

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW AN ALTERNATIVE PARKING DESIGN (CAR LIFTS) AND A SITE DEVELOPMENT PERMIT TO ALLOW THE REMOVAL OF TWO NON-ORDINANCE SIZED TREES, THE DEMOLITION OF FOUR EXISTING STRUCTURES TOTALING APPROXIMATELY 8,193 SQUARE FEET, THE CONSTRUCTION OF A NEW SIX-STORY 130 RESIDENTIAL UNIT BUILDING TOTALING APPROXIMATELY 135,599 SQUARE FEET, AND THE UTILIZATION OF TRANSPORTATION DEMAND MANAGEMENT (TDM) MEASURES TO REDUCE THE PARKING REQUIREMENTS BY 50%, ON AN APPROXIMATELY 1.02 GROSS ACRE SITE LOCATED ON THE NORTH SIDE OF AUZERAIS AVENUE (425 & 433 AUZERAIS AVENUE; APNS: 264-26-088 AND 264-26-017) AND THE WEST SIDE OF DELMAS AVENUE (383 DELMAS AVENUE, APN: 264-26-013)**

**FILE NO. SP17-016**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 20, 2017, an application (File No. SP17-016) was filed by the applicant, Auzerais SJ LLC Et Al, with the City of San José for a Special Use Permit to allow an alternative parking arrangement (car lifts) and a Site Development Permit to allow the removal of two non-ordinance sized trees, the demolition of four existing structures totaling approximately 8,193 square feet, the construction of a six-story 130 residential unit building totaling approximately 135,599 square feet, and the utilization of Transportation Demand Management (TDM) measures to reduce the parking requirements by 50%, all on an approximately 1.02 gross acre site, on that certain real property situated in the LI Light Industrial Zoning District and the R-2 Two-Family Residence Zoning District and generally located on the north side of Auzerais Avenue and the west side of Delmas Avenue (425 Auzerais Avenue; APN: 264-26-088; 433, 435, and 437 Auzerais Avenue, APN: 264-26-017; and 383 Delmas Avenue; APN: 264-

26-013, 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 Exhibits "A1 and A2," entitled “Legal Description” and depicted in Exhibits “B1 and B2” which are 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 May 23, 2018, 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, "Auzerais Avenue," dated received on April 16, 2018, 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 is located on the north side of Auzerais Avenue and the west side of Delmas Avenue within the Park/San Carlos area of the Diridon Station Area Plan. The project site consists of three parcels (APN: 264-26-013; APN: 264-26-017; and APN 264-26-088) that are currently developed with a one-story single-family residence and auxiliary structure, a vacant one-story residence partially destroyed by a previous fire, a one-story commercial building and a two-story commercial building. North of the project site are single-family residential uses. South of the project site is an existing restaurant, single-family residences, and a commercial business. East of the project site is the Guadalupe Freeway (CA-87) and west of the project site are single-family residential uses. The nearby single-family residential uses are primarily one-story structures. The project site is also adjacent to a previously approved (2016) development project (File Numbers C15-047, H15-046, and T15-058) located to the north of the project site that will construct a five-story building with 120 residential units.

2. **Project Description.** The project would allow the demolition of four existing structures, removal of two ordinance sized trees, and the construction of a new six-story 130 residential units, the utilization of Transportation Demand Management (TDM) measures to reduce the parking requirements by 50%, and an alternative parking design (i.e., car lifts), and to combine three parcels into one parcel, and to subdivide the parcel into 130 residential condominium units and a common area. The project proposes parking, lobby areas, and a community room on the ground floor with residential units on floors two through six. The proposed car lifts are located on the ground floor and there are 55 proposed car lifts. The surface parking can be accessed on Auzerais Avenue.
3. **General Plan Conformance.** The proposed project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Downtown and Residential Neighborhood. The Downtown designation allows office, retail, service, residential, and entertainment uses in the Downtown. Development within the Downtown designation is at very high intensities, unless incompatibility with other major policies within the General Plan (such as Historic Preservation Policies) indicates otherwise. The Residential Neighborhood designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas which comprise the majority of its developed land.

The portion of the project site that has a General Plan land use designation of Residential Neighborhood is proposed to be used as common open space for the proposed project. The General Plan land use designation of Residential Neighborhood envisions lower densities (typically eight dwelling units per acre and/or matching existing neighborhood character) and strictly limits development to closely conform to the existing neighborhood form and pattern. This portion of the project site is also not located in the Diridon Station Area Plan boundary. By utilizing this portion of the project site as the common open space, the project is providing a transition from the densities allowed in General Plan land use designation of Downtown to the densities and forms allowed in the General Plan land use designation of Residential Neighborhood. The proposed site design allows a buffer between the existing single-family residential uses located along Gifford Avenue and the proposed six-story building.

The proposed Conforming Rezoning, Special Use Permit, and Site Development Permit are consistent with the following General Plan policies:

- a. Major Strategy #8- Destination Downtown: Support continued growth in the Downtown as the City's cultural center and as a unique and important employment and residential neighborhood. Focusing growth within the Downtown will support the Plan's economic, fiscal, environmental, and urban design/placemaking goals.
- b. Land Use Policy LU-3.1: Provide maximum flexibility in mixing uses throughout

the Downtown Area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the Envision General Plan

*Analysis for Major Strategy #8 and LU-3.1: The General Plan land use designation for the project site is Downtown, which supports significant intensification of underutilized sites. The proposed project is a 130-unit residential project which will contribute to the growing critical population mass of the Downtown in support of economic, fiscal, environmental, and urban design/placemaking goals and act as a transition to lower intensity residential uses.*

- c. Implementation Policy IP-1.6: Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram and advance Envision General Plan vision, goals, and policies.
- d. Implementation Policy IP-1.7: Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics that require special consideration due to those constraints.
- e. Implementation Policy IP-8.2: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective Envision General Plan land use designations, while providing greater detail as to the appropriate land uses and form of development.

*Analysis for IP-1.6, IP-1.7, and IP-8.2: The proposed rezoning would change the zoning for two parcels (APN: 264-26-088 and APN: 264-26-013) on the site from the LI Light Industrial and R-2 Two-Family Residential District to the DC Downtown Primary Commercial Zoning District. The DC Downtown Primary Commercial District is consistent with the General Plan land use designation and Diridon Station Area Plan of Downtown and is a conventional district. The third parcel that fronts Auzerais Avenue (APN: 264-26-017) is proposed to remain as the R-2 Two-Family Residential District, consistent with the project site's General Plan land use designation of Residential Neighborhood.*

- f. 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 proposed project is providing an additional 130 residential units to contribute to the critical population mass of the Downtown area in support of vibrant, walkable urban settings. The Downtown is considered a Growth Area as stated in the General Plan. The project site is also in support of existing and planned transit facilities located approximately 0.7 mile from the Diridon Station, within approximately 0.4 mile from the Valley Transportation Authority (VTA) San Fernando Light Rail station and within approximately 0.2 mile from a VTA bus stop (routes 23 and 81).*

- 4. Diridon Station Area Plan Conformance.** The Diridon Station Area Plan (DSAP), approved by the San José City Council in June 2014, establishes a mix of vibrant uses and districts that build off the synergy and activity of the San José Arena and an expanded Diridon Station. Employment, retail, and entertainment uses are focused at the Diridon Station core to support transit activity and establish the area as a regionwide destination. Residential and supportive commercial uses are located within an easy walk to the Station core. The neighborhood components are located strategically in order to minimize impacts from transportation infrastructure and to strengthen existing neighborhoods.

A portion of the project is located within the Diridon Station Area Plan (DSAP) boundary. The proposed location of the common open space is not located within the Diridon Station Area Plan boundary. The Diridon Station Area Plan has a designation of Downtown for the project site and the project site is located in the Southern Zone, subarea F (Park/San Carlos). The Diridon Station Area Plan land use classification of Downtown supports residential uses as well as non-residential uses, including office, retail, service, hotel, medical, and entertainment uses. The Park/San Carlos area is a mix of new and existing uses neighborhood with a mix of older, newer, smaller and large properties.

#### *Design Guidelines*

The Diridon Station Area Plan's Design Guidelines represent a long-term vision for the area. Various design aspects are discussed in detail below.

#### Maximum Build-Out

The Diridon Station Area Plan anticipates the eventual build-out for the area, establishing the maximum theoretical development that could occur. This site allows a maximum of 154 residential units, up to 15,000 square feet of retail (although not required as the site does not have a required retail frontage requirement). The project is in conformance with these requirements.

#### Height

Guidelines are provided on the maximum height of buildings in the Diridon Station Area. The DSAP allows for a maximum building height of eight stories. These guidelines are consistent with the Federal Aviation Administration's (FAA) Part 77 Airport Approach Zone height limits and with the Santa Clara County Airport Land Use Commission's (ALUC) Comprehensive Land Use Plan (CLUP). To continue the safe operation of the Mineta San José International Airport, the maximum height is 75 feet as designated by the FAA. The maximum building height in the DSAP Southern Zone is intended to ensure the compatibility of new development with the surrounding relatively low density residential neighborhoods. The eight-story maximum height limit in the Diridon Station Area Plan discourages taller buildings adjacent to areas with existing single-family homes and requires the new development to be set back from the established single-family areas. The maximum height of the proposed project is approximately 73 feet, which is below 75 feet and therefore complies with the maximum height allowed by the Federal Aviation Administration's height limits.

### Setbacks

The Diridon Station Area Plan requires that residential buildings be set back up to 15 feet from the street-facing property line to allow a transition zone between the public and private realm. The project has a setback of 15 feet and five inches off of Delmas Avenue and a varying setback of 10 feet, 5 inches to 17 feet, 4 inches on Auzerais Avenue. The project complies with the set back from the street-facing property line on Delmas Avenue of 15 feet; however, the project does not completely comply with the set back from the street-facing property line on Auzerais Avenue as the setback on Auzerais Avenue varies from 10 feet, 5 inches to 17 feet, 4 inches. As previously stated, the Diridon Station Area Plan requires a 15 feet setback from the street-facing property line. The extra two feet and four inches is intended to provide additional depths in the wall plane to create an interesting architectural expression and aesthetic, consistent with the Residential Design Guidelines.

The project provides an outdoor recreational area between the existing single-family residences and the building (APN: 264-26-017). The proposed outdoor recreational area acts as a buffer and a setback from the existing single-family residences and the proposed building. This buffer and setback area ranges from 30 feet to 70 feet.

### Parking Design

The Diridon Station Area Plan states that structured parking that front onto streets should be wrapped with habitable space whenever possible and any exposed parking structure façade should be screened with architectural elements and/or vegetation. The proposed project is placing the lobby areas and community room in front of the street, and effectively screening the garage from the streets.

### Building Siting

The Diridon Station Area Plan requires minimization of the visual impacts of non-

active spaces by placing them behind active uses and landscaping. The only non-active use on the project site is the parking garage entrance along the Auzerais Avenue frontage. The parking garage is articulated with an aluminum and frosted glass door and a fire riser room. The landscaping located in front of the fire riser room includes a variety of shrubs that will provide screening of the blank wall. The garage entrance is approximately 20 feet wide, which is the minimum in which the San José Municipal Code will allow for a two-direction drive aisle. The remaining areas of the Auzerais Avenue project frontage includes active spaces with large, transparent windows, an entrance to the building lobby, bicycle parking and a community room.

## 5. Zoning Ordinance Compliance.

The parcels at 425 Auzerais Avenue (APN: 264-26-088) and 383 Delmas (APN: 264-26-013) were rezoned from the LI Light Industrial Zoning District/R-2 Two-Family Residence Zoning District and the LI Light Industrial Zoning District, respectively, to the DC Downtown Primary Commercial Zoning District. The zoning of the parcel at 437 Auzerais Avenue (APN: 264-26-017) remained as R-2 Two-Family Residence Zoning District. The project does not propose any structures on the R-2 Two-Family Residence Zoning District parcel (aside from a seven-foot, six-inch tall bronze metal fence), but will be utilized for common open space.

### *Setbacks*

Properties located in the DC Downtown Primary Commercial Zoning District are not subject to any minimum setback requirements. However, there are setback requirements for the R-2 Two-Family Residence Zoning District (Parcel at APN: 264-26-017). The setback requirements are as follows:

- Front: 15 feet
- Side, interior: 5 feet
- Rear, interior: 25 feet

The parcel would be common open space with only a 7-foot, 6-inch tall, 73-foot long bronze metal fence installed 15 feet from the Auzerais Avenue frontage property line. The project residential building on the DC Downtown Primary Commercial Zoning District would have a setback of 15 feet, five inches from Delmas Avenue property line and a stepped setback of 10 feet, five inches to 17 feet, 4 inches from the Auzerais Avenue frontage property line. Therefore, the setback requirements are met.

### *Height*

Pursuant to Section 20.70.200 of the San José Municipal Code, properties located in the Downtown zoning districts shall only be subject to the height limitations necessary for the safe operation of San José International Airport. The R-2 Zoning District allows



a maximum height of 35 feet. The project does not propose any structures on the portion of the project that contains an R-2 Zoning District. The proposed building has a maximum height of 73 feet, where a maximum of 75 feet is required to maintain the safe operation of Mineta San José International Airport. Therefore, the project complies with the height requirements and meets the height limitations for safe operation of the San José Airport.

#### *Off-Street Vehicle Parking*

Section 20.70.100 (Allowed Uses and Permit Requirements) of the San José Municipal Code sets forth the off-street vehicle parking requirements. A residential multiple dwelling requires one off-street vehicle parking space per unit. Based on 130 units, 130 off-street vehicle parking spaces are required. The project will have 65 parking spaces. Section 20.70.330 allows the Director of Planning to grant up to a 15 percent parking reduction if the following findings can be made:

- a. Implementation of a Transportation Demand Management (TDM) program. The project has developed a TDM program (prepared by Hexagon Transportation Consultants, Inc.) approved by the Department of Public Works on January 4, 2018 that provides evidence that the TDM program reduces parking demand and identifies the percentage of parking demand that will be reduced through the TDM program. The TDM program will incorporate one or more of the following TDM elements including, but not limited to, measures such as SmartPass transit card, parking cash-out, alternative work schedules, ride sharing, transit support, carpool/vanpools, shared parking, or any other reasonable measures; and
- b. The project demonstrates that 1) it can maintain the TDM program for the life of the project; and 2) it is reasonably certain that the parking shall continue to be provided and maintained at the same location for the services of the building or use for which such parking is required, during the life of the building or use.

The project TDM plan provides the following elements for reducing the demand for parking for the life of the project:

- Provide two free Valley Transportation Authority (VTA) SmartPass (or equivalent) per unit;
- Provide two free car share (Zipcar or equivalent) memberships per unit;
- Provide one free Bay Area Bike Share (or equivalent) membership per unit;
- Provide on-site cargo bicycle share program available to all residents;
- Provide 100 percent unbundled parking; and
- Provide a designated on-site TDM Coordinator and services.

The Homeowners Association, property manager, and/or property owner shall include and maintain the TDM measures for the life of the project.

In addition to the 15% parking reductions allowed in Section 20.70.330, Section 20.90.220 allows up to an additional 50% parking reduction (to be applied after the application of the 15% reduction allowed in Section 20.70.330) if the following elements are met:

- The structure/use is located within 2,000 feet of a proposed or an existing rail station, or bus rapid transit station;
- The project provides all the bicycle parking required by Section 20.90.060;
- The project proposes to implement or develop at least one of the following TDM measures: (1) Implement a carpool/vanpool or car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations at the ratio set forth in the development permit or development exception considering type of use; or (2) Develop a transit use incentive program for employees and tenants, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the region-wide Clipper Card or VTA SmartPass system will satisfy this requirement);
- The project proposes at least two of the following measures:
  - (1) Implement a carpool/vanpool or car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations; or
  - (2) Develop a transit use incentive program for employees, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA SmartPass system will satisfy this requirement); or
  - (3) Provide preferential parking with charging station for electric or alternatively-fueled vehicles; or
  - (4) Provide a guaranteed ride home program; or
  - (5) Implement telecommuting and flexible work schedules; or
  - (6) Implement parking cash-out program for employees (non-driving employees receive transportation allowance equivalent to the value of subsidized parking); or
  - (7) Implement public information elements such as designation of an on-site TDM manager and education of employees regarding alternative transportation options; or

- (8) Make available transportation during the day for emergency use by employees who commute on alternate transportation (this service may be provided by access to company vehicles for private errands during the workday and/or combined with contractual or pre-paid use of taxicabs, shuttles, or other privately provided transportation); or
- (9) Provide shuttle access to Caltrain stations; or
- (10) Provide or contract for on-site or nearby child-care services; or
- (11) Incorporate on-site support services (food service, ATM, drycleaner, gymnasium, etc. where permitted in zoning districts); or
- (12) Provide on-site showers and lockers; or
- (13) Provide a bicycle-share program or free use of bicycles on-site that is available to all tenants of the site; or
- (14) Unbundled parking;

The project meets the requirement for an additional 50% parking reduction because it is located approximately 1,000 feet to Children's Discovery Museum Light Rail Station and approximately 1,900 feet of the San Fernando Light Rail Station and therefore, is located within 2,000 of two existing rail stations. The project is also providing 156 bicycle parking spaces when 130 bicycle parking spaces are required, therefore, the project complies with the bicycle parking requirement. As mentioned above, the project is providing six (6) TDM measures. Because the project is located within 2,000 feet of two existing Light Rail Stations, is providing above the minimum bicycle parking requirement and is proposing six (6) TDM measures, the project is able to utilize additional parking reductions pursuant to Section 20.90.220.

Transportation Demand Management (TDM) Findings. Chapter 20.90.220.A.1.e. requires any project that utilizes a TDM program to make the following findings:

- a. The decision-maker for the project application shall first find in addition to other required findings that the project applicant has demonstrated that it can maintain the TDM program for the life of the project, and it is reasonably certain that the parking shall continue to be provided and maintained at the same location for the services of the building or use for which such parking is required, during the life of the building or use; and

*Based upon the TDM plan provided, the applicant can maintain the reduced parking through aggressive programs which encourage reduced car usage. Also, parking is unbundled, which requires the residents to rent parking spaces. The project's close proximity to the Diridon Station, VTA bus lines, Light Rail, and bicycle facilities will incentive the residents to utilize the TDM program features instead of using an automobile. Further, the conditions of approval authorized the Department of Public Works to require other TDM measures if the approved TMD measures are ineffective in reducing parking demands by at least 50%.*

- b. The decision-maker for the project application also shall first find that the project applicant will provide replacement parking either on-site or off-site within reasonable walking distance for the parking required if the project fails to maintain a TDM program.

*If the TDM program fails, the site is located within 500 feet of a public parking lot, and 2,000 feet of the Diridon Station parking. If the project is unable to maintain the TDM program, a Special Use Permit Amendment is required to proceed in order to satisfy the increased parking demand through adjustments to the TDM program or the use of off-site parking facilities.*

#### Alternative Parking Arrangement

The project will provide 65 spaces with 22 spaces accommodated by an automated car lift system manufactured by Klaus Multi-parking, Model GmbH Trend Vario 2400 series (<https://www.multiparking.com/index.php?KLAUS-TrendVario-parking-automat-parking-solution>) or equivalent brand and model. The lift allows the desired car to be called to the bottom row without requiring another car to be moved by a different resident. The lift works independently and does not rely on other cars to be moved to bring the car in question forward. This will be accomplished through an Alternative Parking Arrangement per Municipal Code Section 20.90.200:

- a. In addition to any other findings required for a Special Use Permit, the City Council may approve such off-street parking facilities arrangements only upon making the following findings:
  - i. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this title; in that, 130 parking spaces are required under the Code and 65 are provided.
  - ii. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; in that, the lifts are conditioned to maintain their operation for the life of the project.

The parking facility is reasonably convenient and accessible to the buildings or uses to be served; in that, the lifts are located in the ground floor of the building and the lift allows the desired car to be called to the bottom row without requiring another car to be moved by a different resident.

#### *Bicycle Parking*

Table 20-140 in Section 20.70.100 of the SJMC requires one bicycle parking space per unit. Based on 130 residential units, 130 bicycle parking spaces are required. Bicycle parking is located in the lobby areas and in the parking garage. The project complies with the bicycle parking requirement by providing 156 bicycle parking

spaces and one cargo bicycle parking space (to be shared among the building's tenants) exceeding the required 130 bicycle parking spaces.

- 6. Residential Design Guidelines Conformance.** The Residential Design Guidelines state that Transit-Oriented Development should create interesting and varied building facades that reinforce street activity, visual interest, and "eyes on the street". Additionally, the guidelines state that buildings along pedestrian routes are encouraged to have frontages with minimal or no setbacks. Lastly, the guidelines state that appropriate setbacks and building separations where different housing types abut or face one another should be applied. 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 providing a 12-foot setback from the sidewalk, an awning and entry element at the ground floor, and a dark plaster finish material that provides a distinctive base. Furthermore, reduced building setbacks are appropriate to higher density housing types in areas near downtown to reinforce the planned urban character of the neighborhood.

The project features a varied roof line with varying heights from approximately 65 feet to approximately 73 feet, which helps reduce the mass of the building and provides architectural interest. The project is incorporating a variety of materials, ranging from swiss pearl for the ground floor and entry way element and plaster for the body of the building. The project also includes a varied building façade, recessed windows and protruding balconies, which all contribute to an interesting aesthetic. The project includes an approximately 15,077-square foot outdoor landscaped area, with picnic tables and barbeque facilities. This outdoor landscaped area is located on the western property line to provide a setback from the existing single-family residences. The project includes a community room on the ground floor, and landscaped interior courtyards.

- 7. Environmental Review.** An Addendum to the Diridon Station Area Plan Environmental Impact Report (EIR), San José Downtown Strategy 2000 EIR, and Envision San José 2040 General Plan EIR, Supplemental EIR, and Addenda thereto was prepared by the Director of Planning, Building, and Code Enforcement for the subject Rezoning, Special Use Permit, and Vesting Tentative Map. The Diridon Station Area Plan and San José Downtown Strategy 2000 EIRs contain sufficient information to provide project-level environmental clearance for certain impacts by including standard measures that apply to all projects in San José. The project is eligible for an Addendum pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15164 and was completed in compliance with CEQA to reflect an independent judgment and analysis of the project.

A community meeting was held on Thursday, March 1, 2018, for the project. There were approximately 15 people in attendance at the community meeting, and concerns and questions were raised regarding the reduction in off-street vehicular parking. A

public hearing was held at the Planning Commission meeting on Wednesday, May 23, 2018. No comments or issues were raised.

An Initial Study was prepared in support of the Addendum that provided analysis of the proposed actions. The Initial Study included relevant mitigation measures, as identified in the previous EIRs, for air quality and biological resources impacts. Mitigation measures are required for both of these resource areas which will reduce any potentially significant project impacts to a less-than-significant level. These mitigation measures include preparing a diesel particulate matter emissions reduction plan for construction equipment and conducting pre-construction bird surveys. The mitigation measures and associated compliance methods are included in the Mitigation Monitoring and Reporting Program.

Additionally, a historical resources evaluation was completed for the project. Due to the age of the structures on site being more than 45 years old, historic evaluations were completed for the structures at 383 Delmas Avenue and 425 Auzerais Avenue to determine if the buildings are eligible to be listed on historic registers at the national, state, and local level. The historic evaluation determined that the structures are not associated with significant events or historically significant persons, not a significant example of the architectural style, and does not appear to have the potential to yield information important to history. Based on the conclusion of the evaluation, both the structures are not considered eligible for listing on the National Register of Historic Places, California Register of Historical Resources, or the City's Historic Resources Inventory and are, therefore, not considered historic resources.

The Initial Study concluded that the Diridon Station Area Plan EIR, San José Downtown Strategy 2000 EIR, and Envision San José 2040 General Plan EIRs adequately address the environmental effects of the proposed project with supplemental evaluation, and the project would not result in significant environmental effects that are not already identified in the EIRs.

The City must consider this Addendum, along with the Diridon Station Area Plan EIR, San José Downtown Strategy 2000 EIR, and Envision San José 2040 General Plan EIRs, prior to making a decision on the project. The Addendum identified that the implementation of the project would not result in any significant effects on the environment. The Addendum, Initial Study, associated appendices, and other related environmental documents are available on the Planning website at: <http://www.sanjoseca.gov/index.aspx?nid=6016>.

8. **Special Permit Findings.** Chapter 20.90 of the San José Municipal Code establishes required Findings for issuance of a permit for an alternative parking arrangement. These criteria are applied to the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the permit. In order to make the Special Use Permit findings pursuant to Section 20.90.200 of the San José Municipal Code and recommend approval to the City Council, the Planning

Commission must determine that:

- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and

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

- b. The Special Use Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and

*Analysis: As described above, the project conforms with the Zoning Ordinance and all other provisions of the San José Municipal Code that are applicable to the project.*

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

*Analysis: The project is consistent with the City Council Policy 6-30 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 project is proposing 11 treatment areas, comprised of flow-through planters and self-retaining areas. Additionally, the proposed project would connect the trash area to the sanitary sewer, utilizing water efficient irrigation systems, providing beneficial landscaping and providing storm drain labeling, which assist in preventing polluted runoff to nearby storm drains.*

- d. The proposed use at the location requested will not:

- 1) Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- 2) Impair the utility or value of property of other persons located in the vicinity of the site; or
- 3) Be detrimental to public health, safety, or general welfare; and

*Analysis: The alternative parking arrangement will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or impair the utility or value of property of other persons located in the vicinity of the site or to be detrimental to public health, safety, or general welfare because the car lift operates as a unit and is not dependent on the owner of the car. Essentially, the desired car can be called to the bottom row without requiring another car to be moved by a different resident. The proposed car lifts will be fully contained and shielded inside the parking garage and will not affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding areas nor impact the utility or value of property of other persons located in the vicinity.*

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

*Analysis: The alternative parking arrangement is fully contained and shielded inside the parking garage.*

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

*Analysis: The project site is currently served by Delmas Avenue and Auzerais Avenue. The project site has street frontages on both these streets. The project only has vehicular access on Auzerais Avenue and does not have vehicular access on Delmas Avenue. The existing streets and utilities are of sufficient capacity to serve the proposed residential use.*

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

*Analysis: As discussed above, the alternative parking arrangement is not anticipated to create impacts associated with noise, vibration, dust, drainage, erosion, storm water runoff and odor as it will be fully contained and fully shielded in the parking garage.*

9. **Site Development Permit Findings.** Chapter 20.100 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow the erection, construction enlargement, placement or installation of a building or structure on the project site. These criteria are applied to the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the permit. In order to make the Site Development Permit findings pursuant to Section 20.100.720 of the San José Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies.

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

- b. The Site Development Permit, as approved, conforms with the Zoning Code and



all other provisions of the San José Municipal Code applicable to the project.

*Analysis: As described above, the project conforms with the Zoning Ordinance and all other provisions of the San José Municipal Code that are applicable to the project.*

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

*Analysis: The project is consistent with the City Council Policy 6-30 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 includes 11 treatment areas, comprised of flow-through planters and self-retaining areas. Additionally, the project would connect the trash area to the sanitary sewer, utilizing water efficient irrigation systems, providing beneficial landscaping and providing storm drain labeling, which assist in preventing polluted runoff to nearby storm drains.*

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

*Analysis: The project site is a multi-family residential use, which is contained solely in one on-site building. There are no other buildings proposed on-site.*

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

*Analysis: The project is compatible with a previously approved adjacent 120 residential unit development project (Planning File No. H15-046, approved by the City Council on June 21, 2016, by Resolution No. 77846) in that the height, massing and architectural style is similar. H15-046 is approved with building heights up to 75 feet to the top of the elevator and approximately 65 feet tall to the top of the parapet. Additionally, the H15-046 project is approved with a modern aesthetic, utilizing clean lines and similar materials as the proposed project. The previously approved development project is located north of the project site and is located on the same block as the proposed project. While the proposed project is not physically compatible with the existing surrounding uses (i.e., single-story single-family residential uses and single-story commercial uses), the project is of a scale that the Diridon Station Area Plan and the General Plan envisions for redevelopment.*

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

*Analysis: The demolition of existing buildings and the construction of a new 130-unit residential building will not have an unacceptable negative affect on adjacent property or properties. In addition to the Addendum 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 eleven biotreatment areas on the project site. Additionally, the proposed residential use is not anticipated to create odor as much of the activity occurs indoors. Lastly, noise and ground vibration related to construction and demolition are the only anticipated temporary noise sources.*

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

*Analysis: The project includes new landscaping, irrigation systems, walls and fences, trash facilities that will upgrade the appearance of the neighborhood. The project includes nine new trees and a new 7 feet, 6 inches tall decorative metal fence that encloses the common open space along the west side of the project site. The proposed trash enclosure is located inside the garage and therefore, is screened from the public right-of-way.*

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

*Analysis: The project includes vehicular access off of Auzerais Avenue only and does not propose vehicular access on Delmas Avenue. The project features pedestrian access on Delmas Avenue and Auzerais Avenue. As discussed in the Zoning Conformance section above, the project includes a 50% reduction in the required parking and an alternative parking arrangement (i.e., car lifts). As part of the 50% reduction in parking, the project is required to implement the Transportation Demand Management (TDM) measures for the life of the project. These TDM measures include free SmartPass, free car share (e.g., Zipcar) memberships, free bike share memberships, an on-site cargo bicycle share program, unbundled parking, and an on-site TDM coordinator for residents of the project.*

**10. 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 buildings will facilitate the construction of a six-story building that will enhance the area and is compatible with the surrounding neighborhood. The surrounding neighborhood is comprised of residential uses. While there is an existing single-family house located on the project site, the project will not reduce the supply of housing as it is proposing 130 residential units. Reusing the existing buildings is not feasible as it is likely that the project site would not be able to accommodate the parking and open space requirements*

*As part of the environmental review process, a historic evaluation was completed for the structures on the project site. The evaluation determined that the structures were not eligible for local, state, or federal designation. The existing buildings on the project site are not historically significant under the City's historic preservation ordinance, the California Register of Historical Resources or the National Register of Historic Places.*

- 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 that are 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. Tree Removal findings pursuant to Section 13.32.100 of the San José Municipal Code must determine 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 proposed project includes removal of two ordinance sized trees that are on the project site, one that is approximately 104 inches and the other 70 inches in circumference. The trees are identified as number 189 and number 193 in the tree evaluation table on Sheet A1.0a of the approved plan set and are presently located in the areas of improvement and grading. Not only are these species deemed unsuitable by the City (City Council Resolution No. 76526) as they are Trees of Heaven, they also have poor form and structure, as per the Tree Evaluation*

*Survey performed by HortScience, Inc. in June 2017. As a condition of approval, the project is required to abide by the City of San José standard tree replacement ratios, which requires replacement for ordinance sized trees, non-ordinance sized trees, native trees, non-native trees and orchards. The replacement ratio is generally a 2:1 replacement for ordinance sized trees and a 1:1 replacement ratio for non-ordinance sized trees. The project is proposing a total of nine new trees to be planted in the common open space area and therefore, satisfies the standard replacement ratio of four trees.*

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

## **CONDITIONS**

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Special Use Permit and Site 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 Special Use Permit and Site 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 Special Use Permit and Site 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/Amendment must be approved prior to the expiration of this Special Use Permit and Site 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 Special Use Permit and Site 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.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the permittee for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Special Use Permit and Site Development Permit plans entitled, "Auzerais Avenue," dated received on April 16, 2018, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".
6. **Use Authorization.** The Special Use Permit allows for the utilization of an alternative parking arrangement to allow the use of 55 car lifts (brand and type as noted on the approved plans dated April 16, 2018). Should the brand/model number be altered in any manner, a Permit Adjustment shall be required, to the satisfaction of the Director of Planning, Building, and Code Enforcement.
7. **Transportation Demand Management.** A Transportation Demand Management plan ("TDM Plan") has been submitted and approved for this project. The TDM Plan dated April 5, 2017 entitled "TDM Plan" prepared by Hexagon Transportation Consultants is on file with the Department of Public Works and is incorporated fully herein by this reference. Based on the TDM measures included in the approved TDM Plan, the project shall meet the 50 percent parking reduction goal. The project is required to submit an annual monitoring report (and pay associated administrative cost for City's time to review), which measures the effectiveness of the approved TDM plan, in a form approved by the Director of Public Works. The report shall be

provided to the City on or before each June 30<sup>th</sup> for the reporting period of the prior calendar year. Additional TDM measures, or changes to existing TDM measures, may be required at the discretion of the Director of Public Works if the TDM measures are not effective in reducing the parking demand by a minimum of 50 percent. The project will also be required to implement control measures to prohibit any parking in the adjacent and surrounding neighborhoods, businesses, and areas. Permittee shall insure no person living, working, visiting or using the project site in any manner shall create any parking impact to the surrounding neighborhoods, businesses, and areas.

Permittee shall also implement the following TDM measures for the life of the project:

- a. Free SmartPass or Clipper Card; two (2) per residential unit and one (1) per employee for the retail use.
- b. One (1) onsite free Cargo Bicycle for the tenants to share for the life of the project.
- c. Provide 100% unbundled parking for all residential spaces.
- d. Employee Clipper Card incentive program for retail employees.
- e. Provide onsite TDM Coordinator (minimum 8 hours per day) to monitor and implement the TDM measures; including providing information packets on transportation options, implementing a car share/ride share program, monitoring parking demand, and scheduling the cargo bicycle. The TDM Coordinator shall have comprehensive knowledge of local transit, trip planning services, car share services, private shuttles, as well as local contact for car sharing service.
- f. Establish an up-to-date TDM services and membership management website. The site should give information on local transit, car sharing services and how residence can get and manage their memberships. The TDM Coordinator shall manage and continuously update the website

If the project is unable to maintain the TDM program, a Special Use Permit Amendment is required to modify the TDM, or provide replacement parking (either on-site or off-site within reasonable walking distance for the parking required),, pursuant to San José Municipal Code Section 20.90.220, as amended.

8. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass. The only approved frosted glass is on the parking garage glass as noted on the Approved Plan Set.
9. **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 an 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.

10. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
12. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
13. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
14. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
15. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
16. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. No outdoor storage is allowed / permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
17. **Noise.** Noise shall be contained within the buildings and the buildings shall be adequately insulated to prevent excessive sound from emanating outside. Adequate HVAC (air conditioning) shall be provided to allow all doors and windows on the subject site to remain closed during the operation and activities of the site.
18. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
19. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.

20. **Perimeter 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.
21. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment to the satisfaction of the Director of Planning, Building, and Code Enforcement.
22. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related Grading Permit has been issued.
23. **Timing for Demolition.** Buildings and structures that are proposed for removal to accommodate the new development shall not be removed until the related Building Permit has been issued.
24. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* These permit file number, SP17-016 shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - e. *Project Addressing Plan.* Prior to issuance of 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).
25. **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.



**26. 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.

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

- a. *Fire Sprinkler System.* Building(s) shall be provided with an automatic fire extinguishing system in accordance with CFC 903.2 and SJFC 17.12.630. Systems serving more than 20 heads shall be supervised by an approved central, proprietary, or remote service to the satisfaction of the Fire Chief.
- b. *Requirements for Trash Areas.* Outdoor covered areas and trash enclosures may require the sprinkler system to be extended to protect them.
- c. *Fire Alarm System.* Building(s) shall be provided with an automatic fire alarm system as required by CFC 907.2 and 907.3.
- d. *Standpipes Available During Construction.* All buildings under construction, three or more stories in height, shall have at least one standpipe for use during construction. Such standpipe shall be provided with fire department hose connections. Location(s) and numbers of standpipe(s) shall be reviewed and approved by the Fire Department.
- e. *Complex Map.* A complex map is recommended which incorporates an elevated view of the building and individual unit addresses. It should be illuminated during the hours of darkness and positioned in the lobby area to be readily readable from main pedestrian access entrance. A complex map should also be placed contiguous to the vehicular entrance to the development where it will not cause stacking problems when being viewed.
- f. *Public Safety Radio Coverage.* Public Safety Radio Coverage is to be provided throughout the area of each floor of the building. Communication repeaters may be required to be installed in the buildings.
- g. *Elevators.* Elevators shall be in accordance with the requirements stipulated in the California Building Code Chapter 30. All buildings with one or more passenger service elevators shall be provided with not less than one medical emergency service elevator.
- h. *Management Association Responsibilities for Life & Safety Systems.* The 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” for approval by San José Building and Fire Departments is required prior to starting construction for wood framing projects consisting of 15 or more dwelling units or construction exceeding a total of 50,000 square feet.

**28. Diridon Station Area Financing Plan.** The San José City Council of the City of San José (“City”) approved the Diridon Station Area Plan on June 17, 2014 (“Diridon Plan”). The Diridon Plan, in conjunction with the 2040 General Plan, provides the framework for development within the approximately 250-acre Diridon Plan area surrounding the existing Diridon Station and future High Speed Rail and Bay Area Rapid Transit hub.

The City is in the process of developing a comprehensive financing plan for the Diridon Plan (“Diridon Financing Plan”) to fund public improvements, affordable housing, and other amenities and services. The Diridon Financing Plan may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program; (v) Commercial linkage fee program; and/or (vi) other financing mechanism.

The City completed a Diridon Station Area Infrastructure Analysis on January 31, 2017 (“2017 Infrastructure Analysis”). The 2017 Infrastructure Analysis examined the basic public infrastructure required for the build-out of the Diridon Plan totaling approximately \$70 million for public streets, sanitary sewer, storm drain and flood control, potable and recycled water, and parks, plazas, and trails. The City is in the process of updating the 2017 Infrastructure Analysis. The City is also in the process of conducting various studies to determine the appropriate financing mechanisms to be included in the Diridon Financing Plan and fair-share contributions from each project located within and outside the Diridon Plan area boundary.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands the above. Permittee further agrees that prior to the issuance of any building permit, the proposed project shall be subject to, fully participate in, and pay any and all charge, fee, assessment or tax included in the City Council approved Diridon Financing Plan, as may be amended, which may include one or more of the financing mechanisms identified above.

## **29. Housing.**

- a. **Permit Issuance and/or Tentative Map or Parcel Map Approval.** The above referenced proposed development(s) contains dwelling units and is thus subject to the City’s Inclusionary Housing Ordinance or Affordable Housing Impact Fee

(AHIF). The permittee shall, as part of the application for First Approval, submit to the Housing Department for approval an Affordable Housing Compliance Plan Application (Compliance Plan), and all relevant attachments. The Compliance Plan Application is available at: <http://www.sanjoseca.gov/DocumentCenter/View/57915>. The permittee must also submit the required Compliance Plan application processing fee to the Housing Department. The Inclusionary Housing Ordinance and AHIF Resolution provide a process that allow permittee to make a claim that a Project may be exempt from affordable housing obligations under the Inclusionary Housing Ordinance or the AHIF Resolution. However, the permittee who believes their project is exempt must submit a Compliance Plan Application, and provide information regarding eligibility for a claimed exemption. Please contact the Housing Department as soon as possible to initiate Affordable Housing Compliance Plan completion. The Compliance Plan must be submitted and approved by the Housing Department prior to Planning scheduling the Project for hearing. Any Inclusionary Housing Ordinance benefits desired for on-site units (e.g., setbacks) listed in the Compliance Plan should be approved by the Director of the Planning, Building and Code Enforcement Department. The above listed permit(s) may seek demolition of existing structures with residential dwelling units if: (i) the existing structure is multi-family (triplexes or larger) and the subdivider is required to comply with the Tenant Protection Ordinance and cannot evict tenants without good cause (intent to demolish the building is not good cause); or (ii) the project involves demolition of existing multi-family residential units built before September 7, 1979 that are subject to the Apartment Rent Ordinance (ARO), and includes at least four units that are subject to the City's Ellis Act Ordinance. Requirements imposed upon the owner/permittee include, but are not limited to, delivery of 120-days minimum to 1 year to tenants of owner's intent to withdraw building from the rental market, provide tenant relocation assistance, record an Ellis Act covenant. New or remodeled units rented within five years of withdrawal under the Ellis Act are subject to the ARO and impacted tenants are notified of their right to return to the property upon owner's intention to bring back the property onto the rental market. For information, please visit: [www.sjhousing.org](http://www.sjhousing.org) and/or call (408) 975-4480.

- b. Actions Required for Housing Department's Clearance for Building Permit(s) or Map Approval. Prior to the approval of any final or parcel map, or issuance of any building permit for a rental residential development, the permittee of a Rental residential development shall either pay the outstanding AHIF fee(s) or, if the Subdivider is claiming an exemption, the owner and Subdivider shall execute an Affordable Housing Agreement to memorialize the project's affordable housing obligation, the outstanding requirements, and if needed, obtain a fee deferral. The Affordable Housing Agreement must then be recorded against the entire development. Prior to the approval of any final or parcel map, or issuance of any building permit for a For-Sale residential development, the permittee of a project that has claimed to be a For-Sale project shall provide evidence that it has met

the For-Sale requirements and provide any documentation associated with its selected compliance option (e.g., on-site, off-site construction of affordable units), and any exemption that may have been claimed. The owner and permittee shall execute an Affordable Housing Agreement to memorialize the project's affordable housing obligation and the outstanding requirements. The Affordable Housing Agreement must then be recorded against the entire development.

- c. Actions required for Housing Department's Clearance of Final Inspection and Issuance of Certificate of Occupancy. No Final Inspection Approval, Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units will be issued until all requirements of the Inclusionary Housing Ordinance, and/or the AHIF Resolution and implementing regulations are met.

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

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:** A Traffic Operational Analysis has been performed for this project based on a net of 87 AM and 87 PM peak hour trips. See separate Traffic memo dated 1/4/18 for additional information. The following conditions shall be implemented:
  - i. The parking garage entry gate shall be opened during the time period of the day when most of the inbound vehicle trips are likely to occur (generally from 2 to 7 pm).
  - ii. "No Parking" zones shall be installed adjacent to the project driveway, as well as appropriate audible and visible warning signals to alert pedestrians and bicyclists for vehicles exiting the site.
  - iii. Provide adequate car door buffer space between the parking spaces and garage supporting walls, and/or assign those parking spaces located adjacent to walls to residents with compact vehicles.
  - iv. On-street limited parking zone on Delmas Avenue or Auzerais Avenue for large moving trucks shall be installed. The loading zone location and design shall be evaluated by City staff during the implementation phase.

v. Implement a comprehensive Transportation Demand Management (TDM) plan in order to meet the proposed 50 percent parking reduction for the project. A Transportation Demand Management plan (“TDM Plan”) has been submitted and approved for this project. The TDM Plan dated April 5, 2017 entitled “TDM Plan” prepared by Hexagon Transportation Consultants is on file with the Department of Public Works and is incorporated fully herein by this reference. Based on the TDM measures included in the approved TDM Plan,, the project shall meet the 50 percent parking reduction goal. The project is required to submit an annual monitoring report (and pay associated administrative cost for City’s time to review), which measures the effectiveness of the approved TDM plan, in a form approved by the Director of Public Works. The report shall be provided to the City on or before each June 30th for the reporting period of the prior calendar year. Additional TDM measures, or changes to existing TDM measures, may be required at the discretion of the Director of Public Works if the TDM measures are not effective in reducing the parking demand by a minimum of 50 percent. The project will also be required to implement control measures to prohibit any parking in the adjacent and surrounding neighborhoods, businesses, and areas. Permittee shall insure no person living, working, visiting or using the project site in any manner shall create any parking impact to the surrounding neighborhoods, businesses, and areas. The proposed residential TDM Plan includes the following measures:

- 1) Free SmartPass or Clipper Card; two (2) per residential unit and one (1) per employee for the retail use.
- 2) One (1) onsite free Cargo Bicycle for the tenants to share for the life of the project.
- 3) Provide 100% unbundled parking for all residential spaces.
- 4) Employee Clipper Card incentive program for retail employees.
- 5) Provide onsite TDM Coordinator (minimum 8 hours per day) to monitor and implement the TDM measures; including providing information packets on transportation options, implementing a car share/ride share program, monitoring parking demand, and scheduling the cargo bicycle. The TDM Coordinator shall have comprehensive knowledge of local transit, trip planning services, car share services, private shuttles, as well as local contact for car sharing service.
- 6) Establish an up-to-date TDM services and membership management website. The site should give information on

local transit, car sharing services and how residence can get and manage their memberships. The TDM Coordinator shall manage and continuously update the website

- vi. If the project fails to maintain the above TDM measures, a Special Use Permit Amendment is required to modify the TDM, or provide replacement parking (either on-site or off-site within reasonable walking distance for the parking required), pursuant to San José Municipal Code Section 20.90.220, as amended.
- vii. With the inclusion of the above 30.b.i through 30.b.v conditions, the subject project will be in conformance with Envision San José 2040 General Plan Goals for the Downtown Strategy Plan.

**c. Grading/Geology:**

- i. A grading permit is required prior to the issuance of a Public Works Clearance.
- ii. b) All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- iv. Because this project involves a land disturbance of one or more acres, the permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should

be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
  - i. The project's preliminary Stormwater Control Plan and numeric sizing calculations have been reviewed, and this project will be in conformance with City Policy 6-29.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f. **Flood Zone X:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
- h. **Parks:** This residential 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.
- i. **Undergrounding:**
  - i. The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Auzerais Avenue and Delmas Avenue prior to issuance of a Public Works Clearance. One-Hundred percent (100%) of the base fee in place at the time of payment will be due. Currently, the 2018 base fee is \$485 per linear foot of frontage and is subject to change every January 31<sup>st</sup> based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.

- ii. The Director of Public Works may, at his/her discretion, allow the permittee to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Auzerais Avenue and Delmas Avenue. Permittee shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.

j. **Street Improvements:**

- i. Construct 10-foot wide attached sidewalk with 4-foot by 5-foot tree wells along Auzerais Avenue project frontage.
- ii. Construct 12-foot wide attached sidewalk with 4-foot by 5-foot tree wells along Delmas Avenue project frontage. Provide approximately 2-foot wide sidewalk easement.
- iii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- iv. Remove and replace curb, gutter, and sidewalk along project frontage.
- v. Close unused driveway cut(s).
- vi. Proposed driveway width 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. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- ix. City recommends reconstruction of the curb ramp at the corner intersection of the Auzerais Avenue and Delmas Avenue project frontages. This may benefit the users accessing the project site.

k. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.

- i. The following shall be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
  - 1) **Site Utilization Plan and Letter of Intent:** The site utilization plan shall provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent shall provide a description operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site.



These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. This would also provide a discussion as to the reasons why covered pedestrian walkways will not be provided (e.g., swinging loads over sidewalk not safe for pedestrians).

- 2) **Multi-Phased Site Specific Sketches:** These sketches shall show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches shall include the type and location of the work to be accomplished within the right-of-way. The exhibit shall show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:
    - 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
    - 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in Condition No. 30.k.i.2 above.
  - iii. If proposed lane and parking closures are a part of the Revocable Permit Application, permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/index.aspx?NID=3713>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
  - l. **Strong Neighborhoods Initiative (SNI):** This project is located within the Delmas Park SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
  - m. **Sanitary:** The permittee is required to submit plans and profiles of the private sewer mains with lateral locations for final review and comment prior to construction.
  - n. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San José Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
  - o. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
  - 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.

**31. 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. \_\_\_\_\_.

**32. Standard Environmental Conditions:**

**a. Air Quality:**

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - 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.
  - All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - 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). Clear signage shall be provided for construction workers at all access points.
  - All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- i. 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. Biological Resources:**

- i. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table 4.4-2 below.

<b>Table 4.4-2: Tree Replacement Ratios</b>				
<b>Diameter of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
18 inches or more	5:1	4:1	3:1	24-inch box
12 - 18 inches	3:1	2:1	none	24-inch box
Less than 12 inches	1:1	1:1	none	15-gal. container

x:x = tree replacement to tree loss ratio  
 Note: 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.

During construction:

- ii. Prohibit grading, construction, demolition or other work within the TREE PROTECTION ZONE. No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist.
- iii. Any root pruning required during construction shall receive the prior approval of, and be supervised by, the consulting arborist.
- iv. Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
- v. Apply supplemental irrigation to trees as determined by the consulting arborist.
- vi. If injury should occur to any tree during construction, the consulting arborist shall evaluate the trees as soon as possible so that appropriate treatments can be applied.

The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permit. The project permittee shall submit a SCVHP Coverage Screening Form to the Supervising Environmental Planner of the Department of Planning, Building, and Code

Enforcement for review and will complete subsequent forms, reports, and/or studies as needed.

**c. Cultural Resources:**

- i. **Stop Work and Evaluate Unanticipated Finds.** If buried cultural deposits are encountered during project activities, all work within 50 feet of the find should be redirected. A qualified archaeologist shall: (1) evaluate the find to determine if it meets the CEQA definition of a historical or archaeological resource; and (2) provide project-specific recommendations regarding the disposition of the find. The results of any archaeological investigation will be submitted to the Northwest Information Center (NWIC) at Sonoma State University. If the find does not meet the definition of a historical or archaeological resource, then no further study or protection is necessary prior to project implementation. If the find does meet the definition of a historical or archaeological resource, then it should be avoided by project activities. Avoidance may be accomplished through redesign, conservation easements, or site capping. If avoidance is not feasible, adverse effects to such resources should be mitigated in accordance with the recommendations of the evaluating archaeologist. Upon completion of the archaeological evaluation, a report documenting the methods, results, and recommendations of the archaeologist shall be prepared and submitted to the NWIC.
- ii. **Follow Statutory Procedures if Human Remains are Encountered.** Pursuant to Health and Safety Code § 7050.5 and Public Resources Code § 5097.94 of the State of California, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the remains are of Native American origin, the Coroner shall notify the Native American Heritage Commission (NAHC) who shall attempt to identify descendants of the deceased Native American to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. The archaeologist should recover scientifically valuable information, as appropriate and in accordance with the recommendations of the Native Americans. Upon completion of analysis, as appropriate, the archaeologist will prepare a report documenting the methods and results of the investigation. This report will be submitted to the NWIC. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- iii. **Provide Preconstruction Worker Awareness Training.** The project

- proponent will ensure that all construction personnel receive paleontological resources awareness training that includes information on the possibility of encountering fossils during construction; the types of fossils likely to be seen, based on past finds in the project area; and proper procedures in the event fossils are encountered. Worker training will be prepared and presented by a qualified paleontologist.
- iv. **Stop Work.** 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 City will be responsible for ensuring that the recommendations of the paleontological monitor regarding treatment and reporting are implemented.
- d. **Geology and Soils:**
- i. The design-level geotechnical investigation to verify compliance with applicable regulations shall identify site-specific ground failure hazards (e.g., liquefaction) and the appropriate techniques to minimize risks to people and structures. Over-excavation and re-compaction is a commonly used method to mitigate soil conditions susceptible to settlement.
- ii. The proposed project shall be designed and constructed in accordance with the most recent California Building Code, which contains the regulations that govern the construction of structures in California. Adherence to the California Building Code would ensure the proposed improvements resist minor earthquakes without damage and major earthquakes without collapse.
- iii. Standard erosion control and grading best management practices (BMPs) will be implemented during construction to prevent substantial erosion from occurring during site development. The BMPs shall be included on all construction documents.
- iv. Prior to issuance of a Public Works Clearance, the permittee must obtain a grading permit before commencement of excavation and construction. In accordance with General Plan Policy EC-4.12, the permittee may be required to submit a Grading Plan and/or Erosion Control Plan for review and approval, prior to issuance of a grading permit.
- v. Consistent with General Plan policies, the project shall complete a design-level geotechnical investigation to verify compliance with applicable regulations. The Geotechnical Report shall determine the site-specific soil conditions and identify the appropriate design and construction techniques to minimize risks to people and structures, including but not limited to:

- foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation. The report shall be submitted to the City of San José Public Works Department for review prior to issuance of any site-specific grading or building permit.
- vi. Techniques that may be used to minimize hazards include: replacing problematic soils with properly conditioned/compacted fill and designing structures to withstand the forces exerted during shrink-swell cycles and settlements.
  - vii. Foundations, footings, and pavements on expansive soils near trees shall be designed to withstand differential displacement.
- e. Hazards and Hazardous Materials:**
- i. In accordance with National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines, an asbestos survey shall be performed on all structures proposed for demolition that are known or suspected to have been constructed prior to 1980. If asbestos-containing materials are determined to be present, the materials shall be abated by a certified asbestos abatement contractor in accordance with the regulations and notification requirements of Bay Area Air Quality Management District (BAAQMD). Demolition and disposal of ACM will be completed in accordance with the procedures specified by BAAQMD's Regulation 11, Rule 2. A final report of methodologies and findings of the survey shall be submitted to the Building Division of PBCE prior to the issuance of grading or building permits.
  - ii. A lead-based paint survey shall be performed on all structures proposed for demolition that are known or suspected to have been constructed prior to 1980. If lead-based paint is identified, then federal and state construction worker health and safety regulations shall be followed during renovation or demolition activities. If loose or peeling lead-based paint is identified at the building, it shall be removed by a qualified lead abatement contractor and disposed of in accordance with existing hazardous waste regulations. Requirements set forth in the California Code of Regulations will be followed during demolition activities, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings will be disposed of at landfills that meet acceptance criteria for the waste being disposed. A final report of methodologies and findings of the survey shall be submitted to the Building Division of the City's PBCE prior to the issuance of grading or building permits.

- iii. The County of Santa Clara and City of San José shall be notified of the proposed redevelopment, as stated and required under the leaking UST case closure issued by the Santa Clara County Department of Environmental Health.
- iv. A Site Management Plan (SMP) shall be written and in-place during site development to address any potential contamination that might be discovered. The SMP will establish management practices for identifying, handling, and disposing of contaminated soils, if encountered during construction activities. If contamination above environmental screening levels is found during construction, regulatory oversight from the Santa Clara County Department of Environmental Health shall be obtained.

**f. Hydrology and Water Quality**

- i. Utilize on-site sediment control BMPs to retain sediment on the project site;
- ii. Utilize stabilized construction entrances and/or wash racks;
- iii. Implement damp street sweeping;
- iv. Provide temporary cover of disturbed surfaces to help control erosion during construction; and
- v. Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

**g. Noise and Vibration**

- i. Construction will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- ii. The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
- iii. The unnecessary idling of internal combustion engines shall be prohibited.
- iv. Staging areas and stationary noise-generating equipment shall be located as far as possible from noise-sensitive receptors such as residential uses (a minimum of 200 feet).
- v. The surrounding neighborhood shall be notified early and frequently of the

construction activities.

- vi. A “noise disturbance coordinator” shall be designated to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.
- vii. The permittee shall minimize vibration impacts to adjacent uses during demolition and construction by restricting vibratory compactors to have a minimum setback of 50 feet from any structures. A vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction.
- viii. A site-specific noise analysis by an acoustical consultant shall be required to verify consistency with the City’s noise standards and identify necessary design features and noise reduction measures, based on projected General Plan traffic volumes. Projections of future noise exposure would also take into account existing and planned commercial/industrial operations and transit facilities.
- ix. Where exterior day-night average noise levels are 60 to 70 dBA DNL, interior noise levels can typically be maintained below 45 dBA DNL with the incorporation of adequate forced air mechanical ventilation systems in the units, which allow residents the option of controlling noise by keeping the windows closed. In areas with noise levels exceeding 70 dBA DNL, the inclusion of windows and doors with high Sound Transmission Class (STC) ratings may also be necessary to meet the interior noise standard of 45 dBA DNL.

**33. Revocation, Suspension, Modification.** This Special Use Permit and Site 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 Special Use Permit and Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.



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

**Effective Date**

The effective date of this Permit (File No. SP17-016) shall be the effective date of the Rezoning Ordinance for File No. C17-009 and shall be no earlier than the effective date of said Rezoning Ordinance.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

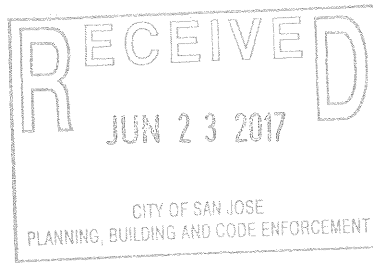
\_\_\_\_\_  
SAM LICCARDO  
Mayor

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.*



June 16, 2017  
HMH 4963.00.270  
Page 1 of 1

**EXHIBIT "A1"  
FOR DC REZONING PURPOSES**

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Parcels One, Two and Four described in the grant deed recorded December 16, 2016 in Document No. 23535168 and all of Parcel One described in the Correctory Trustee's Deed recorded August 12, 2015 in Document No. 23050441 both of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the easterly corner of said Parcel Four, being on the northwesterly line of Auzerais Avenue;

Thence along said northwesterly line the following two courses:

1. Thence South 60°15'35" West, 91.63 feet;
2. Thence South 54°47'54" West, 15.26 feet, to the southwesterly line of said Parcel One as described in said grant deed;

Thence along said southwesterly line, and the northwesterly and northeasterly lines of said Parcel One the following three courses:

1. Thence North 43°28'21" West, 213.81 feet;
2. Thence North 60°15'35" East, 105.08 feet;
3. Thence South 29°44'25" East, 68.61 feet, to the northwesterly line of said Parcel Two;

Thence along said northwesterly line, North 60°15'35" East, 137.50 feet, to the southwesterly line of Delmas Avenue;

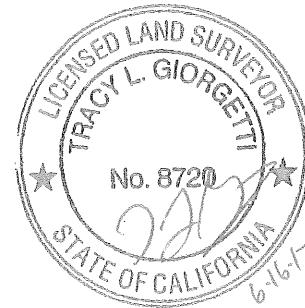
Thence along said southwesterly line, South 29°44'25" East, 68.82 feet, to the southeasterly line of said Parcel One as described in said Correctory Trustee's Deed;

Thence along said southeasterly line, South 60°15'35" West, 85.00 feet, to the northeasterly line of said Parcel Four;

Thence along said northeasterly line, South 29°44'25" East, 68.82 feet, to the POINT OF BEGINNING.

Containing 29,562 square feet or 0.68 acres, more or less.

*For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.*





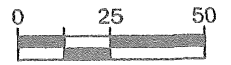
DELMAS AVENUE

AUZERAS AVENUE

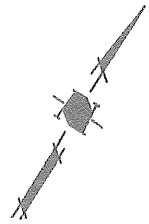
MINOR AVENUE

LEGEND

POB POINT OF BEGINNING



1 IN. = 50 FT.



SHEET 1 OF 1

Date:	2017-06-16
Designed:	-
Drawn:	RF
Checked:	TG
Proj. Eng.:	-
49630	

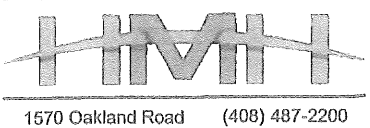
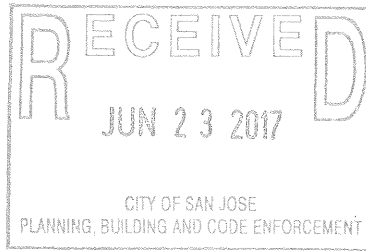


EXHIBIT "B1"  
PLAT TO ACCOMPANY DESCRIPTION:  
FOR DC REZONING PURPOSES

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



June 16, 2017  
HMH 4963.00.270  
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**EXHIBIT "A2"  
FOR R-2 ZONING PURPOSES**

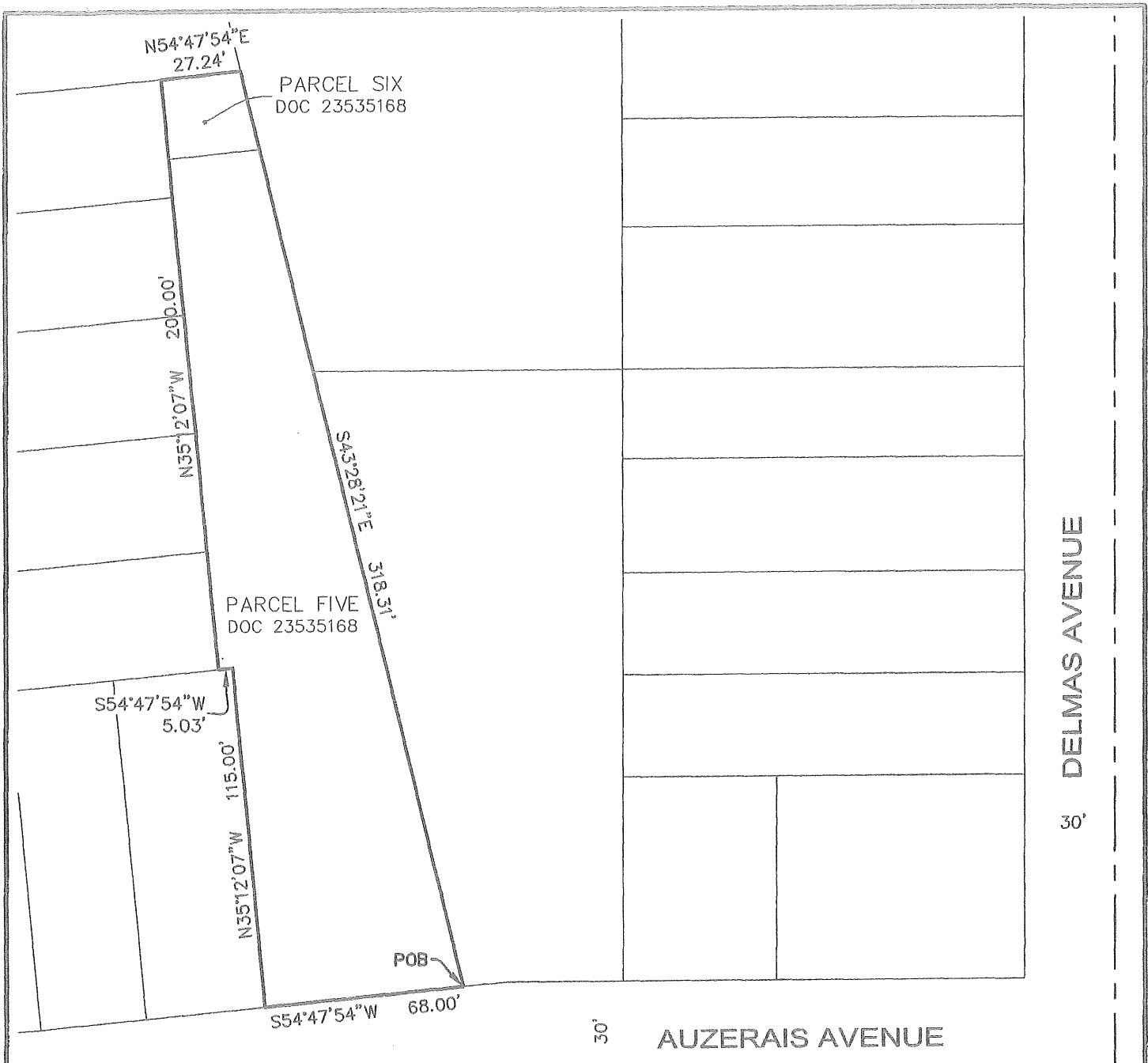
REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Parcels Five and Six as described in the grant deed recorded December 16, 2016 in Document No. 23535168 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the easterly corner of said Parcel Five, being on the northwesterly line of Auzerais Avenue;  
Thence along said northwesterly line, South 54°47'54" West, 68.00 feet, to the general southwesterly line of said Parcel Five;  
Thence along said general southwesterly line and the southwesterly line of said Parcel Six the following three courses:  
1. Thence North 35°12'07" West, 115.00 feet;  
2. Thence South 54°47'54" West, 5.03 feet;  
3. Thence North 35°12'07" West, 200.00 feet, to the northwesterly line of said Parcel Six;  
Thence along said northwesterly line and northeasterly line of said Parcels Five and Six the following two courses:  
1. Thence North 54°47'54" East, 27.24 feet;  
2. Thence South 43°28'21" East, 318.31 feet, to the POINT OF BEGINNING.

Containing 15,214 square feet or 0.35 acres, more or less.

*For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.*





DELMAS AVENUE  
30'

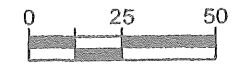
AUZERAI AVENUE

MINOR AVENUE

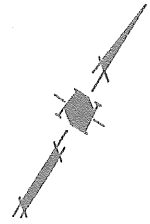
25' 25'

**LEGEND**

POB POINT OF BEGINNING



1 IN. = 50 FT.



SHEET 1 OF 1

Date:	2017-06-16
Designed:	-
Drawn:	RF
Checked:	TG
Proj. Engr.:	-
496300PL02	



1570 Oakland Road (408) 487-2200  
San Jose, CA 95131 HMMca.com

EXHIBIT "B2"  
PLAT TO ACCOMPANY DESCRIPTION:  
FOR R-2 ZONING PURPOSES

SAN JOSE

CALIFORNIA

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