe Design Council Policy*



*Section below.*

- j. Urban Natural Interface Policy ER-6.7: Include barriers to animal movement within new development and, when possible, within existing development, to prevent movement of animals (e.g., pets and wildlife) between developed areas and natural habitat areas where such barriers will help to protect sensitive species.
- k. Wildlife Movement Policy ER-7.1: In the area north of State Route 237 design and construct buildings and structures using bird-friendly design and practices to reduce the potential for bird strikes for species associated with the baylands or the riparian habitats of lower Coyote Creek.

*Analysis for ER-6.7 and ER-7.1: The project includes an eight foot wrought iron fence around the perimeter of the facility, including along the riparian edge. The project contains very minimal glazing elements (i.e. windows) which are primarily limited to the building entryways and at the ground floor level. The building material palette is primarily comprised of earth tones with non-glossy finishes and does not contain any glare elements. The minimal glazing proposed is a low-e glazing with limited reflectivity. Additional analysis is provided in the Riparian Corridor Policy Study and Riparian Corridor Protection and Bird-Safe Design Council Policy Section below.*

- l. Telecommunications Policy IN-6.1: Work with service providers to ensure access to and availability of a wide range of state-of-the-art telecommunication systems and services for households, businesses, institutions, and public agencies throughout the city.

*Analysis for IN-6.1: The proposed data center use will provide and serve the region with telecommunication services, cloud storage and other technology-oriented services.*

Inconsistent General Plan Policies: The project does not fully comply with the following policies of the General Plan:

- m. Riparian Corridors ER-2.1: Ensure that new public and private development adjacent to riparian corridors in San José are consistent with the provisions of the City's Riparian Corridor Policy Study and any adopted Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP).

*Analysis for ER-2.1: The project is consistent with the Riparian Corridor Policy Study as explained in detail below. As mentioned in the Riparian Corridor Policy Study Conformance section below. The project does not fully comply with Guidelines 1A, 2E, and 2F of the Policy Study, as it relates to the orientation of the site, noise and noise generating equipment and lighting. Guideline 1A states that site activity areas (i.e., loading and delivery areas) should be oriented to draw activity away from the riparian corridor. The project proposes one loading area with four loading docks oriented towards the riparian corridor; however, the*

*project is also including a 100-foot riparian setback from Coyote Creek and the loading dock area is located approximately 180 feet from the top of bank. Directly adjacent to the riparian setback area is a landscaped edge measuring approximately 20 feet to 40 feet deep that will assist in providing a landscaped buffer from the riparian setback area. Additionally, the project has placed the lowest level of activity (i.e., the loading area) oriented towards the creek. Switching the location of the loading docks with the building entrance was considered, but was subsequently determined that that this would create increased activity since the loading area generally would be used less than a building entrance. Guideline 2E states that lighting within the riparian corridor and setback area should be avoided. While there is no lighting proposed within the corridor, there would be minimal lighting spillover in the 100-foot riparian setback area. Guideline 2F states that noise-producing stationary mechanical equipment should be located as far as necessary from riparian corridors. There are four stand-by/backup generators located approximately 135 feet from the property line and approximately 35 feet from the 100-foot riparian setback. These generators are not in constant operation and will only be used for approximately 30 minutes every month for testing with a maximum of 30 hours a year. Additionally, the generators are screened and placed in noise attenuating enclosures.*

*Additional analysis is provided in the Riparian Corridor Policy Study and Riparian Corridor Protection and Bird-Safe Design Council Policy Section, below.*

- 4. Alviso Master Plan Conformance.** The project site is located within the Alviso Master Plan area. The Alviso Master Plan was adopted in December of 1998 as a Specific Plan for development in the Alviso planning area. The Master Plan contains guidelines that address height, setbacks, design, materials, architectural features, parking, orientation of truck docks and service areas, outdoor storage and flood mitigation for development within Alviso, as well as design guidelines to promote the preservation and enhancement of the existing small town quality. These design guidelines allow flexibility for larger-scale development provided that new development contributes to the unique design and architecture of Alviso.

On November 6, 2001, City Council adopted a General Plan text amendment to allow maximum building heights of 100 feet for a 140 acre site (includes the project site) north of State Route 237 and approximately 2,000 feet east of Zanker Road (File No. GP01-T-05). This allowed an increase in maximum building height from 50 feet up to 100 feet.

The project site is designated as Light Industrial in the Alviso Master Plan. Under this designation, a wide variety of industrial uses (excluding any uses with unmitigated hazardous or nuisance effects) are allowed. Only low intensity uses (i.e., those with low employment densities) are allowed in the Light Industrial area located near Coyote Creek. The project is consistent with the land use designation because it is considered

a low intensity use in that a data center use does not typically employ a large number of employees and does not typically generate a large amount of vehicular traffic.

The project also complies with several Industrial/Non-Industrial policies, specifically regarding setbacks/buffers from environmental resources (e.g., Coyote Creek) and mitigating potential negative environmental impacts to these resources. The project complies with these policies in that a 100-foot setback from the riparian corridor is provided and the project is mitigating environmental impacts (as stated in the Environmental Impact Report) to the riparian corridor through the Mitigation Measure Report Program (MMRP). Additionally, the project complies with a number of Environmental Protection Policies contained in the Alviso Master Plan, including that certain activities (i.e. parking, circulation, loading, outdoor storage, utility, and other similar activities) must be located on paved surfaces with proper drainage and waterways or marshlands should never be used for storage, trash, or other environmental adverse uses. The project complies with these policies in that the project has been evaluated for stormwater compliance and the data center use is fully contained on the project site.

Furthermore, the project complies with the Alviso Master Plan in that the project is transferring intensity away from the baylands as it is located closer to California State Route 237 and is providing a 100-foot riparian setback, contains an architectural style that has simple volumes, and straight lines. Additionally, the project is locating the surface parking at the sides and rear of the buildings and not towards the public street and is locating the loading area behind the building while still providing a 100-foot setback from the riparian corridor. Lastly, the project is located in Flood Zone X, which is not a designated Federal Emergency Management Agency 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard and there are no city floodplain requirements for Zone X.

The project substantially conforms to the Alviso Master Plan in regards to the land use designation of Light Industrial, land use policies, industrial policies and industrial guidelines (as mentioned above), with the exception of the following:

- Community Character Policy 1: New buildings, particularly within the village area, should continue Alviso's small scale development pattern.
- Community Character Policy 2: New development should reflect Alviso's bayside character through the design of buildings and landscaping.
- Architectural Features: Architectural attention should be focused on the overall building volume and shape rather than overly decorating and detailing the structure.

The above three policies apply throughout the Alviso area and the overall intent is to guide new development so that it is compatible with the existing community. The underlying purposes of the land use policies are also expressed in the specific design guidelines contained in the Alviso Master Plan.

The buildings arguably balances a basic volume and shape with simply articulation and materials. The project does not continue nor reflect Alviso's small scale development as the project design is a modern architectural expression with materials that reinforce the modern appearance. However, the project site is located at the eastern edge of the Alviso Master Plan area and is located approximately three miles outside of the Village Area where there is a small scale development pattern. Although the project does not strictly satisfy the above Alviso Master Plan policies and guidelines, the project does satisfy a number of General Plan policies and it is consistent overall to the Alviso Master Plan and specifically in respect to the following: incorporating a 100 foot setback and buffer from Coyote Creek, the environmental impacts associated with light industrial areas with respect to the nearby natural resources are minimized, the landscaping is drought tolerant and primarily native species and a number of the environmental protection policies.

While the project is not consistent with Community Policy 1, 2 and Architectural Features of the Guidelines for Industrial Development, the project is consistent with land use designation, industrial/non-industrial policies, and guidelines for industrial development outside of the Village Area and therefore, overall consistent with the Alviso Master Plan.

- 5. Riparian Corridor Policy Study & Riparian Corridor Protection and Bird-Safe Design Council Policy.** As the proposed project is within 300 feet of a riparian corridor (as stated in the Riparian Corridor Protection and Bird-Safe Design Council Policy), the project must comply with the City Council approved Riparian Corridor Policy Study and City Council Policy 6-34 for Riparian Corridor Protection and Bird-Safe Design. The City Council adopted the Riparian Corridor Policy Study on May 17, 1994 (later revised on March 1999) and City Council Policy 6-34 entitled "Riparian Corridor Protection and Bird-Safe Design" on August 23, 2016 respectively. The purpose of the Council Policy and Study are to (i) protect, preserve, or restore riparian habitat; (ii) limit the creation of new impervious surface to minimize flooding; and (iii) encourage bird-safe design in baylands north of State Route 237.

The project substantially complies with both the Riparian Corridor Policy Study and the Riparian Corridor Protection and Bird-Safe Design Council Policy. The project is proposing a 100-foot riparian setback and is not proposing any structures, buildings, or activities in this area.

*Guideline 1A, 1B and 1C: Orientation, Incompatible Land Use, and Setback Areas (pages 30-31)*

The project is not considered an incompatible land use in that it is not a land use that generates littering or dumping activities, is not an off-road vehicle use and does not remove native vegetation and is not a use that creates noxious odors or stores/creates toxic materials. It also is not a use that generates high volumes of vehicular traffic. The project is also locating the sub-station at the furthest location from the riparian area and is located more than 1,000 feet away. The project also

complies with the setback requirement of a 100-foot setback from the riparian area and is not proposing any new impervious surface, building structure or outdoor activity areas within this setback.

The Policy states that if loading dock areas or outdoor storage areas cannot be oriented away from the riparian corridors, such use areas should be screened from the riparian corridor by 7-foot-high solid or semi-solid fencing plus a vegetation buffer. The project includes a loading area located outside of the 100-foot riparian setback area but is orienting towards the riparian corridor and the project is proposing a wrought iron security fence around the perimeter of the project site. The project is also providing an approximate 25-foot landscape buffer from the riparian setback area.

*Guideline 2A, 2B, 2C, 3A, and 3B: Building Appearance, Glare, Visual, Development Landscaping, Irrigation (pages 41-42)*

In regards to the building design, the building material palette is primarily comprised of earth tones with non-glossy finishes and does not contain any glare elements. The project is proposing minimal glazing elements on the buildings (primarily limited to the building entryways) and exterior building materials will include precast concrete, core-ten metal panels and insulated metal panels. The minimal glazing proposed is a low-e glazing with limited reflectivity.

Lastly, the project is not proposing any landscaping or irrigation within the riparian setback area (aside from one bioretention area), and the landscape located adjacent to the riparian setback area is primarily native plant species. In regards to construction protection measures, best management practices will be utilized are required and will be utilized during construction.

As described above, the project substantially conforms to the Riparian Corridor Policy Study and the Riparian Corridor Protection and Bird-Safe Design Council Policy with the exception of the following:

- Guideline 1A Orientation: Site activities should be oriented to draw activity away from the riparian corridor, for example, entrances, loading and delivery areas, noise generating activities and equipment, and activities requiring night lighting should be oriented towards non-riparian property edges. Circulation and maneuvering areas serving loading docks and other similar major activity areas should be oriented away from the riparian setback area or should be separated from the setback area by a minimum 7 foot high fence and buffer area thickly planted with native species appropriate to the nearest riparian habitat type.
- Guideline 2E Lighting: For all other developments, lighting within the corridor and setback areas should be avoided. Lighting on development sites should be designed and sited to avoid light and glare impacts to wildlife within the riparian corridor, consistent with public safety considerations. Any lighting located adjacent to riparian areas should be as low as feasible in height and must be directed downward with light sources not visible from riparian areas.

- Guideline 2F Noise: Noise-producing stationary mechanical equipment should be located as far as necessary from riparian corridors to preclude exceeding the ambient noise levels in the corridors.

The project includes a loading area with four loading docks (one for recycling, one for refuse, and two for loading/deliveries) that is oriented to the riparian corridor. As stated previously, there is no activity proposed within the riparian setback, other than a stormwater treatment facility (i.e. bioretention area). While the Riparian Corridor Policy Study encourages loading activity to be oriented away from the riparian area, activity in this area will be infrequent and minimal. A condition of approval is placed on the project to restrict hours of loading activity. The project is also proposing a 25-foot landscape buffer in addition to the 100-foot setback from the riparian corridor and the project has placed the lowest level of activity orienting towards the creek, as switching the location of the building entrance and the loading dock would create increased activity. The building entrance is utilized more frequently than the loading dock area. The project is also proposing 14 standby/back-up generators facing the riparian area; however, the screening mechanism for these generators are also sound attenuated and will not create nor exceed noise levels as specified in the Zoning Ordinance and General Plan. These standby/back-up generators only operate as a back-up power source and occasional testing. These generators are not in constant operation and will only be used for approximately 30 minutes every month for testing with a maximum of 30 hours a year.

The project is proposing perimeter lighting in the form of light poles, approximately be 25-feet tall. There are four light fixtures that are located adjacent to the riparian setback area. There will be minimal lumens (ranging from 0.1 to 3.5) impact to the riparian setback area and there will be no light impacts to the riparian corridor. The small area that contains 3.5 lumens is located adjacent to Building B (facing riparian corridor) will not have any light impacts to the riparian corridor.

While the project does not strictly satisfy the above three riparian guidelines, the project is consistent overall with respect to the following: the project is a use that is not considered incompatible, provides a 100-foot riparian setback, provides a landscape buffer and fencing materials at the 100-foot riparian setback area, utilizes building materials that are earth toned, are not shiny or contain any glare and does not propose any activity within the riparian corridor or riparian setback area..

6. **City of San Jose Interim Lighting Policy Broad Spectrum Lighting (LED) for Private Development.** The project is proposing to utilize LED lighting on the project as opposed to Low Pressure Sodium Lighting, as required by City Council Policy 4-3 Outdoor Lighting on Private Developments. A project is able to utilize LED lighting should certain standards be met. The project is proposing pole mounted lighting that is approximately 25-feet tall and is in compliance with this Policy as the maximum height for ground mounted lighting is 25-feet tall. The lighting located adjacent to riparian areas and riparian setback areas is directed downwards and will have minimal spill

over lighting, as detailed in the Riparian Corridor Policy Study & Riparian Corridor Protection and Bird-Safe Design Council Policy above.

7. **Zoning Ordinance Compliance.** As stated above, the proposed project is located in the A(PD) Planned Development Zoning District. This Planned Development Zone was never effected with a Planned Development Permit and therefore is under the A Agricultural zoning designation. This Planned Development Zoning District was approved by the City Council in 2001. The project proposes to rezone the property from the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District. The LI Light Industrial Zoning District is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects allows for a range of uses, including, but not limited to light and medium manufacturing and assembly, research and development, warehouse/distribution facility, and data centers. Pursuant to Table 20-110 contained in Section 20.50.100 of the San Jose Municipal Code, a data center requires a Special Use Permit. The project was evaluated with the development standards of the LI Light Industrial Zoning District.

#### *Setbacks*

Pursuant to Table 20-120 (Industrial Zoning District Development Standards) contained in Section 20.50.100 of the SJMC, the front setback requirements is as follows:

- Front setback for buildings is 15 feet
- Front setback for parking and circulation for passenger vehicles is 20 feet
- Front setback for trucks and buses parking is 30 feet
- Front setback for loading docks is 60 feet from the property line, or 100 feet from residential districts (whichever is greater)

The project has a front setback of 24 feet and therefore complies with the setback requirements. There are no parking and circulation for passenger vehicles and trucks and buses parking in the front setback area. There are also no loading docks in the front setback area and there are no residential districts adjacent to the project site.

The side and rear setbacks requirements is as follows:

- Side and rear setbacks for buildings and structures is zero feet from the property line, or 25 feet from residential district, whichever is greater
- Side and rear setbacks for parking and circulation for passenger vehicles is zero feet from the property line, or 25 feet from residential district, whichever is greater
- Side and rear setbacks for parking for trucks and buses is zero feet from the property line, or 25 feet from residential district, whichever is greater
- Side setback for loading docks is zero feet from the property line or 100 feet

from the residential district, whichever is greater

There are no residentially zoned properties adjacent to the project site, and therefore, the project is allowed a zero side setback for buildings and structures, parking and circulation for passenger vehicles, parking for trucks, and loading docks. The project complies with this requirement.

### *Height*

The maximum height as stated in Table 20-120 of the San José Municipal Code is 50 feet, unless a different maximum is established as specified in Chapter 20.85. Section 20.85.010(C)(2) (Specific Height Restrictions) of Chapter 20.85 of the SJMC, states that the governing height restriction for properties that are located within specific plan areas are set by the height restrictions within that specific plan document. As discussed above, the project is located in the Alviso Master Plan, which as amended, allows heights for this site up to 100 feet. The project is proposing a maximum height of 91 feet and six inches and therefore, complies with the height requirement.

### *Off-Street Vehicle Parking*

Section 20.90.060 (Number of Parking Spaces Required) of the SJMC sets forth the off-street vehicle parking requirements. A data center use requires one parking space per 250 square feet of office/meeting/technician work space, plus one parking space for each 5,000 square feet of floor area, or fraction thereof, devoted to computer equipment space. Based on 71,639 square feet for the office/meeting/technician work space, the project is required to provide 287 parking spaces. Based on 350,402 square feet of computer equipment space, the project is also required to provide 71 parking spaces for a total of 358 parking spaces.

On August 21, 2017, the applicant submitted a parking study prepared by Hexagon Transportation Consultants that evaluated the maximum parking demand for data centers. The parking study evaluated two existing data centers located in the City of Santa Clara. Parking counts were taken every hour between 8:00 am to 6:00 pm on August 8th, August 9th, and August 10th. The results of the parking study concluded that the data centers utilized a parking demand of 0.22 parking spaces per 1,000 square feet.

Section 20.100.1300(B)(1)(d) of the SJMC allows for a Development Exception Permit to be utilized for exceptions to the off-street parking and loading requirements and regulations of Title 20 (Zoning Ordinance). Based on the parking study submitted by the applicant, the analysis showed that data centers do not generate substantial trips due to the very low number of employees required for each building. There will be approximately 40 employees on-site at any given time. With reduced parking numbers come reduced square footage of impervious surfaces, which reduces the amount of runoff into the stormwater system.

Based on 422,041 square feet and utilizing the 0.22 parking spaces per 1,000 square feet, the parking requirement is 93 parking spaces. The project is providing 97 parking



spaces with approval of the Development Exception Permit.

### *Bicycle Parking*

Table 20-190 in Section 20.90.060 of the SJMC requires one bicycle parking space per 5,000 square feet of office/meeting/technician work space, plus one parking space for each 50,000 square feet of floor area, or fraction thereof devoted to computer equipment space. Based on 71,639 square feet of office/meeting/technician work space area, the project is required to provide 15 bicycle parking spaces. Based on 350,702 square feet of computer equipment space, the project is also required to provide eight bicycle parking spaces. Overall, the project is required to provide a total of 23 bicycle parking spaces. The project complies with the bicycle parking requirement by providing 23 bicycle parking spaces.

8. **Industrial Design Guidelines Conformance.** The project is consistent with the Industrial Design Guidelines in that the project is architecturally sound and incorporates a variety of high-quality materials that are not reflective or glare producing. Additionally, the project incorporates variation in wall planes by incorporating material that contains visual texture and provides depths and shadow lines to the buildings. The project also contains enhanced architectural elements and materials at the building entrances that assist in providing additional architectural interest. The project proposes a number of buildings that all share a unified architectural expression by utilizing similar massing forms and high-quality materials. The site design incorporates outdoor activity areas with pedestrian walkways to the buildings for the enjoyment of the employees along with a security kiosk/check point with adequate vehicle stacking and turnaround circulation.
9. **Environmental Review.** A Draft Environmental Impact Report (DEIR) for the 237 Industrial Center Project was prepared by the Director of Planning, Building and Code Enforcement in accordance to CEQA. The project also relies upon the “Envision San José 2040 General Plan Final Program Environmental Impact Report,” adopted by City Council Resolution No. 76041 on November 1, 2011; and Supplemental Environmental Impact Report to the Envision San José 2040 General Plan Final Program Environmental Impact Report,” adopted by City Council Resolution No. 77617 on December 15, 2015, and Addenda thereto, all as explained in detail in the DEIR and separate resolution adopted by the City Council certifying the DEIR.

The 237 Industrial Center Project DEIR analyzed project level environmental impacts and discussed alternatives to the proposed project. A First Amendment to the Draft DEIR was prepared that provided responses to public comments submitted during the public circulation period and revisions to the text of the Draft SEIR. The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project.

The DEIR evaluated two development options:

- Option 1 – Development of approximately 1.2 million square feet of light industrial uses; and

- Option 2 –Development of a data center and a PG&E electrical substation on 26.5 acres of the 64.5-acre site (Phase 1), and approximately 728,000 square feet of light industrial uses (Phase 2).

The DEIR also evaluated off-site improvements comprising approximately 49 acres for the construction of utilities and roadways serving the project site.

The DEIR was circulated for public review and comment for the mandatory 45 days from Thursday June 1, 2017 to Monday July 17, 2017.

The proposed data center was analyzed as Option 2 Phase 1 in the DEIR. The following outlines the environmental impacts discussed in the DEIR for the proposed project and full build out of Option 1 and Option 2.

#### *Edgar Jackson House Eligible as a Structure of Merit*

Under full build out of Option 1 and Option 2, all existing structures would be removed from the project site. The Edgar Jackson House, located at 1657 Alviso-Milpitas, is recommended in the attached historic report (dated March 9, 2017) to be eligible on the San José Historic Resources Inventory as a Structure of Merit, but is not recommended as a candidate City Landmark. Construction of Option 2 Phase 1 (the data center) would occur on the northern portion of the property would not result in the removal of the Edgar Jackson House, located on the southern portion of the 64.59-acre site. The City can consider placing the structure on the inventory list as a Structure of Merit during the entitlement phase of Phase 2. However, the City does not consider Structures of Merit a significant historic resources under CEQA.

The building is located on a 64.5-acre property (originally 640 acres) that has been in agricultural use (originally row crops and later orchards) for approximately 150 years. Since the mid-1950s, the building had been used as a rental property. The building was constructed circa 1929-1930 as a one-story Craftsman Prairie-style residence with some Mission Revival details in the arched multi-lite windows on the eastern facade. Distinguished Craftsman Prairie-style elements include a recessed entry patio, an ornate arched door within a stoop with a stucco-clad arch, and a hipped roof.

Though the building appears to be designed by Wolfe & Higgins, a prominent architecture firm in San Jose from the first half of the 20th century, it is not a distinctive example of their work and it is not associated with any significant personages from San José's past. The building was built as a residence on an agricultural site. The building has undergone minor alterations since the original construction including some window replacements and the rear door is sealed.

#### *Significant and Unavoidable Impacts*

The DEIR identified the following significant and unavoidable impacts:

1. Agricultural Resources – The proposed development and full buildout of Option 1 and 2 would result in a significant impact to State designated Prime Farmland

through conversion of 64.5 acres of designated Prime Farmland land to a non-agricultural use. This would result in a significant and unavoidable and cumulatively considerable impact.

2. Transportation – Development of the data center would not result in significant and unavoidable transportation impacts. However, full buildout of Option 1 and 2 would contribute significant and unavoidable impacts to traffic congestion on State Route 237 and Interstate 880 and result in a cumulatively considerable contribution to the Zanker Road/Tasman Drive. The project applicant proposed transportation demand management measures to reduce these impacts, however impacts would remain significant and unavoidable.
3. Greenhouse Gas Emissions –The proposed data center would be operational prior to 2020 and would not result in significant and unavoidable GHG impacts. Full buildout of Option 1 and 2 would contribute significant and unavoidable and cumulatively considerable GHG impacts.

*Less than Significant Impact with Mitigation*

The following environmental impacts will be mitigated to less than significant level:

1. Impact AQ-1: The proposed project would result in a significant impact related to the production of NOx during generator testing.
2. Impact BIO-1: Construction activities could result in significant impacts to nesting migratory and other protected bird species.
3. Impact BIO-2: Any actions related to site development that result in the mortality of burrowing owls shall constitute a violation of the Federal Migratory Bird Treaty Act and provisions of the California Fish and Game Code.
4. Impact BIO-3: The project would cause permanent impacts to riparian vegetation and seasonal wetlands as a result of installation of the potential stormwater outfall at Coyote Creek and project construction in the southwest corner of the site.
5. Impact BIO-4: Construction activities on-site could result in significant impacts to trees that may be retained.
6. Impact CUL-1: Construction of the proposed project could result in significant impacts to subsurface cultural resources should they be located on-site.
7. Impact HAZ-1: Implementation of the proposed project could release pesticide chemicals from on-site soils into the environment, and expose construction workers to residual agricultural soil contamination.

The proposed CEQA resolution, MMRP, and EIR further explains in detail how the mitigations reduce each identified above to a less than significant level.

*Alternatives*

As required under CEQA, the Draft DEIR evaluated five alternatives to the two development options, including the proposed project (data center). These alternatives are as follows:

1. No Project – No Development Alternative: Assumes no construction of new buildings on the project site and would result in the retention of the existing buildings and structures.
2. No Project – Existing Zoning Alternative: Assumes that the proposed project is not approved, but that another future project is built consistent with existing plans and policies. According to the Alviso Master Plan and the General Plan, the site has a land use designation of LI – Light Industrial, which allows for a maximum FAR of 1.5. Existing zoning (Planned Development) allows for approximately 2.3 million square feet of data center communication facility uses on a 174-acre site. This zoning includes the Los Esteros Critical Energy Facility (LECEF) property, west of the project site.
3. Design Alternative – (Reduced Scale: Data Center Only Alternative): Assumes the development of an approximately 436,880 square foot data center on the northern portion of the 64.5-acre site without any additional light industrial uses.
4. Design Alternative – (Reduced Scale: Light Industrial Only Alternative): Assumes the reduction of proposed light industrial development from 1.2 millions square feet (Option 1) to 120,000 square feet (90 percent reduction).
5. Reduced Development – (Data Center and Reduced Light Industrial Alternative): Assumes an 85 percent reduction of light industrial development Option 2 from 728,000 square feet to 109,200 square feet would avoid both intersection and freeway impacts.

As further explained in the DEIR and draft CEQA resolution, these alternatives were rejected because they did not meet the project objectives, facilitate the maximum floor area ratio of 1.5 of light industrial development as identified by the light industrial designation on the 2040 General Plan Land Use/Transportation diagram, assist the General Plan goals of achieving the 1.1 jobs to employed resident ratio by the year 2040, and facilitate not as comparable economic growth.

#### Circulation and Public Comments

The City received 12 written comment letters during the public comment period. Issues raised in these comment letters include the following:

- Conversion of designated prime farmland;
- Effects to on-site historic structures;
- Impacts to freeway segments and roadways;
- Effects on vehicle miles travelled;

- Fair share fees for transportation improvements;
- Effects on trails;
- Impacts to the riparian corridor and wildlife;
- Effects of lighting on birds and wildlife;
- Infrastructure improvements;
- Insufficient evidence to support a statement of overriding considerations;
- Air quality impacts to public health;
- Growth inducement effects; and
- Measures to reduce effects to climate change.

The City responded to all comments received on the Draft EIR and incorporated them into the First Amendment to the Draft EIR. The First Amendment, taken together with the Draft EIR, constitutes the Final EIR. The DEIR and First Amendment to the DEIR are available for review on the City's Active EIRs website at: <http://www.sanjoseca.gov/ActiveEIRs>

#### *EIR Recirculation Unnecessary*

The comments received do not identify substantive inadequacies in the Draft EIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft EIR for the project includes written responses to all comments received during the public review period for the Draft EIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft EIR address significant environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the Draft EIR and, in some cases, correct or update information in the Draft EIR. No significant new information has been added to the EIR since publication of the Draft EIR; therefore, the EIR does not need to be recirculated.

#### *Recommended Actions*

Staff recommends that the Planning Commission recommend that the City Council adopt a resolution certifying the Final EIR, including a Statement of Overriding Consideration for the identified significant and unavoidable impact, and adopt the Mitigation Monitoring and Reporting Program. The overriding benefits of the project and full buildout of Option 1 and Option 2 include:

- Increase Employment Opportunity within San José.
- Increase Economic Development.
- Expand Public Utility Infrastructure.
- Envision San José 2040 General Plan Strategies, Goals, and Policies, including Major Strategies #3 Focused Growth and #4 Innovation/Regional Employment Center.

**10. Special Permit Findings.** Chapter 20.100 of the San Jose Municipal Code establishes evaluation criteria for issuance of a permit to allow data center use. These criteria are applied to 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. Pursuant to Section 20.100.820 of the San Jose Municipal Code, the City Council must determine that:

- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and
- b. The Special Use Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and
- c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: As described in the General Plan, Alviso Master Plan, Zoning Code and City Council Policy Conformance sections above, the project is consistent with and conforms to the General Plan, Alviso Master Plan, Zoning Code, and City Council Policies.*

- d. The proposed use at the location requested will not:
  - 1) Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - 2) Impair the utility or value of property of other persons located in the vicinity of the site; or
  - 3) Be detrimental to public health, safety, or general welfare; and

*Analysis: The project will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area as the data center facility has sound attenuation devices and insulation placed around the generators*

*to reduce the noise levels associated with the data center use. Activities related to the data center buildings are primarily self-contained within the confines of the facility, with the exception of the passenger vehicles and deliveries made to the project site.*

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

*Analysis: The project site can physically accommodate the proposed data center and associated site improvements such as fences, parking and loading facilities, landscaping, buildings, power facilities, and water tanks. The data center structures and associated site improvements are fully contained on the project site.*

- f. The proposed site is adequately served: (1) By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and (2) By other public or private service facilities as are required.

*Analysis: Currently, there are limited streets and service facilities located near the project site. As part of the project, new public infrastructure includes construction of a new public street (Nortech Parkway extension) with stormwater treatment methods and a sidewalk with a park strip, a new storm drain line, a pump station and a new outfall at Coyote Creek. These infrastructure improvements will serve the project site and nearby properties. The street widths were evaluated by the Department of Public Works and were found to be compliant with city standard specifications and of sufficient width to carry the type and quantity of traffic the data center use would generate.*

- g. 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: As discussed in detail in the CEQA section above, an Environmental Impact Report (EIR), titled "237 Industrial Center," was prepared for the project and identified significant unavoidable impacts to the environment, specifically pertaining to the loss of agricultural lands, traffic impacts to highways, and greenhouse gas emissions. Prior to taking any action on this project, the City Council must consider the EIR and adopt a resolution (i) making the required findings under CEQA, (ii) adopting a related Mitigation Monitoring and Reporting program for the project, (iii) adopting a statement of overriding consideration, and (iv) certifying the EIR, all in compliance with CEQA.*

**11. Development Exception Findings.** Chapter 20.100 of the San Jose Municipal Code establishes evaluation criteria for issuance of a permit to allow for an exception to the off-street parking and loading requirements and regulations of this title. These criteria 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. Pursuant to Section 20.100.1320 of the San Jose Municipal Code, the City Council must determine that:

- a. The Development Exception will not impair the utility or value of adjacent property or the general welfare of the neighborhood; and
- b. The Development Exception will not impair the integrity and character of the zoning district in which the subject property is situated.

*Analysis: With a Development Exception, the project will be allowed to utilize a different parking ratio (0.22 parking spaces per every 1,000 square feet) than what is required in the San Jose Municipal Code (one parking space per 250 square feet of office/meeting/technician work space, plus one parking space per each 5,000 square feet of floor area, or fraction thereof, devoted to computer equipment space). The ratio of 0.22 parking spaces per every 1,000 square feet will not impair the utility or value of adjacent property or the general welfare of the neighborhood as the parking demand for a data center use, as supplemented by the parking study prepared by Hexagon Transportation Consultants, identifies a parking demand of 0.22 parking spaces per 1,000 square feet.*

*The surrounding parcels are zoned LI Light Industrial or IP Industrial Park and are primarily vacant parcels. This Development Exception will not impair the integrity and character of the zoning district because it does not prohibit or limit other LI Light Industrial properties from developing.*

**12. Tree Removal Findings.** Chapter 13.32 of the San Jose Municipal Code establishes required findings for a Tree Removals 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. In order to make the Tree Removal findings pursuant to Section 13.32.100 of the San Jose Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

- a. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

*Analysis: The project proposes to remove eight ordinance sized and 14 non-ordinance sized trees from the project site. The trees identified as number 23, 37, 38, 39, 40, 49, 80, 81, 82, 3, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, and 95 in the tree evaluation table on Sheet A100.3 of the attached plan set are located in the areas of improvement and grading. The trees identified as number 23, 80, 81, 83,*



*84, 92, 94, and 95 are ordinance sized trees ranging from 57 inches to 141 inches in circumference. The trees identified as number 37, 38, 39, 40, 49, 82, 85, 86, 87, 88, 89, 90, 91, and 93 are non-ordinance sized trees ranging from 15 inches to 47 inches in circumference. Several trees have significant dieback and decay and a majority of the trees have poor structure. As a condition of approval, the project is required to abide by the City of San Jose standard tree replacement ratios, which requires replacement for ordinance sized trees, non-ordinance sized trees, native trees, non-native trees and orchards.*

In accordance with the findings set forth above, a Special Use Permit and a Development Exception to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted these Permits 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.

## **CONDITIONS**

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Special Use Permit and Development Exception 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 Special Use Permit and Development Exception; and
  - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** The Special Use Permit and Development Exception shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San Jose Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Special Use Permit and Development Exception.
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 Special Use Permit and Development Exception shall be deemed acceptance of all conditions specified in this permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Special Use Permit and Development Exception plans entitled, "Special Use Permit SP16-053 Alviso Milpitas Road," dated received on September 22, 2017, 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. **Use Authorization.** The Special Use Permit allows for the removal of eight ordinance sized and 14 non-ordinance sized trees, and to allow the construction of six buildings for a data center use totaling approximately 376,519 square feet with associated site improvements and 14 Caterpillar 3516C 200 kW generators. The Development Exception allows for an exception to the off-street parking requirement for the data center use and office/meeting/technician work space to the data center, which allows for a 0.22 parking space per 1,000 square feet of floor area.
7. **Generators.** This Special Use Permit includes the approval of fourteen stand-by/backup generators (Caterpillar 3516C diesel generators) housed in enclosures, located in the generator yards as shown on the approved plans. Any additional stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the San José Municipal Code.

8. **Loading Activity Hours.** All loading activities shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
9. **Effective Date.** The effective date of this Permit (File No. SP16-053 and V17-004) shall be the effective date of the Light Industrial Zoning Ordinance for File No. C15-054 and shall be no earlier than the effective date of said Light Industrial Zoning Ordinance.
10. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
11. **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 Title 20 of the San José Municipal Code.
12. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
13. **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.
14. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
15. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
16. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. No outdoor storage is allowed / permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
17. **Noise.** Noise shall be contained within the buildings and the buildings shall be adequately insulated to prevent excessive sound from emanating outside. Adequate HVAC (air conditioning) shall be provided to allow all doors and windows on the subject site to remain closed during the operation and activities of the site.
18. **Sign Approval.** No signs are approved at this time. All proposed signs shall be

subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.

19. **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.
20. **Perimeter Fencing.** Fence height and materials shall be provided as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
21. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment.
22. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related Grading Permit has been issued.
23. **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.* These permit file numbers, SP16-053 and V17-004 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 will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - e. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial).
24. **Access Control.** When access control devices including bars, grates, gates, electric and/or magnetic locks, or similar devices which would inhibit rapid fire department emergency access to the building are installed, such devices shall be approved by the Chief. All access control devices shall be provided with an

approved means for deactivation or unlocking by the Fire Department. Access control devices shall also comply with CFC/CBC Chapter 10 for exiting.

**25. Security Gate Access.** All access control vehicle security gate(s) shall be a minimum of 20 feet clear width and may have a clear with of 14 feet for each direction of travel when split by median. Gates shall be recessed beyond the turning radius required by the San Jose Fire Department and without obstruction of any median island dividers. All gate installing shall be reviewed and approved prior to construction. Electric gate operators must have UL 325 listing and it gate must comply with ASTM F2200.

**26. Emergency Vehicle Access.** Width, length, and grade of the fire apparatus access roads, streets, avenues, and the like. Every portion of all building exterior walls shall be within 150 feet of an access road. To the satisfaction of the Fire Chief, the fire access shall include the following:

- a. An approved all weather surface;
- b. Access road that are at least 20 feet wide;
- c. Dimensions with a minimum 13 feet 6 inches vertical clearance;
- d. Load bearing designs that are maintained to support the loads of fire apparatus of at least 75,000 pounds;
- e. Maintain a minimum inside turning radius of 30 feet and an outside turning radius of 50 feet;
- f. Designs with approved provisions for turnaround of fire apparatus if it has dead ends and is in excess of 150 feet;
- g. Maintain a maximum grade of 15%;
- h. Provide a second point of access is required when a fire apparatus road exceeds 1,000 feet;
- i. Curbs are required to be painted red and marked as "Fire Lane - No Parking" under the following conditions: (show exact locations on plan)
- j. Roads, streets, avenues, and the like that are 20 to less than 26 feet wide measured from face-of-curb to face-of-curb shall have curbs on both sides of the road painted and marked
- k. Roads, streets, avenues, and the like that are 26 to less than 32 feet wide measured from face-of-curb to face-of-curb shall have one curb painted and marked.

**27. General Fire Prevention Requirements.** The permittee shall provide the following improvements:

- a. *Fire Sprinkler System.* Building(s) shall be provided with an automatic fire

extinguishing system in accordance with CFC 903.2 and SJFC 17.12.630. Systems serving more than 20 heads shall be supervised by an approved central, proprietary, or remote service to the satisfaction of the Fire Chief.

- b. *Requirements for Trash Areas.* Outdoor covered areas and trash enclosures may require the sprinkler system to be extended to protect them.
- c. *Fire Alarm System.* Building(s) shall be provided with an automatic fire alarm system as required by CFC 907.2 and 907.3.
- d. *Standpipes Available During Construction.* All buildings under construction, three or more stories in height, shall have at least one standpipe for use during construction. Such standpipe shall be provided with fire department hose connections. Location(s) and numbers of standpipe(s) shall be reviewed and approved by the Fire Department.
- e. *Complex Map.* A complex map is recommended which incorporates an elevated view of the building and individual unit addresses. It should be illuminated during the hours of darkness and positioned in the lobby area to be readily readable from main pedestrian access entrance. A complex map should also be placed contiguous to the vehicular entrance to the development where it will not cause stacking problems when being viewed.
- f. *Public Safety Radio Coverage.* Public Safety Radio Coverage is to be provided throughout the area of each floor of the building. Communication repeaters may be required to be installed in the buildings.
- g. *Elevators.* Elevators shall be in accordance with the requirements stipulated in the California Building Code Chapter 30. All buildings with one or more passenger service elevators shall be provided with not less than one medical emergency service elevator.
- h. *Management Association Responsibilities for Life & Safety Systems.* The developer/owner shall create and maintain a Management Association which will be responsible for the fire/life safety systems inspections per Title 19 and access to the systems if applicable.
- i. *Hazardous Materials.* The permittee must contact the Hazardous Materials Division at (408) 535-7750 as soon as possible to initiate the process to determine if the type and quantity of hazardous material is acceptable per code and whether a Hazardous Materials Plan Review is required.
- j. *Construction Fire Protection Plan.* A "Construction Fire Protection Plan" for approval by San Jose Building and Fire Departments is required prior to starting construction for wood framing projects consisting of 15 or more dwelling units or construction exceeding a total of 50,000 square feet.

**28. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or

the issuance of Building permits, whichever occurs first, the 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:  
<http://www.sanjoseca.gov/index.aspx?nid=2246>.

- 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. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or 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 alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
  - iii. 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.
  - iv. 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.
  - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed, and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern

California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

- c. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project is in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
  - iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
  - iv. Provide a dual pump or back-up system to reduce the chance of failure, along with an alarm system to notify the proper owner or operator of a failure. Proper maintenance and inspection methods should also be developed and shared with the responsible party to help facilitate compliance with Provision C.3.h of the MRP.
  - v. Trash Enclosure Areas: Construct a properly designed enclosure detail. Enclosure areas should be plumbed to the sanitary sewer and surrounding areas graded away as per City Council Policy 6-29. More information is also outlined, per Municipal Code section 15.14.515, in the Solid Waste Enclosure Area Guidelines for New Construction and Redevelopment. Access to these resources can be found in the following links:
    - vi. Municipal Code:  
[https://www.municode.com/library/ca/san\\_jose/codes/codes\\_of\\_ordinances?nodeId=SAJOMUCOVOI2000](https://www.municode.com/library/ca/san_jose/codes/codes_of_ordinances?nodeId=SAJOMUCOVOI2000)
    - vii. Solid Waste Enclosure Area Guidelines: For questions or clarification regarding these guidelines, please contact the Integrated Waste Management Division at (408) 535-8550 or [solidwasteguidelines@sanjoseca.gov](mailto:solidwasteguidelines@sanjoseca.gov). The guidelines can also be found here: <https://www.sanjoseca.gov/DocumentCenter/Home/View/437>
  - viii. Loading Docks:



- a) The loading dock area under the cover shall be plumbed to sanitary sewer.
- b) Construct a grade break under the edge of the overhang so that stormwater drains away from the covered loading dock area.
- d. **Transportation:** An EIR was prepared for the proposed development on the Cilkier site, which included a Traffic Impact Analysis (TIA). The TIA analyzed two options: Option 1 proposes 1,197,700 square feet of light industrial and generates 1,104 AM and 1,164 PM peak hour trips; and Option 2 proposes 728,000 square feet of light industrial and 436,880 square feet of data center uses and generates 709 AM and 746 PM peak hour trips. The results of the analysis concluded that both options (Option 1 and 2) will be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and the North San Jose Area Development Policy. See separate Traffic memo for additional information. This Special Use (SP16-053) permit covers only Phase 1 of Option 2 which allows the construction of 438,880 square feet of data center uses and is projected to generate 30 AM and 40 PM peak hour trips. The following are the project conditions for Phase 1 of Option 2:
  - i. Construct new 2 lane street from Zanker Road to project driveway. The new street will consist of an east-west street (Nortech Parkway extension) and a north-south street. Nortech Parkway extension is from Zanker Road to Calpine, located approximately 1,500' north of the I-237 west bound off ramp at Zanker Road. The north-south street is from Nortech Parkway extension to the project driveway and located adjacent to the western property line of Calpine.
  - ii. Construct Zanker Road widening from two travel lanes to four travel lanes from the State Route 237 westbound off-ramp at Zanker Road northerly to Nortech Parkway extension. Zanker Road will transition from four to two lanes north of the new intersection of Zanker Road/Nortech Parkway extension. The Zanker Road widening will include the construction of sidewalk at the eastern side of Zanker Road.
  - iii. Construct a traffic signal at the new intersection of Zanker Road/Nortech Parkway extension.
- e. **Flood: Zone X.** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.
- f. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
- g. **Storm:** The following are the two proposed storm sewer options; the project will

be required to construct one of the following storm sewer options.

- i. Option 1, Public storm sewer connection thru a levee/outfall at Coyote Creek:
  - 1) For proposed outfall(s), the permittee is required to obtain a permit from the Santa Clara Valley Water District and a Clean Water Act Section 401 Water Quality Certification from the Regional Water Board. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a Public Works Clearance.
  - 2) The new street from Zanker Road to the project driveway and the parcels east of Zanker Road will convey stormwater to the proposed Coyote Creek outfall. Construct sanitary sewer under the proposed public street from Zanker Road to the proposed Coyote Creek outfall.
  - 3) The area between Zanker Road and the project site slopes towards Zanker Road. Construct a storm sewer pump station in order to convey stormwater from the proposed public street and the surrounding parcels to the proposed Coyote Creek outfall. The location and design of the pump station will be determined at the implementation stage.
  - 4) Dedicate a 20-foot wide public storm sewer easement for the public storm sewer line that runs adjacent to the northern and eastern property line. The plant and tree species within the easement should not be invasive to the storm pipe.
- ii. Option 2, Public storm sewer connection to the Oakmead pump station:
  - 1) At the implementation stage, the project should submit a design/analysis which minimizes the rate of 10-year stormwater flows to the Oakmead pump station to the satisfaction of the Director of Public Works (approximately 50%), i.e. using a restrictor device or installing a weir for metering the flow. Analysis should also include an evaluation of the existing storm sewer system to determine if downstream storm sewer capacity upgrades are necessary.

**h. Sanitary:**

- i. Construct the sanitary sewer main under the proposed public street from the project site to the existing sanitary sewer force main on the east side of Zanker Road at Thomas Foon Chew Way. The sanitary sewer alignment shall follow the proposed public street alignment and shall be sized to accommodate the project and future development sewer flows east of Zanker Road.

- ii. Construct the pump station at the end of the new sanitary sewer line and connection to the existing 18-inch diameter stub on the existing force main at the east side of Zanker Road at Thomas Foon Chew Way.
- i. **Municipal Water:** In accordance with City Ordinance No. 23975, Major Water Facilities Fee is due and payable prior to Public Works clearance. Contact the City of San José Environmental Services Division at (408) 794-6769 for further information.
- j. **Street Improvements:**
  - i. a) Construct new public street from Zanker Road to the proposed project driveway. The new street shall be 68-feet wide and will include two travel lanes (one lane in each direction), on-street parking on both sides of the street, stormwater facility at the back of curb, 2-foot passenger landing area for parking adjacent to parking, curb, gutter and sidewalk.
  - ii. b) Construct Zanker Road widening (four travel lanes, two lanes in each direction) from State Route 237 to Nortech Extension and the transition from Nortech Extension to the existing Zanker Road. The 96-foot wide Zanker Road cross section will include the construction of curb, gutter and sidewalk with the four travel lanes. The 96-foot wide Zanker Road cross section begins west of the existing PG&E poles.
  - iii. c) Street configuration of the new public street and Zanker Road widening will be finalized at the implementation stage.
  - iv. d) Proposed driveway width to be 26 feet.
  - v. e) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- k. **Electrical:**
  - i. Install electroliers on the new public street.
  - ii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.
  - iii. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10 feet from high voltage lines; 3 feet from secondary voltage lines; and 1 foot from communication lines.
- 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 be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

m. **Referrals:** This project should be referred to the Santa Clara Valley Water District.

29. **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. \_\_\_\_\_.

30. **Standard Environmental Conditions:**

a. **Air Quality:**

i. On-Site Construction Measures:

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

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

**b. Biological Resources:**

- i. Tree Removal: Tree removal as a result of the project will require replacement-to-removal ratios set forth by the City of San José, as shown in the table below. The exact number and species of trees shall be determined based on consultation with the City Arborist and with the Director of the Department of PBCE.

City of San José Standard Tree Replacement Ratios				
Diameter of Tree to Be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12-18 inches	3:1	2:1	none	24-inch box
Less than 12 inches	1:1	1:1	none	15-gallon container

- ii. Santa Clara Valley Habitat Conservation Plan: The project permittee shall comply with the Santa Clara Valley Habitat Conservation Plan (SCVHCP) and SCVHCP EIR, and shall be required to pay all applicable fees prior to issuance of any grading permit.

- c. **Cultural Resources (Paleontological):** The permittee shall ensure all construction personnel receive paleontological resources awareness training that includes information on the possibility of encountering fossils during construction; the types of fossils likely to be seen, based on past finds in the project area; and proper procedures in the event fossils are encountered. Worker training shall be prepared and presented by a qualified paleontologist. If vertebrae 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 an appropriate treatment plan. The treatment plan shall be submitted to the PBCE Supervising Environmental Planner and Historic Preservation Officer for approval prior to continuing construction activities. The approved treatment may include 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.

d. **Cultural Resources (Historic Structures):** Prior to implementation of development on the southern portion of the project site, the permittee shall implement the following Standard Measures:

i. Photo Documentation:

1) Professional Qualifications: The photo documentation shall be conducted by a qualified consultant meeting the professional qualification standards of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. Department of Parks and Recreation, Primary Record (DPR A) and Building, Structure, and Object (DPR 523B) forms: The bound and electronic copy of the Historic Report and/or DPR forms for the Structures/Site.

ii. Non-Historic American Building Survey Archival Photo-Documentation:

1) Cover sheet-The documentation shall include a cover sheet identifying the following: photographer, address of building, common or historic building name, date of construction, date of photographs and description of photographs.

2) Camera- A 35mm camera.

3) Film-Must use black and white film; tri-X, Plus-X, or T-Max film is recommended.

4) View-Perspective view-front and other elevations.

5) Lighting-Sunlight is usually preferred for exteriors, especially of the front facade.

6) Technical-All areas of the photograph must be in sharp focus.

iii. Submission of Photo-Documentation: Evidence that the documentation, including the original prints and negatives, has been submitted to History San Jose, 1650 Senter Road, San Jose, CA 95112-2599), shall be submitted to the Historic Preservation Officer prior to issuance of any grading permits at the potential structure of merit (as identified in the EIR). Digital photos may be provided as a supplement to, but not in place of, the above photo documentation. The above shall be accompanied by a transmittal stating that the documentation is submitted in fulfillment of standard measures for the loss of the Structure of Merit which shall be named and the address stated.

iv. Relocation: Prior to issuance of Public Works clearance, the structure(s) shall be advertised for relocation. The permittee shall provide evidence that the

structure has been retained and advertised for relocation by placing an advertisement in a newspaper of general circulation, posting on a website, and on-site posting for 60 days. The draft public notice shall be submitted to the City's Historic Preservation Officer for review prior to publication.

- v. Salvage: If relocation is not successful, prior to issuance of Public Works Clearance, the structure and site shall be retained and advertised for salvage by placing an advertisement in a newspaper of general circulation, posting on a website, and on-site posting for 30 days.

**e. Geology & Soils:**

- i. Prior to the issuance of a grading permit, the site-specific geotechnical investigation shall be submitted to the Director of Public Works for approval. Recommendations from the approved geotechnical investigation shall be implemented including, supplementary laboratory testing.
- ii. On-site Construction: All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting. Ditches will be installed, if necessary, to divert runoff around excavations and graded areas.

**f. Hazardous Materials:**

- i. Demolition and Construction: 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 structures to determine the presence of asbestos-containing materials and/or lead-based paint. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposal of at landfills that meet acceptance criteria for the waste being disposed. All potentially friable ACMs shall be removed in accordance with ENSHAP guidelines prior to structure demolition that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure. 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. Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

**g. Hydrology & Water Quality:**

i. On-Site Construction:

- 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 be required to maintain at least two feet of freeboard.
- 6) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites would 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 may also be installed at the request of the City.

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

- a. A violation of any conditions of the Special Use Permit and Development Exception 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 \_\_\_\_\_, 2017, 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.*