

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT, TO ALLOW THE DEMOLITION OF NINE BUILDINGS ON SITE TOTALING APPROXIMATELY 64,800 SQUARE FEET, THE REMOVAL OF 56 TREES (26 ORDINANCE-SIZE, 30 NON-ORDINANCE-SIZE) AND THE CONSTRUCTION OF TWO FIVE-STORY MULTI-FAMILY APARTMENT BUILDINGS CONSISTING OF 689 RESIDENTIAL UNITS AND 4,005 SQUARE FEET OF COMMERCIAL SPACE WITH A STATE DENSITY BONUS CONCESSION FOR A 38 PERCENT PARKING REDUCTION, ON AN APPROXIMATELY 5.4-GROSS ACRE SITE, LOCATED AT THE SOUTHEAST CORNER OF MCEVOY STREET AND DUPONT STREET (225 TO 254 MCEVOY STREET AND 205-214 DUPONT STREET) (APN: 261-38-005, -018, -037, -057, -065, -067)

FILE NO. PD20-011

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 18, 2020, an application (File No. PD20-011) was filed by the property owner, Perry Hariri of M&M Diridon LLC, with the City of San José for a Planned Development Permit to allow the demolition of nine buildings on site, totaling approximately 64,800 square feet, the removal of 56 trees (26 ordinance-size, 30 non-ordinance-size) and the construction of two five-story multifamily apartment buildings consisting of 689 units and approximately 4,005 square feet of commercial space with a State Density Bonus concession for a 38% parking reduction on an approximately 5.4-gross acre site, on that certain real property situated in the R-M(PD) Planned Development Zoning District and located on the southeast corner of McEvoy Street and Dupont Street. (225 to 254 McEvoy Street and 205 to 214 Dupont Street, San José, which real property is sometimes referred to herein as the “subject property”); and

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

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a Public Hearing on said application on April 13, 2022, notice of which was duly given; and

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

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

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

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

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

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Planned Development Permit PD20-011 Dupont Village" dated March 11, 2022, said plan is on file in the Department of Planning, Building and Code

Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

After considering evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

- 1. Site Description and Surrounding Uses.** The subject 5.4-gross acre site is located on the southeast corner of McEvoy Street and Dupont Street. The project site is bounded by Park Avenue on the north and West San Carlos Street on the south. The site is bordered by multifamily senior apartments across Park Avenue to the north, the VTA and Caltrain tracks to the east, a mix of industrial uses across McEvoy Street to the west, and a multi-family residence across West San Carlos Street to the south. The site is currently developed with a mix of nine separate industrial buildings totaling approximately 64,800 square feet, associated paved parking and outside storage areas, and 57 trees.
- 2. Project Description.** The project consists of the demolition of all nine industrial buildings on site, totaling approximately 64,800 square feet, the removal of 56 trees (26 ordinance-size, 30 non-ordinance-size) and the construction of two five-story multi-family apartment buildings consisting of 689 units and 4,005 square feet of commercial space on an approximately 5.4-gross acre site.

The project consists of the development of two five-story multi-family buildings consisting of 689 residential units and 4,005 square feet of commercial space. Building A, located at the northernmost portion of the site, consists of an approximately 312,625-square foot, five-story, 314-unit market rate multi-family residential building. Approximately 4,005 square feet of ground floor commercial space would be provided in Building A at the southeast corner of Park Avenue and McEvoy Street. Building B, located at the southernmost portion of the site consists of an approximately 141,387-square foot, five-story, 375-unit affordable multi-family residential building. Both

buildings would be located on separate lots with the approval of an associated Vesting Tentative Map (File No. PT20-036) to combine 6 lots and subdivide into two lots.

The project would include 375 affordable units and 314 market rate units. Specifically, the applicant proposes the following:

- 70 units very-low income (50% or below AMI) – 10% of project
- 35 units low income (60% or below AMI) – 5% of project
- 35 units moderate income (80% or below AMI) – 5% of project
- 235 units at or below 120% of AMI – 34% of project
- 314 units at market rate

As conditioned in this Planned Development Permit, prior to the issuance of Building Permits or Grading Permits, whichever comes first, the applicant would be required to record a Regulatory Agreement with the City of San Jose.

Structured parking would be provided in each of the two buildings, both accessible from the 26-foot-wide driveway dividing Buildings A and B. Building A would include 335 vehicle parking spaces for both the residents and retail patrons. Building B would include 188 vehicle parking spaces for residents. See the California State Density Bonus Law section below for a discussion on parking provided.

A central paseo would also be constructed between the two buildings. Additional common open space would be located adjacent to the easternmost portion of the buildings as well as in courtyards accessible from the interior of each building.

The project site is accessible to pedestrians and bicyclists from Park Avenue, McEvoy Street, and Dupont Streets. Vehicles would access the driveway to the site from McEvoy Street. The project would include the reconfiguration of Dupont Street so that its intersection with McEvoy Street would now occur south of Building B. An Emergency Vehicle Access Easement would be recorded to allow site access along the paseo.

- 3. General Plan Conformance.** The site is designated Transit Residential on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan and the Diridon Station Area Plan. This is the primary designation for new high-density, mixed-use residential development sites that are located in close proximity to transit, jobs, amenities, and services. This designation may also be appropriate for some sites within Urban Village areas as identified through an Urban Village Planning process. This designation also supports intensive commercial employment uses, such as office, retail, hotels, hospitals and private community gathering facilities. To help contribute to “complete communities,” commercial uses should be included with new residential development in an amount consistent with achievement of the planned job growth and Urban Village Plan for the relevant Urban Village area. The Transit Residential Land Use Designation allows a residential density between 50 to 250 Dwelling Units per Acre

(DU/AC). The proposed project has a residential density of approximately 127.59 DU/AC.

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

Implementation Policy IP-8.5: Use the Planned Development zoning process to tailor such regulations as allowed uses, site intensities and development standards to a particular site for which, because of unique circumstances, a Planned Development zoning process will better conform to Envision General Plan goals and policies than may be practical through implementation of a conventional Zoning District. These development standards and other site design issues implement the design standards set forth in the Envision General Plan and design guidelines adopted by the City Council. The second phase of this process, the Planned Development permit, is a combined site/architectural permit and conditional use permit which implements the approved Planned Development zoning on the property.

Analysis: The Planned Development Zoning rezoning would allow for specifically tailored development standards to facilitate the project and achieve the density of approximately 127.59 DU/AC, which is consistent with the Transit Residential land use designation of the General Plan and Diridon Station Area Plan. The Planned Development Zoning includes an increased setback over the allowable setback in the R-M Zoning District along Park Avenue to accommodate the grade change for the underpass adjacent to the site. The maximum allowed height of 87 feet would also conform with the maximum allowed height limits set by the Diridon Station Area Plan. As discussed below, the project includes a Planned Development Permit, which would effectuate the Planned Development Zoning District.

Major Strategy #3 – Focus Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified “Growth Areas” (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods. While the Focused Growth strategy directs and promotes growth within identified Growth Areas, it also strictly limits new residential development through neighborhood infill outside of these Growth Areas to preserve and enhance the quality of established neighborhoods, to reduce environmental and fiscal impacts, and to strengthen the City’s Urban Growth Boundary.

High Quality Facilities and Programs Policy PR-1.9: As Urban Village areas redevelop, incorporate urban open space and parkland recreation areas through a combination of high quality, publicly accessible outdoor spaces provided as part of new development projects; privately or, in limited instances, publicly owned and

maintained pocket parks; neighborhood parks where possible; as well as through access to trails and other park and recreation amenities.

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

Community Design Policy CD-3.5: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.

Land Use Policy LU-9.1: Create a pedestrian-friendly environment by connecting new residential development with safe, convenient, accessible, and pleasant pedestrian facilities. Provide such connections between new development, its adjoining neighborhood, transit access points, schools, parks, and nearby commercial areas.

Analysis: The project would allow for a high density mixed-use residential project in a Growth Area (Diridon Station Area Plan), and in close proximity to a major transit center. As discussed above, the project would allow for the construction of 689 housing units, of which 375 units would be affordable. Additionally, the project would include approximately 4,005 square feet of ground floor commercial space to serve the new residents. The project would incorporate a range of open space, including private and public open space within the two buildings as well as a privately owned-publicly accessible paseo that would allow for pedestrian and bicycle connections to and from the site. The project includes a concession for reduced parking under the State Density Bonus Law, thereby promoting the use of alternative transportation at a site adjacent to high quality transit facilities (Diridon Station). Bicycle parking would be provided at convenient locations throughout the development.

4. Diridon Station Area Plan Conformance

Land Use Designation

The subject site is also designated Transit Residential on the Land Use Diagram of the Diridon Station Area Plan (DSAP) adopted by City Council on May 25, 2021 (Resolution No. 80021). The Transit Residential designation is the primary designation for high-density, mixed-use residential development sites that are located in close proximity to transit, jobs, amenities, and services. This designation also supports intensive commercial employment uses, such as office, retail, hotels, hospitals, and private community gathering facilities. While this land use designation allows between 50 to 250 dwelling units to the acre in the Envision San José 2040 General Plan, the sites designated Transit Residential in the Diridon Station Area Plan have a minimum residential density of 65 dwelling units to the acre and a maximum of 450 dwelling units to the acre to facilitate the development of residential densities that are

supportive of the vision of this Plan. The allowable density/intensity for commercial projects is a FAR of 2.0 to 12.0 with a minimum FAR of 2.0. Residential/ commercial mixed-use development shall require a minimum of 65 DU/AC with a maximum FAR of 12.0. Given the potential noise, vibration, and aesthetic impacts, residential uses should not be located directly adjacent to train lines unless a residential project can be designed to mitigate these impacts and create a high-quality living environment. The proposed project would be consistent with the Transit Residential land use designation as it has a FAR of approximately 3.8 and a residential density of approximately 127.59 DU/AC. The project is consistent with the following Guiding Principles of the Diridon Station Area Plan:

Diridon Station Area Plan Policies

Development – D3: Develop strategies to produce new affordable housing units, preserve the affordability of the neighborhoods for lower income residents, and protect vulnerable residents from displacement to ensure low-income residents benefit from new development

Development – D5: Provide a variety of commercial and mixed-use development opportunities, ranging from largescale corporate or institutional sites to smaller infill development sites to create opportunity-rich neighborhoods.

Development – D7: Develop and implement urban design standards that promote walkable, livable, and business supportive places.

Mobility – M2: Create a highly active, safe, and lively pedestrian and bicycle friendly environment with excellent connectivity to Downtown destinations and regional transit to reduce greenhouse gas emissions that contribute to climate change

Analysis: As previously discussed, the project would include the construction of a high-density mixed-use development consisting of 689 residential units and approximately 4,005 square feet of commercial space. Of the 689 residential units proposed, 375 would be affordable. The project would incorporate a range of open space, including private and public open space within the two buildings as well as a privately owned-publicly accessible paseo that would allow for pedestrian and bicycle connections to and from the site. Bicycle parking would be provided at convenient locations throughout the development to promote multimodal transportation at a site located approximately 700 feet from Diridon Station.

Height

Pursuant to Figure 2-3-13 of the Diridon Station Area Plan, the maximum allowable height for the site is 285 feet. Building A would have a maximum height of 87 feet and Building B would have a maximum height of 76 feet, 6 inches. Therefore, the project would conform with the allowable height limits of the Diridon Station Area Plan.

5. California State Density Bonus Law (Government Code Section 65915)

The project is an affordable housing project as defined in Section 65915 of the Government Code for the State of California. The project would include 375 affordable units and 314 market rate units. Specifically, the applicant proposes the following:

- 70 units very-low income (50% or below AMI) – 10% of project
- 35 units low income (60% or below AMI) – 5% of project
- 35 units moderate income (80% or below AMI) – 5% of project
- 235 units at or below 120% of AMI – 34% of project
- 314 units at market rate

As the project is providing 10% of the units at or below low-income levels, the project the project is eligible for the provisions of the State Density Bonus Law pursuant to Government Code Section 65915(b)(1)(A).

The Transit Residential Land Use Designation allows up to 250 DU/AC. The project has a residential density of approximately 127.59 DU/AC. Therefore, the project does not include a request for an increase in density, but only needs to be eligible for a density bonus in order to pursue incentives and concessions, such as reductions in development standards to facilitate the economically viable construction of affordable housing. The project has requested one incentive as follows:

Incentive: Reduction in Code Required Parking Spaces

Pursuant to Chapter 20.90 of the San José Municipal Zoning Code, the project is required to provide 825 vehicle parking spaces. The project is providing a total of 515 parking spaces, a reduction of 310 spaces or approximately 38% via a Density Bonus Concession. The project is not requesting any additional parking exceptions pursuant to Chapter 20.90 of the San Jose Municipal Zoning Code. Additionally, the project is required to provide 174 motorcycle parking spaces. A total of 46 spaces would be provided.

Based on the project applicant's estimate, each parking space costs approximately \$50,000 per space to construct. To provide the required spaces the applicant would be required to provide an additional one or more levels of parking (structured or underground), for an increased cost to the project of approximately \$18 million. An estimated additional \$5 million would result from costs due to craning, setting, and assembly costs for modular units. Therefore, the concession for reduced parking would result in identifiable and actual cost savings that will contribute to affordable housing costs. This density bonus concession is an alternative means of reducing parking and is not subject to other parking reduction methods under Chapter 20.90 of the San José Municipal Zoning Code or related transportation demand management measures when required parking is reduced by more than 20%.

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

6. Zoning Ordinance Compliance.

Land Use

The project is in the R-M(PD) Multiple Residence Planned Development Zoning District. Subject to the project's Development Standards, the newly created R-M(PD) Multiple Residence Planned Development Zoning District would allow for uses that conform with the TR Transit Residential Zoning District, in alignment with the General Plan Land Use Designation of Transit Residential. The Planned Development Zoning District allows for multifamily mixed-use developments as a permitted use with the issuance of a Planned Development Permit.

Development Standards

The table below highlights the proposed Development Standards as outlined in the General Development Plan of the R-M(PD) Planned Development Zoning District.

Development Standard	Required	Proposed
Front Setback (McEvoy)	Minimum 0 feet, Maximum 15 feet	13 feet
Side Setback (Park)	Minimum 16 feet	17 feet
Side Setback (Dupont)	Minimum 0 feet, Maximum 20 feet	17 feet (south), 5 feet (west)
Rear Setback	Minimum 21 feet from Peninsula Corridor Joint Powers Board property, Minimum 18 feet from Santa Clara Valley Transportation Authority property	22 feet
Maximum Height	285 feet allowed	87 feet

As shown on the approved plan set, the project conforms with all required height and setback standards pursuant to the project's development standards. The reduced setbacks, compared to the standard R-M Zoning District, accommodate the grade change for the underpass at Park Avenue and the adjacent railroad right-of-way.

Parking

As discussed in the State Density Bonus Law Section above, the project has requested a Concession to allow for reduced vehicle parking. The project does not propose any additional parking exceptions pursuant to Chapter 20.90 of the Zoning Code. See the table below for an understanding of the number of parking spaces required and provided with the granting of the Concession.

Vehicle Parking

Unit Type (Ratio)	Number of Units/Floor Area	Parking Required per Municipal Code (Chapter 20.90)
1 Bedroom/Studio (1 per unit)	460 units	460 spaces
2 Bedroom (1.5 per unit)	229 units	344 spaces
Retail (1 per 200 sf of floor area)	4,005 sf	21 spaces
	Total Required	825 spaces
	Total Provided (w/ 38% Density Bonus)	515 spaces

As discussed in the State Density Bonus Law section above, the project is required to provide 174 motorcycle spaces and 46 would be provided with the requested concession. Additionally, the project would provide the required bicycle parking pursuant to Chapter 20.90 of the Zoning Code. A total of 175 bicycle parking spaces. A total of 264 bicycle parking spaces would be provided.

Noise.

The project is subject to the performance standards of the TR Transit Residential Zoning District. Pursuant to Section 20.55.202 of the Zoning Code, there are no minimum noise requirements. However, a noise report was prepared by Illingworth & Rodkin, Inc. dated September 10, 2021. The noise study identified potential noise impacts of the project including during construction and operation. The site is adjacent to both Park Avenue and a railroad right-of-way. Therefore, the project includes conditions to reduce interior noise levels includes a condition for the project to provide a suitable form of forced-air mechanical ventilation, as determined by the Building Official, for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards. The project also includes a condition requiring the construction of a sound

barrier at the eastern property line, to reduce noise impacts on the common open space at the eastern end of the property. Additionally, the project is within 500 feet of a residence, therefore construction hours are limited to 7:00 am to 7:00 pm Monday through Friday.

Tree Removals

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

Table Error! No text of specified style in document.-2: Tree Replacement Ratios				
Circumference of Tree to be Removed¹	Type of Tree to be Removed²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more ³	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon
<p>*x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. ** A 24-inch box replacement tree = two 15-gallon replacement trees Single Family and Two-dwelling properties may replace trees at a ratio of 1:1.</p>				

The project includes the removal of 26 ordinance-size and 30 non-ordinance-size trees. The trees to be removed are located either within the project building footprint, or within the newly dedicated streets, sidewalks or necessary driveways. The trees to be removed include a mix of Shiny xylosma, White Alder, Chinese Elm, Monterey Cypress, African Fern Pine, Camphor, Mediterranean Cypress, Japanese Maple, Evergreen Ash, Coast Redwood, American Sweetgum, Crepe Myrtle, Callery Pear, Indian Hawthorn, Carob, and Honey Locust trees. The removal of the 56 trees on-site requires the replacement of 166 trees (24-inch box trees) on site. Eight trees would be replaced at a 5:1 ratio, 18 trees would be replaced at a 4:1 ratio, 24 trees would be replaced at a 2:1 ratio, and the remaining 6 trees would be replaced at a 1:1 ratio. The total number of replacement trees required to be planted is 166. Based on the plans provided, 182 24-inch box trees would be planted on-site. The trees to be planted include a mix of California Buckeye, Norfolk Island Pine, Strawberry, King Palm, Jelly Palm, European Hornbeam, Western Redbud, Toyon, Jacaranda, Brisbane Box, Catalina Ironwood, Swan Hill Olive, Sweet Olive and Water Gum trees.

7. Downtown Design Guidelines and Standards Consistency

The project is consistent with the following provisions of the City's Downtown Design Guidelines and Standards.

- Section 3.2.2 - Building Placement
 - Standard - Place a ground level building facade along 70% of each parcel's Public-Space facing property lines (within 10 feet) or setback lines (within 3 feet).
- Section 4.3.3 – Streetwall
 - Standard B - Create a Streetwall along a Primary Addressing Street or SoFA Addressing Street along at least 70% of the property or setback line.
 - Standard C - Create a Streetwall along a Secondary Addressing Street along at least 50% of the property or setback line

Analysis: The project provides a streetwall along Park Avenue (Primary Addressing Street) and McEvoy and Dupont Streets (Secondary Addressing Streets). Building A is placed along the entirety of the Park Avenue setback to the north and McEvoy Street setback to the west. Similarly, Building B is placed along the entirety of the McEvoy Street setback to the west and the Dupont Street setback to the south. As previously discussed, the Planned Development Zoning includes an increased setback over the allowable setback in the R-M Zoning District along Park Avenue to accommodate the grade change for the underpass adjacent to the site.

- Section 3.5.2 – Service Entrance Location
 - Standard B - Locate service entrances at least 25 feet from the primary pedestrian and bicycle entrance.
- Section 3.3.4 – Vehicle and Bicycle Parking Location
 - Standard B - Place bicycle parking so that bicyclists do not have to cross vehicular parking or drive aisles to enter the building.
- Section 3.5.3 – Parking and Vehicular Access Location
 - Standard A - Locate parking and vehicle entries at least 20 feet away from primary pedestrian entries (except within Porte Cochères).

Analysis: Pedestrians and bicyclists would be able to access both buildings from multiple entrances along Park Avenue, McEvoy Street, and Dupont Street without crossing vehicular drive aisles. Secure bicycle parking would also be placed on the ground floor at a minimum of 100 feet from each primary building entrance. The primary service entrance is located a

minimum of 49 feet from the primary lobby entrance of Building A and 107 feet from the primary lobby entrance of Building B.

- Section 4.3.1 – Podium Level Massing
 - Standard - Divide Podium Level building massing facing Public Space that creates a facade wider than 100 feet into visibly articulated smaller masses no wider than 80 feet using projections and recesses, materials, shadow relief, or other architectural elements

Analysis: All sides of both Buildings A and B, including the garage screening along Park Avenue are broken up into visibly articulated masses. This is achieved by both changes in plane and building articulation as well as changes in color and material. Building A includes a mix of light sand, white, and gray finished stucco as well as brick veneer at the building corners to highlight retail and pedestrian entrances. Similarly, all facades of Building B are also broken up into visibly articulated masses with changes in plane as well as changes in material and colors to break up long blank walls.

- Section 4.4.7.a - Rooftops and Mechanical Equipment
 - Standard C - Screen vents, mechanical rooms and equipment, elevator houses, cooling towers, large vent projections, water tanks, or storage areas on the building elevation and rooftop from street level view with enclosures, parapets, setbacks, plant materials, or other means. Use similar means to obscure these items from neighboring buildings, if visible, or design and arrange them to present an ordered and attractive view

Analysis: The project is required to screen any rooftop mechanical equipment in conformance with the Downtown Design Guidelines and Standards.

8. Environmental Review.

The City of San José, as the lead agency for the project, prepared an Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (EIR) for the Dupont Residential Project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines Section 15164, because the development capacity evaluated in the Downtown Strategy 2040 Final EIR included the development under the project at a program level. An Initial Study was prepared by the Director of Planning, Building and Code Enforcement in October 2021 for the Dupont Residential Project to evaluate the impacts of the project, and no new significant environmental impacts or additional mitigation measures beyond those identified in the Downtown Strategy 2040 Final EIR were identified for the project. The Addendum and supporting Initial Study were not required to be circulated for public review and will be attached to the Downtown Strategy 2040 FEIR as supplemented pursuant to CEQA Guidelines §15164(c). The Addendum is available

at the following link: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/dupont-residential-project-pd20-011>.

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

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

Analysis: As previously discussed, the project is consistent with the General Plan Land Use Designation of Transit Residential. The Transit Residential Land Use Designation allows a residential density between 50 to 250 DU/AC. The proposed project has a residential density of approximately 127.59 DU/AC. The project complies with the General Plan goals and policies related to Focused Growth, High Quality Facilities and Programs, Land Use and Employment, and Implementation.

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

Analysis: As previously discussed, the project conforms with the Development Standards of the General Development Plan for the Planned Development Zoning District (File No. PDC20-020). The newly created R-M(PD) Zoning District would allow for uses that conform with the TR Transit Residential Zoning District, as amended, which includes high density mixed-use developments. Special and Conditional Uses would be subject to the approval of a Planned Development Permit.

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

Analysis: Council Policy 6-30: Public Outreach Policy was implemented in order to inform the public of the project. An on-site sign has been posted on the project frontage since March 2, 2021. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Staff has also been available to respond to questions from the public. A formally noticed Community Meeting was held on Tuesday, November 16, 2021 to introduce the project to the community. Approximately 21 members of the public attended the meeting. Issues raised included soundproofing adjacent to the railroad tracks, access to the Coyote Creek Trail during construction, the possibility of adding another crosswalk at the intersection of Park and McEvoy, construction timeline, and rooftop use and noise.

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

Analysis: The interrelationship between the orientation, location, mass and scale of the building volumes and elevations of the project buildings and other uses on-site are appropriate, compatible, and aesthetically harmonious. The two five-story residential buildings would both be oriented towards the street and would allow for direct pedestrian and bicycle access. The commercial uses are compatible with the development as they would be located on the ground floor with frontage directly on the street, further activating the streetscape. Additionally, the common open space would be oriented between the two buildings (paseo) and at the rear of both buildings to allow direct access for residents.

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

Analysis: All environmental impacts related to noise, vibration, dust, drainage, erosion, storm water runoff, and odor would be temporary and would only occur during construction. Therefore, the project would not have an unacceptable impact on adjacent properties. The project is located adjacent to residential properties across Park Avenue to the north and across West San Carlos Street to the south. Therefore, construction hours would be limited to between the hours of 7:00 am to 7:00 pm Monday through Friday. The project also includes standard environmental permit conditions to reduce and mitigate impacts regarding air quality, dust and emissions control, water quality, and noise.

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

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

Analysis: The project includes 35 units (5% of the total units) restricted for very-low-income households earning up to 60% AMI, 35 units (5% of the units) restricted for low-income households earning up to 80% AMI, 35 units (5% of units) restricted to moderate-income households earning up to 100% AMI, and 270 units (39% of units) restricted to moderate-income households earning up to 100% AMI as defined in California Code Section 65915. As the project is providing 10% of the units at or below low-income levels, the project is eligible for a Density Bonus under Government Code Section 65915(b)(1)(A).

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

Analysis: The project does not include a land donation.

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

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

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

Analysis: The project is requesting an incentive for a mixed-use development. The project is eligible as a "Housing Development" pursuant to Government Code Section 65915(i) as it includes five or more residential units. The project would allow the construction of 689 residential units and 4,005 square feet of commercial space.

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

Analysis: The project does not include a request for condominium conversions.

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

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

Analysis: The project includes the removal of 26 ordinance-size and 30 non-ordinance-size trees. The trees to be removed are located either within the project building footprint, or within the newly dedicated streets, sidewalks or necessary driveways. The trees to be removed include a mix of Shiny xylosma, White Alder, Chinese Elm, Monterey Cypress, African Fern Pine, Camphor, Mediterranean Cypress, Japanese Maple, Evergreen Ash, Coast Redwood, American Sweetgum, Crepe Myrtle, Callery Pear, Indian Hawthorn, Carob, and Honey Locust trees. The removal of the 56 trees on-site requires the replacement of 166 trees (24-inch box trees) on site. Eight trees would be replaced at a 5:1 ratio, 18 trees would be replaced at a 4:1 ratio, 24 trees would be replaced at a 2:1 ratio, and the remaining 6 trees would be replaced at a 1:1 ratio. The total number of replacement trees

required to be planted is 166. Based on the plans provided, 182 24-inch box trees would be planted on-site. The trees to be planted include a mix of California Buckeye, Norfolk Island Pine, Strawberry, King Palm, Jelly Palm, European Hornbeam, Western Redbud, Toyon, Jacaranda, Brisbane Box, Catalina Ironwood, Swan Hill Olive, Sweet Olive and Water Gum trees.

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

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

Analysis: The project includes the demolition of nine buildings totaling approximately 64,800 square feet. The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition nor would it jeopardize public health, safety or welfare, as it would allow for the construction of a mixed-use residential development that would provide much needed affordable housing to the area. The demolition permit would facilitate a project that is compatible with the surrounding neighborhood. As previously discussed, the project is consistent with all applicable General Plan goals and policies, Planned Development Zoning requirements, applicable city council policies, and Downtown Design Guidelines and Standards. The demolition of the existing buildings would facilitate the construction of two five-story multi-family apartment buildings consisting of 689 units and 4,005 square feet of commercial space on an approximately 5.4-gross acre site. Given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible. As discussed in the Initial Study, none of the buildings on the project site or the adjacent properties are listed on any local, State, or federal lists of historically or architecturally significant structures and/or sites, landmarks, or points of interest. The project site is currently developed with vernacular industrial and ancillary buildings that do not have distinctive architectural features and modern office

buildings. Therefore, the buildings are not eligible for listing on the National Register of Historic Places, California Register of Historic Resources, or City of San José Historic Resources Inventory. The demolition of any existing buildings on-site would not be approved until the issuance of a grading permit.

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

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Planned Development Permit ("Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Use Authorization.** Subject to all conditions herein, this Permit allows the demolition of nine buildings on site, totaling approximately 64,800 square feet, the removal of 56 trees (26 ordinance-size, 30 non-ordinance-size) and the construction of two five-story multi-family apartment buildings consisting of 689 units and 4,005 square feet of commercial space with a State Density Bonus Concession for a 38 percent parking reduction on an approximately 5.4-gross acre site.

The project would include 375 affordable units and 314 market rate units. The housing units are to be provided at the following income levels:

- (i) 70 units very-low income (50% or below AMI) – 10% of project
 - (ii) 35 units low income (60% or below AMI) – 5% of project
 - (iii) 35 units moderate income (80% or below AMI) – 5% of project
 - (iv) 235 units at or below 120% of AMI – 34% of project
 - (v) 314 units at market rate
4. **Conformance to Plans.** The development of the site shall conform to the approved plans entitled, “Planned Development Permit PD20-011 Dupont Village” dated March 11, 2022, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City’s approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the “Approved Plan Set”.
5. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted pursuant to Condition of Approval No. 1 above, the use of territory not covered by the Permit shall only be land uses consistent with the Planned Development Zoning District (File No. PDC20-020) and only upon issuance of a Planned Development Permit for those uses.
6. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
7. **Timing for Demolition.** Buildings and structures that are being removed to accommodate the new development shall not be removed until the related Public Works Grading Permit has been issued.
8. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
9. **Green Building Requirements.** This development is subject to the City’s Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the

Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

10. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
11. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
12. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
13. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
14. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
15. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures,

conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.

16. **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.
17. **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.

18. Standard Environmental Permit Conditions

a. *Construction Dust Emissions Control*

- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
- ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. Tree Replacement

- i. Replace all trees to be removed at the following ratios:

Table Error! No text of specified style in document.-2: Tree Replacement Ratios				
Circumference of Tree to be Removed¹	Type of Tree to be Removed²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more ³	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon
<p>*x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. ** A 24-inch box replacement tree = two 15-gallon replacement trees Single Family and Two-dwelling properties may replace trees at a ratio of 1:1.</p>				

- ii. A total of 56 trees onsite would be removed, eight trees would be replaced at a 5:1 ratio, 18 trees would be replaced at a 4:1 ratio, 24 trees would be replaced at a 2:1 ratio, and the remaining 6 trees would be replaced at a 1:1 ratio. The total number of replacement trees required to be planted is 166.
- iii. Prior to the issuance of any building permit(s), the permittee shall pay Off-Site Tree Replacement Fee(s) to the City for any off-site replacement trees in accordance with the City Council approved Fee Resolution in effect at the time of payment.
- iv. If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
- (i) The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment.
- (ii) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of any Public Works grading permit(s), in accordance to the City Council approved Fee Resolution, in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

c. Santa Clara Valley Habitat Plan (SCVHP)

The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

d. Subsurface Cultural Resources

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

e. Human Remains

- i. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of the Department of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the

Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- (i) The NAHC is unable to identify an MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- (ii) The MLD identified fails to make a recommendation; or
- (iii) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

f. Seismic Hazards

- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.

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

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

- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
 - (i) Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
 - (ii) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
 - (iii) Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

i. PCBs

- i. In conformance with City of San José permitting requirements, consistent with RWQCB regulations, the project applicant shall be required to submit a PCB Screening Assessment Form to the Environmental Services Department when applying for a demolition permit to demolish the existing building(s) on the project site, and shall comply with any resulting sampling and abatement procedures as directed by federal and State agencies.

j. Construction-Related Water Quality

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.

- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily with water sweepers.
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system may also be installed at the request of the City.
- ix. The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

19. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. [REDACTED].

20. **Sound Barrier.** To optimize noise level reduction within the open space area along the eastern property line, one solid wall at least six feet high, continuous from grade to top, with no cracks or gaps, would be required at each terrace level facing the railroad tracks. Each barrier would consist of a minimum surface density of three pounds per square foot.

21. Interior Noise Levels.

- a. Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
- b. A qualified acoustical specialist shall prepare a detailed analysis of interior residential noise levels resulting from all exterior sources during the design phase pursuant to requirements set forth in the State Building Code. The study will also establish appropriate criteria for noise levels inside the commercial spaces affected by environmental noise. The study will review the final site plan, building elevations, and floor plans prior to construction and recommend building treatments to reduce residential interior noise levels to 45 dBA DNL or lower and to reduce commercial interiors to 50 Leq(1-hr) or below. Treatments would include, but are not limited to, sound-rated windows and doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, etc. The

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

22. Pedestrian Facilities.

- a. Construct a minimum 10-foot-wide sidewalk along Park Avenue, McEvoy Street, and Dupont Street, consistent with the City's Complete Streets Design Standards and Guidelines.
- b. Construct a multi-use path along the eastern and northern project frontage to improve pedestrian connections throughout the project site and between the Los Gatos Creek Trail and Park Avenue.
- c. The east end of Dupont Street running under the San Carlos Street bridge and on the other side of the LRT tracks, however, does not have sidewalks and, therefore, no continuous pedestrian route exists between the project site and the Los Gatos Creek Trail. Therefore, the project shall make a fair-share contribution to the VTA's Dupont Street/LRT crossing multi-modal improvements design plans.

23. Density Bonus Regulatory Agreement.

- a. Applicants for a Density Bonus, Incentive, waiver or modification of Development Standards shall enter into a Regulatory Agreement with the City. The terms of the draft Regulatory Agreement shall be reviewed and revised as appropriate by the Director and the City Attorney. The final Regulatory Agreement, as approved by the City Attorney, shall be executed by the Applicant and forwarded to the Approval Authority for final approval.
- b. Timing of Agreement Approval. Approval of the Regulatory Agreement by the Approval Authority shall take place under an application for a compliance plan submitted between the Discretionary Approval, and Building Approval or Grading Approval, whichever comes first.

24. Conditions of Approval for Inclusionary Housing Ordinance Requirements: The permittee has submitted an Affordable Housing Compliance Plan Application (Plan) and Processing Fee. Approval of the Plan is required prior to the development's planning application being deemed complete and prior to Planning's first approval.

- a. The permittee must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any contiguous property under common ownership and control prior to earliest of: issuance of any building permits, or approval of any parcel or final map.

- b. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.
- c. No building permit may issue until the Affordable Housing Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
- d. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO and Affordable Housing Agreement are met.

25. Actions Required for Housing Department's Clearance for Demolition Permit(s), Building Permit(s) or Map Approval.

- a. Conditions for projects subjected to the Inclusionary Housing Ordinance (IHO)
 - i. Prior to the first to occur of the following:
 - (i) approval of any final map,
 - (ii) approval of any parcel map, or
 - (iii) issuance of any building permit for a rental residential development, if the subject project has been determined to be subject to the Ordinance, the Inclusionary Housing Agreement must be recorded (senior to all deeds of trust) on the land including all parcels needed to implement the project's residential uses and affordable housing obligation including contiguous property under common ownership and control.

26. Actions Required for Housing Department's Clearance of Final Inspection and Issuance of Certificate of Occupancy.

- i. 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 Agreement, Inclusionary Housing Ordinance and Guidelines are met.

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

- a. *Construction Plans.* This permit File No. PD20-011 shall be printed on all construction plans submitted to the Building Division.
- b. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division.

Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

- c. *San Jose's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
- d. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- e. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- f. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street
- g. *Other.* Such other requirements as may be specified by the Chief Building Official.

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

29. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant 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: <http://www.sanjoseca.gov/devresources>.

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:** A Local Transportation Analysis (LTA) has been performed for the subject project based on a net new 181 AM and 228 PM peak hour trips. See separate Traffic Memo dated 10/14/21 for additional information. The project shall implement the following conditions:

- i. Provide three (3) 26-foot wide full-access driveways along McEvoy Street project frontage.
 - ii. Implement a minimum of 5-foot long red curbs on both sides adjacent to the project driveways to ensure adequate sight distance.
 - iii. Contribute a not-to-exceed amount of \$208K towards VTA's Dupont Street/LRT crossing multimodal improvement plans.
- c. **Diridon Station Area Infrastructure Impact Fee.**
- i. Associated with the implementation of the Diridon Station Area Plan (Chapter 14.35 of Title 14 of the San Jose Municipal Code) this project is subject to the City's Diridon Station Area Basic Infrastructure Impact Fee. Projects located within the Diridon Station Area are required to pay an impact fee in categories of Transportation, Plaza, Sanitary Sewer and Storm Drainage.
 - ii. The 2022 Infrastructure Impact Fee, that includes all infrastructure categories, is \$6.69 per square foot of Office/R&D, \$4.46 per square foot of Retail, \$3,228 per Hotel room and \$3,013 per residential unit. This fee is subject to an annual escalation on January 1st per the Engineering News-Record (ENR) Construction Cost Index for San Francisco. This fee must be paid prior to issuance of Public Works Clearance. Credits will be applied for any infrastructure built as identified in the Diridon Nexus Study by the developer.
- d. **Street Vacation:** A street vacation is required in order to accomplish the land use plan as shown in the Approved Plan Set. The street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to Public Works Clearance. The preliminary title report indicates the permittee owns the street in fee. Upon vacation no further action by the City is required.
- e. **Grading/Geology:**
- i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.

- iii. If the project 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 applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- f. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
- g. **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).

- h. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- i. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- j. **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 Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose 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 for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
- k. **Undergrounding:** Developer shall complete the underground conversion of the utility facilities fronting the project along McEvoy Street. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
- l. **Street Improvements:**
 - i. Construct relocated north-south direction Dupont Street with an ultimate right-of-way width of 44 feet inclusive of two (2) 11-foot-wide travel lanes, a 10-foot wide sidewalk with trees along the project frontage, and a 12-foot wide sidewalk on the west side of the street (to be constructed by First Community Housing and to be protected in place) to the satisfaction of the Director of Public Works.
 - (i) North-south direction shall be constructed from eastern property line along Dupont Street to the western curblin constructed by First Community Housing.
 - (ii) Taper roadway width from approximately 36 feet (adjacent to San Carlos Bridge) to 22 feet Provide taper length of approximately 60 feet, and construct a vertical curb for the transition.
 - ii. Construct relocated east-west direction Dupont Street with an ultimate right-of-way width of 42 feet inclusive of two (2) 11-foot-wide travel lanes and two (2) 10-foot-wide sidewalks with trees on both sides of the street to the satisfaction of the Director of Public Works.
 - (i) East-west direction shall be constructed from northern property line to southern property line along Dupont Street.

- iii. Construct 10-foot-wide sidewalk at the opposite frontage along the relocated Dupont Street in the 90° bend (First Community Housing frontage). Provide street easement dedication as required.
- iv. Construct 12-foot-wide City standard attached sidewalk with 4-foot by 5-foot tree wells at the back of curb along McEvoy Street project frontage.
- v. Construct 22-foot-wide City standard attached sidewalk, which includes 6-foot-wide buffer/tree wells, 6-foot-wide bike way, and 10-foot-wide pedestrian through zone, along Park Avenue project frontage.
- vi. Construct cross section D and E (Sheet C1.1 of the approved plans titled, "Planned Development Permit PD20-011 Dupont Village" dated March 11, 2022) to the easterly conform limits along Park Avenue. Permittee shall execute an agreement with the Google project for design, construction, and reimbursement costs. Limits of construction for pedestrian/bike/vehicular multimodal connection improvements underneath rail overcrossing along Park Avenue shall be determined during implementation phase as required by the Director of Public Works.
- vii. If street tree locations conflict with existing utilities, developer shall be solely responsible for relocating or adjusting utilities as necessary to resolve conflict.
- viii. Close unused driveway cut(s).
- ix. Proposed driveway widths to be 26 feet.
- x. Construct half-bulbouts at the northeast and southeast corners of the Dupont Street/McEvoy Street relocated intersection that shadows the on-street parking on McEvoy Street.
- xi. Construct half-bulbout at the southeast corner of the McEvoy Street/Park Avenue intersection.
- xii. Shift curblines/modified bulbouts along the eastbound Park Avenue approach that aligns with the proposed curblines on the eastbound Park Avenue departure of the intersection.
- xiii. Relocate the existing Rectangular Rapid Flashing Beacons according to the new intersection design.
- xiv. Install two (2) handicap ramps at opposite returns across Dupont Street and McEvoy Street.
- xv. Project shall provide a minimum 21-foot rear setback from the Caltrain property line and a minimum 18-foot setback from the lands of Santa Clara Valley Transportation Authority.

- xvi. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- xvii. Provide monetary contributions to VTA in **a not-to-exceed amount of \$208K** for future rail improvements at Dupont Street crossing.
- xviii. At implementation stage, provide location and cross section for the proposed retaining wall along Park Avenue relative to the project's frontage. Indicate if an easement will be needed to encompass their width in the appropriate cross-sections, including foundations.
- m. **SNi:** This project is located within the Burbank/Del Monte SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
- n. **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.
- o. **Street Trees:**
 - i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". 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. The recommended street trees along Dupont Street are Carpinus betulus 'Fastigiata' and should be 35 feet on center. The recommended street trees along McEvoy Street are Arbutus 'Marina' and should be 35 feet on center. The recommended street trees along Park Avenue are Tristaniopsis laurina and should be 25 feet on center. The recommended median trees on the Park Avenue median are Jacaranda mimosifolia and should be 35 feet on center.
 - ii. Replace any missing street trees in empty tree wells or park strips along project frontage and match existing trees per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects." Obtain a DOT street tree planting permit for any project-related street tree plantings.
 - iii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that will be removed.
- p. **Median Island Improvements:** Permittee is required to construct Type 1 landscaped median on Park Avenue along project frontage per City standards;

refer to the current “Guidelines for the Planning, Design and Construction of City Streetscape Projects.”

- q. **Referrals:** This project should be referred to the Santa Clara Valley Transportation Authority (VTA), California High Speed Rail Authority, Caltrain, and Union Pacific Railroad. Contact the Contract Manager of the California High-Speed Rail Authority at walid.khalife@hsr.ca.gov or (916) 330-5671. Contact the Director of Caltrain Planning, at (650) 207-7831.

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

31. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.

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

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

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

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EFFECTIVE DATE

The effective date of this Planned Development Permit shall be the same as effective date of the Rezoning Ordinance for File No. PDC20-020 passed for publication on _____, 2022 (the "Zoning Ordinance") and shall be no earlier than the effective date of said Rezoning Ordinance.

ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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



March 30, 2022
HMH 5663.00.270
Page 1 of 2

EXHIBIT "A"
FOR REZONING PURPOSES

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the 1.261 acre parcel of land as shown on that certain Record of Survey filed for record on August 26, 1968, in Book 241 of Maps, page 28; a portion of Parcel One & Dupont Street as shown on that certain Parcel Map filed for record on February 18, 2009, in Book 830 of Maps, page 36; all of Parcel 7-B, a portion of Parcel 8-B and a portion of Park Avenue as shown on that certain Record of Survey filed for record on February 8, 1968, in Book 233 of Maps, page 11; all of Parcel No 1 as shown on that certain Parcel Map filed for record on November 21, 1977, in Book 407 of Maps, page 56; all of the Parcel A & B as described in the Resolution and Order Proclaiming the Vacation of a Portion of Dupont Street recorded July 27, 1988, in Book K618 of Official Records, page 864; and a portion of the parcel of land described in the Grant Deed recorded August 26, 2008, in Document No. 19964945, all of Santa Clara County Records, described as follows:

BEGINNING at the southwesterly corner of said 1.261 acre parcel of land being on the easterly line of Dupont Street;

Thence along said easterly line, North 02°26'48" West, 19.16 feet;

Thence northwesterly, along a non-tangent curve to the left, having a radius of 75.23 feet, whose center bears South 67°15'10" West, through a central angle of 07°09'19" for an arc length of 9.40 feet;

Thence along a reverse curve to the right, having a radius of 55.00 feet, through a central angle of 27°27'13" for an arc length of 26.35 feet;

Thence North 02°26'56" West, 88.76 feet;

Thence North 05°03'31" East, 20.69 feet;

Thence along a tangent curve to the left, having a radius of 60.00 feet, through a central angle of 105°07'45" for an arc length of 110.09 feet;

Thence South 79°55'45" West, 22.14 feet;

Thence South 87°31'27" West, 143.55 feet;

Thence along a tangent curve to the right, having a radius of 12.00 feet, through a central angle of 89°58'45" for an arc length of 18.85 feet, to the easterly line of McEvoy Street;

Thence along said easterly line and its northerly prolongation North 02°29'48" West, 472.31 feet;

Thence along a tangent curve to the right, having a radius of 24.00 feet, through a central angle of 89°44'26" for an arc length of 37.59 feet;

Thence North 87°14'38" East, 306.12 feet;

Thence North 87°55'39" East, 47.72 feet;

Thence South 02°26'48" East, 46.21 feet;

Thence South 00°59'45" West, 51.09 feet;

Thence South 87°29'51" West, 3.97 feet;

Thence southerly, along a non-tangent curve to the right, having a radius of 1,961.64 feet, whose center bears South 76°55'59" West, through a central angle of 01°10'47" for an arc length of 40.39 feet, to the easterly line of said 1.261 acre parcel of land;

Thence along said easterly line, South 02°26'48" East, 420.89 feet;

Thence southerly, along a non-tangent curve to the right, having a radius of 420.35 feet, whose center bears North 80°34'42" West, through a central angle of 21°11'48" for an arc length of 155.51 feet;

Thence along a compound curve to the right, having a radius of 1,712.59 feet, through a central angle of 01°05'30" for an arc length of 32.63 feet;

Thence South 31°42'36" West, 10.15 feet;

Thence South 87°33'12" West, 42.19 feet, to the POINT OF BEGINNING.

Containing 4.97 acres, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

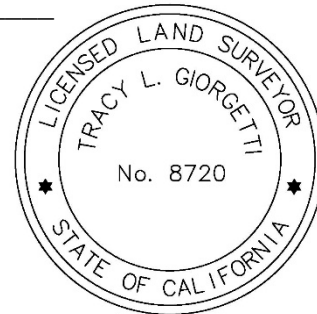
END OF DESCRIPTION

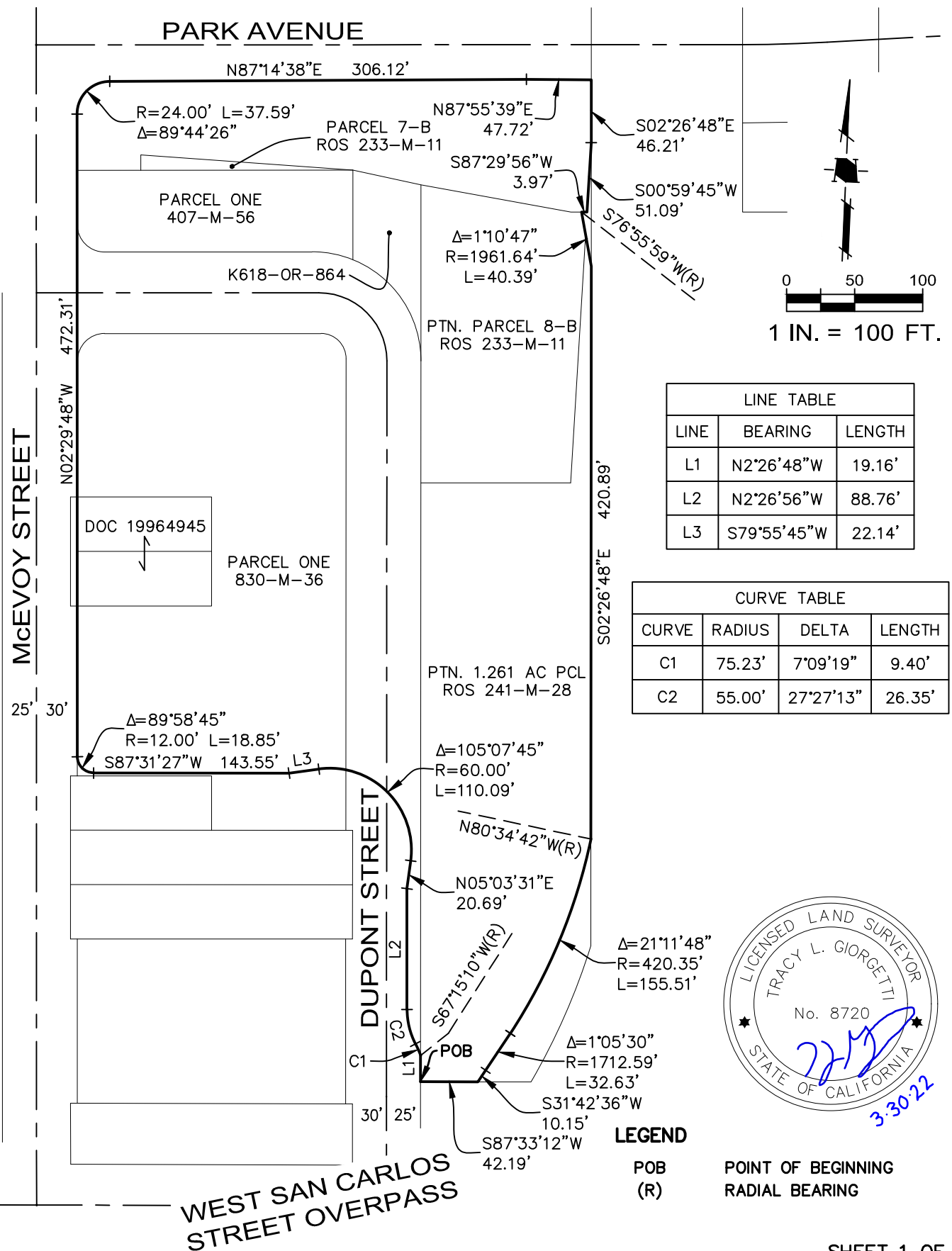
For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 3-30-22

Tracy L. Giorgetti
Tracy L. Giorgetti, LS 8720





SHEET 1 OF 1

Date: 2022-03-30

Designed: AL

Drawn: RF

Checked: TG

Proj. Engr.: —

566300PL08



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

EXHIBIT "B"
PLAT TO ACCOMPANY DESCRIPTION:
FOR ZONING PURPOSES

SAN JOSE

CALIFORNIA