

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 FIVE BUILDINGS TOTALING APPROXIMATELY 105,980-SQUARE FEET, THE REMOVAL OF 68 ORDINANCE SIZE TREES AND TO ALLOW THE CONSTRUCTION OF A SIX-STORY APPROXIMATELY 233,000-SQUARE FOOT OFFICE BUILDING, A SIX-STORY PARKING GARAGE, AN EIGHT-STORY MIXED-USE BUILDING CONTAINING APPROXIMATELY 10,000-SQUARE FEET OF GROUND FLOOR COMMERCIAL AND UP TO 289 RESIDENTIAL UNITS, AND AN EIGHT-STORY RESIDENTIAL BUILDING CONTAINING UP TO 293 RESIDENTIAL UNITS, APPROXIMATELY 88 AFFORDABLE RESIDENTIAL UNITS WILL BE DISPERSED THROUGHOUT THE DEVELOPMENT, ON AN APPROXIMATELY 9.2-GROSS ACRE SITE LOCATED AT THE SOUTH SIDE OF STEVENS CREEK BOULEVARD BETWEEN PALACE DRIVE AND KIELY BOULEVARD (4300 – 4360 STEVENS CREEK BOULEVARD; APNS: 294-40-009, 296-38-014, AND 296-38-013)**

**FILE NO. PD17-014**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on April 25, 2017, an application (File No. PD17-014) was filed by the applicant, Perry Hariri, on behalf of Stevens Creek Owner LLC, with the City of San José for a Planned Development Permit to allow the demolition of five buildings totaling approximately 105,980-square feet, the removal of 68 ordinance size trees and to construct a six-story approximately 233,000-square foot office building, a six-story parking garage, an eight-story mixed-use building containing approximately 10,000-square feet of ground floor commercial and up to 289 residential units, and an eight-story residential building containing up to 293 residential units, where approximately 88 affordable housing units will be dispersed throughout the development, all on an approximately 9.2 gross acre site, on that certain real property situated in the CP(PD) Planned Development Zoning District and located on the south side of Stevens Creek

Boulevard between Palace Drive and Kiely Boulevard (4300 – 4360 Stevens Creek Boulevard; APNs: 296-40-009, 296-38-014, and 296-38-013, which real property is sometimes referred to herein as the “subject property”); and

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

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on January 16, 2019, notice of which was duly given; and

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

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

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

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

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

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Stevens Creek Promenade," dated received on January 7, 2019, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

1. **Site Description and Surrounding Uses.** The project site currently contains five commercial buildings with an approximate total square footage of 105,980, surface parking, and approximately 68 ordinance size trees. North of the project site and across Stevens Creek Boulevard are car dealerships located within the City of Santa Clara. South of the project site across Albany Drive are existing multifamily residential uses. East and west of the project site are car dealerships across Palace Drive and Lopina Way. With the relocation of Lopina Way, a public street, the project will be bounded by Stevens Creek Boulevard to the north, relocated Lopina Way to the east, and Albany Drive to the South. Stevens Creek Boulevard, Lopina Way, and Albany Drive are all public streets.
2. **Project Description.** On August 10, 2016, the applicant filed an application with the City of San José for a Planned Development Rezoning of the subject site from the CG Commercial General Zoning District to a CP(PD) Commercial Pedestrian Planned Development Zoning District. On April 25, 2017, the applicant filed an application with the City of San José for a Planned Development Permit and Vesting Tentative Map.

The Vesting Tentative Map will allow the subdivision of three existing parcels into four parcels and seven common parcels. The Planned Development Permit allows the demolition of five commercial buildings totaling approximately 105,980 square feet, the removal of 68 ordinance-sized trees, and to construct a six-story, approximately 233,000-square foot office building, a six-story parking garage, an eight-story mixed-use building containing approximately 10,000-square feet of ground floor commercial and up to 289 residential units, and an 8-story residential building containing up to 293 residential units. Approximately 88 affordable residential units of the 582 residential units will be dispersed throughout two buildings, the mixed-use and residential building on an approximately 10-gross acre site. As part of the proposed project Lopina Way, a public street, will be relocated to the eastern portion of the project site. Currently, Lopina Way bisects the project site, separating the proposed residential uses and the commercial uses from each other, as shown on the approved Development Plans. With the relocation of Lopina Way to the eastern portion of the site, the vacated street will be converted to an approximately 1.3 acre privately owned and maintained, publicly-accessible open space area that will include open lawn areas with seating, pathways, a pet park, a play area, and an outdoor amphitheater that can be used to conduct outdoor meetings, presentations, or act as an outdoor gathering space. The project is not subject to the City Council adopted Urban Village Implementation and Amenity Framework (Implementation Framework). The City Council-approved Implementation Framework includes a provision that grandfathered projects that submitted a complete Planned Development Zoning and Planned Development Permit application prior to the date of the City Council adoption of the Implementation Framework. The Implementation Framework was adopted by the City Council on May 22, 2018, after the Planned Development Zoning and Planned Development Permit, and Tentative Map applications were submitted to the City for review in 2016 and 2017.

3. **General Plan Conformance.** As shown on the General Plan map, the proposed project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Urban Village. This designation supports a wide variety of commercial, residential, institutional, or other land uses with an emphasis on establishing an attractive urban form in keeping with the Urban Village concept. The Urban Village General Plan Land Use designation allows for a density of up to 250 dwelling units per acre and a floor area ratio of up to 10.0. The project has a density of 122 dwelling units per acre and a floor area ratio (FAR) of 4.3 for the office building and associated above-ground parking structure, and therefore complies with the density and floor area ratios allowed in this General Plan Land Use designation.

The project site is located within the Stevens Creek Urban Village Plan boundary; however, the project is not required to be in conformance with this Urban Village Plan as allowed by Policy LU-1.7 contained in the Stevens Creek Urban Village Plan. Policy LU-1.7 in the Stevens Creek Urban Village Plan states, "Planned Development Zonings and discretionary permits that are applying under the

“Signature Project” policy, as defined in the Envision San José 2040 General Plan may continue to move forward as such, and will not be required to be in conformance with this Urban Village Plan. All of the “Pipeline” applications benefiting from “pipeline” provision of this policy must have been submitted to the City, including full payment of initial application fees, prior to the adoption of this Urban Village Plan.” The Planned Development Zoning, Planned Development Permit, and Tentative Map were submitted (and initial application fees were paid) prior to the adoption of this Urban Village Plan on August 8, 2017 and the project is applying under General Plan Policy IP-5.10 (Signature Project). Therefore, this project is not required to be in conformance with the Stevens Creek Urban Village Plan. A Signature Project is a project with a residential component located within a future Planning Horizon that wishes to move forward before that Horizon has been opened for development. The intent of this General Plan Signature Project policy was to only allow very specific projects (with a residential component) meeting specified criteria to move forward ahead of the growth Horizon. These development projects are seen to be a catalyst for the implementation of the General Plan Urban Village strategy. Fully commercial projects would not be required to proceed through the Signature Project General Plan policy, as the Signature Project General Plan policy only applies to projects with a residential component.

#### *General Plan Policies*

The proposed Planned Development Zoning, Vesting Tentative Map, and Planned Development Permit are consistent with the following General Plan policies:

Major Strategy #3- Focused Growth: Strategically focus new growth into areas of San José that will enable the achievement of City goals for economic growth, fiscal sustainability and environmental stewardship and support the development of new, attractive urban neighborhoods. A Major Strategy of the Envision General Plan is to focus new growth capacity in specifically identified “Growth Areas,” while the majority of the City is not planned for additional growth or intensification.

Major Strategy #5- Urban Villages: Promote the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan’s environmental goals.

*Analysis for Major Strategy #3 and #5: The project is a Signature Project within the Stevens Creek Urban Village boundary. Urban Villages are considered growth areas in the General Plan, and Urban Villages are intended to create higher-density housing growth along with a significant amount of job growth. The project is furthering General Plan Major Strategy #3 and #5 by developing a higher-density residential and commercial project as envisioned in the Stevens Creek Urban Village boundary.*

Implementation Policy LU-5.10: Allow non-residential development to proceed within Urban Village areas in advance of the preparation of an Urban Village Plan. In addition, a residential, mixed-use “Signature Project” may also proceed ahead of preparation of a Village Plan. A Signature Project clearly advances and can serve as a catalyst for the full implementation of the Envision General Plan Urban Village strategy. A Signature Project may be developed within an Urban Village designated as part of the current Plan Horizon, or in a future Horizon Urban Village area by making use of the residential Pool capacity. A residential, mixed-use Signature Project may proceed within Urban Village areas in advance of the preparation of an Urban Village Plan if it fully meets the following requirements:

1. Within the Urban Village areas, Signature Projects are appropriate on sites with an Urban Village, residential, or commercial Land Use / Transportation Diagram designation.
2. Incorporates job growth capacity above the average density of jobs/ acre planned for the developable portions of the entire Village Planning area and, for portions of a Signature Project that include housing, those portions incorporate housing density at or above the average density of dwelling units per acre planned for the entire Village Planning area. The commercial/office component of the Signature Project must be constructed before or concurrently with the residential component.
3. Is located at a visible, prominent location within the Village so that it can be an example for, but not impose obstacles to, subsequent other development within the Village area.

Additionally, a proposed Signature Project will be reviewed for substantial conformance with the following objectives:

4. Includes public parklands and/or privately maintained, publicly-accessible plazas or open space areas.
5. Achieves the pedestrian friendly design guideline objectives identified within this General Plan.
6. Is planned and designed through a process that provided a substantive opportunity for input by interested community members.
7. Demonstrates high-quality architectural, landscape and site design features.
8. Is consistent with the recommendations of the City’s Urban Design Review process or equivalent recommending process if the project is subject to review by such a process.

*Analysis for Implementation Policy IP-5.10: The project satisfies the criteria for a Signature Project as specified in the General Plan. The project is located on a site with a General Plan Urban Village land use designation. The Planned Development Zoning requires a minimum of 229,269 square feet of commercial uses. The*

*Planned Development Zoning allows a maximum of 300,000 square feet of office uses and 15,000 square feet of ground-floor retail uses. The project provides approximately 233,000 square feet of office uses in Building A (as shown on Sheet C3.0 in the Planned Development Permit Plan Set), and approximately 10,000 square feet of ground-floor retail uses in Mixed-Use Building C, for a total of 243,000 square feet of commercial uses. 229,269 square feet is the minimum employment square footage the project must incorporate to satisfy the Signature Project General Plan policy. Therefore, the project satisfies point 2 of the Signature Project General Plan policy.*

*Pursuant to General Plan Appendix 5, the Stevens Creek Boulevard Urban Village boundary is 269 acres with a planned housing growth of 3,860 residential units equaling an average residential density of 14 dwelling units per acre required for projects. The project is proposing a density of 122 dwelling units per acre (based on 582 dwelling units and 4.76 acres) which satisfies the housing density required by this General Plan policy. As part of the Development Standards for the Planned Development Zoning, the commercial/office component must be constructed before or concurrently with the residential component. This is a requirement and the developer will not be able to construct the residential portion of the project before the commercial/office component.*

*The project site is also considered a visible, prominent location as it is located along a major commercial arterial (Stevens Creek Boulevard) and is of a substantial size of approximately 10 acres. Development of the site will not constrain future development of adjacent parcels, as development of the site will not create small remnant parcels. Rather, Lopina Way will be relocated to aggregate two existing sites for greater redevelopment opportunity. Therefore, the project satisfies point 3 of the Signature Project General Plan policy.*

*The project is also providing an approximately 1.3 acre privately owned and maintained, publicly-accessible open recreational area that can be accessed by the public. This privately owned and maintained, publicly accessible open space will be privately owned and maintained through a common ownership of the four proposed parcels. Therefore, the project satisfies point 4 of the Signature Project General Plan policy.*

*The project achieves the pedestrian-friendly design guidelines and demonstrates high-quality architecture, landscaping, and site design features, as described below.*

*The project has had two city-led community meetings. The first community meeting on March 13, 2017 was to discuss the Planned Development Zoning on file and to receive public comments on the Notice of Preparation for the Environmental Impact Report. The second community meeting on March 26, 2018 was to discuss the Planned Development Rezoning, Planned Development Permit, and the Vesting Tentative Map. Approximately 18 community members attended the first community meeting and approximately 55 community members attended the second community*

*meeting. Outreach efforts were also extended to the City of Santa Clara and the City of Cupertino. Two staff members for the City of Cupertino were in attendance. Both community meetings were noticed at a radius of 1,000 feet, which also includes City of Santa Clara residents. The project applicant has also held separate events to discuss the project. These meetings are separate and apart from the City's community meetings. The applicant has had approximately 11 outreach efforts through presentations, open houses, and meetings with a neighborhood group (Loma Linda Neighborhood), professional organizations (Silicon Valley Leadership Group, Silicon Valley Organization, Bay Area Council), and other governmental agencies (Valley Transportation Authority). These events and meetings occurred through the project review in 2016 to 2018, with most of the applicant-sponsored outreach efforts in 2018. The project applicant has also created a website for the project.*

*The project demonstrates high-quality architecture, landscaping, and site design features. The project overall utilizes a variety of different materials with different textures and scales, but all are compatible with one another. All four proposed buildings contain elements that qualify for a project with high-quality architectural value, including but not limited to: substantial changes in building plane, strategic use of material, variation in roof line, high-quality materials, appropriate form and massing, and high-quality ground-floor spaces with depths of at least 45 feet and interior heights of approximately 22 feet. The site and landscape design of the project is of a high-quality due to the placement of buildings in a functional and logical manner. Placing the Office Building A and Mixed-Use Building C towards Stevens Creek Boulevard (which is considered a Grand Boulevard) is appropriate as commercial uses and higher-intensity residential uses help activate, engage, and add interest to Stevens Creek Boulevard. Placing Residential Building D towards Albany Drive and the parking garage is appropriate as the mass and scale of these buildings are reduced and have a better transition to the lower intensity existing residential uses on Albany Drive. The landscape design incorporates a number of elements that will help activate the privately owned and maintained, publicly-accessible open space and provides for a number of different activities that can be conducted in this open space area. The project has incorporated pedestrian-friendly design features by including wide sidewalks, shade structures, and human-scaled architectural elements. All of these contribute to the pedestrian environment.*

*Lastly, the project has incorporated design changes as recommended through the Urban Design Review process. The project has also incorporated ground-floor commercial depths of at least 45 feet and has provided a varying roof line in Mixed-Use Building C. The undulating element in Mixed-Use Building C has been greater emphasized, creating a more dynamic design. The Garage Building B also incorporated additional screening mechanisms along Lopina Way, consistent with the direction provided in the Urban Design Review process. The Office Building A has also incorporated an enhanced building entrance that is easily recognizable.*



Implementation Policy IP-1.6: Ensure that proposals to rezone and pre-zone properties conform to the Land Use/Transportation Diagram and advance Envision General Plan vision, goals, and policies.

*Analysis for IP-1.6: The project rezones the subject site from CG Commercial General to CP(PD) Commercial Pedestrian Planned Development Zoning District. The CP(PD) Commercial Pedestrian Planned Development Zoning District furthers a number of General Plan goals and policies, as described in this section.*

Community Design Policy CD-1.5: Encourage incorporation of publicly accessible spaces, such as plazas or squares, into new and existing commercial and mixed-use developments.

Community Design Policy CD-1.6: Promote vibrant, publicly accessible spaces that encourage gathering and other active uses that may be either spontaneous or programmed. Place a variety of uses adjacent to public spaces at sufficient densities to create critical mass of people who will activate the space throughout the day and night.

Function CD-2.4: Incorporate public spaces (squares, plazas, etc.) into private developments to encourage social interaction, particularly where such spaces promote symbiotic relationships between businesses, residents, and visitors.

*Analysis for CD-1.5, CD-1.6, CD-2.4: The project is incorporating an approximately 1.3 acre privately owned and maintained, publicly accessible open space as part of the project. This open space will be accessible by the new and surrounding residents, businesses, and community. The open space incorporates a pet area and a kid zone towards Albany Drive and incorporates walking paths, sitting areas, and a small amphitheater towards Stevens Creek Boulevard. This open space provides a recreational buffer between the proposed office use and the residential and mixed-use building. This open space will be privately owned and maintained but will be accessible and open to the public through a public access easement.*

Community Design Policy CD-1.1: Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.

Community Design Policy CD-1.7: Require developers to provide pedestrian amenities, such as trees, lighting, recycling and refuse containers, seating, awnings, art, or other amenities, in pedestrian areas along project frontages. When funding is available, install pedestrian amenities in public rights-of-ways.

Community Design Policy CD-1.8: Create an attractive street presence with pedestrian-scaled building and landscaping elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity throughout the City.

Community Design Policy CD-1.12: Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.

Community Design Policy CD-1.9: Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas such as Downtown, Urban Villages, or along Main Streets, place commercial and mixed-use building frontages at or near the street-facing property line with entrances directly to the public sidewalk, provide high-quality pedestrian facilities that promote pedestrian activity, including adequate sidewalk dimensions for both circulation and outdoor activities related to adjacent land uses, a continuous tree canopy, and other pedestrian amenities. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street facade and pedestrian access to buildings.

Function CD-2.3: Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate.

1. Include attractive and interesting pedestrian-oriented streetscape features such as street furniture, pedestrian scale lighting, pedestrian oriented way-finding signage, clocks, fountains, landscaping, and street trees that provide shade, with improvements to sidewalks and other pedestrian ways.
2. Strongly discourage drive-through services and other commercial uses oriented to occupants of vehicles in pedestrian-oriented areas. Uses that serve the vehicle, such as car washes and service stations, may be considered appropriate in these areas when they do not disrupt pedestrian flow, are not concentrated in one area, do not break up the building mass of the streetscape, are consistent with other policies in this Plan, and are compatible with the planned uses of the area.
3. Provide pedestrian connections as outlined in the Community Design Connections Goal and Policies.
4. Locate retail and other active uses at the street level.
5. Create easily identifiable and accessible building entrances located on street frontages or paseos.

6. Accommodate the physical needs of elderly populations and persons with disabilities.
7. Integrate existing or proposed transit stops into project designs.

*Analysis for CD-1.1, CD-1.7, CD-1.8, CD-1.12, CD-1.9, and CD-2.3: The project is designed to be pedestrian-oriented. Along Stevens Creek Boulevard, the project is incorporating a storefront of ground-floor commercial tenant spaces with numerous pedestrian entrances from the public sidewalk in Mixed-Use Building C with awnings and building overhangs to create areas of shade, protection from weather, and to create a comfortable semi-enclosed pedestrian walking environment. The third floor overhangs the ground-floor commercial uses to provide a protected walkway along Stevens Creek Boulevard. Furthermore, accented paving, planter pots, bicycle racks, and tables and chairs are incorporated into the project in front of Mixed-Use Building C along Stevens Creek Boulevard.*

*Along Office Building A, the project incorporates transparent glass along Stevens Creek Boulevard which allows for visual permeability into the building which is more inviting than walking along a walled off building. Street trees and 15-foot sidewalks line Stevens Creek Boulevard which will encourage walkability by providing a more comfortable walking environment. Once grown, the street trees will provide shade and a landscaped barrier between the pedestrian and the vehicles on Stevens Creek Boulevard. The buildings are also oriented towards and placed close to Stevens Creek Boulevard which will reinforce the streetscape and create a quality pedestrian experience.*

*The parking facilities are also either wrapped with residential uses which visually conceals the parking from view or are placed on a smaller street with screening mechanisms in place. Mixed-Use Building C and Building D both contain the parking facilities in the 'core' of the building and have residential uses wrapping the parking structure, thus concealing it from view. Office Building A has a separate parking structure (Building B) located at the corner of relocated Lopina Way and Albany Drive. Parking garage Building B is utilizing a series of undulating and flat perforated panels (60% and 40% perforated panels) to screen the view of parking from Lopina Way and Albany Drive. The undulating panels will have varying depths of seven inches to two feet, which will create texture and visual interest. Furthermore, there will be a series of private and street trees planted along Lopina Way and Albany Drive (essentially two 'layers' of trees), which will further help screen the parking garage from Lopina Way and Albany Drive.*

Land Use Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified "Growth Areas" in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.

*Analysis for LU-2.1: The Stevens Creek Urban Village is considered a Growth Area as stated in the General Plan. The project is providing an additional 582 residential units and approximately 243,000 square feet of commercial uses (approximately 233,000 square feet will be in the Office Building A and approximately 10,000 square feet will be on the ground floor in Mixed-Use Building C) which contribute to the Stevens Creek Urban Village area in support of vibrant, walkable urban settings. The Office Building A and the ground-floor commercial uses in Mixed-Use Building C will support and provide additional employment opportunities to the region. The project site is also located along Valley Transportation Authority (VTA) bus line Rapid 523. According to VTA, rapid transit service will have a bus arriving at least every 15 minutes and will have limited stops. The Rapid 523 line will begin near the Berryessa Bay Area Rapid Transit (BART) station, continue into Downtown San José, to Stevens Creek Boulevard and head along Sunnyvale-Saratoga Road.*

Land Use Policy LU-1.1: Foster development patterns that will achieve a complete community in San José, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing and a resident workforce.

Land Use Policy LU-9.1: Create a pedestrian-friendly environment by connecting new residential development with safe, convenient, accessible, and pleasant pedestrian facilities. Provide such connections between new development, its adjoining neighborhood, transit access points, schools, parks, and nearby commercial areas. Consistent with Transportation Policy TR-2.11, prohibit the development of new cul-de-sacs, unless it is the only feasible means of providing access to a property or properties, or gated communities, that do not provide through- and publicly-accessible bicycle and pedestrian connections.

*Analysis for LU-1.1 and LU-9.1: The project includes a mixed-use building (with approximately 10,000 square feet of ground-floor commercial uses and approximately 289 residential units), an office building (with approximately 233,000 square feet), a residential building (with approximately 293 residential units), and a parking structure (with approximately 858 parking spaces). The project is a higher-density residential product (of approximately 122 dwelling units per acre) and commercial product (with an approximate FAR of 4.3). The project is also incorporating an approximately 1.3 acre privately-maintained, publicly-accessible open space. Locating residential uses adjacent to employment, shopping, and recreational opportunities help create complete communities within San José because it allows residents to be able to work, shop, live, and recreate within close proximity. The project is also located within a Local Transit Urban Village which is a type of Urban Village (the project is specifically located within the Stevens Creek Urban Village boundary). Local Transit Urban Villages are located along light rail or bus rapid transit facilities which are used primarily for travel on a more localized basis. Rapid 523 bus line operates along Stevens Creek Boulevard, through Downtown San José and extending to the future Berryessa BART Station area and*

*to the North San José area. The project is facilitating a pedestrian-friendly environment by incorporating many pedestrian-oriented design features into the proposed buildings and site design features. These include, but are not limited to: incorporation of seating, awnings for protection from the elements, wider sidewalks, enhanced landscaping near pedestrian walkways, orienting the buildings closer to the street, and providing building entrances within close proximity of the sidewalk.*

Land Use Policy LU-9.6: Require residential developments to include adequate open spaces in either private or common areas to partially provide for residents' open space and recreation needs.

*Analysis for LU-9.6: The project has a total of 582 residential units (289 units in Mixed-Use Building C and 293 residential units in Building D). The Residential Design Guidelines state that private open space should be provided at a minimum of 60 square feet per unit and common open space should be provided at a minimum of 100 square feet per unit. Based on 582 residential units, approximately 34,920 square feet of private open space should be provided and approximately 58,200 square feet of common open space should be provided. Mixed-Use Building C is providing approximately 18,174 square feet of private open space and Building D is providing approximately 19,169 square feet of private open space, with a total private open space of 37,343 square feet of private open space. The project is providing an additional approximately 2,423 square feet of private open space beyond what the Residential Design Guidelines require. Of the 582 residential units, 459 units have private open spaces in the form of balconies. Mixed-Use Building C is providing approximately 29,723 square feet of common open space and Building D is providing approximately 30,325 square feet of common open space, for a total of 60,048 square feet of common open space. The project is providing an additional 1,848 square feet of common open space. The amenities within the common open spaces include fitness rooms, pool areas, community amenity rooms, barbeque areas, lounge seating, and picnic areas. Furthermore, as part of the Signature Project General Plan Policy, the project is also required to provide public parklands and/or privately-maintained, publicly-accessible plazas or open space areas. The project is providing approximately 1.3 acres of privately owned and maintained, publicly-accessible open space.*

Function Policy CD-2.10: Recognize that finite land area exists for development and that density supports retail vitality and transit ridership. Use land use regulations to require compact, low-impact development that efficiently uses land planned for growth, especially for residential development which tends to have a long life-span. Strongly discourage small-lot and single-family detached residential product types in Growth Areas.

*Analysis for CD-2.10: The project includes a total of four buildings, one of which is a mixed-use building with approximately 10,000 square feet of ground-floor commercial uses and 289 residential units. The project is proposing a density of 122*

*dwelling units per acre and a FAR of 4.3 on an approximately 9.2-acre site (this acreage does not include the relocation of Lopina Way). The project is a higher-density residential project (compared to existing surrounding uses) located adjacent to commercial uses that is efficiently utilizing the land in a compact, dense form.*

Compatibility CD-4.6: Support cohesive and architecturally distinctive urban development along Grand Boulevards and include such design elements as enhanced landscaping; attractive lighting; wide, comfortable sidewalks; area identification banners; and harmonious building scale features.

Attractive Gateways Policy CD-10.2: Require that new public and private development adjacent to Gateways, freeways (including U.S.101, I-880, I-680, I-280, SR17, SR85, SR237, and SR87), and Grand Boulevards consist of high-quality architecture, use high-quality materials, and contribute to a positive image of San José.

*Analysis for CD-4.6 and CD-10.2: The project is located along Stevens Creek Boulevard, which is considered a Grand Boulevard (Major Strategy #6 Streetscapes for People). The project is architecturally distinctive and well-treated and includes pedestrian-oriented design and site elements. Along Stevens Creek, the project is proposing 15-foot sidewalks with street trees, outdoor furniture, pedestrian-scaled lighting, building awnings to provide shade and protection from the elements, and a wide and well activated entrance to the 1.3 acre privately-maintained but publicly-accessible open space.*

Land Use and Employment Policy IE-1.3: As part of the intensification of commercial, Village, Industrial Park and Employment Center job Growth Areas, create complete, mixed-employment areas that include business support uses, public and private amenities, child care, restaurants and retail goods and services that serve employees of these businesses and nearby businesses.

Fiscally Sustainable Land Use Framework Policy FS-3.6: Through the land use entitlement process, approve new development projects, including mixed-use residential development, that conform to the completed Urban Village Plan or which provide job capacity above the amount identified in the Urban Village Plan for the subject property.

*Analysis for IE-1.3 and FS-3.6: The Planned Development Permit is providing approximately 243,000 square feet of commercial uses. Office Building A is proposing approximately 233,000 square feet and Mixed-Use Building C is incorporating approximately 10,000 square feet of ground-floor commercial uses. The Planned Development Zoning District is allowing a maximum of 300,000 square feet of office uses in Office Building A (of the 300,000 square feet of office, up to 7,000 square feet could be used for ground-floor retail), and 15,000 of ground-floor commercial in Mixed-Use Building C. The project is also demolishing five existing commercial buildings, with an approximate square footage of 105,980. The project is*

*replacing the demolished commercial square footage and providing additional commercial square footage, consistent with the Signature Project General Plan Policy (IP-5.10).*

Promote Fiscally Beneficial Land Use Policy FS-4.8: Emphasize mixed-use development for most new development, to achieve service efficiencies from compact development patterns and to maximize job development and commercial opportunities near residential development.

*Analysis for FS-4.8: The project is a vertical and horizontal mixed-use development. Mixed-Use Building C contains approximately 10,000 square feet of ground-floor commercial uses and approximately 289 residential units on upper floors (for the portion of the building facing Stevens Creek Boulevard). Mixed-Use Building C is the vertical mixed-use component. Office Building A is located along Stevens Creek Boulevard and adjacent to Mixed-Use Building C. Residential Building D is located along Albany Drive and the parking garage Building D is also located along Albany Drive. These four buildings in the current site layout are considered to be horizontally mixed-use. The parking structures for Mixed-Use Building C and Residential Building D are wrapped within the buildings, and are not visible from the public streets. This wrap approach is compact in nature, as there is not a separate and apart parking structure for these buildings. Lastly, the project has commercial (i.e., employment) uses adjacent to residential uses, which maximize job development and commercial opportunities near residential uses. By densifying the site, the project is 'stacking' uses in a more compact form (as opposed to segregating all uses which leads to uses sprawling outwards), and therefore, allowing for additional amenities and uses to be placed on the site by 'freeing' up space for those amenities and uses.*

Vibrant, Attractive, and Complete Neighborhoods Policy VN-1.3: Encourage the development and maintenance of compatible neighborhood retail and services within walking distance of residences as a means to promote the creation of "complete" neighborhoods.

*Analysis for VN-1.3: The project is providing approximately 233,000 square feet of office uses and approximately 10,000 square feet of ground-floor commercial uses facing Stevens Creek Boulevard. These commercial uses are within walking distances to existing adjacent residential uses, particularly the existing residential uses to the south of the project site along Albany Drive. Convenient access is provided to the existing residential uses to the south through the privately-maintained, publicly-accessible 1.3-acre open space area that bisects the site.*

Compatibility Policy CD-4.5: For new development in transition areas between identified Growth Areas and non-growth areas, use a combination of building setbacks, building step-backs, materials, building orientation, landscaping, and other design techniques to provide a consistent streetscape that buffers lower-intensity

areas from higher intensity areas and that reduces potential shade, shadow, massing, viewshed, or other land use compatibility concerns.

*Analysis for CD-4.5: The project site is located within the Stevens Creek Urban Village boundary, and Urban Villages are considered Growth Areas. South of the project site are properties not located within the Urban Village and, therefore, not located in a Growth Area. There is an existing apartment complex (Park Kiely Apartments) located south of the project site across Albany Drive. This existing apartment complex is within a fenced property and the buildings are set back approximately 25 feet from the roadway by a large area of landscaping.*

*Residential Building D and Parking Garage Building B are located along Albany Drive. Building D has varying heights of approximately 22 feet (two stories) to approximately 53 feet (five stories) along Albany Drive as illustrated on Planned Development Permit Plan Set Sheets A-7d.0.1, Sheet A-7d.0.1, and A-7d.1.1. Building D has varying heights along Albany Drive because the two-courtyard common open spaces are facing Albany Drive and these courtyard common open spaces are open to the sky (see perspective and elevation drawings for Building D in the Planned Development Plan Set). The two-courtyard common open spaces provide a sculpted building massing that allows for an appropriate transition to occur between Residential Building D and the existing two-story residential uses to the south by relocating the buildings overall mass. Residential Building D is incorporating pedestrian entrances to the residential units facing Albany Drive, which allows for ground-floor articulation (non-back of house uses) and ‘eyes on the street.’ There is also a lobby entrance facing Albany Drive for Residential Building D. Residential Building D has an overall height of approximately 95 feet (8 stories). Residential Building D incorporates various building step downs, as the eight-story portion of the building is set back approximately 61 feet from the southern property line (facing Albany Drive). The seven-story element is set back approximately 43 feet from the southern property line (facing Albany Drive). The materials utilized in Residential Building D are appropriately scaled and creates a distinctive base, middle, and top of the building. The ‘base’ material is a darker masonry veneer material and a darker composite metal panel material which helps visually ‘ground’ the building, particularly as the material utilized for the upper stories of the building are lighter composite metal panels. This contrast provides a visual definition of the base, middle, and top of this building.*

*Building B (parking garage for the office Building A), is approximately 60 feet tall (five stories). As mentioned previously, the parking garage is utilizing various screening elements, including two ‘layers’ of trees, and perforated panels, to screen the garage from views from the existing residential uses located south of the project site and to reduce the level of illumination generated by vehicles in the garage onto the adjacent residential uses.*



Urban Villages Design Policy CD-7.1: Support intensive development and uses within Urban Villages, while ensuring an appropriate interface with lower-intensity development in surrounding areas and the protection of appropriate historic resources.

Urban Villages Design Policy CD-7.9: Build new residential development within Urban Village areas at a minimum of four stories in height with a step down in height when building new residential development immediately adjacent to single-family residential sites that have a Residential Neighborhood designation. Individual Urban Village Plans may establish more specific policies or guidelines to ensure compatibility with adjacent single-family neighborhoods, and development should be consistent with these policies and guidelines, established in approved Urban Village Plans.

*Analysis for CD-7.1 and CD-7.9: The project has varying heights of two-stories to eight-stories. Residential Building D contains varying building heights of two-stories with step-ups to eight-stories. Mixed-Use Building C contains varying building heights of seven-stories to eight-stories. The heights of Residential Building D are lower closer to the existing residential uses across Albany Drive Way. The heights of Residential Building D step up and are set back as the existing residential uses are further away. Office Building A contains varying building heights of two-stories to six-stories and Parking Garage Building B is five-stories. Although the adjacent existing residential uses are not single-family uses, the project incorporates a building step back and step down closer to the existing multifamily uses.*

Affordable 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.

Affordable Housing Policy H-2.2: Integrate affordable housing in identified growth locations and where other housing opportunities may exist, consistent with the Envision General Plan.

*Analysis for H-2.1 and H-2.2: A total of 88 affordable units are included as part of the project. These affordable units will be dispersed between Mixed-Use Building C and Building D and will likely serve the very low and moderate income range. There will be approximately 39 affordable residential units in Mixed-Use Building C and approximately 49 affordable residential units in Building D. The affordable residential units equate to approximately 15% of the total units. These 88 units will be deed-restricted affordable housing units, as per the Housing Compliance Plan that has been received and approved by the Housing Department.*

- 4. Municipal Code Compliance.** The subject site is in the CP(PD) Commercial Pedestrian Planned Development Zoning District with a base zoning district of CP Commercial Pedestrian.

The CP Commercial Pedestrian Zoning District allows a maximum 10-foot front setback and does not have minimum standards for the side and rear setback. A maximum of a 10-foot front setback allows the buildings to be placed closer to the street, which is considered to be pedestrian-friendly.

The CP(PD) Planned Development Zoning District has three Areas (Area A, Area B, and Area C) as shown in the Planned Development Zoning plan set. This CP(PD) Planned Development Zoning District, as a whole, will allow up to 315,000 square feet of commercial uses with a minimum requirement of 229,269 square feet of commercial uses, up to 582 residential units, and 1.3 acres of publicly-accessible, privately maintained and owned open space. In Area A Residential and Supportive Commercial Area, up to 582 residential units (at a maximum density of 122 dwelling units per acre, and a minimum of 55 dwelling units per acre) will be allowed, in addition to 15,000 square feet of commercial uses. Area B Commercial Area will allow a maximum of 300,000 square feet for commercial uses (with a minimum of 229,269 square feet of commercial uses). Area C Publicly-Accessible, Privately-Maintained Open Space Area is required to be a minimum of 1.3 acres of publicly-accessible, privately owned and maintained open space. The allowed uses in Area C are limited to farmer's markets, outdoor recreational uses, outdoor vending (i.e., mobile food vendors, temporary pop-ups, and other similar non-impactful uses), and temporary outdoor events.

The CP(PD) Planned Development Zoning District will allow up to 582 residential units, 88 of which would be deed-restricted affordable housing units. The Housing Department has received and approved the Housing Compliance Plan. The privately-owned, publicly-accessible open space would be required to remain open to the public and will not be allowed to decrease in size. Allowed uses in the privately-owned and maintained, publicly-accessible open space would be limited to recreational activities.

The CP(PD) Planned Development Zoning District would allow for similar building setbacks as the CP Commercial Pedestrian Zoning District, contained in Chapter 20.40 of Title 20 in the San José Municipal Code. However, the heights of the buildings will be allowed up to 115 feet rather than 120 feet to allow for the vision of the General Plan to be implemented. Pursuant to Table 20-100 (Commercial Zoning Districts Development Standards) in the San José Municipal Code, the height limit in the CP Commercial Pedestrian Zoning District is 50 feet, unless a different maximum is established in Chapter 20.85, or as established in approved Urban Village Plan. A different maximum is established in Chapter 20.85, which states that the maximum height restriction shall not exceed 120 feet on the property. The proposed heights are lower than what is allowed in Chapter 20.85 by 20 feet. As discussed previously, the height limitations in the Stevens Creek Urban Village Plan are not applicable to this project because of Policy LU-1.7 contained in the Stevens Creek Urban Village Plan. The project is not required to comply with the Stevens Creek Urban Village Plan and the heights prescribed in that Urban Village Plan. For context, the Stevens Creek Urban Village Plan allows heights up to 120 feet for the project site.

Parking for the residential units would be 1.3 parking spaces per each residential unit, for a total of 448 parking spaces. Parking for the commercial uses (including office) would be 1 parking space per 400 square feet of floor area, for a total of 788 parking spaces. Floor area is defined as 85% of the total gross floor area of a building.

## 5. City Council Policy Conformance.

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

Under City Council Policy 6-30, the project is considered a development proposal of significant community interest. Following City Council Policy 6-30, the applicant has posted the on-site signs along Stevens Creek Boulevard, Lopina Way, and Albany Drive. These signs were updated periodically with current development information.

Additionally, there were two community meetings held for this project. The first community meeting was to discuss the Planned Development Rezoning and receive public comments on the Notice of Preparation. The first community meeting was held on Monday, March 13, 2017 at the Cypress Community Center and approximately 18 members of the public were in attendance. The joint community meeting notice and Notice of Preparation was sent to property owners and occupants within 1,000 feet of the project site. Approximately 1,633 notices were mailed.

The second community meeting for the Planned Development Rezoning, Planned Development Permit, and Vesting Tentative Map was held on March 26, 2018 at the Cypress Community Center and approximately 50 members of the public were in attendance. The City of Santa Clara and the City of Cupertino were invited to attend this community meeting, and two staff members from the City of Cupertino were in attendance. This community meeting notice was sent to property owners and occupants within 1,000 feet of the project site and approximately 1,719 notices were mailed.

Both community meetings were coordinated with Council District Office 1 and Council District staff attended both community meetings.

A project webpage was also created for the project where information related to the different plan set submittals and general project information has been available. Staff contact information have also been available on the community meeting notices and on the project webpage.

### *City Council Policy 6-29: Post-Construction Urban Runoff Management*

The project has been evaluated under City Council Policy 6-29 and has found to be in compliance. The project is providing a number of different stormwater treatment methods, ranging from media filters, flow through planters, biofiltration, and beneficial landscaping. There is a total of 28 stormwater treatment areas located throughout the site to adequately treat the stormwater runoff. Although the project is creating approximately 341,830 square feet of total proposed impervious surface area, the

project is also proposing approximately 115,157 total new pervious surface area for the stormwater runoff to be treated.

6. **Residential Design Guidelines Conformance.** The project complies with the Residential Design Guidelines by being designed for the pedestrian at the ground-level and providing an interesting architectural aesthetic. This project is pedestrian scaled by placing the building within close proximity of the sidewalk, providing an awning and a ground floor entrance, and a darker masonry veneer that provides a distinctive base. Furthermore, reduced building setbacks are appropriate to higher-density housing types in growth areas to reinforce the planned urban character of the neighborhood.

Mixed-Use Building C is incorporating approximately 10,000 square feet of ground-floor commercial uses. The ground-floor of the Stevens Creek elevation is lined with transparent storefront windows with distinctive entrances to each tenant space. The building entrances to the ground-floor commercial component also have awnings to further distinguish the building entrance and to provide a shade structure. The upper floors protrude over the first floor, which provides additional shading and protection from the elements for the pedestrian and provides a sense of enclosure from Stevens Creek Boulevard.

Building C has a defined base, middle, and top. The base of the building is grounded by a darker masonry veneer material and the commercial store fronts fronting Stevens Creek Boulevard. The middle of the building is defined by the various volumetric expressions, and the top of the building is defined by the undulating profiled metal panels and the recessions in building plane. Building C also contains variations in roof line and building plane, which contribute to the overall aesthetic.

Residential Building D is located adjacent to Albany Drive and interfaces with existing two-story residential uses. Residential Building D is stepped down towards Albany Drive and is two-to five-stories (approximately 22 to 53 feet in height). The building heights and mass are concentrated towards the middle of the building and increases in height the further away the building is from the existing residential uses on Albany Drive. This transition is appropriate given the planned urban nature of the Urban Village area. Furthermore, there are individual unit entrances and balconies on the ground-floor fronting Albany Drive, allowing for additional “eyes on the street”.

Residential Building D contains a defined base, middle, and top. The base of Residential Building D is defined by the darker masonry veneer material and the ground-floor units. The two-story units located on the ground-floor provide a solid base. The middle of the building is defined by the white composite metal paneling system and the top of the building is defined by the building setbacks at the 8th floor and the differentiation in material and color. The top of the building is utilizing an orange colored stucco material that is carried through pops of color throughout the building.

The project features a strong roof top element which clearly defines the “top” of the building. The roof top element is comprised of a dark red cement board cornice. This roof top cornice is provided on all sides of the building and provides a nice finish to the building. The project incorporates a variety of materials, ranging from cement board for the ground floor, roof top cornice element, and body of the building. The project also includes a dark ipe wood material to provide additional interest. The project also includes a varied building façade, recessed windows, and protruding balconies, which all contribute to an interesting aesthetic (Planned Development Permit plan set Sheet A-3). The change in building plane, the recessed windows, and protruding balconies will provide additional shadow lines to the building and, therefore, provide dimensionality to the building façades which will provide additional architectural interest to the building.

- 7. Commercial Design Guidelines Compliance.** The project complies with the Commercial Design Guidelines. Office Building A is placed near the front setback line facing Stevens Creek Boulevard and the parking garage Building B is screened from view through the use of landscaping and decorative perforated metal panels. The primary building entrance is located along the approximately 1.3 acres of privately-maintained, publicly-accessible open space, allowing this open space to be activated. Office Building A is utilizing transparent glass and glass fiber reinforced concrete throughout the building to create a modern aesthetic. The height of the Office Building A is comparable to the heights of the other proposed buildings on-site. The Office Building A is six-stories tall with a height of approximately 100 feet tall (measured to the mechanical screen on the roof). Office Building A does not have the “back of house”, mechanical equipment, or unarticulated, blank walls placed towards Stevens Creek Boulevard, which creates a better street presence and pedestrian experience along the public sidewalk.

Office Building A also contains a defined base, middle, and top. The base of the building helps “ground” the building by utilizing a warm medium grey brick material. This brick material also has a smaller scale as the individual pieces of brick of smaller, which helps relate to the pedestrian-scale of the first floor. The defined middle of the building is the building mass that projects out. Lastly, the building top is defined by creating a thicker interior aluminum panel (please refer to Planned Development Permit plan set sheet A-7a.2.1 for a graphic) at the six-floor.

Office Building A also has a prominent main entrance from the open space area. The building entrance is situated between two angled building masses that direct the user to the entrance. There is also a protruded building feature that acts like an awning, protecting users from the elements.

- 8. California Environmental Quality Act.** The City of San José, as the lead agency for the proposed project, prepared a Draft Environmental Impact Report (DEIR), which was circulated for public review and comment from August 31, 2018 to October 15, 2018. A First Amendment to the DEIR was prepared that provided responses to

public comments submitted during the public circulation period and revisions to the text of the DEIR. The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project. The following discussion outlines the environmental impacts discussed in the DEIR.

*Identified Significant Unavoidable Impacts – Greenhouse Gas Emissions and Freeway Impacts*

The DEIR found that the project would result in significant and unavoidable impacts resulting from greenhouse gas emissions and peak hour traffic on six High-Occupancy Vehicle (HOV) freeway segments.

Operation of the project will result in greenhouse gas (GHG) emissions in excess of the “Substantial Progress” efficiency metric of 2.6 Metric Tons CO<sub>2</sub> per service population per year established by the California Air Resources Board 2017 Climate Change Scoping Plan to meet the 2030 reduction targets in Senate Bill SB32. The project will be required to implement a transportation demand management (TDM) plan, but implementation of such a plan cannot be guaranteed to reduce project GHG emissions below the Substantial Progress efficiency metric, and is, therefore, considered a significant and unavoidable impact.

The DEIR also identified that the project would increase traffic volumes by more than one percent for six HOV freeway segments that currently operate at a Level of Service F, resulting in a significant impact. Mitigation of these impacts would require roadway widening to construct additional through lanes, but it is unfeasible for an individual project to bear the responsibility for implementing such improvements. Because neither Caltrans nor the Santa Clara Valley Transportation Authority (VTA) have identified a freeway widening project for these segments, the project’s impacts on the HOV freeway segments identified would be significant and unavoidable.

Prior to adoption of this Resolution, the City Council adopted a separate resolution certifying the FEIR and adopting a Statement of Overriding Considerations related to the identified significant and unavoidable impacts. The Statement of Overriding Considerations found that benefits of the project outweigh its significant adverse environmental impact. Specifically, it found that the significant, unavoidable impacts of the project are acceptable because, among other things, i) the project will support General Plan Major Strategies #3 and #5 to promote focused growth, especially of employment, in City designated growth areas such as the Stevens Creek Urban Village; ii) the project will provide up to 315,000 square feet of office/commercial space, which will increase employment within a City-designated growth area and will help increase the ratio of jobs to employed residents to achieve fiscal sustainability for the City; iii) as a Signature Project, the development will serve as a catalyst for future development within the Stevens Creek Urban Village and will provide an example of high-quality design with attractive public amenities to serve existing and future residents; iv) the project will support General Plan policies to focus high-density development in locations in proximity to high-frequency transit, such as the existing

bus service and the proposed Bus Rapid Transit (BRT) service along Stevens Creek Boulevard; and v) the project will advance General Plan Policies to create complete communities by locating new pedestrian-oriented retail, residential units, office jobs, and customers on the site within walking distance to nearby shops, restaurants, and neighborhoods.

Environmental Impacts and Mitigation Measures

As part of the certification of the Final EIR, the City Council also adopted a related Mitigation Monitoring and Reporting Program (MMRP) for the project. A copy of the signed MMRP is attached to the separate City Council CEQA resolution. The following mitigation measures apply to the project as further explained in the DEIR and MMRP:

*Transportation* – Prior to issuance of any building permits, the project applicant shall pay fair share fees to the County of Santa Clara based on the August 2015 update of the County Expressway Plan 2040, which identifies the widening of San Tomas Expressway to eight lanes (by adding a fourth through lane in each direction) between Homestead Road and Stevens Creek Boulevard as a Tier 1 project. Payment of the fee would reduce the impact to a less than significant level.

*Air Quality* – The project applicant must prepare a construction operations plan demonstrating that all diesel-powered off-road equipment operating on site for more than two days will meet U.S. Environmental Protection Agency (EPA) Tier 2 standards or equivalent, and that diesel-powered portable equipment operating on site for more than two days will meet U.S. EPA Tier 4 standards or equivalent. Implementation of these measures would reduce the temporary community health impact to a less than significant level.

*Noise* – Limitation on types and use of construction equipment and preparation of a construction vibration monitoring plan would reduce vibration-related construction impacts to adjacent buildings to a less than significant level.

*Biological Resources* – If construction activities start during the migratory bird breeding season (February through August, inclusive), pre-construction surveys for nesting raptors or other migratory birds are required to reduce the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment impacts to less than significant levels.

*Hazardous Materials* – After demolition of the existing buildings, but prior to the issuance of grading permits, the applicant will be required to conduct soil sampling. If contaminated soils are found on site above established thresholds, the applicant must enter into the Santa Clara County Department of Environmental Health’s Voluntary Cleanup Program for remediation of contaminated soil.

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### CEQA Alternatives

As required under CEQA, the DEIR evaluated two No-Project alternatives and two Reduced Development alternatives. These alternatives are summarized as follows:

*No Project – No Development Alternative:* The No Project – No Development Alternative assumes no redevelopment of the project site and would result in the retention of the existing buildings.

*No Project – General Commercial Redevelopment Alternative:* The No Project – General Commercial Redevelopment Alternative assumes a project is built consistent with the sites' Urban Village General Plan Land Use/Transportation Diagram designation and CG Commercial General Zoning District. Such a development would not include any residential use and would include approximately 600,000 to 900,000 square feet of commercial/office space.

*Reduced Development Alternative:* The Reduced Development Alternative would reduce the size of the project to avoid identified significant transportation impacts. To avoid the impact to the San Tomas Expressway and Saratoga Avenue, net new project trips would need to be reduced by approximately 15% to 4,729 net new trips. To avoid project impacts to the six HOV freeway segments, net new project trips would have to be reduced by 25% to 4,172 net new trips. This would result in a corresponding reduction in residential units and/or commercial space.

These alternatives were rejected because none of the alternatives would meet all of the project's objectives to develop a high-density, mixed-use project within the Stevens Creek Boulevard Urban Village.

### Circulation and Public Comments

The DEIR was circulated for a 45-day period from August 31, 2018 to October 15, 2018. The City received eleven written comment letters during the public comment period. Comments were submitted by one individual and the following agencies and organizations: the California Department of Transportation (Caltrans), the Casa View Oaks Neighborhood Traffic Committee, City of Cupertino, City of Santa Clara, Santa Clara Valley Transportation Authority, the Stevens Creek Advisory Group (SCAG), Lozeau Drury LLP (representing Laborers International Union of North America, Local Union No. 270), and Adams Broadwell Joseph & Cardozo (representing San José Residents for Responsible Development). Issues raised in these comment letters include the following:

- Payment of fair share traffic impact fees;
- Analysis of transportation impacts to additional intersections;
- Queuing analysis at the I-280 off-ramps for Lawrence Expressway/Stevens Creek Boulevard and the Lawrence Expressway off-ramps at Stevens Creek Boulevard;



- Implementation, monitoring, and enforcement of TDM measures to reduce project trips and GHG emissions;
- The project should contribute offsetting improvements to address an impact at Stevens Creek Boulevard and Winchester Boulevard pursuant to the City's Protected Intersection Policy;
- Overflow parking in adjacent neighborhoods;
- Shade and shadow impacts on adjacent residential neighborhoods, especially north of Stevens Creek Boulevard;
- Speeding traffic on neighborhood streets such as Albany Drive and Kiely Boulevard;
- A desire for bike and pedestrian improvements, including a bike route on Albany Drive a bike/pedestrian crossing over I-280 at Mise Park;
- School capacity to accommodate new residents;
- Coordination between adjacent cities;
- Inadequate analysis of construction period air quality;
- Inadequate mitigation to address potential soil contamination from previous agricultural operations; and
- Construction vibration impacts to adjacent structures.

The City responded to all comments received on the DEIR and incorporated them into the First Amendment to the DEIR. The First Amendment, taken together with the Draft SEIR, constitutes the Final EIR. The DEIR and First Amendment to the DEIR are available for review on the project page on the City's Active EIRs website at: <http://www.sanjoseca.gov/index.aspx?nid=5380>.

*EIR Recirculation Unnecessary*

The comments received do not identify substantive inadequacies in the DEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a DEIR is not "significant" unless the DEIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5). In accordance with CEQA Guidelines Section 15088, the First Amendment to the DEIR for the project includes written responses to all comments received during the public review period for the DEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the DEIR address

significant environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the DEIR and, in some cases, correct or update information in the DEIR. No significant new information has been added to the EIR since publication of the DEIR; therefore, the EIR does not need to be recirculated.

9. **Public Outreach.** Pursuant to Council Policy 6-30: Public Outreach Policy, 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.

The first community meeting was held on Monday, March 13, 2017 for the Planned Development Rezoning and the Notice of Preparation. Approximately 18 people were in attendance. The concerns raised by the public were related to: impacts to schools, traffic impacts, outside agency coordination (with the City of Santa Clara and the City of Cupertino), building heights, existing conditions (related to the car dealerships and impacts to the neighborhood), and environmental review.

The second community meeting was held on March 26, 2018 and approximately 55 community members were in attendance. The concerns raised by the public were related to: building heights (privacy concerns, visual impacts), incompatibility with surrounding uses, school impacts, traffic impacts (additional traffic, pedestrian safety, parking problems), capacity of sewer lines, vacation and relocation of Lopina Way, insufficient parking, lack of park space, impacts to firefighting, increase in crime, and increased sense of overcrowding.

The staff report was posted on the City's website and a project webpage has been created. Staff has been available to respond to questions from the public.

10. **Planned Development Permit Findings.** Chapter 20.100 of the San José Municipal Code (SJMC) establishes required Findings for issuance of a Planned Development Permit for the demolition of five existing buildings and the construction of four new buildings. These criteria are applied to the project based on the above-stated findings related to General Plan and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Permit.

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

*Analysis: As described above, the project is consistent with and will further the policies of the General Plan.*

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

*Analysis: As described above, the Planned Development Permit conforms in all respects to the CP(PD) Planned Development Zoning of the property, including uses, setbacks, and height.*

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

*Analysis: As described in the City Council Policy section above, the project is consistent with the City Council policies on Public Outreach. The project also has been evaluated with City Council Policy number 6-29 Post-Construction Urban Runoff Management and has been found in compliance. The proposed project complies with stormwater requirements and is providing a number of stormwater treatment methods. Additionally, the project would connect the trash area to the sanitary sewer, utilizing water efficient irrigation systems, and provide beneficial landscaping.*

- 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 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. The architectural styles between the four buildings contain similar volumes, mass, scale, and materials. The Mixed-Use Building C and Office Building A relate to one another in the four-story volume that incorporates the white composite metal panel (see sheet A-7a.0.4 of the Planned Development Permit plan set). This four-story volumetric element relates to the volumes of the Office Building A. This volumetric element is carried through to Residential Building D. The undulation expression of the parking garage screening is also seen on Mixed-Use Building C, particularly on the Stevens Creek Boulevard elevation and the open space elevation (see Sheet A-7a.0.4 of the Planned Development Permit Plan Set). The residential and commercial (including office) uses are compatible and are not negatively impactful to one another.*

- 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 California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Analysis: The demolition of existing buildings, removal of trees, and the construction of the project will not have an unacceptable negative affect on adjacent property or properties. In addition to the Environmental Impact Report prepared pursuant to the California Environmental Quality Act (CEQA), the project was also evaluated per adopted stormwater requirements and has been found in compliance by providing a number of stormwater treatment measures on the project site. Additionally, the project's residential and commercial uses create odor as much of the activity occurs indoors. The outdoor activities would produce odors consistent with the use of public open spaces. Noise and ground vibration effects*

*related to construction and demolition would be reduced with implementation of standard conditions, best management practices and mitigation measures.*

**11. Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes required findings for Tree Removals which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit. In order to make the Tree Removal findings pursuant to Section 13.32.100 of the San José Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

- a. The tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010; or
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
- c. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

*Analysis: The project will remove 68 ordinance-sized trees located on-site. The trees are currently located adjacent to the existing buildings or in the surface parking lot. Approximately 11 trees are located within the proposed access routes (including the emergency vehicle access route, relocated Lopina Way, and vehicular entrances to proposed buildings). Approximately 11 trees are located in the publicly-accessible, privately-maintained open space. Approximately five trees are located in the project's landscaped areas (including bioretention areas). The 52 ordinance-sized trees that are located within proposed building footprints and proposed access routes cannot be preserved because the project must satisfy the densities and commercial square footage requirements of a Signature Project. Preservation of these 52 ordinance-sized trees will create a building footprint that is not conducive to the growth envisioned in this area. Furthermore, the entire project site will be graded for the proposed four buildings and the privately-maintained, publicly-accessible open space to the extent that the 68 ordinance-sized trees will be impacted and will not likely survive. The 68 ordinance sized trees are currently located adjacent to the existing buildings or in the surface parking lot. Approximately 41 trees are located within proposed building footprints and therefore, restricts the economic development of the parcel.*

**12. Evaluation Criteria for Demolition.** Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Resolution.

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

*Analysis: The demolition of the existing five commercial buildings will not result in the creation or continued existence of a nuisance, blight, or dangerous condition, nor will the project jeopardize public health, safety or welfare; however, the demolition will help implement the General Plan by furthering Major Strategy # 3 and #5 along with a number of other General Plan policies, as described above. The demolition of the existing five commercial buildings will facilitate the construction of an approximately 233,000 square foot office building, a five-story parking structure, a mixed-use building with 289 residential units and approximately 10,000 square feet of ground-floor retail, a residential building with 293 residential units, and a publicly-accessible, privately-maintained open space of approximately 1.3 acres that will be accessible to surrounding residents. The project is replacing the existing commercial square footage (of approximately 105,980 square feet) and providing an additional 134,020 square feet of commercial uses. The surrounding uses are comprised of one-to two-story car dealerships and two-story apartments (Park Kiely Apartments). While the project is not compatible with the surrounding area in terms of scale, the project is consistent with what is envisioned in the Stevens Creek Urban Village Plan in terms of densification and build-out.*

*The project will not diminish the existing housing stock in the City of San José; in fact, the project will add additional housing units. The project site does not currently contain any residential units and the project is proposing to add 582 residential units. As part of the environmental review process, an historic resources evaluation was completed for the project. The five existing commercial buildings on-site were constructed between 1973 and 1974 (approximately 45 years ago). As part of that historic resources evaluation, a literature review was conducted, and the literature review found no known record of historic or prehistoric archaeological sites located on-site or within one quarter mile of the site. The five existing commercial buildings*

*do not appear eligible for the California Register of Historic Resources or the National Register of Historic Places based on the age and architectural style. Reuse of the five existing commercial buildings would not be feasible. The current configuration of the site is not conducive to encouraging pedestrian activity along Stevens Creek as three of the five existing buildings are set further back from the street and each of the five buildings is surrounded by surface parking lots, making the site more auto-oriented and less pedestrian friendly, which is not consistent with the General Plan and Urban Village policies. Furthermore, the current location of the existing buildings would not allow the creation of the privately-maintained, publicly-accessible open space area and for compact development to occur.*

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 permitted hereby.

## **CONDITIONS**

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

4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by permittee shall constitute acknowledgement of receipt of notice by permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Stevens Creek Promenade," dated received on January 7, 2019, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".
6. **Scope of the Planned Development Permit.** Subject to all conditions herein, this Planned Development Permit allows the demolition of five commercial buildings, the removal of 68 ordinance-sized trees, relocation of Lopina Way to the east side of the project site, and construction of a six-story, approximately 233,000-square foot office building ("Building A"), a six-story parking garage ("Building B"), an eight-story mixed-use building containing approximately 10,000-square feet of ground floor commercial and up to 289 residential units ("Building C"), and an 8-story residential building containing up to 293 residential units ("Building D"). Approximately 88 affordable residential units of the 582 residential units will be dispersed between the mixed-use and residential buildings, in accordance with the approved development plans and uses consistent with the General Development Standards of the Planned

Development Zoning District. Additionally, this Planned Development Permit effectuates the street-level plaza to be used for a privately owned and maintained, publicly accessible open space plaza from 7:00 a.m. to 9:00 p.m.

7. **Project Phasing.** No building permits shall be issued for the Residential Building D and Mixed-Use Building C until such time as the Office Building A has begun full vertical construction and the publicly-accessible, privately-maintained open space has been 50% completed.
8. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows located on the ground floor shall consist of a transparent glass.
9. **Expiration of Vesting Tentative Map.** Subject to Condition #5 noted above (Conformance to Plans), the Vesting Tentative Map shall automatically expire 48 months from and after the date of issuance hereof by the Director of Planning of the City of San José. The date of issuance is the date the Vesting Tentative Map is approved by the City Council.
10. **Hours of Construction within 500 feet of a Residential Unit.** Unless otherwise expressly allowed in a development permit or other planning approval, no permittee or agent of the permittee shall suffer or 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.
11. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
12. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
13. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
14. **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.
15. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance



District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

16. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
17. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
18. **Noise.** Noise shall be contained within the buildings and the buildings shall be adequately insulated to prevent excessive sound from emanating outside. Adequate HVAC (air conditioning) shall be provided to allow all doors and windows on the subject site to remain closed during the operation and activities of the site.
19. **Sign Approval.** No signs are approved at this time. All project signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
20. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
21. **Perimeter wall.** Wall height and materials shall be provided as shown on the Approved Plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
22. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment to the satisfaction of the Director of Planning, Building, and Code Enforcement.
23. **Timing for Demolition.** Buildings and structures that are being removed to accommodate the new development shall not be removed until the related Public Works Grading Permit has been issued.
24. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related Public Works Grading Permit has been issued.
25. **Mixed-Use Building C.** Detail 3 - North Elevation (Stevens Creek Boulevard) - Storefront Option, as shown in the Planned Development Permit Plan Set Sheet A-7c.1.5 shall be implemented as shown on the accompanying building permit plan set.
26. **FAA Clearance.** In compliance with federal regulations, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard to Air

Navigation” for the highest points of Office Building A and Building C prior to City issuance of any building permit for construction.

- a. The permittee shall initiate the FAA review process via filing of FAA Form 7460-1 (Notice of Proposed Construction or Alteration) for each building high point. The technical data on the FAA forms shall be prepared by a licensed civil engineer or surveyor using latitude/longitude coordinates in NAD83 datum out to hundredths of seconds and elevations in NAVD88 datum rounded off to next highest foot.
- b. Any condition set forth in the FAA determinations requiring physical alterations or addition of roof-top obstruction lighting/markings shall be incorporated into PD17-014 through a Permit Adjustment prior to City issuance of a building permit for construction. Any condition set forth in the FAA determinations requiring filing of FAA Form 7460-2 (Notice of Actual Construction or Alteration) shall be completed prior to City issuance of any certificate of occupancy.

**27. Public Access Easement.** Prior to recordation of the Final Map, the permittee shall offer to the City of San José a Public Access Easement, subject to City’s Public Works review and approval, for an approximately 1.3 acres privately owned and maintained public accessible open space as shown on the approved plan set. The Public Access Easement shall be applied on lots 1 – 4 and lots A – G. Said easement shall be binding upon, and all benefits shall inure to, all successors in interest to the affected real property.

**28. Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.

**29. Project Phasing.** Consistent with General Plan Policy IP-5.10, no building permit shall be issued for Mixed-Use Building C until such a time as the Office Building A, and Garage Building B has begun full vertical construction and the privately-owned and maintained, publicly accessible open space has been at least fifty percent (50%) completed.

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

- a. *Construction Plans.* This permit file number, PD17-014, shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

- d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - e. *Common Interest Development.* Prior to issuance of any certificate of occupancy, or release for occupancy, the permittee shall provide a self-certified statement to the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San José Common Interest Development standards.
  - f. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial).
31. **Access Control.** When access control devices including bars, grates, gates, electric and/or magnetic locks, or similar devices which would inhibit rapid fire department emergency access to the building are installed, such devices shall be approved by the Chief. All access control devices shall be provided with an approved means for deactivation or unlocking by the Fire Department. Access control devices shall also comply with CFC/CBC Chapter 10 for exiting.
32. **Security Gate Access.** All access control vehicle security gate(s) shall be a minimum of 20 feet clear width and may have a clear with of 14 feet for each direction of travel when split by median. Gates shall be recessed beyond the turning radius required by the San José Fire Department and without obstruction of any median island dividers. All gate installing shall be reviewed and approved prior to construction. Electric gate operators must have UL 325 listing and it gate must comply with ASTM F2200.
33. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE-NO PARKING," shall be provided as required by the Fire Department.
34. **General Fire Prevention Requirements.** The permittee shall provide the following improvements:
- a. *Fire Sprinkler System.* Building(s) shall be provided with an automatic fire extinguishing system in accordance with CFC 903.2 and SJFC 17.12.630. Systems serving more than 20 heads shall be supervised by an approved central, proprietary, or remote service to the satisfaction of the Fire Chief.
  - b. *Requirements for Trash Areas.* Outdoor covered areas and trash enclosures may require the sprinkler system to be extended to protect them.

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

### **35. Housing.**

- a. The development is subject to the City's Inclusionary Housing Ordinance (IHO) and each of the conditions below:
  - i. 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.

- ii. 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.
- iii. 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.
- iv. 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.

**36. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.

**a. Vesting Tentative Map:**

- i. Submit Quitclaim for existing 10-foot PG&E easement prior to map recordation.
- ii. Provide updated title report showing underlying fee ownership of existing Lopina Way.
- iii. A Covenant of Easement (COE) will be necessary for Lots 3, 4, A, B, C, D, E, F, and G for Emergency Vehicle Access (EVA) and Ingress Egress Easement (IEE).

**b. 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.

**c. Transportation:** A Traffic Impact Analysis has been performed for this project based on a net 603 AM and 542 PM peak hour trips. See separate Traffic Memo (Stevens Creek Promenade PW No. 3-02236 (PDC16-036, PD17-014) dated December 17, 2018, for additional information. The following conditions shall be implemented:

- i. A cumulative impact to the Winchester Blvd/Stevens Creek Blvd protected intersection was identified during the public circulation of the Environmental Impact Report (EIR). Therefore, the permittee is required to pay a fair contribution towards cumulative impacts at the protected intersection at a rate of \$3,237 per trip going through the intersection, as may be adjusted. The project adds approximately 69 PM peak hour trips to the intersection. Final determination of the contribution shall be determined at the implementation phase.
  - ii. Pay fair share contribution towards the County Expressway Plan 2040 that includes widening San Tomas Expressway to eight lanes for Background plus project impact on San Tomas Expressway/Saratoga Avenue and cumulative impact at the intersections of San Tomas Expressway/Stevens Creek Boulevard and San Tomas Expressway/Moorpark Avenue.
  - iii. The permittee has agreed to pay a fair share contribution towards the VTA Voluntary Mitigation Program for impacted freeway segments. The contribution is currently based on \$1/square foot of office uses (estimated \$300,000 in 2019 numbers), as may be adjusted.
  - iv. The permittee shall be required to mitigate a cumulative impact to the protected intersection of Stevens Creek Boulevard/Winchester Boulevard which requires construction of offsetting improvements based on the number of project trips added to the cumulative impact. The 2019 (effective July 1, 2019) rate is \$3,237 per project trip for 69 project trips (estimated \$223,353 in 2019 numbers) and is adjusted annually.
  - v. Construct improvements shown on the Saratoga Avenue plan line from Kiely Avenue to Saratoga Avenue/I-280 NB Ramp. The improvements include extending the Number 2 northbound left-turn lane to Saratoga Avenue/I-280 NB ramp, signal modification at Saratoga Avenue/Kiely Avenue, removing the pork chop island at the south east quadrant of the intersection, median island modification, and re-striping.
  - vi. Install an all-way stop at the new intersection of relocated Lopina Way/Albany Drive.
  - vii. Relocated Lopina Way street section shall provide on-street parking on both sides of the street.
  - viii. Install red curb at both sides of project driveways to provide adequate sight distance at project driveways.
  - ix. Install red curb on both sides of Stevens Creek Boulevard at relocated Lopina Way to provide adequate sight distance at the new intersection.
- d. **Urban Village Plan:** This project is located in the designated Stevens Creek Urban Village per the Envision San José 2040 General Plan. Urban Villages are

designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.

- e. **Grand Boulevard:** This project fronts Stevens Creek Boulevard, which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- f. **Street Vacation:** A street vacation is required in order to relocate Lopina Way to the eastern property line and accomplish the land use plan as shown. Prior to Public Works Clearance, the street vacation shall be processed through a final map in conformance with the vesting tentative map. The preliminary title report indicates the permittee owns the street in fee.
- g. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
  - iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - iv. Because this project involves a land disturbance of one or more acres, the permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- h. **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 shall be in conformance with City Policy 6-29 prior to Grading Permit issuance.
- 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. At the implementation stage, the grading plans shall incorporate the latest published Treatment Control Measure (TCM) Summary Table and format, which can be found at the following website:  
<http://www.sanjoseca.gov/index.aspx?nid=2247>
- i. **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).
- j. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
- k. **Parks:** This residential portion of the project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- l. **Street Improvements:**
  - i. Construct 15-foot wide attached sidewalk with 4-foot by 5-foot tree wells at the back of curb along Stevens Creek project frontage. Provide approximately 5-foot wide street dedication to achieve the new sidewalk width.
  - ii. Construct 10-foot wide attached sidewalk with 4-foot by 5-foot tree wells at the back of curb along Albany Drive project frontage.
  - iii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
  - iv. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage.
  - v. Close unused driveway cut(s).
  - vi. Proposed driveway widths to be 26 feet.



- vii. 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.
- viii. Install handicap ramps (2) at opposite returns across relocated Lopina Way at Stevens Creek Boulevard and Albany Drive.
- ix. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- x. Reconstruct half street along Albany Drive and Stevens Creek Boulevard frontage including curb, gutter, sidewalk, and pavement sections.
- m. **Landscape Plan:** At the implementation phase, the landscape plans shall include the following note: “Flow-Through Planter Boxes can only accept “basin” planting zone species since they do not have bank or highland planting zones. For example, Mahonia Aquifolium, Anigozanthos ‘Red Cross’, and Muhlenbergia c. ‘Regal Mist’ are only acceptable in banks and highlands of Bioretention Areas.”
- n. **Sanitary:**
  - i. The permittee is required to submit a plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
  - ii. The existing 8-inch sanitary line along Albany Drive and Kiely Boulevard may not have adequate capacity to support the development. Provide flow monitoring along the 8-inch line at Kiely Boulevard. The metered data shall include dry weather days to avoid rain. If it is determined that the project is creating a deficiency, the project will be required to upsize the pipe.
  - iii. Project may be required to install a new 8-inch sanitary sewer main along the relocated Lopina Way.
- o. **Electrical:**
  - i. Salvage existing electroliers and luminaires along existing Lopina Way.
  - ii. Install electroliers on relocated Lopina Way project frontage. Ultimate location will be determined at Public Improvement plan stage.
  - iii. Existing electroliers along the project frontages will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
  - iv. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
  - v. Provide clearance for electrical equipment from driveways and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.

- p. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
  - i. Provide sufficient soil volume for root development (approximately 2,700 cubic feet) with "street trees located in gaps between biotreatment planters".
- q. **Referrals:** This project shall be referred to the City of Santa Clara and the Santa Clara Valley Transportation Authority.

**37. Privately Owned and Maintained, Publicly Accessible Open Space.** The project's plaza located on the property between Office Building A and Mixed-Use Building C (as referenced on the approved Plan Set) consisting of approximately 1.3 acres shall be a privately owned and maintained, publicly accessible ground level open space. The plaza shall be an area designated for use by the general public while owned and maintained by a private owner(s), meeting each of the following conditions:

- a. Permittee (including property owners) providing this publicly accessible open space shall, to the fullest extent permitted by law, hold harmless and indemnify the City of San José, its officers, agents and employees, from any and all damage or injury caused in any manner by the design, construction, use, or maintenance of the open space.
- b. Permittee (including property owners) shall be solely liable for any and all damage or loss occasioned by any act or negligence in respect to the design, construction, use, or maintenance of the open space.
- c. Liability Insurance satisfactory to the City Attorney, naming the City of San José and its officers and employees as additional insureds, shall be provided for all such spaces prior to issuance of any certificate of occupancy. The property owner shall record with the County Recorder a special restriction on the property satisfactory in substance to the Department and sufficient to give notice to subsequent owners, tenant and other persons having other economic interests in the property of the open space requirement and the means by which the requirement has been, and must continue to be, satisfied.
- d. Maintenance - Open spaces shall be maintained at no public expense. Permittee (including property owners) for the property on which the open space is located shall maintain the open space by keeping the area clean and free of litter and keeping in a healthy state any plant material that is provided for the life of the publicly accessible open space and subject building.

- e. Plaza Hours of Operation –The privately owned and maintained, publicly accessible open space shall remain open and unobstructed to public pedestrians between the hours of 7 AM and 9 PM, 7 days a week. Permittee (including property owners) shall have the right to close access to the open space for emergency repairs and/or maintenance, provided immediate written notice is given to the City and the duration of the closure is only for the completion of the emergency repairs and/or maintenance.
- f. Security – The Permittee (including property owners) shall put in place and maintain appropriate security and safety measures including, but not limited to, adequate lighting for nighttime visibility, textured or minimal slip paving, and access to a public “blue light” emergency phone or similar device situated within the plaza.
- g. The City, at its discretion, may require certain signage to be installed notifying the public of the privately owned and maintained, publicly accessible open space.

**38. 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. \_\_\_\_\_.

**39. Standard Environmental Conditions:**

- a. **Construction Air Quality:** All construction phases of the proposed project shall implement the following Best Management Practices that are required of all projects:
  - i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - iii. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - iv. All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible and feasible. Building pads shall be laid as soon as possible and feasible, as well, after grading unless seeding or soil binders are used.
  - vi. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California

Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

vii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

viii. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.

b. **Tree Replacement Ratios:** In accordance with City policy, tree replacement would be implemented as shown in the following table:

<b>Tree Replacement Ratios</b>				
<b>Circumference of Tree to be Removed<sup>[1]</sup></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>	
More than 38 inches	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

[1] As measured at 4.5 feet above the ground level. Trees greater than or equal to 18-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

i. Since all 240 trees onsite would be removed, 13 trees would be replaced at a 5:1 ratio, 94 trees would be replaced at a 4:1 ratio, 55 trees would be replaced at a 2:1 ratio, and the remaining 78 trees would be replaced at a 1:1 ratio. As mentioned previously, there are 13 native trees on-site. The total number of replacement trees required to be planted would be 629 trees. The species of trees to be planted would be determined in consultation with the

City Arborist and the Department of Planning, Building and Code Enforcement.

- ii. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
  - 1) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
  - 2) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of any Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- c. **Santa Clara Valley Habitat Conservation Plan:** The permittee is required to submit the Santa Clara Valley Habitat Plan Application for Private Project form to the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement for approval prior to the issuance of any grading permit. The project shall pay all applicable fees, including the nitrogen deposition fee, and comply with all applicable conditions prior to issuance of any grading permits. The project permittee shall submit a Santa Clara Valley Habitat Conservation Plan Coverage Screening Form or Nitrogen Deposition Only Application Form (if no land cover fees apply) to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement for review and shall complete subsequent forms, reports, and/or studies as needed.
- d. **Archeological Resources:** In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Supervising Environmental Planner and Historic Preservation Officer of the City of San José Department of Planning, Building, and Code Enforcement shall be notified, and the archaeologist shall examine the find and make appropriate recommendations 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 Supervising Environmental Planner and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement and the Northwest Information Center at Sonoma State University prior to the issuance of occupancy permits. In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped. The Santa Clara County Coroner shall

be notified and make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once the NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which shall be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.

- e. **Paleontological Resources:** If vertebrate fossils are discovered during construction, all work on the site will stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee shall be responsible for implementing the recommendations of the paleontological monitor.
- f. **Erosion Control:** As a condition of approval, the permittee would be required to implement the following measures, consistent with the regulations identified in the General Plan FEIR (as amended), for avoiding and reducing construction related erosion impacts: 1) All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.; 2) Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting, and; 3) Ditches shall be installed, if necessary, to divert runoff around excavations and graded areas.
- g. **Asbestos:** The project shall conform to the following regulatory programs and shall implement the following standard project conditions, consistent with OSHA requirements, to reduce impacts due to the presence of Asbestos Containing Materials (ACMs) and/or 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 buildings to determine the presence of asbestos-containing materials and/or lead-based paint.
  - ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
  - iii. All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with

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

- 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 BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- h. **Construction Water Quality:** Pursuant to the City's requirements, the following measures, based on Regional Water Quality Control Board recommendations, have been included in the project as Standard Permit Conditions to reduce potential construction-related water quality impacts:
  - 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 would be suspended during periods of high winds.
  - iii. All exposed or disturbed soil surfaces would 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 would be watered or covered.
  - v. All trucks hauling soil, sand, and other loose materials would be covered and all trucks would be required to maintain at least two feet of freeboard.
  - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites would be swept daily (with water sweepers).
  - vii. Vegetation in disturbed areas would 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 may also be installed at the request of the City.
- i. **Construction Noise:** Consistent with the Municipal Code and in accordance with the General Plan FEIR (as amended), particularly Policy EC-1.7, the permittee shall be required by conditions of approval to implement the following measures during all phases of construction on the project site:
  - i. Demolition and construction activities on- or off-site, within 500 feet of sensitive receptors, such as residential development, shall be restricted to the hours of 7 AM to 7 PM Monday through Friday, non-holidays only.

- ii. Staging areas and construction material areas shall be located as far away as possible from adjacent land uses.
  - iii. All internal combustion engines for construction equipment used on the site shall be properly muffled and maintained. All equipment shall be checked by a certified mechanic prior to the start of each phase of construction and determined to be running in proper condition.
  - iv. All unnecessary idling of internal combustion engines is prohibited. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes.
  - v. Construct solid plywood fences around the construction site where it is adjacent to operational businesses, residences, or noise-sensitive land uses.
  - vi. A temporary noise control blanket barrier would be erected, if necessary, along building facades facing the construction site. This would be at the discretion of the Director of Planning, Building and Code Enforcement should conflicts arise during construction.
  - vii. All stationary, noise-generating construction equipment, such as air compressors and portable power generators, shall be located as far as practical from existing residences and businesses.
  - viii. If pile driving is necessary, pre-drill founding pile holes to minimize the number of impacts required to seat the piles.
  - ix. Residential neighborhoods proximately located to the project site shall be notified in writing by the developer of the construction schedule at least seven days prior to the start of construction.
  - x. A noise disturbance coordinator shall be designated who is responsible for responding to complaints about construction noise. The telephone number of the disturbance coordinator shall be posted in a conspicuous place at the construction site and shall also be included in the notice sent to neighbors and the Director of Planning, Building and Code Enforcement regarding the schedule.
- j. **Interior Noise:** As a condition of approval, the following standard permit condition shall be included in the project: A qualified acoustical specialist shall prepare a detailed analysis of interior residential noise levels resulting from all exterior sources during the design phase pursuant to requirements set forth in the State Building Code. The study will include a review of the final site plan, building elevations, and floor plans prior to construction, and will include recommendations for building treatments to reduce residential interior noise levels to 45 dBA DNL or lower. Treatments would include, but are not limited to, sound-rated windows and doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, mechanical ventilation, etc.



The specific determination of what noise insulation treatments are necessary shall be completed on a unit-by-unit basis during final design of the project. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City for review and approval, along with the building plans and approved design, prior to issuance of a building permit.

k. Transportation:

i. Offsetting Improvements:

- 1) Winchester Boulevard and Stevens Creek Boulevard: This intersection has been identified by the City of San José as a protected intersection. Pursuant to the City's Transportation Impact Policy (Council Policy 5-3), in lieu of physical improvements to the intersection, the project applicant shall construct offsetting improvements to other parts of the citywide transportation system in the vicinity of the project site. The final improvements required will be identified by the City of San José based on the number of peak hour trips generated by the project. The specific offsetting improvements shall be identified and be implemented by the developer with all required public improvement plans, bonding, and security prior to the issuance of Public Works clearance. Pursuant to the City's policy, the implementation of offsetting improvements would provide project benefits that outweigh the project's significant impact.

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

- a. A violation of any conditions of the 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**.

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**Effective Date**

The effective date of this Permit (File No. PD17-014) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC16-036, approved for publication on \_\_\_\_\_, 20\_\_ (the "Planned Development Rezoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019, 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"**  
Legal Description

**For APN/Parcel ID(s): 296-38-013, 296-38-014 and 296-40-009**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

PARCEL A AS SHOWN ON THE PARCEL MAP OF A PORTION OF THAT CERTAIN 51.058 ACRE PARCEL OF LAND AS SHOWN ON THAT CERTAIN RECORD OF SURVEY, RECORDED APRIL 29, 1969 IN BOOK 252, PAGE 38, SANTA CLARA COUNTY RECORDS, SAID PARCEL MAP BEING FILED DECEMBER 29, 2003 IN BOOK 767 OF MAPS, PAGES 10-12.

APN: 296-38-013

**PARCEL TWO:**

PARCEL B AS SHOWN ON THE PARCEL MAP OF A PORTION OF THAT CERTAIN 51.058 ACRE PARCEL OF LAND AS SHOWN ON THAT CERTAIN RECORD OF SURVEY, RECORDED APRIL 29, 1969 IN BOOK 252, PAGE 38, SANTA CLARA COUNTY RECORDS, SAID PARCEL MAP BEING FILED DECEMBER 29, 2003 IN BOOK 767 OF MAPS, PAGES 10-12.

APN: 296-38-014

**PARCEL THREE:**

BEGINNING AT A NORTHEASTERLY CORNER OF THAT CERTAIN 51.058 ACRE PARCEL OF LAND AS SHOWN ON THAT CERTAIN RECORD OF SURVEY, RECORDED IN BOOK 252, PAGE 38, SANTA CLARA COUNTY RECORDS, SAID CORNER BEING IN THE SOUTHERLY LINE OF STEVENS CREEK BOULEVARD; THENCE ALONG THE NORTHERLY LINE OF SAID 51.058 ACRE PARCEL, SAID LINE BEING ALSO THE SOUTHERLY LINE OF SAID STEVENS CREEK BOULEVARD, NORTH 89°26'25" WEST 260.09 FEET TO A POINT OF CUSP, AS DESCRIBED IN THAT CERTAIN DEED OF RIGHT-OF-WAY RECORDED IN BOOK 8821, PAGE 278, SANTA CLARA COUNTY RECORDS; THENCE LEAVING SAID NORTHERLY LINE IN A SOUTHWESTERLY DIRECTION ALONG A CURVE, HAVING A RADIUS OF 30.00 FEET, CONCAVE SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 89°53'44", AN ARC LENGTH OF 47.07 FEET; THENCE SOUTH 00°39'51" WEST 40.00 FEET; THENCE ON A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 236.00 FEET; THROUGH A CENTRAL ANGLE OF 7°37'41", AN ARC LENGTH OF 31.42 FEET TO A POINT OF REVERSE CURVATURE; THENCE ON A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 216.00 FEET

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ALTA Owner's Policy (06/17/2006)

Printed: 07.18.16 @ 09:40 AM

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

**'A'**  
**(File Nos. PDC16-036; PD17-014; PT17-023)**

**EXHIBIT "A"**  
Legal Description

THROUGH A CENTRAL ANGLE OF 7°37'41" AN ARC LENGTH OF 28.76 FEET; THENCE SOUTH 00°39'41" WEST 386.30 FEET; THENCE ON A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90°06'25" AN ARC LENGTH OF 31.45 FEET; THENCE SOUTH 89°26'34" EAST 31.84 FEET; THENCE ON A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 330.00 FEET THROUGH A CENTRAL ANGLE OF 40°03'15" AN ARC LENGTH OF 230.70 FEET TO A POINT OF REVERSE CURVATURE; THENCE ON A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 270.00 FEET THROUGH A CENTRAL ANGLE OF 7°52'26" AN ARC LENGTH OF 37.11 FEET TO A POINT ON AN EASTERLY LINE OF SAID 51.058 ACRE PARCEL; THENCE ALONG SAID EASTERLY LINE NORTH 00°38'10" EAST 635.53 FEET TO THE POINT OF BEGINNING.

APN: 296-40-009

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ALTA Owner's Policy (06/17/2006)



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

(File Nos. PDC16-036; PD17-014; PT17-023)

"A"