

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE REMOVAL OF TWO ORDINANCE-SIZE TREES AND THE CONSTRUCTION OF FOUR MULTIFAMILY RESIDENTIAL BUILDINGS CONSISTING OF 14 RESIDENTIAL UNITS WITH STATE DENSITY BONUS CONCESSIONS FOR A REDUCTION IN THE SIDE SETBACK AND SETBACK TO THE PUBLIC RIGHT-OF-WAY, AND A WAIVER FOR A REDUCTION IN PRIVATE OPEN SPACE ON AN APPROXIMATELY 0.86-GROSS ACRE SITE, LOCATED ON THE WEST SIDE OF SOUTH JACKSON AVENUE BETWEEN WOODSET LANE AND PORTICO COURT (101 SOUTH JACKSON STREET) (APN: 481-22-067)**

**FILE NO. H19-031**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on July 11, 2019, a concurrent application (File No. H19-031) was filed by the property owner, Habitat for Humanity East Bay/Silicon Valley, with the City of San José for a Site Development Permit to allow the removal of two ordinance-size trees and the construction of four multifamily residential buildings consisting of 14 residential units with State Density Bonus concessions for a reduction in the side setback and setback to the public right-of-way, and a waiver for a reduction in private open space on an approximately 0.86-gross acre site, on that certain real property situated in the MUN Mixed Use Neighborhood Zoning District and located on the west side of South Jackson Avenue between Woodset Lane and Portico Court (101 South Jackson Avenue, San José, which real property is sometimes referred to herein as the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” 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 June 22, 2022, 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, "File No. H19-031 101 South Jackson Avenue San Jose, CA" dated November 29, 2021, 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 0.86-gross acre site is located on the west side of South Jackson Avenue between Woodset Lane to the north and Portico Court to the south. The project site is bounded by a middle school (Rocketship Fuerza Community Prep) across South Jackson Avenue to the east, single-family residences to the south and west, and a church (Cosmopolitan Evangelical Church) to the north. The site is currently a flat, vacant lot with two ordinance-size trees.
- 2. Project Description.** The project consists of the development of 14 townhomes configured in four buildings on an approximately 0.86-gross acre vacant site. The project includes the construction of a 100% affordable housing project. The applicant would provide two low-income units (households earning less than 80% AMI) and 12 moderate-income units (households earning less than 120% AMI). All of the units would be covered by a deed restriction recorded against the property, which has already been completed and recorded in connection with the site acquisition funds the City of San Jose provided to Habitat for Humanity in September 2020. As the project is providing 100% of the units at low-income levels, the project is eligible for the provisions of the State Density Bonus Law pursuant to Government Code Section 65915(b)(1)(A).

The project includes concessions for the reduction of the side setback, reduction in the setback from the public right-of-way, a reduction in parking (pursuant to Section 20.190.060 of the Zoning Code), and a waiver for the reduction of required private open space. See the Density Bonus Discussion below for more analysis. As conditioned in this Site Development Permit, prior to the issuance of building or grading permits, whichever comes first, the applicant would be required to record a Regulatory Agreement with the City of San José.

In addition, a 52-foot-wide public street connecting the north and south segments of Woodset Lane and would include 9-foot-wide sidewalks on either side of the newly dedicated street is to be constructed. Building A, consisting of two units, would be accessible from two driveways along the west side of Woodset Drive. Building B would

be accessible from a single driveway along the east side of Woodset Drive. Buildings C and D would be accessible from a single driveway along South Jackson Avenue.

Pursuant to Section 20.190.060 of the Zoning Code, a parking ratio of 0.5 spaces per bedroom may be applied as the project provides at least 20% of the units for lower income households, and is within ½ mile of a major transit stop (Alum Rock and Jackson 522 BRT Station). A total of 22 spaces would be required. A total of 26 surface parking spaces would be provided on site and would be accessible via private driveways. The associated Vesting Tentative Map includes easements to allow ingress/egress and emergency vehicle access throughout the site.

The project includes an associated Vesting Tentative Map (File No. T19-028) to subdivide one lot into 16 lots. Two of the lots would be for common areas and would include parking, landscaping, and a trash/recycling area. The remaining 14 lots would be residential lots ranging from 787 square feet to 1,574 square feet.

- 3. General Plan Conformance.** The site is designated Residential Neighborhood on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas which comprise the majority of its developed land. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern. New infill development should improve and/ or enhance existing neighborhood conditions by completing the existing neighborhood pattern and bringing infill properties into general conformance with the quality and character of the surrounding neighborhood. New infill development should be integrated into the existing neighborhood pattern, continuing and, where applicable, extending or completing the existing street network. The average lot size, orientation, and form of new structures for any new infill development must therefore generally match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project.

For infill projects where 50% or more of the development on the same block (both sides of the street) is developed at a density greater than 8 dwelling units per acre (DU/AC), new development can match the prevailing density. For any new project to exceed 8 DU/AC, it is necessary that: (1) other policies in this Plan are met, (2) applicable design guidelines are met, and (3) development does not exceed 16 DU/AC. For example, on a site bordered by development with a prevailing average density of 12 DU/AC, new development should include the number of units that would most closely match this density, provided that it would also meet the applicable design guidelines and other Envision General Plan policies.

*Analysis: The Residential Neighborhood Land Use Designation allows a residential*

*density of up 8 DU/AC or up to 16 DU/AC if the project matches the prevailing density of the surrounding neighborhood. However, the project includes an application for and qualifies under the State Density Bonus Law, which would allow the construction of up to 18 units on site or a residential density of approximately 20.9 DU/AC. The project proposes a residential density of approximately 16.27 DU/AC. Therefore, the construction of 14 units on site would conform with the land use designation of Residential Neighborhood with the implementation of the State Density Bonus Law.*

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

Implementation Policy IP-1.8: Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics that require special consideration due to those constraints.

Implementation Policy IP-8.2: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use / Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed use and open space. The various ranges of allowed use and development intensity correspond generally to the respective Envision General Plan land use designations, while providing greater detail as to the appropriate land uses and form of development.

*Analysis: The project included a Conventional Rezoning from the R-1-8 Single-Family Residence Zoning District to the MUN Mixed Use Neighborhood Zoning District. While the R-1-8 Single-Family Residence Zoning District and General Plan land use designation aligned (Residential Neighborhood), the R-1-8 Zoning District did not support multifamily (townhouse development) at more than 16 dwelling units per acre. However, the project includes an application under the State Density Bonus Law, which would allow the construction of the project at the density proposed (16.27 DU/AC). Therefore, a Conventional Rezoning to the MUN Mixed Use Neighborhood was included in the application. The MUN Mixed Use Neighborhood Zoning District allows the development of the project at the allowable density under the Residential Neighborhood land use designation.*

Housing Policy H-1.2: Facilitate the provision of housing sites and structures across location, type, price and status as rental or ownership that respond to the needs of all economic and demographic segments of the community including seniors, families, the homeless and individuals with special needs.

Housing Policy H-2.1: Facilitate the production of extremely low-, very low-, low-, and moderate income housing by maximizing use of appropriate policies and financial

resources at the federal, state, and local levels; and various other programs.

Housing Policy H-2.4: Allow affordable residential development at densities beyond the maximum density allowed under an existing Land Use/Transportation Diagram designation, consistent with the minimum requirements of the State Density Bonus Law (Government Code Section 65915) and local ordinances.

*Analysis: The project includes the construction of a 100% affordable housing project. The applicant would provide two low-income units (households earning less than 80% AMI) and 12 moderate-income units (households earning less than 120% AMI). All of the units would be covered by a deed restriction recorded against the property. As discussed below, the project would utilize the State Density Bonus Law to allow for the construction of the affordable project at the density proposed.*

#### **4. California State Density Bonus Law (Government Code Section 65915)**

The project consists of the construction of 14 townhomes configured in four buildings on an approximately 0.86-gross acre vacant site. The project includes the construction of a 100% affordable housing project. The applicant would provide low-income units (households earning less than 80% AMI) and 12 moderate-income units (households earning less than 120% AMI). All of the units would be covered by a deed restriction recorded against the property, which has already been completed and recorded in connection with the site acquisition funds the City of San Jose provided to Habitat for Humanity in September 2020. As the project is providing 100% of the units at low-income levels, the project the project is eligible for the provisions of the State Density Bonus Law pursuant to Government Code Section 65915(b)(1)(A).

The Residential Neighborhood Land Use Designation allows up to 16 DU/AC if 50% or more of the development on the same block (both sides of the street) is developed at a density greater than 8 DU/AC. The surrounding neighborhood as a residential density of approximately 13 DU/AC, which would allow for the development of up to 10 units. With the level of affordability (100% low-income), the project is eligible for a Density Bonus of up to 80% or 18 total units. However, the applicant is only pursuing an approximate 42% density bonus or 4 units. In accordance with the State Density Bonus Law, the project has requested a parking reduction, and one waiver as follows:

##### Incentives/Concessions:

- Reduction of Side Yard Setback from 10 feet to 6 feet (Lot 1 only)
- Reduction of Setback to Public Right-of-Way from 10 feet to 5 feet (Lots 1 and 2 only)

*Analysis: Because of the need to connect the current terminus of both Woodset Drive and Woodset Court public streets across the project site, this limits the developable area of the property. The site plan, as designed, shows two units on the western portion of the property (Units 1 and 2). Only these two units require the granting of concessions to setback requirements – Units 3 to 14 meet all required setbacks.*

*For Lots 1 and 2, if the typical MUN side yard and right of way setbacks were required, the building footprint for the two units would need to be reduced 4 feet on one side and by 5 feet along the length of the building's frontage. This would reduce the building footprint so that the three-bedroom and four-bedroom units could not be accommodated, and instead replaced by two-bedroom units. This would remove one of the accessible units from the project (Unit 2) and reduce the number of people being served by this affordable neighborhood (smaller units = smaller households). Alternatively, if a unit layout were to be designed that could meet the setback requirements, an additional story would need to be added to the building to achieve the same unit sizes (3-bedroom and 4-bedroom units) and similar square footage. Adding a third story to the units would increase the structural and framing costs for the building and could also impact the design of the foundation. Costs would include both hard costs such as material and labor expenses involved in the construction of three-story units (that are not being used elsewhere and out of context with the neighborhood) as well as soft costs including architectural and engineering consultant time and materials to create new floor plans and unit layouts. The consultant costs would be incurred at the entitlement stage (new drawings and designs for the Planning submittal) and also at the Building Permit stage (additional construction drawings for another unit type being utilized in the project). New structural assessments would need to be completed as well. A conservative estimate of these additional project costs would be \$40,000 for technical consultant time and materials as well as labor and material costs associated with a three-story building.*

#### Parking Reduction

- Reduction in Code Required Parking Spaces (Section 20.190.060 of the San Jose Municipal Zoning Code)

*Analysis: Pursuant to Section 20.190.060 of the Zoning Code, a parking ratio of 0.5 space per bedroom may be applied as the project provides at least 20% of the units for lower income households, and is within ½ mile of a major transit stop (Alum Rock and Jackson 522 BRT Station). A total of 22 spaces would be required. A total of 26 surface parking spaces would be provided on site.*

#### Waiver:

- Reduction in required private open space (170 square feet) per unit (Section 20.55.104 of the San Jose Municipal Zoning Code)

*Analysis: With the incentives/concessions granted in accordance with State Density Bonus Law, the private open space areas for each of the units are 10 to 11 feet deep and range, based on the width of the townhouse unit/lot, from 176 square feet to 282 square feet. In order to provide 300 square feet of private open space for each unit, the depth of the private open space areas would need to increase (by 7.75 additional feet for the narrowest townhome unit). If the depth of the private open space area needed to increase, this would have physical*

*implications on the layout of the rest of the site – resulting in the provision of fewer housing units, encroachment into parking and circulation areas, reduced number of parking spaces, and modifications to the common open space amenities that are currently designed to be equally accessible to all residents. The total amount of private open space required for 14 units at 300 square feet per unit is 4,200 square feet. The project has a total of 3,088 square feet of private open space plus common open space areas shared by all residents. This is 1,112 square feet less than the minimum standard. In order to provide this additional private open space square footage, at least one housing unit would need to be removed from the project, thus physically precluding the development of the project at the density allowed with the requested incentives.*

As conditioned in this Site Development Permit, prior to the issuance of Building Permits, the applicant would be required to record a Regulatory Agreement with the City of San José.

## 5. Zoning Ordinance Compliance.

### Land Use

The project was rezoned from the R-1-8 Single-Family Residence Zoning District to the MUN Mixed Use Neighborhood Zoning District to allow for the project development to proceed at the allowable density under the State Density Bonus Law. The MUN Mixed Use Neighborhood Zoning District allows for the construction of multifamily developments as a permitted use with the issuance of a Site Development Permit.

### Development Standards

The table below highlights the project’s conformance with the applicable development standards as outlined in Table 20-137 of Section 20.55.104 of the Zoning Code. As the project proposes townhouses, the “Alternate Setback Regulations” of the MUN Zoning District apply to the project.

**Table 20-137 Mixed Use Neighborhood Development Standards (Alternate Setback Regulations)**

Development Standard	Required	Proposed
Minimum Lot Area	No Minimum (Entire project must be covered by a single development permit. Cannot exceed 30 DU/AC)	787 sf
Lot Frontage Requirements to Public Right-of-Way	None required, provided all lots have access from a public right-of-way provided by easement	Access provided from Woodset Drive and Private Street with easement
Residential Density (DU/AC)	Maximum 30 DU/AC	16.21 DU/AC
Setback to Public Right-of-Way	Minimum 10 feet	5 feet (see Density Bonus



		discussion above)
Setback to property line within project boundary covered by same development permit	No side setback required, subject to compliance with Building and Fire Codes	None
Setback to property line of property not covered by same development permit	Minimum 5 feet side setback for development up to 2.5 stories	5 feet
	Minimum 10 feet side setback for properties adjacent to property designated as Residential Neighborhood	6 feet (Lot 1 only – see Density Bonus discussion above)
Maximum Height (Townhouse/Rowhouse)	40 feet	25 feet, 9 inches
Maximum Number of Stories	3 stories	2 stories
Private Open Space Requirement	300 sf	170 sf (see Density Bonus discussion above)

As shown above, the project conforms with the development standards of the MUN Mixed Use Neighborhood Zoning District, with the exception of the two concessions and one waiver requested pursuant to the State Density Bonus Law.

Parking

As discussed in the State Density Bonus Law Section, above, and shown in the table below, the project has requested a parking reduction in accordance with Section 20.190.060 of the Zoning Code.

**Vehicle Parking – Table 20-290**

Number of Units	Parking Ratio
14	0.5 space per bedroom
Total Parking Required	22 spaces
<b>Total Parking Provided</b>	<b>26 spaces</b>

Pursuant to Section 20.190.060 of the Zoning Code, a parking ratio of 0.5 space per bedroom may be applied as the project provides at least 20% of the units for lower income households, and is within ½ mile of a major transit stop (Alum Rock and Jackson 522 BRT Station). A total of 22 spaces would be required. A total of 26 surface parking spaces would be provided on site.

Additionally, the project would be required to provide 4 bicycle parking spaces in

accordance with Chapter 20.90 of the Zoning Code. A total of 14 bicycle parking spaces would be provided.

Noise

Pursuant to Section 20.55.202 of the Zoning Code, there are no maximum noise thresholds for properties in the MUN Zoning District. The project includes standard permit conditions to reduce construction noise impacts to surrounding uses. Permit conditions include construction of solid plywood fences around the ground level construction site, equipping all internal combustion engine-driven equipment with intake and exhaust mufflers, locating stationary noise-generating equipment as far away from sensitive noise receptors as possible, utilizing quiet air compressors, notifying all adjacent businesses and residences of the construction schedule in writing, and appointing a construction disturbance coordinator who would be responsible for responding to any noise complaints. Additionally, the project is within 500 feet of a residence. Pursuant to Section 20.100.450 of the Zoning Code, construction hours are limited to 7:00 am to 7:00 pm Monday through Friday.

Tree Removals

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

Tree Replacement Ratios				
Circumference of Tree to be Removed <sup>1</sup>	Type of Tree to be Removed <sup>2</sup>			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more <sup>3</sup>	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  
 Single Family and Two-dwelling properties may replace trees at a ratio of 1:1.

The project includes the removal of two ordinance-size trees. The trees to be removed are located within the proposed project building footprint. The trees to be removed are one palm (75 inches in circumference) and one oak (101 inches in circumference). The removal of the two trees requires the replacement of eight (15-gallon) or four (24-inch box) trees on site. The project includes the planting of 15 trees on site. The trees to be

planted include six Coast live oak, five Chinese pistache, and five Shumared red oak trees. All trees to be planted would be 24-inch box size.

## 6. Residential Design Guidelines

The project application was submitted to the Department of Planning, Building and Code Enforcement in July 2019, prior to the adoption of the Citywide Design Standards and Guidelines in March 2021. Therefore, the project was reviewed for consistency with the Residential Design Guidelines, which were approved by City Council in February 1997 and are applicable to all residential project submitted prior to March 2021. The project is consistent with the following provisions of Residential Design Guidelines for townhouse projects.

- Street Frontage
  - Building Orientation – The major orientation of buildings nearest the street should be parallel to that street or to the prevailing pattern of existing property lines. This guideline is not intended to limit either the inclusion of architectural elements, articulation, or embellishments that may not align with the street or the inclusion in large projects of minor buildings that do not align with the street.

*Analysis: The project would continue the pattern of building orientation based on the surrounding development. The buildings with frontage on Woodset Drive would face the street and would continue the pattern of building orientation with the existing residences to the north, south, and west. The buildings at the eastern portion of the site would continue the orientation of the existing residences to the south. The street facing unit at the eastern end of the project site would be oriented towards Woodset Drive and would have the primary entrance facing the street.*

- Building Design
  - At least one architectural projection per unit. Such a projection must project no less than 2 feet 6 inches from the major wall plane, must be between 4 feet 6 inches and 15 feet wide, and must extend the full height of a one-story building, at least one-half the height of a two-story building.
  - A change in wall plane of at least 3 feet for at least 12 feet every 2 units.
  - Both vertical and horizontal articulation is encouraged for sloped roofs. Rooflines should be representative of the units under them and no more than two units should be covered by a single, unarticulated roof. Roof articulation may be achieved by changes in plane of no less than 2 feet 6 inches and/or the use of traditional roof forms such as gables, hips, and dormers. Hipped or gabled roofs covering the entire mass of a building are preferable to mansard roofs or segments of pitched roof applied at the building's edge.

*Analysis: As shown on the approved project plans, the building facades include variations in plane, window projections, highlighted building entrances, changes in roof plane, and an articulated façade throughout. Building articulation and changes in minor architectural details occur throughout the development so that no two buildings are the same.*

- Perimeters, Walls, and Fences

- Height - Fences and walls should be no more than 7 feet high, except when adjacent to freeways, expressways, railroads, incompatible uses, or when they are required for sound attenuation.

*Analysis: As shown on the landscape plan, the project includes the construction of a 6-foot-high wood fence at the perimeter of the site and between private yards.*

- Landscaping

- Landscaping should be provided by the developer in all setback areas between project walls and/or fences and the rights-of-way of public streets and sidewalks. This landscaping should be generous and should include trees and/or shrubs as well as groundcover. Tall shrubs or vines should be planted to help screen walls and fences and provide protection from graffiti.
- The developer should plant street trees of an approved species and size along all public and private streets. There should be at least one tree for approximately every 25 feet of street frontage, depending on species, or at least one tree for each lot abutting the street. The City's street tree planting standards should be used.

*Analysis: The project includes an extensive landscaping plan. All areas not covered by buildings, walkways, and driveways would be landscaped with a mix of trees, shrubs, and ground cover. The perimeter of the site would be landscaped to screen the development from adjacent uses and streets. The project provides a conceptual street tree planting plan, which would be finalized by the Department of Transportation at the construction stage.*

- Bicycle Parking

- Attached unit projects, which do not include enclosed garages, should provide secure parking facilities (one bicycle space per two units) to encourage the use of bicycles instead of automobiles.

*Analysis: The project would include a secure bicycle locker in the common area as well as bicycle lockers in the rear yards of each unit. In conformance with the Zoning Code, a total of 14 spaces would be provided.*

- Trash Enclosures should be:

- Adequately sized for recycling bins (newspaper, glass, aluminum cans, compostable material, etc.) in addition to appropriately sized garbage bins.
- Located away from existing adjacent residences and new unit entries and windows.
- Convenient to dwelling units.
- Designed to provide screening of storage containers inside the enclosure.
- Designed with pedestrian access that doesn't require the opening of gates.
- Designed to foster personal security.
- Located for convenient access by garbage trucks.

*Analysis: The project includes the construction of a trash enclosure at the central portion of the site. The enclosure would be approximately 19 feet by 11 feet and would include adequate space for both recycling and trash bins. The enclosure would be fully covered to avoid any nuisance effects to the residences and would connect to the storm drain, as required by the Environmental Services Division. The enclosure would be located away from both the proposed residences and screened from the existing residences to the south. The enclosure would be conveniently accessible to the future residents via the primary walkway through the site. The enclosure would be accessible to garbage trucks from the primary driveway serving the site.*

## **7. City Council Policy 6-30: Public Outreach Policy**

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. An on-site sign has been posted on the project frontage since March 20, 2021. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

## **8. Environmental Review.**

A Mitigated Negative Declaration (MND) supported by an Initial Study was prepared for the 101 South Jackson Avenue Townhomes Project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. Mitigation measures were developed to reduce the following impacts to less than significant levels: exposure of sensitive receptors to toxic air contaminants during construction, and disturbance and/or destruction of nesting migratory birds during construction.

Standard Permit Conditions are also required to ensure no impacts occur during construction and operation of the project. These Standard Permit Conditions include best management practices for construction related air quality impacts, protection of nesting migratory birds, compliance with the Santa Clara Valley Habitat Plan, protection of unknown subsurface cultural resources and human remains, compliance with the California Building Code for seismic safety of the proposed building, erosion

control during construction activities, water quality impacts during construction, and best management practices to control noise during construction.

The MND was circulated for public review and comment from April 15, 2022 through May 5, 2022. One comment letter was received from Pacific Gas and Electric Company (PG&E). PG&E commented that the applicant should contact PG&E prior to ground disturbance to identify any underground utilities on the project site. Identifying underground utilities is standard construction practice and does not change the analysis or the findings of the MND for the project. The MND and supporting Initial Study, technical reports, and comment letter are available on the City's website at [www.sanjoseca.gov/negatedeclarations](http://www.sanjoseca.gov/negatedeclarations).

**9. Site Development Permit Findings:** Section 20.100.630 of the San José Municipal Code specifies the required findings for the approval of a Site Development Permit.

- a. The site development permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies.

*Analysis: The project is consistent with the General Plan land use designation of Residential Neighborhood. The project allows for the construction of 14 units on site (16.27 DU/AC), which would conform with the allowable density of the Residential Neighborhood land use designation with the implementation of the State Density Bonus Law. The project is consistent with General Plan Housing policies regarding the provision of affordable housing and the implementation of the State Density Bonus Law. The project includes the construction of a 100% affordable housing project. The applicant would provide two low-income units (households earning less than 80% AMI) and 12 moderate-income low-income units (households earning less than 120% AMI). All of the units would be covered by a deed restriction recorded against the property. As discussed below, the project would utilize the State Density Bonus Law to allow for the construction of the affordable project at the density proposed.*

- b. The site development permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: As discussed above, the project conforms with all requirements of the MUN Mixed Use Neighborhood Zoning District. With the exception of the concessions and waivers under the State Density Bonus Law, as discussed above, the project conforms with all required setbacks, heights, lot sizes, and parking requirements of the MUN Zoning District.*

- c. The site development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

*Analysis: The project is consistent with City Council Policy 6-30 for Public Outreach. The project hearing was noticed at a radius of 500 feet. An on-site*

*sign has been posted on the project frontage since March 20, 2021.*

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

*Analysis: The 12 units on the eastern end of the property would be oriented in the same manner, facing the private driveway to the south of the site. The two units to the west of Woodset Drive would be oriented towards the street. All of the units would be two stories and would include adequate space for all walkways, driveways, and landscaping. As discussed in the Residential Design Guidelines section above, the buildings would maintain a similar architectural style while providing variation in building plane and minor architectural details.*

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

*Analysis: The project would continue the pattern of building orientation based on the surrounding development. The buildings with frontage on Woodset Drive would face the street and would continue the pattern of building orientation with the existing residences to the north, south, and west. The buildings at the eastern portion of the site would continue the orientation of the existing residences to the south. The street facing unit at the eastern end of the project site would be oriented towards Woodset Drive and would have the primary entrance facing the street. The townhouses would all be two stories, similar to the existing two story residences located directly to the north and south of the subject site.*

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

*Analysis: This Site Development Permit Resolution includes standard environmental permit conditions to reduce construction impacts. The conditions would reduce impacts related to air quality, biological resources, cultural resources, geological resources, hazards and hazardous materials, water quality, and noise. All construction activity would be temporary and would be limited between the hours 7:00 am to 7:00 pm Monday through Friday. The project is also conditioned to appoint a construction disturbance coordinator to respond to any construction related complaints. Therefore, given the implementation of the standard permit conditions, the project would not have an unacceptable negative affect on adjacent properties.*

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

*Analysis: The project includes a detailed landscaping plan which provide details for proposed trees, plants, groundcover, walls, and fences. Landscaping would be provided throughout the site to ensure the new residences are adequately screened from the adjacent residential and public assembly uses. The project also includes a trash enclosure which is located away from the adjacent residences to the south and would conform with the requirements of the Residential Design Guidelines and requirements of the City's Environmental Services Division.*

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

*Analysis: The project is accessible to pedestrians and vehicles from both Woodset Drive and South Jackson Avenue. All parking would be provided in a surface parking lot on both the east and west sides of Woodset Drive. The project conforms with the parking requirements as discussed in the Density Bonus and Zoning conformance sections above.*

**10. City Affordable Housing Density Bonuses and Incentives Findings.** Chapter 20.190.090 of the San José Municipal Code requires that any project with a Density Bonus, or an Incentive must make the following findings.

- a. The Housing Development is eligible for a Density Bonus and any Incentives, waivers or modifications requested.

*Analysis: The project consists of the construction of 14 townhomes configured in four buildings on an approximately 0.86-gross acre vacant site. The project includes the construction of a 100% affordable housing project. The applicant would provide two low-income units (households earning less than 80% AMI) and 12 moderate-income low-income units (households earning less than 120% AMI). All of the units would be covered by a deed restriction recorded against the property, which has already been completed and recorded in connection with the site acquisition funds the City of San José provided to Habitat for Humanity in September 2020. As the project is providing 100% of the units at low-income levels, the project the project is eligible for the provisions of the State Density Bonus Law pursuant to Government Code Section 65915(b)(1)(A).*

- b. If the Density Bonus is based on all or in part on donation of land, a finding that all the requirements for a land transfer Density Bonus that ae specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

*Analysis: The project does not include a land donation.*

- c. If the Density Bonus or Incentive request is based all or in part on the inclusion of a Child Care Facility, a finding that all of the requirements for a Child Care Facility Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

*Analysis: The project does not include a Child Care Facility.*



- d. If the Incentive request is for a Mixed-Use development, a finding that all the requirements for a Mixed-Use Incentive development approval that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

*Analysis: The project is requesting incentives/concessions for a townhouse development. The project is eligible as a "Housing Development" pursuant to Government Code Section 65915(i) as it includes five or more residential units. The project would allow the construction of 14 residential units.*

- e. If the Incentive includes a request for approval of condominium conversion, a finding that all the requirements for a condominium conversion Incentive that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

*Analysis: The project does not include a request for condominium conversions. The existing site is vacant.*

**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 two ordinance-size trees. The trees to be removed are located within the proposed project building footprint. The trees to be removed are one palm (75 inches in circumference) and one oak (101 inches in circumference). The removal of the two trees requires the replacement of eight (15-gallon) or four (24-inch box) trees on site. The project includes the planting of 15 trees on site. The trees to be planted include six Coast live oak, five Chinese pistache, and five Shumared red oak trees. All trees to be planted would be 24-inch box size.*

In accordance with the findings set forth above, a Site 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 Site 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 years from and after the date of issuance hereof by said City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Use Authorization.** Subject to all conditions herein, this Permit allows the removal of two ordinance-size trees and the construction of four multifamily residential buildings consisting of 14 residential units with State Density Bonus concessions for a reduction in the side setback and setback to the public right-of-way, and a waiver for a reduction in private open space on an approximately 0.86-gross acre site.
4. **Conformance to Plans.** The development of the site shall conform to the approved plans entitled, "File No. H19-031 101 South Jackson Avenue San Jose, CA" dated November 29, 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".
5. **Homeowner's Association.** A Homeowner's Association shall be established for maintenance of all common areas, including driveways/courtyards, landscaping and the community amenity area. A copy of the Development Permit, the accompanying Approved Plans, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans shall be provided to the Homeowner's Association by the Permittee no later than 30 days upon completion of each phase.
6. **Common Access and Maintenance.** The Homeowner's Association shall be responsible for all common access and maintenance as listed below:
- a. Common Access Driveway (easement) shall be provided with a minimum width of 22 feet that is clear to the sky.
  - b. Common Access Walkway (easement) shall provide pedestrian access from a public street to the subdivision and primary entryway of each unit. The common

- access walkways must be a minimum of three (3) feet in width and remain unobstructed and open to the sky.
- c. A utility easement shall be provided per the Department of Water and Power or similar agency requirements.
  - d. A Maintenance agreement shall be formed, composed of all property owners to maintain all common areas such as trees, landscaping, trash, parking, community driveways, walkways, shared walls, shared roofs, shared fences, etc. Each owner and future property owners shall automatically become members of the agreement and shall be subject to a proportionate share of the maintenance. The Maintenance Agreement shall be recorded as a Covenant and Agreement to run with the land. The subdivider shall submit a copy of this Agreement, once recorded to the Planning Division for placement in the tract life.
  - e. All trash pick-up and recycling pick-up shall be conducted on-site. Recycling bins shall be provided at appropriate locations to promote recycling of paper, metal, glass, and other recyclable material.
7. **No Tract Sales Office/Model Homes Approved.** This Permit does not include the approval of a tract sales office/model homes complex. Said use requires a Permit Adjustment approved by the Director of Planning.
  8. **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.
  9. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to 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 and the City of San José Landscape and Irrigation Guidelines.
  10. **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.

11. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
12. **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.
13. **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.
14. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
15. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
16. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.

17. **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.

18. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.

19. **Standard Environmental Permit Conditions**

a. *Air Quality.* The permittee shall implement the following measures during all phases of construction to control dust and exhaust at the project site:

- 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 by 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. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. 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.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of "running in proper condition" prior to operation.
- xi. Post a publicly visible sign with the telephone number and person at the lead agency to contact regarding dust complaints.

b. *Biological Resources*

- i. Santa Clara Valley Habitat Plan. The project is subject to applicable Santa Clara Valley Habitat Plan conditions and fees (including the nitrogen deposition fee)

prior to issuance of any grading permits. The permittee would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/>.

- c. Cultural Resources. The permittee would be required to implement the following standard permit condition to reduce the potential impacts to subsurface 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 (PBCE) 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 Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
  - ii. The permittee would be required to implement the following standard permit condition to reduce the potential impacts to human remains.
    - (i) 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 (PBCE) 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:

- (a) 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.
  - (b) The MLD identified fails to make a recommendation; or
  - (c) 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. Geological Resources. The permittee would be required to implement the following standard permit condition to reduce the potential impacts from seismic shaking.
- i. To avoid or minimize potential damage from seismic shaking, project construction shall use standard engineering and seismic safety design techniques. Complete building design and construction at the site in conformance with the recommendations of an approved geotechnical investigation. The geotechnical investigation report shall be reviewed and approved by the Department of Public Works as part of the building permit review and entitlement process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
  - ii. The permittee would be required to implement the following standard permit conditions to reduce the potential impacts from soil erosion.
    - (i) Schedule all excavation and grading work in dry weather months or weatherize construction sites.
    - (ii) Cover stockpiles and excavated soils with secured tarps or plastic sheeting.
    - (iii) Install ditches to divert runoff around excavations and graded areas if necessary.
    - (iv) Construct the project in accordance with standard engineering practices in the California Building Code, as adopted by the City. Obtain a grading permit from the Department of Public Works 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.

- iii. Implementation of the standard permit condition outlined below would avoid or reduce impacts to paleontological resources.
  - (i) If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) 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 Planning or Director's designee of the PBCE.
- e. Hazards and Hazardous Materials. The permittee would be required to implement the following standard permit conditions to reduce the potential impacts from the routine transport and disposal of ACMs and lead.
  - i. Conduct a visual inspection/pre-demolition survey, and possible sampling in conformance with State and local laws, to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP) prior to the demolition of on-site building(s).
  - ii. Remove all building materials containing lead-based paint during demolition activities, in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Dispose any debris or soil containing lead-based paint or coatings at landfills that meet acceptance criteria for the type of lead being disposed.
  - iii. Remove all potentially friable asbestos containing materials (ACMs) in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. Undertake all demolition activities in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
  - iv. Retain a registered asbestos abatement contractor 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. Remove materials containing more than one-percent asbestos in accordance with BAAQMD requirements and notifications.



- vi. Implement the following conditions in accordance with Cal/OSHA rules and regulations, to limit impacts to construction workers.
  - (i) Prior to commencement of demolition activities, complete a building survey, including sampling and testing, to identify and quantify building materials containing lead-based paint.
  - (ii) During demolition activities, remove all building materials containing lead-based paint in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
  - (iii) Dispose any debris or soil containing lead-based paint or coatings at landfills that meet acceptance criteria for the type of waste being disposed.
- vii. The permittee would be required to implement the following standard permit condition to reduce the potential impacts from the routine transport and disposal of ACMs and lead.
  - (i) Conduct a visual inspection/pre-demolition survey, and possible sampling in conformance with State and local laws, to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP) prior to the demolition of on-site building(s).
  - (ii) Remove all building materials containing lead-based paint during demolition activities, in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Dispose any debris or soil containing lead-based paint or coatings at landfills that meet acceptance criteria for the type of lead being disposed.
  - (iii) Remove all potentially friable asbestos containing materials (ACMs) in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. Undertake all demolition activities in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
  - (iv) Retain a registered asbestos abatement contractor 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. Remove materials containing more than one-percent asbestos in accordance with BAAQMD requirements and notifications.
- viii. Implement the following conditions in accordance with Cal/OSHA rules and regulations, to limit impacts to construction workers.

- (i) Prior to commencement of demolition activities, complete a building survey, including sampling and testing, to identify and quantify building materials containing lead-based paint.
  - (ii) During demolition activities, remove all building materials containing lead-based paint in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
  - (iii) Dispose any debris or soil containing lead-based paint or coatings at landfills that meet acceptance criteria for the type of waste being disposed.
- f. Water Quality. The permittee would be required to implement the following standard permit conditions to reduce the potential impacts from construction runoff.
- i. Install burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains.
  - ii. Suspend earthmoving or other dust-producing activities during periods of high winds.
  - iii. Water all exposed or disturbed soil surfaces at least twice daily to control dust as necessary.
  - iv. Water or cover stockpiles of soil or other materials that can be blown by the wind.
  - v. Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks.
  - vi. Sweep all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites daily (with water sweepers).
  - vii. Replant vegetation in disturbed areas as quickly as possible.
  - viii. Fill with rock all unpaved entrances to the site to remove mud from tires prior to entering City streets. Install a tire wash system if requested by the City.
  - ix. Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- g. Noise. The permittee would be required to implement the following standard permit conditions to reduce the potential impacts from construction noise.
- i. Consistent with General Plan Policy EC-1.7 and the Municipal Code, the City will require the permittee to implement the following standard measure to reduce construction-related noise impacts to a less than significant level:
  - ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.

- iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iv. Prohibit unnecessary idling of internal combustion engines.
- v. 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.
- vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- vii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- viii. Notify all adjacent businesses, 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.
- ix. 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.
- x. 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.
- xi. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite 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 uses.

**20. 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.           .

**21. Density Bonus Regulatory Agreement.**

- a. Permittees shall enter into a Regulatory Agreement with the City, in accordance with the San Jose Municipal Code, for a Density Bonus, Incentive, waiver or modification of Development Standards. The terms of the draft Regulatory

Agreement shall be reviewed and revised as appropriate by the Director and the City Attorney. The final Regulatory Agreement, as approved by the City Attorney, shall be executed by the permittee and forwarded to the Approval Authority for final approval.

- b. Timing of Agreement Approval. Approval of the Regulatory Agreement by the Approval Authority shall take place under an application for a compliance plan submitted between the Discretionary Approval, and Building Approval or Grading Approval, whichever comes first.

**22. Housing Department Conditions of Approval.** This development is subject to the City's Inclusionary Housing Ordinance (IHO) and each of the conditions below.

- a. The permittee must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any contiguous property under common ownership and control prior to earliest of: issuance of any building permits, or approval of any parcel or final map.
- b. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.
- c. No building permit may issue until the Affordable Housing Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
- d. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO and Affordable Housing Agreement are met.

**23. 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. H19-031 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 proposed 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.
24. **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.
25. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works Permits may be found at the following: <http://www.sanjoseca.gov/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. **Transportation:** This project meets the Screening Criteria for CEQA Transportation Analysis for Development Projects as a small infill project and no further transportation analysis is needed.
  - c. **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. 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.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
    - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
    - 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 design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.
  - e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
  - f. **Flood: Zone AO, Depth 1':**
    - i. Elevate the lowest floor, including basement, to 2 feet or more above the existing highest adjacent grade to the proposed structure (depth of flooding plus one foot per 2016 CRC).
    - ii. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation (depth of flooding plus one foot) or protected from flood damage.
    - iii. Construction materials used below the base flood elevation (depth of flooding plus one foot) must be resistant to flood damage.

- iv. 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.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- h. **Parks:** This residential project is subject to the payment of park fees in-lieu of land dedication under either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code).
- i. Street Improvements:
  - i. Construct 52-foot wide public street section connecting north and south segments of Woodset Lane. Dedication of 52-foot wide street easement is required.
  - ii. Construct a 9-foot wide (0.5-foot wide curb, 4-foot wide park strip, 4-foot wide walk, and 0.5-foot wide landscape area) detached sidewalk on Woodset Lane. Match the sidewalk sections of the adjacent tract.
  - iii. Construct two (2) 16-foot wide driveways for the parking areas on the west side of Woodset Lane.
  - iv. Construct one (1) 22-foot wide driveway along the east side of Woodset Lane.
  - v. Construct a 10-foot wide (0.5-foot wide curb, 4.5-foot wide park strip, and 5-foot wide walk) detached sidewalk along South Jackson Avenue. Match the sidewalk sections of the adjacent tract. Provide dedication as needed.
  - vi. Construct one (1) 26-foot wide driveway along South Jackson Avenue project frontage.
  - vii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
  - viii. Close any unused driveways.
  - ix. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
  - x. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - xi. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any

necessary pavement restoration will be included as part of the final street improvement plans.

- j. **Strong Neighborhoods Initiative (SNI):** This project is located within the Mayfair SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
  - k. **Sanitary:** The project is required to submit plan and profile of the private sewer lateral locations for final review and comment prior to construction.
  - l. **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.
  - m. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in park strips on Woodset Lane and South Jackson Avenue. If street tree locations conflict with existing utilities, permittee shall be solely responsible for relocating or adjusting utilities as necessary to resolve conflict. Obtain a Department of Transportation (DOT) street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only. The recommended tree species for South Jackson Avenue is *Ulmus propinqua* 'Bieberich'. Match existing tree species trees on Woodset Avenue.
26. **Construction Disturbance Coordinator.** Rules and regulation 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.
27. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
28. **Revocation, Suspension, Modification.** This Site 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 Site 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 Site Development Permit shall be the same as effective date of the Rezoning Ordinance for File No. C19-028 passed for publication on \_\_\_\_\_, 2022 (the “Zoning Ordinance”) and shall be no earlier than the effective date of said Rezoning Ordinance.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

**NOTICE TO PARTIES**

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

## EXHIBIT A

The land referred to is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

Portion of Lot 25, as shown upon that certain map entitled, "Map of the Alta Vista Tract" which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on August 4, 1904 in [Book F-3 of Maps, Page 89](#), and more particularly described as follows:

Beginning at an iron pipe set flush in the southwesterly line of Jackson Avenue at the northernmost corner of Lot 25, as said avenue and lot are shown upon the map above referred to; thence along the southwesterly line of Jackson Avenue South 37° 3' East, 100 feet; thence leaving said line of Jackson Avenue and running South 59° 20' West, 400 feet; thence at right angles North 30° 40' West, 100 feet, more or less, to the northwesterly line of said Lot 25; thence at right angles Northeasterly and along the northwesterly line of said Lot 25 North 59° 20' East, 389 feet, more or less, to the point of beginning.

Excepting therefrom all that portion conveyed in the deed to the City of San Jose, a municipal corporation, dated May 17, 1974 and recorded July 15, 1974 in [Book O988, Page 595](#), Instrument No. 480844, Official Records, Santa Clara County Records, described as follows:

Commencing at the point of intersection of the northeasterly prolongation of the northwesterly line of that certain parcel of land described in the deed to Tama Ezaki and Grace Ezaki, recorded on May 24, 1963, in Book 6038 of Official Records, at page 120, Santa Clara County Records with that certain monument line established for record on that certain map entitled, "Record of Survey of a Monument Line Jackson Avenue from Alum Rock Avenue to Summer Street," filed on February 14, 1973 in Book 316 of Maps, Page 40, in the Office of the Recorder of the County of Santa Clara, State of California; thence Southwesterly along said northeasterly prolongation to the most northerly corner of said Ezaki parcel of land, being the TRUE POINT OF BEGINNING of this description; thence along the northeasterly line of said Ezaki parcel of land South 37° 03' 00" East, 100.00 feet to the most easterly corner of said Ezaki parcel of land; thence along the southeasterly line of said Ezaki parcel of land South 59° 20' 00" West, 15.09 feet to the point of intersection thereof with a line parallel with and distant 40.00 feet Southwesterly measured at right angles from said monument line of Jackson Avenue; thence along said parallel line North 37° 03' 00" West, 100.00 feet to the point of intersection thereof with said northwesterly line of Ezaki parcel of land; thence along said northwesterly line of Ezaki parcel of land North 59° 20' 00" East, 15.09 feet to the true point of beginning.

APN: 481-22-067

**PROPERTY INFORMATION**

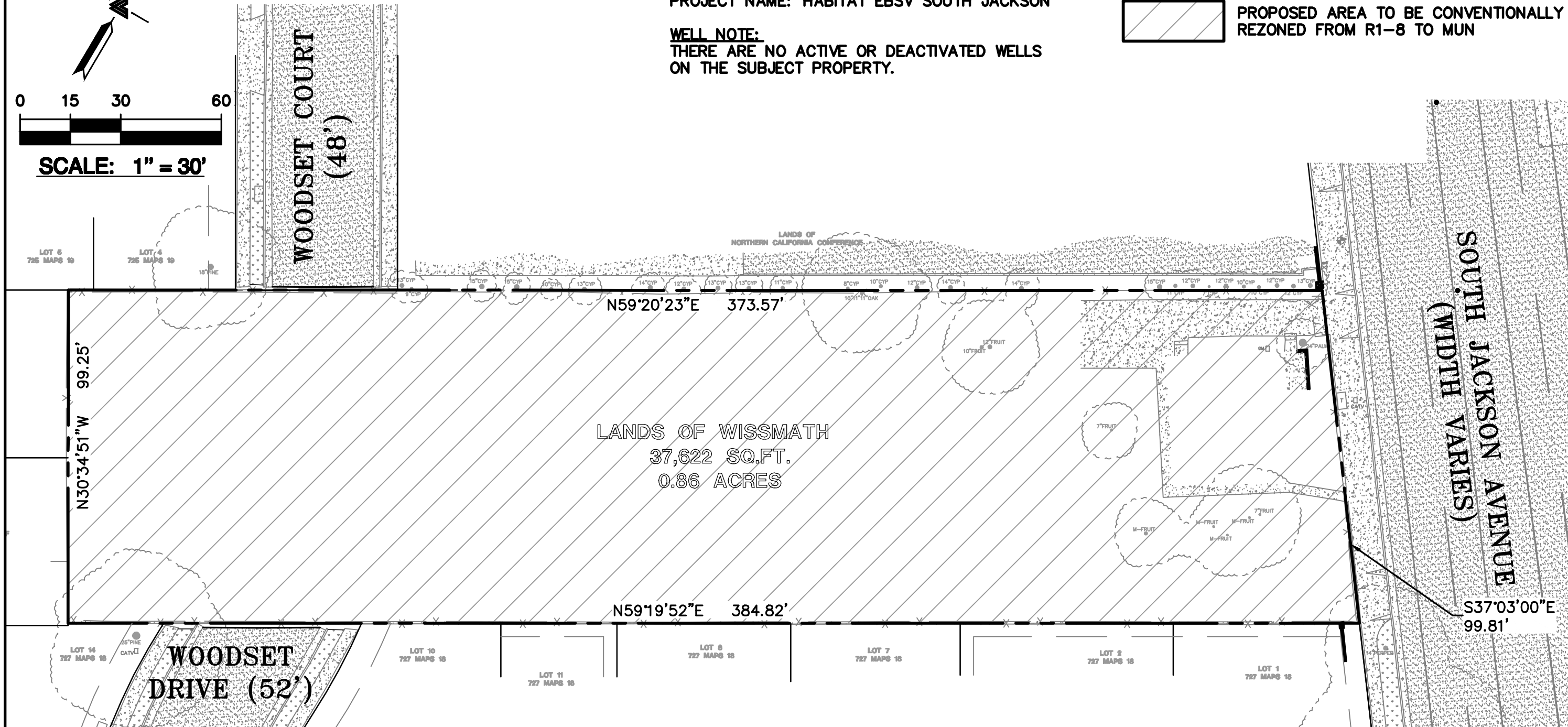
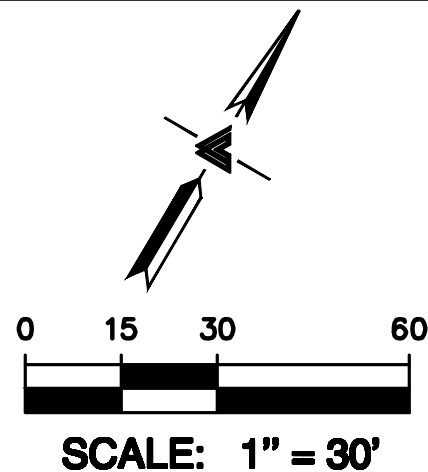
PROJECT NAME: HABITAT EBSV SOUTH JACKSON

**WELL NOTE:**  
THERE ARE NO ACTIVE OR DEACTIVATED WELLS ON THE SUBJECT PROPERTY.

**HATCH LEGEND:**



PROPOSED AREA TO BE CONVENTIONALLY REZONED FROM R1-8 TO MUN



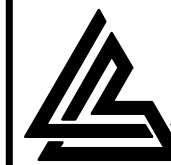
Date: 08-27-21  
Scale: 1" = 30'  
Design By: JH  
Checked By: PC  
Job No. 2181084 CI



**"EXHIBIT B"**  
**PLAT MAP**  
**101 SOUTH JACKSON AVENUE**  
**SAN JOSE, CALIFORNIA**

APN: 481-22-067

SANTA CLARA COUNTY



**LEA & BRAZE ENGINEERING, INC.**

CIVIL ENGINEERS • LAND SURVEYORS

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ROSEVILLE, CA 95661  
(P) (916) 966-1338  
(F) (916) 797-7363

WWW.LEABRAZE.COM

**EX-B**

01 OF 01 SHEETS