

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT, TO ALLOW THE DEMOLITION OF TWO BUILDINGS TOTALING APPROXIMATELY 135,000-SQUARE-FEET AND THE REMOVAL OF 156 TREES (101 ORDINANCE-SIZE AND 55 NON-ORDINANCE-SIZE) WITH 47 REPLACEMENT TREES FOR THE CONSTRUCTION OF TWO DATA CENTERS TOTALING APPROXIMATELY 522,194 SQUARE FEET, ONE APPROXIMATELY 136,573-SQUARE FOOT 300-STALL PARKING STRUCTURE, AN ELECTRICAL SUBSTATION, AND 39 BACKUP GENERATORS WITH AN APPROXIMATELY 32% PARKING REDUCTION ON AN APPROXIMATELY 9.78-GROSS-ACRE SITE, LOCATED AT THE SOUTHEAST CORNER OF TRADE ZONE BOULEVARD AND RINGWOOD AVENUE (2400 RINGWOOD AVENUE AND 1849 FORTUNE DRIVE) (APNS: 244-17-009 & 244-17-014)**

**FILE NO. PD22-001**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on February 17, 2022, an application (File No. PD22-001) was filed by the owner and applicant, Stack Infrastructure, with the City of San José for a Planned Development Permit to allow the demolition of two buildings totaling approximately 135,000 square feet and the removal of 156 trees (101 ordinance-size and 55 non-ordinance-size) with 94 replacement trees for the construction of two data centers totaling approximately 522,194 square feet, one approximately 136,573-square-foot manufacturing building, an approximately 150,000-square-foot, 300-stall parking structure, an electrical substation, and 39 backup generators with an approximately 32% parking reduction on an approximately 9.78-gross-acre site , on that certain real property situated in the Transit Employment Center Planned Development Zoning District TEC(PD) and located at the southeast corner of Trade Zone Boulevard and Ringwood Avenue (2400 Ringwood Avenue and 1849 Fortune Drive, APNS 244-17-009 & 244-17-

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

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” and Exhibit "B," entitled “Plat Map,” 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 Public Hearing on said application on April 26, 2023, 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 recommendation of the City’s Planning Commission and the City’s Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, “Stack SVY LI/L2” dated October 25, 2022, 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 evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

- 1. Site Description and Surrounding Uses.** The subject 9.78-gross-acre site is located at the southeast corner of Trade Zone Boulevard and Ringwood Avenue (2400 Ringwood Avenue and 1849 Fortune Drive). The Subject Property is comprised of two parcels (APNS: 244-17-009 & 244-17-014). The project site is bounded by industrial uses to the east, south, and west, and multifamily residential uses in the City of Milpitas across Trade Zone Boulevard to the north. 2400 Ringwood Avenue is currently developed with a vacant approximately 80,000-square foot single-story industrial building and associated surface parking. 1849 Fortune Drive is currently developed with a vacant approximately 55,000-square foot single-story industrial building and associated surface parking.
- 2. Project Description.** The project consists of the merger of the two existing parcels into one parcel and the subdivision of the one parcel into no more than 15 commercial condominium units with common area through the tentative and final subdivision process, the redevelopment of the Subject Property for the construction of one four-story advanced manufacturing building (approximately 136,573 square feet), two four-story data center buildings (approximately 522,194 square feet), a 300-stall parking garage (150,000 square feet), an associated electrical substation, and 36 backup generators.

The four-story advanced manufacturing building is located at the northernmost portion of the lot nearest to the intersection of Trade Zone Boulevard and Ringwood Avenue. The maximum height of manufacturing building is approximately 83 feet.

The two four-story data center buildings are located in the central and southernmost portions of the lot. Each data center consists of two main components. The data center suites house the client servers, while the administrative facilities include the building lobbies, conference rooms, restrooms, office space, customer space, loading dock, and storage. The two data centers have a maximum height of approximately 80 feet.

The project also includes the construction of a new 100 MVA (mega volt-ampere) electrical substation at the easternmost portion of the site. The substation will be capable of delivering electricity to the data centers from a new Pacific Gas and Electric ("PG&E") circuit but does not allow any electricity generated from the backup generation facility to be delivered to the transmission grid. To serve the project, PG&E will construct a "looped" transmission interconnection involving two offsite transmission lines. The substation consists of an all-weather asphalt surface, underlain by an aggregate base. A 13-foot-high concrete masonry unit (CMU) wall will be constructed to screen the substation. An additional 8-foot-high chain link fence would also be constructed inside the main wall for additional security.

The project also includes a backup generation facility with a generation capacity of 91 megawatts (MW) to support the needs of the data centers and to provide uninterruptible power supply for the data center tenant's servers. The backup generation facility consists of 36 3-MW and 3 1-MW diesel-fired backup generators arranged in two generation yards, each designed to serve the two data center buildings. The generator yards are located to the south and north of the two data center buildings, respectively.

Vehicle parking is provided in a 5-level structured parking garage located in the north-central portion of the site, to the east of the data center buildings. A total of 339 vehicle parking spaces are provided resulting in an approximately 32% vehicle parking reduction. The vehicle parking reduction is supported with the implementation of a Transportation Demand Management ("TDM") Plan.

The site is accessible to vehicles from a primary 32-foot-wide driveway along Trade Zone Boulevard. Secondary vehicular access is provided from a 32-foot-wide driveway along Fortune Drive and a 32-foot-wide driveway along Ringwood Avenue. A fourth, 26-foot-wide, maintenance-only driveway is provided along Trade Zone Boulevard for access to the electrical substation.

Off-site improvements include construction of a Class IV protected bikeway along Trade Zone Boulevard, a 15-foot-wide detached sidewalk along Trade Zone Boulevard, and a 10-foot detached sidewalk along Ringwood Avenue.

**3. General Plan Conformance.** The site is designated Transit Employment Center on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. This designation is applied to areas planned for intensive job growth because of their importance as employment districts to the City and high degree of access to transit and other facilities and services. To support San Jose’s growth as a Regional Employment Center, it is useful to designate such key Employment Centers along the light rail corridor in North San José, in proximity to the Bay Area Rapid Transit (“BART”) and light rail facilities in the Berryessa/Milpitas area, and in proximity to light rail in the Old Edenvale area. All of these areas fall within identified Growth Areas and have access to transit and other important infrastructure to support their intensification. Uses allowed in the Industrial Park designation are appropriate in the Transit Employment Center designation, as are supportive commercial uses. The North San José Transit Employment Center also allows limited residential uses, while other Employment Centers should only be developed with industrial and commercial uses.

The project is consistent with the following General Plan Goals and Policies:

Land Use and Employment Policy IE-1.5: Promote the intensification of employment activities on sites in close proximity to transit facilities and other existing infrastructure, in particular within the Downtown, North San José, the Berryessa International Business Park and Edenvale.

Business Growth and Retention Policy IE-2.8: Encourage business and property development that will provide jobs and generate revenue to support city services and infrastructure.

Broad Economic Prosperity Policy IE-6.2: Attract and retain a diverse mix of businesses and industries that can provide jobs for the residents of all skill and education levels to support a thriving community.

Land Use Policy LU-6.4: Encourage the development of new industrial areas and the redevelopment of existing older or marginal industrial areas with new industrial uses, particularly in locations which facilitate efficient commute patterns. Use available public financing to provide necessary infrastructure improvements as one means of encouraging this economic development and revitalization

*Analysis: The project encourages the development of manufacturing and data center uses that will generate jobs and revenue for the City. The subject site is located in the Berryessa International Business Park, an identified growth area, that is intended to be developed with intensive employment activities. Based on a market research report prepared by Colliers International, dated November 9, 2022, the manufacturing building is designed to attract businesses focused on “advanced manufacturing” sectors providing examples such as semiconductor or lithium battery production. These types of advanced manufacturing employers provide well-paying jobs and often require high school level education levels. The project would replace two existing aging vacant industrial buildings with a modern*

*advanced manufacturing building as well as two data centers that will support the infrastructure needs of the surrounding area. The subject site is located approximately 2,300 feet south of the Milpitas BART station. Bus stops serving VTA Routes 60 and 77 are located directly in front of the project site along Trade Zone Boulevard. Additionally, the applicant is required to implement a Transportation Demand Management (TDM) Plan, which includes the implementation of a Transit Use Incentive Program to encourage transit ridership for employees. Therefore, the project will also facilitate efficient commute patterns for future employees.*

**4. Zoning Ordinance Compliance.**

General Development Plan

The project is in the TEC(PD) Planned Development Zoning District per File No. PDC22-001. Subject to the project’s Development Standards, the newly created TEC(PD) Planned Development Zoning District would allow for Data Center uses as well as uses that conform with the TEC Transit Employment Center Zoning District, in alignment with the Transit Employment Center General Plan land use designation. The Planned Development Zoning District allows for data centers and manufacturing uses, as a permitted uses with the issuance of a Planned Development Permit.

Setbacks and Height

The table below highlights the Development Standards as outlined in the General Development Plan of the TEC(PD) Planned Development Zoning District File No. PDC22-001. The project is in compliance with the development standards of the TEC Transit Employment Zoning District pursuant to Section 20.50.200 of the Zoning Code.

<b>Development Standard</b>	<b>Required</b>	<b>Project</b>
Minimum Lot Size	6,000 square feet	426,016 square feet
Minimum Front Setback (Building)	15 feet minimum	23 feet (from Trade Zone Boulevard) 20 feet (from Fortune Drive)
Minimum Side Setback	0 feet	20 feet (from Ringwood Avenue), 20 feet (from easterly property line)
Minimum Rear Setback	0 feet	26 feet (from southeasterly property line)
Maximum Building Height	120 feet	83 feet

As shown on the Project Plans, the project conforms with all required height and setback standards pursuant to the General Development Plan of the Planned Development Zoning District.

Parking

<b>Use</b>	<b>Square Footage</b>	<b>Ratio</b>	<b>Required</b>
<b>Data Center</b>	31,231 sf of data center office space	1 stall per 250 sf of office/meeting/technician space	125 spaces
	257,175 sf of data hall space	1 stall per 5,000 sf of floor area for computer equipment space	52 spaces
<b>Manufacturing</b>	112,246 sf of floor area	1 per 350 square feet of floor area	321 spaces
<b>Total Required</b>			<b>498</b>
<b>Total Provided</b>			<b>339</b>
<b>Parking Reduction</b>			<b>32%</b>

Pursuant to Section 20.90.060 of the Zoning Code, the project is required to provide 498 vehicle parking spaces. A total of 339 vehicle parking spaces are provided, resulting in a parking reduction of approximately 32%. Pursuant to Section 20.90.220 of the Zoning Code, up to 20% of the parking reduction is allowed as the project is located within the Berryessa International Business Park, a growth area. The additional 12% parking reduction is allowed with the implementation of a TDM plan. A TDM plan, dated October 20, 2022 was prepared by Hexagon Transportation Consultants, Inc, which achieves an additional 12% parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures in accordance with Section 20.90.220 of the Municipal Zoning Code. The project is required to implement a Transit Use Incentive Program and a Telecommuting and Flexible Work Schedule.

In addition to the approximately 32% parking reduction, the project requires a total of 50 motorcycle parking spaces and 38 bicycle parking spaces. The project would provide 50 motorcycle parking spaces and 39 bicycle parking spaces, in compliance with the Zoning Code requirements.

Noise

Pursuant to the General Development Plan of the TEC(PD) Planned Development Zoning District, the project is subject to the performance standards of the TEC Transit Employment Center Zoning District. Pursuant to Table 20-135, Section 20.50.300 of the Zoning Code, the maximum allowed noise level for industrial uses adjacent to

property used or zoned for industrial purposes is 70 decibels for uses adjacent to industrial properties, 60 decibels for industrial uses adjacent to commercial properties, and 55 decibels for industrial uses adjacent to residential properties.

A noise report was prepared by Illingworth and Rodkin dated March 30, 2022. The noise report analyzed operational noise impacts of the project included 36 3-MW diesel-fueled generators and two 1-MW diesel-fueled house generators, located within generator yards adjacent to the north side of the SVY06 building and the south side of the SVY05 building. Each generator will be enclosed and tested only during daytime hours. Under full load, each 3 MW generator would meet a design goal of 70 dBA at a distance of 23 feet. HVAC equipment including a total of 78 chillers will be located on the rooftops of the data center buildings. Noise data provided for the chillers indicated a sound power level of 100 dBA Lw when operating at 100% load. Other mechanical and electrical equipment located inside the buildings is not anticipated to emit audible noise outside. Fixed sources of noise at the site were modeled using SoundPLAN, a three-dimensional noise modeling software that considers site geometry, the characteristics of the noise sources, and shielding from structures and barriers. The two primary noise scenarios evaluated were operational noise resulting from all chillers running at 100% load, and all chillers running at 100% load with concurrent testing of one generator, also at 100% load. A detailed generator testing schedule was not available at the time of this writing, however, due to limits on generator testing frequency imposed by the City of San José and the Bay Area Air Quality Management District and testing schedules of similar projects, a worst-case scenario of a yearly, hour-long “load bank” test of one generator at the worst-case individual generator location was considered. These two scenarios are representative of what will be the peak-hour noise level resulting from project operations during the daytime when generator testing would occur, and during the nighttime when only HVAC equipment will be running. In both scenarios, the maximum decibel level at the property line of the nearest residential property across Trade Zone Boulevard to the north will be 53 decibels, below the maximum allowed 55 decibel limit. With the inclusion of a 16-foot-high parapet wall for both data center buildings, the maximum allowed noise level would not exceed 60 decibels at any surrounding commercial or industrial property line.

Therefore, the project conforms with the noise requirements of the TEC(PD) Planned Development Zoning District. The Planned Development Permit includes standard environmental permit conditions to reduce construction noise. Additionally, the project is within 500 feet of a residence, therefore hours are limited to 7:00 a.m. to 7:00 p.m. Monday through Friday. The Planned Development Permit includes a condition for the appointment of a Construction Disturbance Coordinator to address any construction related complaints.



Tree Removals

The project is subject to the following tree replacement ratios as shown in the table below.

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

x:x = tree replacement to tree loss ratio

Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter.

A 24-inch box replacement tree = two 15-gallon replacement trees

The project includes the removal of 156 trees. Of the trees to be removed, 101 are ordinance-size and 55 are non-ordinance-size. Based on the arborist report prepared by Anderson Tree Care Specialists, Inc., on behalf of HMM Engineers, dated November 19, 2021, the trees to be removed are located within the project buildings or equipment/infrastructure footprint. 13 of the trees are native species. 26 off-site trees would be preserved. 10 trees require replacement at a 5:1 ratio, 91 trees require replacement at 4:1 ratio, 3 trees require replacement at a 3:1 ratio, 40 trees require replacement at 2:1 ratio, and 12 trees require replacement at a 1:1 ratio. Based on the requirements listed in the table above, the removal of the 156 trees on-site requires the replacement of either 515 15-gallon trees or 258 24-inch box trees on site. The total number of replacement trees to be planted on site is 47 24-inch box trees (equal to 94 15-gallon trees), a deficit of 421 replacement trees. Therefore, the applicant is required to pay in in-lieu fee (\$775 per tree) for the replacement trees. Based on the current Planning Fee Schedule, the estimated cost for the in-lieu fee for the remaining replacement trees is \$326,275. The applicant is required to pay the fees prior to issuance of Grading or Building Permits, whichever comes first.

## 5. Citywide Design Standards and Guidelines Consistency

The project is consistent with following provisions of the Citywide Design Standards and Guidelines:

- Section 2.1.2 – Relationship to Transit

- When located within 500 feet of a Frequent Network Transit Stop, locate the primary building entrance at the building façade closest to the transit stop.

*Analysis: The subject site is adjacent to a VTA bus stop (Trade Zone and Ringwood Stop ID: 63942) serving Routes 60 and 77 along Trade Zone Boulevard. The primary building entrance is located so that pedestrians and bicyclists have direct access from the sidewalk to the street along Trade Zone Boulevard nearest the bus stop.*

- Section 2.2.1 – Pedestrian and Bicycle Access Location

- Standard 5 – Place primary building entrance such that it can be accessed from a street, public open space, semi-private open space, or POPOS.
- Guideline 1 – Provide frequent entrances and openings in building facades to connect buildings to the public realm.

*Analysis: The primary building entrance is located along Trade Zone Boulevard, a public street with a 15-foot-wide detached sidewalk. The northernmost data center building includes three additional pedestrian entrances along the Ringwood Avenue street frontage. The southernmost data center building also includes three accessible pedestrian entrances along the Fortune Drive frontage.*

- Section 2.3.1 Building Placement

- Standard 1 - To create a continuous streetwall, place at least 75 percent of the ground floor primary street, paseo, or public open space facing (except riparian corridor) façades of buildings with the primary commercial or residential use within five feet of the setback or easement line (whichever is more restrictive). When there are multiple buildings on the site, 75 percent of the sum of all primary street, paseo, and public open space-facing ground floor building façades must be considered in the calculation above.

*Analysis: All buildings on site are placed within five feet of the minimum 15-foot building setback line for the entirety of the building frontages along Trade Zone Boulevard, Ringwood Avenue, and Fortune Drive. Therefore, each of the buildings in the project, that have street frontage, create a continuous streetwall that exceeds the 75 percent requirement for ground floor building placement along both primary streets (Trade Zone Boulevard and Ringwood Avenue) and secondary streets (Fortune Drive).*

- Section 3.1.2 – Form, Proportion, and Scale

- Standard 1 - Buildings at street intersections with traffic signals, terminus points, and open spaces must include at least two of the following architectural features for a minimum of 20 percent of each building frontage along the street:
  - Corner plaza.
  - Articulated corner with vertical or horizontal projections.
  - Taller massing or exaggerated roof elements.
  - Building entrances with a minimum recess of three feet.
  - Different façade treatments such as variations in materials and color.
- Standard 3 - For streetwalls more than 200 feet in length, provide at least one recess or projection in the façade that is at least 10 feet wide and 5 feet deep for industrial developments.

*Analysis: The manufacturing building is located at the intersection of Trade Zone Boulevard and Ringwood Avenue, which is a signalized intersection. The project includes an approximately 30-foot-wide and an approximately 10-foot-deep recessed entrance along the Ringwood side of the building corner. The project also includes an approximately 18-foot-wide by 6-foot-deep recessed entrance along the Trade Zone Boulevard side of the building. The recess continues from the ground floor to the fourth floor. An articulated corner is provided on the building, which includes a five-foot-wide horizontal metal panel element that protrudes from the upper level of the building and frames the corner on both sides of the street facing portion of the building.*

- Section 3.2.2 Services and Utilities Entrances and Design

- Standard 1 - Screen solid waste, utilities, and service areas from residential and commercial uses, and on-site and off-site views to limit visual impact on the public realm using fences, walls, or landscaping that:
  - Use durable and weather-resistant materials.
  - Are four to five feet tall.
  - Do not interrupt the line-of-sight of drivers entering or exiting the site.

*Analysis: All solid waste and utilities are interior to the manufacturing and data center buildings. The electrical substation at the eastern end of the site is full screened with a 13-foot-high concrete wall, which is landscaped with climbing vines.*

- Section 3.3.1 – Façade Design and Articulation

- Standard 1 - Articulate all building façades facing a street or public open space for at least 80 percent of each façade length. Articulate all other building façades

for at least 60 percent of each façade length. Façade articulation can be achieved by providing material and plane changes or by providing a rhythmic pattern of bays, columns, balconies, and other architectural elements to break up the building mass.

*Analysis: The manufacturing building and southernmost data center are the only two buildings with frontage on a public street. Both buildings are articulated for the entirety of the street facing façade with changes in material and plane change. All buildings include a mix of materials including dark, medium, and light gray metal paneling, brown wood look metal panel, spandrel glass, vision glass, and precast concrete. The non-street facing façades include building articulation to break up the massing and reduce blank walls for at least 60% of the non-street facing facades. Non-street facing façade features include a mix of dark and light gray approximately 14-foot-wide metal panels and Exterior Insulation Finishing Systems (EIFS) to break up the long uninterrupted walls at the upper levels of the building. The lower levels of the non-street facing facades are broken up with the generator enclosures and platforms of varying widths as well as secondary pedestrian entrances and loading docks.*

- Section 3.3.2 – Roofs and Parapets

- Standard 4 - Parapets and other screening elements at the roof level must screen rooftop equipment from public view.

*Analysis: The project includes a 16-foot-high parapet wall at both data center buildings to screen mechanical equipment from street view and to serve as a noise attenuation feature.*

## **6. City Council Policy 6-30: Public Outreach Policy for Pending Land Use**

**Decisions.** Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the project. An on-site sign has been posted on the project frontage since March 5, 2021. A formally noticed Community Meeting was held on Thursday, February 23, 2023 to introduce the project to the community. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on March 30, 2023. The staff report is also posted on the City's website at <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/commissions-hearings-and-developers-roundtable/planning-commission/planning-commission-agendas-minutes>. Staff has also been available to respond to questions from the public.

## **7. Environmental Review.**

In accordance with the California Environmental Quality Act (CEQA), the California Energy Commission (CEC) is the lead agency for the Project and certified the Final Environmental Impact Report ("FEIR") on April 12, 2023. The FEIR identified potential

environmental impacts to air quality, biological resources, cultural and tribal resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, noise, and transportation. These impacts would be reduced to less than significant levels with the implementation of identified mitigation measures. The FEIR determined there would be no significant and unavoidable impacts due to the implementation of the project.

The City of San José is the Responsible Agency for the Project pursuant to CEQA. Whenever a Responsible Agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a Responsible Agency to make its own findings pursuant to Section 15091. When making the findings, a Responsible Agency should adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during Project implementation. The City of San José reviewed the draft EIR prior to its certification by the CEC and concluded that all impacts were adequately addressed, impacts were reduced to a less than significant level and that such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as the Responsible Agency for the Project (the "Mitigation Monitoring and Reporting Program"). The FEIR is available at <https://www.energy.ca.gov/powerplant/tradepark>.

**8. Planned Development Permit Findings:** Section 20.90.940 of the San José Municipal Code specifies the required findings for the approval of a Planned Development Permit.

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

*Analysis: The project is consistent with the General Plan Land Use Designation of Transit Employment Center. The Transit Employment Center designation allows for a maximum FAR of 12.0. The project FAR is approximately 1.5, below the maximum allowed FAR. The project is consistent with General Plan policies regarding land use and employment, business growth and retention, broad economic prosperity, and land use. The project encourages the development of manufacturing and data center uses that will generate jobs and revenue for the City. The project would replace two existing aging vacant industrial buildings with a modern advanced manufacturing building as well as two data centers that will support the infrastructure needs of the surrounding area.*

- b. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property; and

*Analysis: The project conforms with the Development Standards of the General Development Plan for the Planned Development Zoning District (File No. PDC22-001). The newly created TEC(PD) Zoning District would allow for the data center uses as well as uses that conform with the TEC Transit Employment Center Zoning*

*District, as amended. Special and Conditional Uses is subject to the approval of a Planned Development Permit. As demonstrated in Section 4 (Zoning Ordinance Compliance) the project conforms with all required lot sizes, setbacks, heights, and parking requirements of the Planned Development Zoning District. Additionally, as discussed above, the project is consistent with all applicable noise requirements and tree removal replacement requirements.*

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

*Analysis: Council Policy 6-30: Public Outreach Policy was implemented in order to inform the public of the project. An on-site sign has been posted on the project frontage since March 5, 2021. A formally noticed Community Meeting was held on February 23, 2023 to introduce the project to the community. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Staff has also been available to respond to questions from the public.*

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

*Analysis: The project consists of the merger of two parcels into one parcel and the subdivision of the one parcel into no more than 15 commercial condominium units with common area, demolition of two existing vacant industrial buildings for the construction of a manufacturing building, two data center buildings, a parking structure, and an associated electric substation. The manufacturing building and two data center buildings are similar to each other in size, scale, height, color, materials, and articulation. The three street facing buildings are oriented towards the street with entrances accessible from Fortune Drive, Ringwood Avenue Trade Zone Boulevard, in conformance with the design requirements of the Citywide Design Standards and Guidelines. The parking garage is located interior to the site and screened from view of the street by the manufacturing building. The substation is also screened from view with a painted concrete wall and decorative metal gate. The site is landscaped along the street frontages to further screen utilities and infrastructure from the public view. Therefore, the interrelationship of the project buildings on-site is appropriate, compatible, and aesthetically harmonious.*

- e. 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 CEQA, will not have an unacceptable negative effect on adjacent property or properties.

*Analysis: Environmental impacts related to noise, vibration, dust, drainage, erosion, storm water runoff, and odor will be temporary and would only occur during construction. The project would conform with all applicable noise*

*requirements of the TEC Transit Employment Center Zoning District. The project is required to conform 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 discharge. The project also includes standard environmental permit conditions to reduce and mitigate impacts regarding air quality, dust and emissions control, water quality, and noise. Additionally, the project is required to adhere to the Mitigation Monitoring and Reporting Program (MMRP) prepared for the project in association with the STACK Trade Zone Park Environmental Impact Report. The project is located within 500 feet of residences across Trade Zone Boulevard to the north. Therefore, construction hours are limited to between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. The Planned Development Permit Resolution includes a condition of approval for the appointment of a Construction Disturbance Coordinator to address any constructed related complaints or concerns. Therefore, the project would not have an unacceptable impact on adjacent properties.*

- 9. Parking Reduction Findings.** Section 20.90.220 of the San José Municipal Code specifies the required findings for a parking reduction.
- a. The structure or use is located within two thousand (2,000) feet of a proposed or an existing rail station or bus rapid transit station, or an area designated as a Neighborhood Business District, or as an Urban Village, or as an area subject to an area development policy in the City's General Plan or the use is listed in Section 20.90.220G; and
  - b. The structure or use provides bicycle parking spaces in conformance with the requirements of Table 20-90.
  - c. For any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a TDM program that contains but is not limited to one of the following measures:
    - i. Implement a carpool/vanpool or car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations at the ratio set forth in the development permit or development exception considering type of use; or
    - ii. Develop a transit use incentive program for employees and tenants, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA SmartPass system will satisfy this requirement).

- iii. In addition to the requirements of Section 20.90.220, for any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a TDM program that contains but is not limited to at least two of the following measures in Section 20.90.200 A.1.d.

*Analysis: Pursuant to Section 20.90.060 of the Zoning Code, the project is required to provide 497 vehicle parking spaces. A total of 339 vehicle parking spaces are provided, resulting in a parking reduction of approximately 32%. Pursuant to Section 20.90.220 of the Zoning Code, up to 20% of the parking reduction is allowed as the project is located within the Berryessa International Business Park, a growth area. The project is required to provide 38 bicycle parking spaces and 38 are provided. The additional 12% parking reduction is allowed with the implementation of a TDM plan. A TDM plan, dated October 20, 2022, was prepared by Hexagon Transportation Consultants, Inc, which achieves an additional 12% parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures in accordance with Section 20.90.220 of the Municipal Zoning Code. The project is required to implement a Transit Use Incentive Program and a Telecommuting and Flexible Work Schedule. The implementation of the TDM Plan is included as a condition of approval in this Planned Development Permit Resolution.*

**10. Commercial Common Interest Development Findings.** Section 20.175.050 of the San Jose Municipal Code specifies the required findings for Commercial Common Interest Development.

- a. The proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development, or in the city as a whole;

*Analysis: The project's common interest development would not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity in that the size of the commercial units adequately accommodates a variety of potential uses, and the anticipated uses, including a data center and manufacturing building, would add to the economic viability of the area by creating jobs and increasing tax revenue for the City.*

- b. The proposed common interest development includes sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development; and

*Analysis: A Declaration of Covenants, Conditions, and Restrictions (CC&Rs) is required to be reviewed and approved by the City, and recorded, prior to final map*



*approval. The CC&Rs would include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development. Additionally, the applicant, at its sole cost, shall prepare grant deeds for all mutual or reciprocal easement right, which shall be reviewed by the City for compliance with the terms of Chapter 20.175 of the Zoning Code and Chapter 19 of Subdivision Code.*

- c. The proposed common interest development includes sufficient provisions for the retention of such common areas for the use of all owners of separate interests therein.

*Analysis: The CC&Rs, required when the Final Map is approved by the City in accordance with the Zoning Ordinance, would state that each commercial owner shall have, as appurtenant to their unit, and undivided interest in the common areas. This would ensure that each common interest development has sufficient retention of common areas for use by all owners as noted in the conditions of approval. The CC&Rs would also include provisions for ingress, egress, parking, emergency access, utilities, landscaping, and the like.*

**11. Tree Removal Permit Findings.** Section 13.32.100 of the San José Municipal Code specifies the required findings for live tree removals.

- a. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or

*Analysis: The project includes the removal of 156 trees. Of the trees to be removed, 101 are ordinance-size and 56 are non-ordinance-size. Based on the arborist report prepared by Anderson Tree Care Specialists, Inc., on behalf of HMM Engineers, dated November 19, 2021, the trees to be removed are located within the project buildings or equipment/infrastructure footprint. 13 of the trees are native species. 26 off-site trees would be preserved. 10 trees require replacement at a 5:1 ratio, 91 trees require replacement at 4:1 ratio, 3 trees require replacement at a 3:1 ratio, 40 trees require replacement at 2:1 ratio, and 12 trees require replacement at a 1:1 ratio. Therefore, the removal of the 156 trees on-site requires the replacement of either 515 15-gallon trees or 258 24-inch box trees on site. The total number of replacement trees to be planted on site is 47 24-inch box trees (equal to 94 15-gallon trees), a deficit of 421 replacement trees. Therefore, the applicant is required to pay in in-lieu fee (\$775 per tree) for the replacement trees. Based on the current Planning Fee Schedule, the estimated cost for the in-lieu fee for the remaining replacement trees is \$326,275. The applicant is required to pay the fees prior to issuance of Grading or Building Permits, whichever comes first.*

**12. Demolition Permit Findings.** Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for the issuance of a permit to allow demolition:

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

*Analysis: The project includes the demolition of two vacant industrial buildings totaling approximately 135,000 square feet. The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition nor would it jeopardize public health, safety or welfare, as it would allow for the redevelopment of the site with new industrial uses that are consistent with the allowable uses and development standards of the TEC General Plan land use designation and Planned Development Zoning District. The demolition permit would facilitate a project that is compatible with the surrounding neighborhood, which consists of primarily industrial uses. As previously discussed, the project is consistent with all applicable General Plan goals and policies, Planned Development Zoning requirements, applicable city council policies, and Citywide Design Standards and Guidelines. The project would not demolish any existing housing.*

*Given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible as the project requires the complete redevelopment of the site to support the data center, manufacturing building, and associated substation and parking garage.*

*As discussed in the Environmental Impact Report, the oldest permanent structures on-site were constructed in 1997 (2400 Ringwood Drive) and 1982 (1849 Fortune Drive) and are less than 45 years old. No buildings or structures on-site are listed on the City's Historic Resources Inventory, nor is the site located within a historic or landmark district. The buildings to be demolished are not eligible for the California Register of Historic Places or National Register of Historic Places based on their age or architectural style. The demolition of any existing buildings on-site would not*

*be approved until the issuance of a grading permit or building permit, whichever comes first.*

In accordance with the findings set forth above, a Planned Development Permit 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 this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the Permittee fail to file a timely and valid appeal of this Planned Development Permit ("Permit") within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the use of the site or the construction of buildings (if a 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. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City

Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility- represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination 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 on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Use Authorization.** Subject to all conditions herein, this Permit allows the demolition of two buildings totaling approximately 135,000 square feet and the removal of 156 trees (101 ordinance-size, 55 non-ordinance-size, and 94 replacement trees) for the construction of two data centers totaling approximately 522,194 square feet, one approximately 136,573-square foot manufacturing building, an approximately 150,000-square foot 300-stall parking structure, an electrical substation, 39 backup generators, and no more than 15 commercial condominiums with an approximately 32% parking reduction on an approximately 9.78-gross-acre site.
6. **Project Phasing.** Prior to issuance of Certificate of Occupancy for either of the two data center buildings, the permittee shall begin the vertical construction (building shell) of the manufacturing building.
7. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, "Stack SVY L1/L2" dated October 25, 2022, on file with the Department of Planning, Building and Code Enforcement ("Approved Plans"), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
8. **Planned Development District Effectuated.** This Planned Development Permit effectuates the portion of the Planned Development Zoning as reflected in the Permit's Approved Plan Set and the corresponding legal description.
9. **Demolition Permit.** A demolition permit may be issued for the demolition two buildings totaling approximately 135,000 square feet only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
10. **Transportation Demand Management Plan.** The project is required to implement the TDM Measures included in the TDM Plan prepared by Hexagon Transportation

Consultants, Inc, dated October 20, 2022 for the 32% vehicle parking reduction, for the life of the project.

- a. Provide code required number of bicycle parking spaces.
- b. Implement a Transit Use Incentive Program.
- c. Implement a Telecommuting and Flexible Work Schedule.
- d. Provide on-site showers and lockers

**11. Common Interest Owner's Association.** Prior to approval of a Final Map by the Department of Public Works, a Common Interest Owner's Association shall be established for maintenance of all common areas, including but not limited to, private streets, pedestrian walkways, easements, landscaping, and landscaping in the public right-of-way that is not already in a maintenance district. The permittee shall provide to the Owner's Association a copy of the Vesting Tentative Map Permit, the accompanying Plan Set, any approved Amendments or Adjustments to the associated Planned Development Permit (File No. PD22-001), and a complete set of approved building and all improvement plans within 30 days of completion of each construction phase.

**12. Common Interest Development.**

- a. The permittee, at its sole cost, shall prepare, submit for prior review and approval by the city, and record concurrently with the applicable parcel or final map, governing documents for the common interest development that include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms, including enforcement by the city, to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development and that such common area shall be retained for the use of all owners within the development. Prior to approval of the parcel or final map by the city, the permittee shall submit the governing documents to the city for review for compliance with the requirements of this chapter.
- b. The permittee shall, at its sole cost, prepare grant deeds for all mutual or reciprocal easement rights, which shall be reviewed by the city for compliance with the terms of this chapter and the requirements of Title 19 of this Code, and shall upon city approval be recorded concurrently with the approved parcel or final map.

**13. Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

**14. Timing of Tree Removals.** Trees that are to be removed to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.

**15. Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan

Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the Permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

16. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
17. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
18. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
19. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping.
20. **Replacement Landscaping.** All landscaping removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
21. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension

is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

22. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
23. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
24. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
25. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
26. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
27. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
28. **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.
29. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
30. **Building and Property Maintenance.** The property shall be maintained 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.
31. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
32. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
33. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the

mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

**34. Construction Disturbance Coordinator.** Rules and regulations pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.

**35. Fence Standards.** Fences shall be erected in accordance with the standards established on the Approved Plans. Changes to the approved fencing shall comply with Section 17.24 of the City of San José Municipal Code.

**36. 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. [REDACTED].

**37. Standard Environmental Permit Conditions.**

a. **Construction Related Air Quality.** The following measures shall be implemented during all phases of construction to control dust emissions.

- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
- ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet-~~power~~ vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. All vehicle speeds on unpaved roads shall be limited to 15 mph
- viii. Replant vegetation in disturbed areas as quickly as possible.
- ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- x. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- xi. Maintain and properly tune construction equipment 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.



- xii. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

**b. Biological Resources**

- i. **Santa Clara Valley Habitat Plan.** The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The permittee shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement or the Director’s designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.
- ii. **Tree Replacement.** The trees removed for the project shall be replaced at ratios required by the City, as stated in the table below, as amended:

<b>Table: Tree Replacement Ratios</b>				
<b>Circumference of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
38 inches or more	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon
<p>x:x = tree replacement to tree loss ratio                      Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.                      A 38-inch tree equals 12.1 inches in diameter.                      A 24-inch box replacement tree = two 15-gallon replacement trees</p>				

- (i) 156 trees onsite will be removed, 12 trees will be replaced at a 1:1 ratio, 40 trees will be replaced at a 2:1 ratio, 3 trees will be replaced at a 3:1 ratio, 91 trees will be replaced at a 4:1 ratio, and the remaining 10 trees will be replaced at a 5:1 ratio. The total number and size of replacement trees required to be planted on site is 515 (15-gallon) trees or 258 (24-inch box)

trees. Based on the landscape plan provided, a total of 47 (24-inch box) trees are to be planted on site (equal to 94 15-gallon trees). Prior to the issuance of Grading or Building Permits, whichever comes first, the Permittee shall be required to pay the Off-Site Tree Replacement Fee to the City for 421 trees that could not be planted on-site because of insufficient area.

- (ii) Prior to the issuance of building permit(s), the permittee shall pay Off-Site Tree Replacement Fee(s) to the City for ## off-site replacement trees in accordance with the City Council approved Fee Resolution in effect at the time of payment.
- (iii) If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment
  - (a) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site
  - (b) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

**c. Cultural Resources**

- i. **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee, the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

- ii. **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
  - (i) The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
  - (ii) The MLD identified fails to make a recommendation; or
  - (iii) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

d. **Greenhouse Gas Emissions/Energy**

- i. **Proof of Enrollment in SJCE.** Prior to issuance of any Certificate of Occupancy for the project, the occupant shall provide to the Director of the Department of Planning, Building, and Code Enforcement or the Director's designee, proof of enrollment in the San Jose Community Energy (SJCE) GreenSource program (approximately 60% renewable energy) or TotalGreen program (approximately 100% renewable energy) assumed in the approved environmental clearance for the project in accordance with CEQA. If it is determined the project's environmental clearance requires enrollment in the TotalGreen program, neither the occupant, nor any future occupant, may opt out of the TotalGreen program.

e. **Geology and Soils**

- i. **Seismic Hazards**
  - (i) All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.

- (ii) Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
  - (iii) Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
  - (iv) The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
  - (v) If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.
- f. **Paleontological Resources.** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building and Code Enforcement or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of PBCE or the Director's designee.
- g. **Hazards and Hazardous Materials**
- i. **Asbestos and Lead-Based Paint**
    - (i) In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
    - (ii) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
    - (iii) All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance

with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.

- (iv) 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.
- (v) Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

#### **h. Hydrology and Water Quality**

##### **i. Construction Related Water Quality**

- (i) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- (ii) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- (iii) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- (iv) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- (v) All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- (vi) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- (vii) Vegetation in disturbed areas shall be replanted as quickly as possible.
- (viii) All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- (ix) The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

##### **i. Noise**

- i. Construction Related Noise.** Noise minimization measures include, but are not limited to, the following:

- (i) Pile Driving is prohibited.
- (ii) Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation

plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.

- (iii) Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- (iv) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- (v) Prohibit unnecessary idling of internal combustion engines.
- (vi) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- (vii) Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- (viii) Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- (ix) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
- (x) If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- (xi) Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

**38. Housing:** This development is subject to the City’s Commercial Linkage Fee (CLF) and each of the conditions below:

- a. Permittee must strictly comply with each requirement of the approved CLF Satisfaction Plan Application (Plan), Processing Fee, and Agreement, and any other applicable requirements of the CLF.
- b. No building permit may be issued until an Agreement is recorded against the property. No building permit may be issued except consistent with the requirements of the CLF and the Plan to fulfill the CLF obligations.
- c. No scheduling of the final building inspection will occur until all requirements of the Commercial Linkage Fee Ordinance and Guidelines are met.

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

- a. *Construction Plans.* This permit File No. PD22-001 shall be printed on all construction plans submitted to the Building Division.
- b. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
- c. *San Jose's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit [www.sjenvironment.org/reachcode](http://www.sjenvironment.org/reachcode).
- d. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- e. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- f. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street
- g. *Other.* Such other requirements as may be specified by the Chief Building Official.

**40. Bureau of Fire Department Clearance for Issuing Permits:** Prior to the issuance of any Building Permit, the project must comply with the California Fire Code as adopted or updated by the City.

**41. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Final Subdivision Map by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Subdivider will be required to have satisfied all of the following Public Works conditions. The Subdivider 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/devresources>.

- 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. **Covenant of Easement.** Prior to recordation of the final subdivision map, the Owner shall create and record an easement in favor of the City of San Jose on the Subject Property in a form approved by the City Attorney and in accordance with Part 1 of San Jose Municipal Code Chapter 20.110 (commencing with Section 20.110.010) for the purposes listed in Section 20.110.030.
- c. **Covenants, Conditions and Restrictions (CC&Rs).** Prior to the recordation of the final subdivision map, the Owner shall record CC&Rs in accordance with Chapter 20.75 of the Zoning Ordinance, that provide that each commercial condominium unit owner is granted, as appurtenant to their unit, and undivided interest in the common areas. This would ensure that each common interest development has sufficient retention of common areas for use by all owners. The CC&Rs shall include provisions for ingress, egress, parking, emergency access, utilities, open space, landscaping, storm water treatment facilities, and any other easement necessary for the condominium project to work as a unified whole and provide each unit owner with necessary infrastructure and services, and a mechanism for funding of maintenance and replacement thereof. The CC&Rs shall be timely provided to the City for review prior to recordation.
- d. **Transportation:** A Transportation Analysis has been performed for this project. We conclude that, with the following conditions, the subject project will be in conformance with the City of San Jose Transportation Policy (Council Policy 5-1) and a determination for less than significant impacts can be made with respect to transportation impacts. See separate Transportation Analysis Memo dated 3/30/23 for additional information.
- e. **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 latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
  - iii. If the project will 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 report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. 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.
  - f. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
  - g. **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 for 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.
  - h. **Flood: Zone AO, Depth 1':**
    - i. Elevate the lowest floor to 1 foot or more above the existing highest adjacent grade to the proposed structure or floodproof to the same elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
    - ii. An Elevation Certificate (FEMA Form 086-0-33) for each proposed structure, based on construction drawings, is required prior to issuance of a building

- permit. Consequently, an Elevation Certificate for each built structure, based on finished construction is required prior to issuance of an occupancy permit.
- iii. If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 086-0-34) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
  - iv. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the depth of flooding or protected from flood damage.
  - v. Construction materials used below the depth of flooding must be resistant to flood damage.
- i. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
  - j. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for all frontage(s) adjacent to Trade Zone Boulevard prior to issuance of a Public Works Clearance. Percentage of the base fee in place at the time of payment will be due. Currently, the 2022 base fee is \$574 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
  - k. **Street Improvements:**
    - i. Trade Zone Boulevard/Ringwood Avenue intersection: Construct a complete streets protected intersection design, with a Class IV protected bikeway and a raised crosswalk at the southeast and southwest corners at Trade Zone Boulevard/Ringwood Avenue.
    - ii. Trade Zone Boulevard:
      - (i) Construct a raised median island per City standards along the Trade Zone Blvd project frontage.
      - (ii) Construct an on-street Class IV protected bikelane along the Trade Zone Boulevard project frontage that includes a 5-foot wide raised concrete island and 7-foot wide bike lane.
      - (iii) Reconstruct VTA Standard bus stop. Actual dimensions to be coordinated with City and VTA during implementation.
      - (iv) Construct 15-foot wide detached sidewalk with curb, gutter, 7-foot wide parkstrip, and 8-foot wide sidewalk along Trade Zone Boulevard frontage per City standards.
      - (v) Construct 32-foot wide driveway per City standards at the proposed ingress/egress location along Trade Zone Boulevard.

- (vi) Construct 26-foot wide driveway per City standards at the easternmost proposed ingress/egress location along Trade Zone Boulevard.
- (vii) Provide 3-inch diameter communications conduit along Trade Zone Boulevard.
- iii. Ringwood Avenue:
  - (i) Construct 10-foot wide detached sidewalk with parkstrip per City standards along the Ringwood Avenue frontage.
  - (ii) Construct 32-foot wide driveway per City standards at the proposed ingress/egress locations along the Ringwood Avenue.
  - (iii) Per the City Standard Details, revise depiction of driveway widths to exclude flares
  - (iv) Provide contribution for future implementation of a Class IV protected bike lane along the Ringwood Avenue frontage per the City's Better Bike Plan 2025. Fair share contribution estimated at \$121 per linear foot of total project frontage.
- iv. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
- v. Repair, overlay, or reconstruction of asphalt pavement up to half street along Fortune Drive frontage may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans
- vi. Close unused driveway cuts.
- vii. Street dedication required to cover the extent of all public improvements.
- viii. Dedication and improvements of the public streets shall be to the satisfaction of the Director of Public Works.
- ix. Coordination with Milpitas may be required for any signal modifications at the Trade Zone Blvd/Ringwood Ave intersection.
- l. **Sanitary:** The project is required to submit a sanitary sewer plan with pipe slopes, surface elevations, and invert elevations.
- m. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- n. **Street Trees:**
  - i. 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”. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.

ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are to be removed.

o. **Referrals:** This project should be referred to the City of Milpitas and the VTA.

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

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

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

**EFFECTIVE DATE**

The effective date of this Planned Development Permit shall be the same as effective date of the Rezoning Ordinance for File No. PDC22-001 passed for publication on [REDACTED], 2023 (the “Zoning Ordinance”) and shall be no earlier than the effective date of said Rezoning Ordinance.

//  
  
//  
  
//  
  
//  
  
//  
  
//

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
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.*

EXHIBIT "A"  
VESTING PARCEL MAP T22-002  
LEGAL DESCRIPTION  
FOR PLANNING PURPOSES ONLY

**PARCEL 1**

PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP", IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, FILED FOR RECORD ON SEPTEMBER 10, 1981 IN BOOK 489 OF MAPS, AT PAGE 43, TOGETHER WITH PARCEL 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP", IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, FILED FOR RECORD ON JULY 28, 1983 IN BOOK 515 OF MAPS, AT PAGE 24, BOTH IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHEAST CORNER OF SAID PARCEL 2, SAID CORNER BEING ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF TRADE ZONE BOULEVARD, A 53.00 FOOT WIDE HALF-STREET; THENCE LEAVING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE AND ALONG THE EASTERLY LINE OF SAID PARCEL 2 THE FOLLOWING THREE (3) COURSES:

- 1.) SOUTH 03°23'21" EAST 349.77 FEET;
- 2.) THENCE SOUTH 86°36'39" WEST 358.42 FEET;
- 3.) THENCE SOUTH 03°23'21" EAST 31.40 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 2, SAID CORNER ALSO BEING A POINT ON THE NORTHERLY LINE OF SAID PARCEL B;

THENCE ALONG SAID NORTHERLY LINE NORTH 86°36'39" EAST 17.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL B;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL B SOUTH 03°23'21" EAST 462.07 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL B, SAID CORNER BEING A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF FORTUNE DRIVE, A 40.00 FOOT WIDE HALF-STREET;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B AND SAID NORTHERLY RIGHT-OF-WAY LINE, SOUTH 86°36'39" WEST 347.03 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL B;

THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE AND ALONG THE WESTERLY LINE OF SAID PARCEL B AND SAID PARCEL 2 THE FOLLOWING THREE (3) COURSES:

- 1.) NORTH 03°23'21" WEST 634.02 FEET;
- 2.) THENCE SOUTH 86°36'39" WEST 30.00 FEET;
- 3.) THENCE NORTH 03°23'21" WEST 13.04 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 2, SAID CORNER BEING A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF RINGWOOD AVENUE, A 40.00 FEET WIDE HALF-STREET, SAID RIGHT-OF-WAY LINE ALSO BEING A POINT ON A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, AND HAVING A RADIUS OF 540.00 FEET, A RADIAL LINE TO SAID CURVE HAVING A BEARING OF NORTH 43°57'16" WEST;

EXHIBIT "A"  
VESTING PARCEL MAP T22-002  
LEGAL DESCRIPTION  
FOR PLANNING PURPOSES ONLY

THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL B AND SAID SOUTHEASTERLY RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) COURSES:

- 1.) NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 31°26'35", AN ARC DISTANCE OF 296.34 FEET TO A REVERSE CURVE, CONCAVE SOUTHEASTERLY, AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE TO SAID CURVE THAT BEARS NORTH 75°23'51" EAST;
- 2.) THENCE NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 81°13'12", AN ARC DISTANCE OF 70.88 FEET TO A POINT OF TANGENCY WITH THE NORTHEASTERLY LINE OF SAID PARCEL 2, SAID NORTHEASTERLY LINE ALSO BEING THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID TRADE ZONE BOULEVARD;

THENCE ALONG SOUTH NORTHEASTERLY LINE AND SAID SOUTHWESTERLY RIGHT-OF-WAY LINE SOUTH 84°10'39" EAST 507.00 FEET TO THE **POINT OF BEGINNING**.

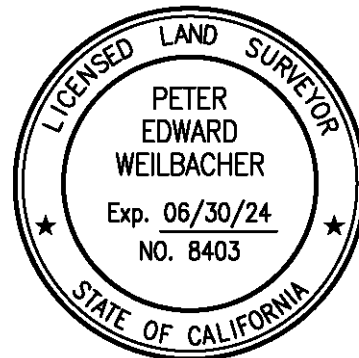
THE ABOVE-DESCRIBED PARCEL CONTAINS 9.78 ACRES, MORE OR LESS.

AS SHOWN ON THE ATTACHED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, RIGHTS, RIGHTS-OF-WAY, AND OTHER MATTERS OF RECORD, IF ANY.

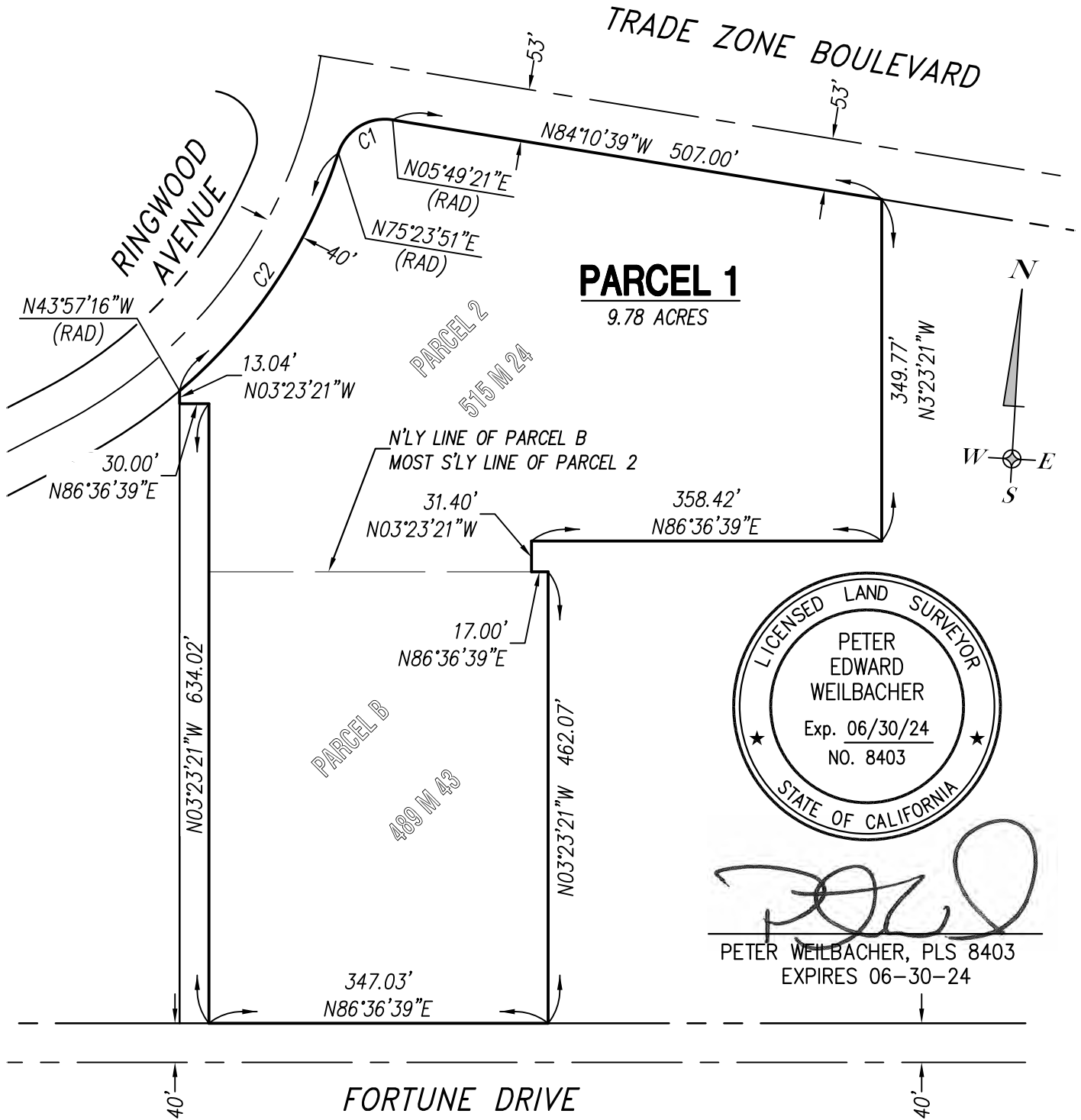
PREPARED BY ME OR UNDER MY DIRECTION  
ON APRIL 5, 2023.

  
\_\_\_\_\_  
PETER E. WEILBACHER, PLS 8403



# EXHIBIT "B"

## PROPOSED PARCEL EXHIBIT



### NOTES

SEE SHEET 2 FOR CURVE TABLE, LEGEND, AND BASIS OF BEARINGS STATEMENT.

FOR PLANNING PURPOSES ONLY

DATE: 04/05/2023



**PBLA SURVEYING, INC.**  
 Planning • Engineering • Surveying  
 981 CORPORATE CENTER DR., STE 168  
 POMONA, CALIF. 91768  
 (888) 714-9642 PH • (714) 389-9191 FAX



# EXHIBIT "B"

## PROPOSED PARCEL EXHIBIT

<i>CURVE TABLE</i>			
<i>CURVE</i>	<i>RADIUS</i>	<i>LENGTH</i>	<i>DELTA</i>
<i>C1</i>	<i>50.00'</i>	<i>70.88'</i>	<i>081°13'12"</i>
<i>C2</i>	<i>540.00'</i>	<i>296.34'</i>	<i>031°26'35"</i>

### BASIS OF BEARINGS

THE BEARING NORTH 86°36'29" EAST, BEING THE CENTERLINE OF FORTUNE AVENUE, AS SHOWN ON THAT CERTAIN PARCEL MAP, RECORDED IN BOOK 916 OF MAPS AT PAGE 43, SANTA CLARA COUNTY RECORDS, AND AS FOUND MONUMENTED, WAS TAKEN AS BASIS OF BEARINGS FOR THIS MAP.

### LEGEND

- DISTINCTIVE BOUNDARY LINE
- RIGHT OF WAY
- EXISTING PROPERTY LINE
- HISTORIC LOT LINE
- CENTERLINE

FOR PLANNING PURPOSES ONLY

DATE: 04/05/2023



**PBLA SURVEYING, INC.**  
 Planning • Engineering • Surveying  
 981 CORPORATE CENTER DR., STE 168  
 POMONA, CALIF. 91768  
 (888) 714-9642 PH • (714) 389-9191 FAX