

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 APPROXIMATELY 126,345 SQUARE FEET OF EXISTING COMMERCIAL BUILDINGS, THE REMOVAL OF 120 TREES (20 ORDINANCE-SIZE, 120 NON-ORDINANCE-SIZE) AND THE CONSTRUCTION OF FOUR MIXED USE BUILDINGS CONSISTING OF 994 RESIDENTIAL UNITS AND 165,949 SQUARE FEET OF COMMERCIAL SPACE, EXTENDED CONSTRUCTION HOURS (15 HOUR CONCRETE POURS BETWEEN 6:00 AM AND 9:00 PM DAILY OVER A 15-DAY PERIOD), AND A CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW OFF-SALE ALCOHOL (TYPE 21 ABC LICENSE – FULL RANGE OF ALCOHOLIC BEVERAGES) AT A FUTURE GROCERY STORE IN AN APPROXIMATELY 40,000-SQUARE FOOT TENANT SPACE ON AN APPROXIMATELY 10.76-GROSS ACRE SITE LOCATED EAST OF THE INTERSECTION OF SARATOGA AVENUE AND QUITO ROAD (1312 EL PASEO DE SARATOGA) AND NORTH OF THE INTERSECTION OF SARATOGA AVENUE AND LAWRENCE EXPRESSWAY (1777 SARATOGA AVENUE) (APN: 403-33-014 & 386-10-033, -036, -044, -045, -046)

FILE NO. PD20-006

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 18, 2020, an application (File No. a PD20-006) was filed by the applicant Allison Koo, on behalf of property owner, El Paseo Property Owner LLC, with the City of San José for a Planned Development Permit to allow the demolition of approximately 126,345 square feet of existing commercial buildings, the removal of 120 trees (20 ordinance-size, 100 non-ordinance-size) for the construction of four mixed use buildings consisting of 994 residential units and 165,949 square feet of commercial space, extended construction hours (15-hour concrete pours between 6:00 am to 9:00 pm daily over a 15-day period), and a Conditional Use Permit and Determination of

Public Convenience or Necessity to allow off-sale alcohol (Type 21 ABC License) at a future grocery store in an approximately 40,000-square foot tenant space on an approximately 10.76-gross acre site, on that certain real property situated in the CG(PD) Planned Development Zoning District and located east of the intersection of Saratoga Avenue and Quito Road (1312 El Paseo de Saratoga) and north of the intersection of Saratoga Avenue and Lawrence Expressway (1777 Saratoga Avenue, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibits “A-1” and “A-2,” entitled “Legal Description,” and Exhibits “B-1” and “B-2,” 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 May 25, 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, "El Paseo and 1777 Saratoga Avenue Mixed Use Village Planned Development Permit Application PD20-006" dated November 30, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

- 1. Site Description and Surrounding Uses.** The subject 10.76-gross acre site is bisected by Saratoga Avenue into the El Paseo site and the 1777 Saratoga site. The El Paseo site is located east of the intersection of Saratoga Avenue and Quito Road, at the southwestern end of the El Paseo de Saratoga Shopping Center. The 1777 Saratoga site is located north of the intersection of Saratoga Avenue and Lawrence

Expressway. The El Paseo site is bounded by Quito Road to the west, Saratoga Avenue to the northwest, the remainder of the existing El Paseo shopping center to the north and east, and single-family residences to the south. The El Paseo site is currently developed with a vacant commercial tenant space that would be demolished for the construction of the project. The 1777 Saratoga site is bounded by Lawrence Expressway to the southwest, a church to the north and west, and Saratoga Avenue to the southeast. The 1777 Saratoga site, known as Kato Business Square, is developed with four existing single-story commercial structures that would also be demolished for the construction of the project.

- 2. Project Description.** The project consists of a high-density development that would incorporate housing, retail, and office space in a vertical mixed-use format. To facilitate the project, approximately 126,345 square feet of existing commercial buildings and associated surface parking lots would be demolished, and 120 trees would be removed. In total, the project would consist of the construction of 994 residential units and 165,949 square feet of commercial space.

Development at the 1312 El Paseo de Saratoga site consists of the demolition of a portion of the westernmost existing retail building within the El Paseo de Saratoga Shopping Center for the construction of three mixed use buildings (Buildings 1, 2, and 3) centered around a primary paseo, referred to in the development plans as “Main Street”. Development at the 1777 El Paseo de Saratoga site consists of the demolition of four existing single-story commercial structures for the construction of one mixed-use building (Building 4) located north of the intersection of Saratoga Avenue and Lawrence Expressway.

The four buildings consist of multi-story glass, concrete, wood, and steel structures arranged in a village-type design. Approximately 109,676 square feet of ground floor retail would be provided throughout the project site, with the primary retail space being located along the primary pedestrian paseo. Approximately 40,000 square feet office space would also be provided throughout the site on both the ground floor and upper floors of the buildings at the 1312 El Paseo de Saratoga site. The residential units would be located on the upper levels of each building and would include a mix of common and private open space. The number of stories would range from 9 (Building 2) to 12 (Building 4). Maximum building heights would range from 99 feet (Building 2) to 132 feet (Building 4). See the table below for information on the commercial square footage, number of residential units, and heights of each proposed building.

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Project Information	Building 1 (El Paseo)	Building 2 (El Paseo)	Building 3 (El Paseo)	Building 4 (Saratoga)
Commercial Square Footage	64,176 sf	29,699 sf	66,838 sf	5,236 sf
Residential Units	267 units	273 units	206 units	248 units
Maximum Height	127 feet, 6 inches	99 feet	130 feet	132 feet
Maximum No. of Stories	11 stories	9 stories	11 stories	12 stories

Approximately 3.5 acres of publicly accessible outdoor space would be provided throughout the project site. A 1.1-gross acre public park would be constructed at the southwest corner of the subject site along Quito Road. As previously discussed, a pedestrian paseo (Main Street) would serve as the focal point of the development. The outdoor areas and public park would include amenities including landscaping, a fountain, seating, garden terraces, a dog park, and lawn areas.

The project site is accessible to pedestrians and bicyclists from Saratoga Avenue, Quito Road, and Lawrence Expressway. Vehicles would access the site from driveways along Quito Road, Saratoga Avenue, and from internal driveways within the El Paseo de Saratoga Shopping Center.

Subterranean and structured parking would be provided throughout each of the two sites. A two-level subterranean garage would be constructed below Buildings 1 and 3, and a portion of Building 2. Building 2 would include three levels of above ground structured parking in a podium configuration. Ground floor parking and a two-level subterranean garage would be provided in the building at 1777 Saratoga Avenue (Building 4). Pursuant to Chapter 20.90 of the Zoning Code, a total of 2,071 vehicle parking spaces are required. A total of 1,944 vehicle parking spaces would be provided for the project, representing an approximately 6.1 percent vehicle parking reduction in accordance with Section 20.90.220 of the Zoning Code, as outlined in the Zoning Code Compliance section below. Motorcycle and bicycle parking are provided throughout the project site in conformance with the Zoning Code.

To facilitate the construction of the project, this Planned Development Permit includes extended construction hours outside of the permitted construction hours of 7:00 am to 7:00 pm Monday through Friday. The project includes nighttime construction for a 15-

day period in order to allow for the construction of the parking garage at the El Paseo site. This would involve 15-hour concrete pours between 6:00 a.m. and 9:00 p.m. daily over a 15-day period. The extended construction hours were analyzed in the associated 1312 El Paseo and 177 Saratoga Avenue Mixed Use Village Project Environmental Impact Report that was prepared for the project.

The project includes a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale alcohol (Type 21 ABC License – Full Range of Alcoholic Beverages) at a future grocery store (expected to be a Whole Foods Market) in an approximately 40,000-square foot tenant space on the ground floor of Building 3. The findings for the issuance of a Conditional Use Permit and Determination of Public Convenience or Necessity are outlined below.

- 3. General Plan Conformance.** The site is designated Regional Commercial and Neighborhood/Community Commercial on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. The subject site is also located in the Paseo de Saratoga Urban Village, which does not have an approved Urban Village Plan. The Regional Commercial designation is applied primarily to existing regional shopping centers, though sometimes it may reflect the cumulative attraction of a regional center and one or more nearby community or specialty commercial centers, or two or more community or specialty centers in close proximity whose combined drawing power is of a regional scale. This designation supports a wide range of commercial uses, which may develop at a wide range of densities. Large shopping malls, and large or specialty commercial centers that draw customers from the greater regional area are appropriate in this designation along with office uses ranging in intensity up to a 12.0 Floor to Area Ratio (FAR). The Neighborhood/Community Commercial designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Neighborhood/Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction. The project would result in a FAR of approximately 3.69, in conformance with both the allowable FAR of both Commercial General and Neighborhood/Community Commercial designations. As the project includes mixed-use residential/commercial in an Urban Village without an approved plan, it is reviewed for conformance with the Signature Project Policy and additional General Plan goals and policies as outlined below.

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

Implementation Policy 5-10 (Signature Project Policy): Allow non-residential and mixed-use (with residential) development to proceed within Urban Village areas prior to the adoption of an Urban Village Plan as a “Signature Project”. The Signature Project shall act as a catalyst for future development within the Urban Village, as

prescribed in General Plan Major Strategy #5 Urban Villages. Pending Signature Projects that have submitted an application prior to December 7, 2021 are not subject to the updated Signature Project Policy:

Analysis: The project application was submitted on December 17, 2019. Therefore, it is not subject to the updated Signature Project criteria, adopted by City Council on December 21, 2021. Instead, the subject project is required to conform with the following criteria.

- a. Within the Urban Village areas, Signature projects are appropriate on sites with an Urban Village, residential, or commercial Land Use/Transportation Diagram designation.

Analysis: The project is located in the Paseo De Saratoga Urban Village, on a site with two commercial land use designations (Neighborhood/Community Commercial and Regional Commercial). Therefore, the project meets this requirement.

- b. Incorporates job growth capacity above the average density of jobs/ acre planned for the developable portions of the entire Village Planning area and, for portions of a Signature project that include housing, those portions incorporate housing density at or above the average density of dwelling units per acre planned for the entire Village Planning area. The commercial/office component of the Signature project must be constructed before or concurrently with the residential component.

Analysis: The project is required to provide 164,928 square feet of commercial space and achieve a minimum residential density of 55 dwelling units per acre (DU/AC). The project would provide approximately 165,949 square feet of commercial space. Of the total commercial space, approximately 109,676 square feet of ground floor retail would be provided throughout the project site, with the primary retail space being located along the primary pedestrian paseo. Approximately 56,273 square feet office space would also be provided throughout the site on both the ground floor and upper floors of the buildings at the 1312 El Paseo de Saratoga site. The project would allow the construction of 994 residential units on an approximately 10.76-gross acre site, resulting in a residential density of approximately 92 DU/AC. As described in the Development Phasing section of the Development Standards, the residential and commercial components would be constructed at the same time.

- c. Is located at a visible, prominent location within the Village so that it can be an example for, but not impose obstacles to, subsequent other development within the Village area.

Analysis: The project is located on two large corner lots, fronting two major thoroughfares (Saratoga Avenue and Quito Road/Lawrence Expressway).

Both roadways are Grand Boulevards as identified on the Land Use/Transportation Diagram of the Envisions San Jose 2040 General Plan. Therefore, this site is considered to be in a visible, prominent location within the Urban Village. The design of the project, particularly at the El Paseo site, would create a walkable, accessible urban environment which could easily be connected to future development within the larger urban village area. Additionally, the project includes significant public improvements, including the construction of 20-foot-wide sidewalks along Saratoga Avenue, 15-foot-wide sidewalks along Lawrence Expressway, and 17-foot-wide sidewalks along Quito Road. The project would also include the removal and replacement of the existing bus shelters along Saratoga Avenue and Campbell Avenue to improve transit and pedestrian connections within the urban village and larger area.

- d. Includes public parklands and/or privately maintained, publicly-accessible plazas or open space areas.

Analysis: The project includes both a public park as well as a large amount of publicly-accessible plazas, paseos, and open space. The project includes a 1.1-gross acre public park at the southwest corner of the subject site along Quito Road. Approximately 2.4 gross acres of publicly accessible open space are incorporated throughout the remainder of the development.

- e. Achieves the pedestrian friendly design guideline objectives identified within this General Plan.

Analysis: The project consists of a high-density development that incorporates housing, retail, and office space in a vertical mixed-use format. The project uses a pedestrian oriented design, with the construction of four mixed-use buildings that are fully accessible from pedestrian oriented open space. The portion of the project at the El Paseo Shopping Center incorporates a primary pedestrian paseo, referred to as Main Street on the approved development plans. General retail, restaurants, shops, offices, residences, and open space are all directly accessible from the Main Street paseo. Additionally, the project incorporates pedestrian oriented design on the street facing facades of the buildings fronting Saratoga Avenue and Lawrence Expressway/Quito Road. Building 1, located directly east of the intersection of Saratoga Avenue and Quito Road, incorporates storefronts, entrances, and active spaces which are directly accessible from the street. Building 4, located directly north of the intersection of Saratoga Avenue and Lawrence Expressway also incorporates active uses, ground floor retail, and publicly accessible open space along the street frontage. Parking is located within structured parking garages either below ground or wrapped with active uses or high-quality screening.

- f. Is planned and designed through a process that provided a substantive opportunity for input by interested community members.

Analysis: In addition to the two City-held community meetings, the project applicant held approximately 40 separate community meetings with various stakeholder groups throughout the planning process. The project has a dedicated webpage on the City's website, which is consistently updated as new project information is received and project milestones are met.

- g. Demonstrates high-quality architectural, landscape and site design features.

Analysis: As shown on the approved Planned Development Permit plan set, the project demonstrates a high-quality design for a large mixed-use project. The buildings consist of multi-story glass, concrete, wood, and steel structures arranged in a village-type design. The outdoor areas and public park include a variety of amenities such as landscaping, a fountain, seating, garden terraces, a dog park, and lawn areas. The project incorporates an attractive pedestrian paseo (Main Street) that would serve as the focal point for the development. As shown on the detailed landscape plan in the approved plan set, the project includes high-quality landscaping throughout the development, including a variety of California native species.

- h. Is consistent with the recommendations of the City's Urban Design Review process or equivalent recommending process if the project is subject to review by such a process.

Analysis: The project went through an extensive design review process throughout the entire project review. The project included an external urban design review, conducted by Aedis Architects. Aedis was supportive of the height, density, and uses. Additionally, Aedis was complementary of the overall architecture, massing, articulation, location of vehicle parking underground, and location of retail along the primary paseo. Additionally, the project was reviewed for consistency with the applicable General Plan design policies and Residential Design Guidelines, as discussed below.

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 project included a Planned Development Rezoning from the CG Commercial General and CP Commercial Pedestrian Zoning Districts to a CG(PD) Planned Development Zoning District. The Planned Development rezoning was required to allow specifically tailored regulations to achieve the amount of commercial space and residential density as required by the Signature Project Policy. These specifically tailored regulations include permitted uses, setbacks, heights, building orientation and configuration, and pedestrian circulation, and support the development of a mixed-use, dense, vibrant, and walkable urban environment within the Urban Village.

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.

Efficient Use of Residential and Mixed Use Lands Policy LU-10.2: Distribute higher residential densities throughout the City in identified growth areas and facilitate the development of residences in mixed-use development within these growth areas.

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 allows for a high density mixed-use residential project in a Growth Area (Paseo de Saratoga Urban Village). As discussed above, the project provides approximately 165,949 square feet of commercial space consisting of a wide range of retail and employment options including ground floor retail space, a grocery store, and office space. The project also allows the construction of 994 residential units on an approximately 10.76-gross acre site, resulting in a residential density of approximately 92 DU/AC. The project incorporates a range of open space, including private and public open space. The project includes a 1.1-gross acre Public Park at the southwest corner of the subject site along Quito Road. Approximately 2.4-gross acres of publicly accessible open space is incorporated throughout the remainder of the development. The privately owned-publicly accessible open space includes a central paseo (Main Street) that allows for pedestrian connection through the central portion of the site. As the project is located within an Urban Village, it is eligible for up to a 20% parking reduction without a TDM Plan, if the project provides the required number of bicycle parking spaces. The project includes an approximately 6.1 percent reduction. To encourage multimodal use, bicycle parking is provided at convenient locations throughout the development in conformance with the requirements of Title 20 of the Zoning Code. Also see the discussion on parking in the San Jose Municipal Code Conformance section below.

Land Use Policy LU-5.10: In the review of new locations for the off-sale of alcohol, give preference to establishments that offer a full range of food choices including fresh fruit, vegetables, and meat.

Analysis: The project allows off-sale alcohol (Type 21 ABC License) at a future grocery store (expected to be a Whole Foods Market), which would occupy the ground floor tenant space in Building 3. Whole Foods is a nationwide chain of retail grocery stores that offers a complete shopping experience including a full range of groceries, produce, meat, as well as alcohol. Alcohol sales would be incidental to the larger retail use.

Urban Village Design Policies

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

Urban Village Design Policy CD-7.3: Review development proposed within an Urban Village Area prior to approval of an Urban Village Plan for consistency with General Plan design policies and any other applicable design policies pertaining to the proposed use. Following adoption of an Urban Village Plan, review new development

for consistency with design goals, policies, standards, and guidelines included within the Urban Village Plan.

Urban Village Design Policy CD-7.9: Build new residential development within Urban Village areas at a minimum of four stories in height with a step down in height when building new residential development immediately adjacent to single-family residential sites that have a Residential Neighborhood designation.

Urban Village Design CD-8.3: While the height of new development should be regulated to avoid long term land use incompatibilities, ensure proposed Zoning Ordinance changes establish adequate maximum building heights to allow full build-out of the planned job and housing growth capacity within each of the identified Growth Areas.

Urban Village Design CD-8.4: For properties subject to a Planned Development Zoning which makes reference to a General Plan height limit and/or which does not specify a height limit, provide that the allowable height is the greater of either 35 feet or the height that was allowed through the General Plan at the time of the adoption of the Planned Development Zoning.

Analysis: The project allows for a high density mixed-use residential project in the Paseo de Saratoga Urban Village, including the construction of 994 residential units and 165,949 square feet of commercial space. As discussed above, the project conforms with the criteria of the Signature Project Policy IP-5.10, including provisions regarding overall project design, pedestrian friendly design, and incorporation of publicly accessible open space. The CG(PD) Planned Development Zoning District would allow for a maximum height of 145 feet. As described in the Development Standards for the project, maximum heights would range from 99 feet (Building 1) to 132 feet (Building 4). The buildings are designed so that the tallest portions of each building are directed away from the single-family residences to the south. Building 1, located east of the intersection of Quito Road and Saratoga Avenue, has a maximum height of 127 feet. Building 1 is setback from the existing single-family residences to the south by 165 feet. Building 1 includes a setback at the southside of the building beginning at 39 feet and gradually rising to 127 feet at the northernmost portion of the building. Building 2, located closest to the adjacent single-family residences to the south has a maximum height of 99 feet. Additionally, Building 2 incorporates a 100-foot setback from the existing single-family residences to the south. Building 2 also includes a setback at the south side of the building beginning at 33 feet and gradually rising to 99 feet at the northernmost portion of the building. Building 3, located at the northernmost portion of the El Paseo site, has a maximum height of 130 feet, and is adjacent to other buildings within the development or existing commercial development within the El Paseo de Saratoga shopping center. Building 4, located north of the intersection of Saratoga Avenue and Lawrence Expressway, has a maximum height of 132 feet. The front portion of the building, nearest the single-family

residences across Lawrence Expressway to the south, has a maximum height of 110 feet. The rear northernmost portion of the building, adjacent to existing commercial uses, has a maximum height of 132 feet. Given the location of the project in an Urban Village, the density required by the Signature Project Policy, and the allowable FAR of the General Plan land use designations, the maximum heights are consistent with the policies of the General Plan and are well integrated with the existing lower density development in the surrounding area.

4. Zoning Ordinance Compliance.

Land Use

The project is located in the CG(PD) Planned Development Zoning District. Subject to the project's Development Standards, the newly created CG(PD) Planned Development Zoning District allows for uses that conform with the UV Urban Village Zoning District. As shown on the General Development Plan of the CG(PD) Planned Development Zoning District, the permitted, special, and conditional uses of the UV Urban Village Zoning District are subject to the issuance of a Planned Development Permit or Planned Development Permit Amendment. The project includes the construction of a mixed use residential/commercial project and off-sale alcohol. Therefore, a Planned Development Permit is required.

Development Standards

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

Development Standard	El Paseo Site	1777 Saratoga Site
North Setback	0 feet minimum from property line	5 feet minimum from property line
West Setback	10 feet minimum from property line	4 feet minimum from property line
South Setback	25 feet minimum from property line	17 feet minimum from property line
East Setback	0 feet minimum from property line	10 feet minimum from property line
Maximum Height	145 feet to top of roof	145 feet to top of roof

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

Vehicle Parking

Required Residential Parking (Table 20-210)

Unit Size	Number of Units	Ratio	Required
Studio	99	1.25 spaces per unit	123.75
1 Bedroom	542	1.25 spaces per unit	677.5
2 Bedroom	316	1.7 spaces per unit	537.2
3 Bedroom	37	2 spaces per unit	74
		Total Required	1,413 spaces

Commercial Parking (Table 20-190)

Use	Floor Area	Ratio	Required
Retail	93,225 sf	1 per 200 sf of floor area	466.12
Office	47,832 sf	1 per 250 sf of floor area	191.32
		Total Required	658

Project Parking Totals

Project Total	Required	Provided
Residential	1,413 spaces	1,243 spaces
Commercial (Retail and Office)	658 spaces	701 spaces
Total Parking Required	Total Parking Required	2,071 spaces

	Total Parking Provided	1,944 spaces
	Parking Reduction Requested	6.1%

Pursuant to Chapter 20.90 of the Zoning Code, the project is required to provide 2,071 vehicle parking spaces. Based on the approved plans, the project provides 1,944 vehicle parking spaces on-site, parking reduction of approximately 6.1%. Pursuant to Section 20.90.220 of the Zoning Code, a project is eligible for up to a 20% parking reduction without requiring the implementation of a Transportation Demand Management (TDM) plan if the use is located in an Urban Village, and the project provides bicycle in conformance with Table 20-190 of the Zoning Code. The subject site is located in the Paseo De Saratoga Urban Village. As discussed below, the project provides greater than the required number of bicycle parking spaces. Therefore, a parking reduction of 6.1% is permitted.

Bicycle Parking

Use	Ratio	Required
Residential	1 per 4 units	249
Retail	1 per 3,000 sf of floor area	31 spaces
Office	1 per 4,000 sf of floor area	12 spaces
	Total Required	292 spaces
	Total Provided	306 spaces

As shown above the project exceeds the required number of bicycle parking spaces. Pursuant to Table 20-190 and Table 20-210 of the Zoning Code, the project is required to provide 292 bicycle parking spaces. At the El Paseo site, 118 short term spaces and 123 long term spaces are provided. At the 1777 Saratoga site, 27 short term spaces and 38 long term spaces are provided. Overall, a total of 306 bicycle parking spaces are provided for the project.

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Motorcycle Parking

Use	Ratio	Required
Residential	1 per 4 units	249
Retail	1 per 20 code required spaces	24
Office	1 per 50 code required spaces	4
	Total Required	277
	Total Provided	285

Pursuant to Table 20-250 of Section 20.90.350 of the Zoning Code, the project is required to provide 277 total motorcycle spaces. 221 motorcycle spaces are provided in the El Paseo site and 64 spaces are provided at the 1777 Saratoga site, for a total of 285 spaces.

Noise.

Pursuant to the General Development Plan of the CG(PD) Planned Development Zoning District, the project is subject to the performance standards of the UV Urban Village 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 and Rodkin, dated September 16, 2021. The report evaluated the project’s compatibility with the onsite noise environmental and the project’s potential to result in significant noise and vibration impacts with respect to the California Environmental Quality Act (CEQA). Noise measurements were taken from eight separate locations at the boundaries of the project site, near both existing residential and commercial uses to analyze the noise and vibration impacts that may occur during construction. This Planned Development Permit allows nighttime construction for a 15-day period in order to construct the parking garage at the 1312 El Paseo de Saratoga site. This would involve 15-hour concrete pours between 6:00 am and 9:00 pm daily over a 15-day period. This Planned Development Permit includes standard permit conditions to reduce potential noise impacts during construction. Conditions include constructing solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses, constructing temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. Utilizing “quiet” air compressors and other stationary noise sources where technology exists, controlling noise from construction workers’ radios to a point where they are not

audible at existing residences bordering the project site, and notifying all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences. If complaints are received or excessive noise levels cannot be reduced using the measures above, a temporary noise control blanket barrier is required to be installed along surrounding building facades that face the construction sites. The Planned Development Permit also requires the appointment of a construction disturbance coordinator.

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>				

As shown on the landscape plan, and discussed in the Arborist Report prepared by HortScience and Bartlett Consulting, dated April 22, 2020, the project includes the removal of 20 ordinance-size and 100 non-ordinance-size trees. A total of 19 trees would be preserved. 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 Callery pear, Crape myrtle, Camphor, Date palm, Birsbane box, Atlast cedar, Yew pine, Coast live oak, Evergreen ash, California pepper, Oleander, Southern magnolia, and Hollywood juniper trees. The removal of the 120 trees on-site requires the replacement of 228 (15-gallon) or 114 (24-inch box) trees on site. Based on the plans provided, 132 24-inch box trees would be planted on-site. The trees to be planted include a mix of Strawberry, Bloodgod Japanese maple, Jacaranda, Orange, Lemon, Fig, Olive, Date palm, Chinese pistache, London plane, Cherry, Pomegranate, Coast live oak, Cork oak, and Water gum trees.

5. Residential Design Guidelines Consistency

The project application was submitted to the Department of Planning, Building and Code Enforcement in December 2019, prior to the adoption of the Citywide Design Standards and Guidelines in March 2021. Therefore, the project was reviewed for consistency with the Residential Design Guidelines. The project is consistent with the following provisions of Residential Design Guidelines for mixed use projects.

- Pedestrian Orientation: Mixed use projects should include direct and attractive pedestrian access to all nearby commercial areas, transit stops and transit stations. Sidewalks and walkways should be wide, separated from conflicting activities and bordered by attractive landscaping, most importantly by street and/or shade trees
- Mix of Uses:
 - Retail uses should generally be limited to the ground floor spaces along busy street frontages.
 - Office uses may be located on the first and or upper floors. Consideration should be given to project designs that allow areas of the building to be occupied with either office or residential uses depending on market demand provided such uses do not conflict.
 - Commercial uses within mixed use projects should be of the variety that directly serve and support the surrounding neighborhood and! or promotes pedestrian traffic or public transit.
 - Uses incompatible with a pleasant residential environment should be avoided.

Analysis: The project is located on two large corner lots, fronting two major thoroughfares (Saratoga Avenue and Quito Road/Lawrence Expressway). Both roadways are Grand Boulevards as identified on the Land Use/Transportation Diagram of the Envisions San Jose 2040 General Plan. The project includes approximately 109,676 square feet of retail space and 56,273 square feet of office space. Retail is located on the ground floor of the Main Street paseo as well as the project frontages along Saratoga Avenue, Quito Road, and Lawrence Expressway. Office space is located on portions of the ground floor and upper floors of the buildings on the El Paseo de Saratoga site.

- Interface Between Uses:
 - Commercial loading areas, trash facilities and mechanical equipment should be screened from sight from all pedestrian ways and should be

located away from residential entries, open space and windows to avoid visual, noise and odor impacts on the residential portion of a project.

- The residential portions of projects and buildings should be self-contained and inappropriate access to them from non-residential spaces should be precluded.
- Commercial hours of operation should be limited to avoid adverse impacts on the residential uses within the project.

Analysis: Commercial loading areas are located away from the residential areas within the project site, as well as the existing residences to the south of the site. The primary truck loading area is located at the north side of the Building 1, at the furthest point away from adjacent residences. Hours of operation of the retail spaces are subject to the requirements of Title 20 of the Zoning Code and applicable City Council Policies for late night use.

- Building Setbacks: Mixed use buildings and locations are typically urban in character; setbacks from streets should reflect the urban setting and should be no greater than 15 feet. Smaller setbacks are encouraged. Buildings may be set back further to provide outdoor dining space or courtyards. See Chapter 5, "Perimeter Setbacks" for additional setback information.
- Building Orientation: Buildings should be oriented parallel to the street particularly at corners. Buildings and, in particular, entrances should be oriented toward light rail stations and bus stops for convenient access by public transit passengers.
- Relationship to the Street: Active connections between buildings and the street, for example residential and retail entries, porches, stairs, decks, courtyards, and windows, should be maximized.

Analysis: The street-facing buildings (Buildings 1 and 4) are oriented towards the primary streets with minimal setbacks. Both buildings are oriented parallel to the street with entrances directly accessible from the sidewalk. The 1777 Saratoga Avenue site incorporates a privately-owned, publicly-accessible plaza at the intersection of Saratoga Avenue and Lawrence Expressway, which would allow for recreational space and outdoor seating. As previously discussed, the 1312 El Paseo de Saratoga site incorporates a paseo which also includes ground floor retail, office space, seating, and recreational space.

- Building Design, Vertical Mixed Use:
 - The scale of mixed use buildings should reflect the scale of existing or planned surroundings. Larger mixed use buildings or projects may reflect their relatively smaller scaled surroundings through greater building

articulation, borrowing of architectural themes and the judicious use of multiple materials.

- Materials should be solid and durable. Stucco with a thinly applied appearance, or rough and/or thin wood siding and trim, for example, is not appropriate.
- Building facades should reflect the uses behind them while maintaining a strong architectural relationship among the parts. For example:
 - Building facades should be articulated vertically or horizontally, both if possible.
 - Commercial windows should be large and of clear glass for retail spaces and residential windows should typically be smaller and often vertical in shape. Materials and detailing may vary to express different uses but should be drawn from the same architectural theme or style.
- Entries to residential and non-residential uses should be separate and designed to reflect their residential or commercial purpose. Entrances to residential units along "commercial" frontages and/or high volume major streets should be via an internal lobby, stairway and/or elevator. Along other streets, "first floor" units should be accessed via private stairs and porches where feasible. Exterior stairways visible from streets should never extend above the one and a half story level.

Analysis: The buildings consist of multi-story glass, concrete, wood, and steel structures arranged in a village-type design. The buildings are designed so that the tallest portions of each building are directed away from the single-family residences to the south. Building 1, located east of the intersection of Quito Road and Saratoga Avenue, has a maximum height of 127 feet. Building 1 is setback from the existing single-family residences to the south by 165 feet. Building 1 includes a setback at the southside of the building beginning at 39 feet high and gradually rising to 127 feet at the northernmost portion of the building. Building 2, located closest to the adjacent single-family residences to the south, has a maximum height of 99 feet. Additionally, Building 2 incorporates a 100-foot setback from the existing single-family residences to the south. Building 2 also includes a setback at the south side of the building beginning at 33 feet high and gradually rising to 99 feet at the northernmost portion of the building. Building 3, located at the northernmost portion of the El Paseo site, has a maximum height of 130 feet, and is adjacent to other buildings within the development or existing commercial development within the El Paseo de Saratoga shopping center. Building 4, located north of the intersection of

Saratoga Avenue and Lawrence Expressway, has a maximum height of 132 feet. The front portion of the building, nearest the single-family residences across Lawrence Expressway to the south, has a maximum height of 110 feet. The rear northernmost portion of the building, adjacent to existing commercial uses, has a maximum height of 132 feet. Entries to residential and non-residential spaces are clearly delineated throughout the project site.

- **Structured Parking Design:**

- The blank walls of parking floors should not be located along streets or major pedestrian ways.
- Entries to parking levels should never be placed in prominent locations in primary building façade:
 - Parking entries should be placed in less visible locations at the sides or rears of buildings or at least at a far end of a front elevation.
 - To further reduce entry visibility along streets, entries should be placed in notched back sections of buildings.

Analysis: Subterranean and structured parking areas are provided throughout each of the two sites. A two-level subterranean garage is below Buildings 1, 3, and a portion of Building 2. Building 2 includes three levels of above ground structured parking in a podium configuration. Ground floor parking and a two-level subterranean garage are provided in the building at 1777 Saratoga Avenue. All structured parking is wrapped with active space or screened from view.

6. City Council Policy 6-30: Public Outreach.

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the project. On-site signs were posted on the project frontages on March 11, 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. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

Two formally noticed, City sponsored, community meetings were held on October 5, 2020 and January 20, 2022. Both meetings were held via Zoom in accordance with the Santa Clara County Health Officer's, March 16, 2020 Shelter in Place order. The October 5, 2020 meeting was attended by approximately 125 members of the public. The January 20, 2022 meeting was attended by approximately 126 members of the public. Additionally, the applicant has held over 40 meetings with various stakeholder

groups throughout the planning process. Concerns raised by members of the public include the high project density, building heights, neighborhood compatibility, traffic impacts, pedestrian and bicyclist safety, school impacts, the lack of affordable housing, potentially historic resources, construction impacts, air quality impacts, and noise.

7. Environmental Review.

The City of San José, as the lead agency for the project, prepared a Draft Environmental Impact Report, State Clearinghouse No. 2020090521 (DEIR), which was circulated for public review and comment from October 15, 2021 to November 29, 2021. A First Amendment to the DEIR was prepared that provided responses to public comments submitted during the public circulation period and revisions to the text of the DEIR. In addition, an errata memorandum was also posted on the City's website regarding minor revisions to the mitigation measures under the TR-1.1, Transportation/Traffic impact. The First Amendment together with the DEIR and errata constitute the Final Environmental Impact Report (FEIR) for the project.

The EIR identified potential environmental impacts to Air Quality, Biological Resources, Hazardous Materials, Noise, and Transportation/Traffic and these impacts would be reduced to less than significant levels with the implementation of the identified mitigations. The EIR determined there would be no significant and unavoidable impacts resulting from implementation of the project.

The applicant's objectives for the project are as follows:

1. Provide a high-quality, mixed use Signature Project for the Paseo de Saratoga Urban Village (Horizon 3) in accordance with the City of San José's General Plan's Major Strategy #5. 153
2. Redevelop the project sites with a mix of uses that includes over 700 market-rate, multifamily residential units and 165,000 square feet of commercial retail uses or a K-12 educational facility and 60,000 square feet of commercial retail uses to meet the demand for these land uses in the site area;
3. Increase housing opportunities in the City of San José and expand the supply of higher density housing product by providing approximately 700-1,100 multifamily units;
4. Redevelop the underutilized project sites to allow for new retail, higher density housing, and possibly educational use on a Signature site near existing residential and commercial uses and major transportation thoroughfares including SR 85, Saratoga Avenue, and Lawrence Expressway in western San José;
5. Provide a mix of land uses and public amenities that promote walking, bicycling, telecommuting, transit, and other transportation alternatives;

6. Respect the surrounding neighborhood and community through quality design, materials, and landscaping;
7. Implement sustainable building practices promoting energy and water efficiency;
8. Create new outdoor plaza and publicly-accessible open space areas to allow for the passive enjoyment by all residents and educational facility/office building users as well as the general public.

Alternatives

The DEIR analyzed three selected project alternatives that could lessen the significant effects of the project and achieve the project objectives, in accordance with CEQA Guidelines Section 15126.6. Additionally, three alternatives were considered and rejected due to infeasibility. The selected alternatives included:

- 1. No Project/No Development Alternative-** This alternative considers what would reasonably be expected to occur in the foreseeable future if no project were approved and no new development would occur. Because the project sites are developed with 96,440 square feet of existing commercial space and 25,184 square feet of office development (approximately 1,900 square feet or less than two percent of commercial space on the El Paseo site is currently occupied and the remaining square footage 94,540 square feet is unoccupied) it was anticipated the buildings would all be occupied, increasing traffic generated from the currently occupied buildings. The project would avoid most of the environmental impacts of the project including construction and operational impacts to neighboring residential uses; however, none of the project objectives would be satisfied. Under the No Project Alternative, the project sites could remain and be leased as is with commercial and/or office uses consistent with the sites' General Plan designations and zoning districts (CG Commercial General and CP Commercial Pedestrian, respectively).
- 2. No Project Redevelopment Alternative-** This alternative considered the redevelopment of the site consistent with the current General Plan designations Regional Commercial and Neighborhood/Community Commercial and the underlying zoning districts of CG Commercial General and CP Commercial Pedestrian for the IP Industrial Park Zoning District. Given the project sites' land use designations and location within the Paseo de Saratoga Urban Village, a wholly commercial development totaling 571,624 square feet could be developed on the project sites (office and retail, no residential or educational uses). The No Project Redevelopment Alternative would have similar impacts to the preferred non-education mixed-use project; however, this alternative would result in a new commercial VMT impact. Under this alternative, the project would meet some of the project objectives (i.e., 6,7,8) by providing quality design, materials and landscaping, implementing sustainable building practices, and creating publicly

accessible outdoor spaces. This alternative could partially meet objective five by providing amenities that promote transportation alternatives, but it would not include a mix of land uses on the sites. This alternative would not redevelop the project sites with a mixed-use Signature Project that provides a mix of uses (which includes higher density residential uses and commercial uses) and, therefore, this alternative would not meet objectives one through four.

- 3. Reduced Development Alternative-**Under this alternative, the project sites would be developed with a mixed-use project at the minimum density and square footages stipulated in the General Plan for Signature Projects. General Plan Policy IP-5.10 states the minimum density for projects in Local Transit and Commercial Corridor and Center Villages is 55 dwelling units per acre, which equates to 586 residential units on the project sites. Under General Policy IP-5.10, a site must replace the commercial square footage that would be removed by redevelopment of that site (there is 121,624 square feet of existing commercial uses). Additionally, the project would be required to include 43,304 square feet of new commercial square footage, for a minimum requirement totaling 164,928 square feet of commercial uses on the project sites. In total, under this Alternative, the project sites will be developed to meet the minimum requirement of 586 residential units and 164,928 square feet of commercial uses. The project sites would still be redeveloped under this alternative; therefore, the Reduced Development Alternative's construction-related air quality and noise impacts would be comparable to the project (under either option) because the amount of demolition and grading and proximity to sensitive receptors would be the same as under the project (under either option). Since there would be less development, however, it is assumed the construction duration of the Reduced Development Alternative would be less than the project (under either option). This alternative would also require nighttime construction for a 15-day period. As a result, construction noise impacts would be similar though slightly less than the project (under either option). Construction-related air pollutant emissions under this alternative would exceed the significance thresholds and be mitigated to below the threshold, same as the project. This Alternative would meet project objectives four, five, six and seven by intensifying development on the project sites and developing a mixed-use project near existing residential and commercial uses and major transportation thoroughfares. This Alternative could also meet objective eight in that it would provide an outdoor plaza and open space (per Signature Project requirements), although not to the extent proposed under the project. This Alternative would not provide the approximately 900 residential units under the non-education mixed use project or approximately 700 residential units and the K-12 educational facility under the education mixed-use option.

The No Project/No Development alternative would avoid all project impacts, however, CEQA requires that when the no-project alternative is the environmentally superior alternative another alternative shall be identified. Therefore, the Reduced Development Alternative would be the next environmentally superior alternative as it would achieve the most project objectives with the least amount of project impacts.

DEIR Recirculation Comments

As stated above, the DEIR was circulated for public review and comment from October 15, 2021 to November 29, 2021. Seventy-four comments were received during public circulation including four from regional and local agencies and seventy from members of the public. Many of the comments received during public circulation raised similar concerns and questions; therefore, topic responses were prepared to respond to those common concerns/questions. The topic responses address the following topics:

- Vehicle Miles Traveled
- Below-Market Housing
- Utilities (Water and Sewer)
- Parking
- Schools
- Aesthetics and Visual Impacts
- General Plan Consistency, Project Density and Scale

The responses to comments (First Amendment to the DEIR) were posted to the project's webpage at www.sanjoseca.gov/ActiveEIRs. In addition, an errata memorandum was also posted on the City's website regarding minor revisions to the mitigation measures under the Transportation/Traffic (TR-1.1) impact. All commenters were notified of the First Amendment's availability as well as the errata via email.

DEIR Recirculation Unnecessary

Staff responded to the comments and questions in the First Amendment and none of the comments raised represents new significant information that would warrant recirculation of the Draft EIR pursuant to CEQA Guidelines Section 15088.5(a). The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft EIR is not "significant" unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

The First Amendment was posted on the City's website on May 6, 2022 and all commenters were notified via email of the document's availability. The errata memorandum was posted to the City's website on May 13, 2022. The Draft Environmental Impact Report (DEIR), First Amendment and errata are available for public review on the City's website: <https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs>.

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

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

Analysis: As previously discussed in the General Plan analysis section above, the project is consistent with the Signature Project Policy (IP-5.10) criteria for the development of residential projects in an Urban Village ahead of the preparation of an Urban Village Plan. The project is also consistent with the applicable Urban Village Design Policies including increased height limits above what currently exists on site. Additionally, the project is consistent with applicable major strategies for focused growth, high quality facilities, land use and employment, implementation of Planned Development Zonings, and the review of off-sale alcohol.

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

Analysis: As previously discussed in the Municipal Code analysis section above, the project conforms with the Development Standards of the General Development Plan for the Planned Development Zoning District (File No. PDC19-049). The newly created CG(PD) Zoning District would allow for uses that conform with the UV Urban Village 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. On-site signs were posted on the project frontages on March 11th, 2021. Formally noticed public hearings were held on October 5, 2020 and January 20, 2022. Additionally, the applicant has held over 40 meetings with various stakeholder groups. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of

the project site and posted on the City website. Staff has also been available to respond to questions from the public.

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

Analysis: The 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 three mixed-use buildings at the El Paseo site are oriented around the primary pedestrian Paseo (Main Street), the focal point of the development. The buildings include similar massing, articulation, materials, and colors, while each maintaining a unique identity. The retail uses are compatible with the development as they are located on the ground floor with frontage directly on either the public streets or primary paseo, further activating the streetscape. Additional open space is provided in the form of a public park at the southern end of Buildings 1 and 2, as well as a publicly accessible paseo at the southern end of Building 4.

- 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 are temporary and would only occur during construction. Stormwater would be treated in conformance with Public Works requirements as conditioned in the Planned Development Permit. This Planned Development Permit allows nighttime construction for a 15-day period in order to construct the parking garage at the 1312 El Paseo de Saratoga site. This would involve 15-hour concrete pours between 6:00 am and 9:00 pm daily over a 15-day period. As discussed above, the project includes standard permit conditions regarding construction-related air quality, construction-related noise, construction-related water quality, asbestos and lead-based paint, and seismic hazards. The project applicant is also required to appoint a construction disturbance coordinator as conditioned in this Planned Development Permit.

9. Conditional Use Permit Findings. Chapter 20.100.720 of the San José Municipal Code specifies the required findings for the issuance of a Conditional Use Permit.

- a. The Conditional Use Permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans and area development policies; and

Analysis: As explained in detail above, the project use is consistent with and further the policies of the General Plan. The project conforms with General Plan Land Use

Policy LU-5-10, which gives preference to off-sale alcohol establishments that offer a full range of food choices. The project allows off-sale alcohol (Type 21 ABC License) at a future grocery store (expected to be Whole Foods Market). Whole Foods is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, and meat, as well as alcohol. Alcohol sales would be incidental to the larger retail use. The store provides a retail option for existing and future neighborhood residents in addition to employing 150 employees.

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

Analysis: The retail use is a permitted use in the CG(PD) Planned Development Zoning District, and off-sale alcohol use would also be authorized with a Planned Development Permit pursuant to the General Development Plan (File No. PDC19-049). Therefore, the project would be in conformance with the requirements of the CG(PD) Planned Development Zoning District with the issuance of the permit.

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

Analysis: As described above, Council Policy 6-30: Public Outreach Policy was implemented in order to inform the public of the project. On-site signs were posted on the project frontages on March 11th, 2021. Formally noticed public hearings were held on October 5, 2020 and January 20, 2022. Additionally, the applicant has held numerous meetings with various stakeholder groups. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Staff has also been available to respond to questions from the public.

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

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

Analysis: As indicated in the San José Police Department Memorandum dated January 27, 2022, the use is located in an area that is unduly concentrated with alcohol sales but is not in an area of high crime. The Police department is neutral regarding the off-sale alcohol establishment. Due to the concentration of alcohol sales within this census tract, a Determination of Public Convenience and Necessity is required. Alcohol sales would be incidental to the primary use as a grocery store. As conditioned in the Planned Development Permit, the alcohol sales area is limited

to no more than five percent of the sales floor area. Additionally, the Operations Plan, prepared by the applicant and submitted to the Director of the Department of Planning, Building and Code Enforcement on September 23, 2021, provides provisions for security and employee training specific to alcohol sales. Video surveillance would also be utilized throughout the store and the exterior of the building. Grocery store employees will be trained in responsible alcohol sales and service and will be responsible for maintaining adequate lighting, and deterring theft, loitering, and vandalism. Hours of alcohol sales would coincide with hours of operation of the store (6:00 am to 12:00 am, 7 days per week).

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

Analysis: As discussed above, the building conforms to the development regulations, including setbacks, height, and parking for a building in the CG(PD) Planned Development Zoning District. All alcohol sales would be conducted indoors within the specified tenant space.

- f. The proposed site is adequately served:

- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
- ii. By other public or private service facilities as are required

Analysis: The subject site is adequately served by local and regional access routes, and is accessed from Quito Road, Saratoga Avenue, and Campbell Avenue, as indicated above. The subject site is served by VTA bus routes 26 and 57. The site is regionally served by Lawrence Expressway and California State Route 85.

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

Analysis: Off-sale alcohol would be incidental to the larger grocery store use. All alcohol sales would be conducted indoors. Therefore, there would be no unacceptable negative environmental impacts related to noise, vibration, fugitive dust, drainage, storm water runoff, or odor, and the project will not have any unacceptable negative environmental affect on adjacent properties with regards to alcohol sales.

10. Off-Sale Alcohol Findings. Chapter 20.80.900 of the San José Municipal Code specifies the required findings for the off-sale of alcoholic beverages.

- a. For such use at a location closer than five hundred feet from any other such use involving the off-sale of alcoholic beverages, situated either within or outside the city, that the proposed location of the off-sale alcohol use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one thousand foot radius from the proposed location.

Analysis: The use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand-foot radius from the subject site. Target, BevMo, Sprouts, and CVS all have active off-sale alcohol licenses and are all located within 1,000 feet of the subject site. Therefore, this finding cannot be made.

- b. For such use at a location closer than five hundred feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the city, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one thousand foot radius from the proposed location, that the resulting excess concentration of such uses will not:
 - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the area; or
 - iii. Be detrimental to public health, safety or general welfare.

Analysis: As previously stated, the use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand-foot radius from the subject site. As indicated in the San José Police Department Memorandum dated January 27, 2022, the establishment is located in an area that is unduly concentrated with alcohol sales but is not in an area of high crime. The Police department is neutral regarding this off-sale alcohol establishment. As conditioned in the Planned Development Permit, the alcohol sales area is limited to no more than five percent of the sales floor area. Additionally, the Operations Plan provides provisions for security and employee training specific to alcohol sales. Video surveillance would also be utilized throughout the store and the exterior of the building. Staff will be trained in responsible alcohol sales and service and will be responsible for maintaining adequate lighting, and deterring theft, loitering, and vandalism. Hours of alcohol sales would coincide with hours of operation of the store (6:00 am to 12:00 am 7 days per week). Therefore, given the primary use as a grocery store and with the implementation of the applicant's

Operation Plan, the use would not adversely affect the surrounding area. Therefore, this finding can be made.

- c. For such use at a location closer than five hundred feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or one hundred fifty feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

Analysis: The subject site is not located within five hundred feet from a child care center, social services, agency, residential care facility, residential service facility, secondary school, college or university. The project is adjacent to residentially zoned properties to the south and includes the construction of a Public Park at the southwest corner of the subject site. However, the use is oriented in a manner that would not be a detriment to the adjacent uses including the residences to the north and school to the east. There is no pedestrian or vehicular access to the site from the residences to the south. Additionally, the sale of alcohol occurs entirely indoors and is incidental to the larger grocery store use. Whole Foods is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, and meat, as well as alcohol. Alcohol sales are incidental to the larger retail use. As conditioned in the Planned Development Permit, the alcohol sales area is limited to no more than five percent of the sales floor area. Therefore, this finding can be made.

11. Determination of Public Convenience or Necessity Findings. Section 6.84.030 of the San Jose Municipal Code specifies the required findings for the issuance of a Determination of Public Convenience or Necessity.

Under California Business and Professions Code Sections 23958 and 23958.4, the Department of Alcohol Beverage Control (ABC) must deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses in the area,” unless the City determines that the public convenience or necessity would be served by the issuance of the license (Determination of Public Convenience or Necessity, or PCN). An “undue concentration” is defined as follows:

- a. The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or

- b. The premises of the proposed license are located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

Analysis: The project site is located within Census Tract 5066.04. According to the San José Police Department Memorandum January 27, 2022, the establishment is located in an area that is unduly concentrated with alcohol sales but is not in an area of high crime. The neighborhood does not report 20 percent more crimes above the city average. However, the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole. The allocated number of off-sale establishments in Census Tract 5066.04 is three, and currently there are five off-sale establishments with active licenses. This permit would be the sixth off-sale alcohol use in the Census tract. Therefore, for the California Department of Alcoholic Beverage Control (ABC) to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The analysis of the proposal is based on the required findings identified in Title 6 of the San José Municipal Code and is described below.

Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that the Planning Commission may issue a PCN only after first making all of the findings specified below (see San Jose Municipal Code section 6.84.030):

- a. The proposed use is not located within a Strong Neighborhoods Initiative or neighborhood revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in which the chief of police has determined based upon quantifiable information that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area; or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and
 - i. Would be detrimental to the public health, safety, or welfare of persons located in the area; or
 - ii. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

Analysis: The project site is not located within a Strong Neighborhoods Initiative (SNI) area or neighborhood revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs. According to the Police Department Memorandum dated January 27, 2022, The Police Department stated that it is neutral to the issuance of a Conditional Use Permit for the off-sale of alcohol at the subject site. Alcohol sales are incidental to the primary use as a grocery store. As conditioned in this Planned Development Permit, the area in which alcoholic beverages are

displayed or otherwise offered for sale shall not exceed 5 percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space. Additionally, the Operations Plan provides provisions for security and employee training specific to alcohol sales. Video surveillance would also be utilized throughout the store and the exterior of the building. Grocery store employees will be trained in responsible alcohol sales and service and will be responsible for maintaining adequate lighting, and deterring theft, loitering, and vandalism. Hours of alcohol sales would coincide with hours of operation of the store (6:00 am to 12:00 am 7 days per week). Therefore, given the primary use as a grocery and the mitigation measures provided for in the applicant's Operation Plan, the use would not be detrimental to public health, safety, or welfare of persons located in the area, or increase the severity of existing law enforcement or public nuisance problems in the area. Therefore, this finding can be made.

- b. The proposed use would not lead to the grouping of more than four off-premises sale of alcoholic beverage uses within a one-thousand-foot radius from the exterior of the building containing the proposed use; and

Analysis: As previously discussed, the use results in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand-foot radius from the subject site. Target, BevMo, Sprouts, and CVS all have active off-sale alcohol license and are all located within 1,000 feet of the subject site. Therefore, this finding cannot be made.

- c. The proposed use would not be located within five hundred feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty feet of a residence; and

Analysis: The subject site is located within one hundred fifty feet of a residence and within five hundred feet of a public park, which would be constructed as part of the development. Therefore, this finding cannot be made.

- d. Alcoholic beverage sales would not represent a majority of the proposed use; and

Analysis: Whole Foods is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, and meat, as well as alcohol. Alcohol sales would be incidental and appurtenant to the larger grocery store use. As conditioned in this Planned Development Permit, the area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 5 percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product

displays shall not be placed outside the retail tenant space. Additionally, the Operations Plan provides provisions for security and employee training specific to alcohol sales. Therefore, this finding can be made.

e. At least one of the following additional findings:

- i. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

Analysis: The census tract is not unusually configured in shape. Therefore, this finding cannot be made.

- ii. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or

Analysis: The project allows off-sale alcohol (Type 21 ABC License) at a future grocery store (Whole Foods Market). Whole Foods is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, and meat, as well as alcohol. Alcohol sales would be incidental to the larger retail use. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 5 percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space. Additionally, the Operations Plan provides provisions for security and employee training specific to alcohol sales. The store would provide retail option for existing and future neighborhood residents in addition to employing 150 employees. According to the Police Department Memorandum dated January 27, 2022, the Police Department is neutral to the issuance of a Conditional Use Permit for the off-sale of alcohol at the subject site. The subject site is located in San Jose Police Beat N6. The reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index, thus the location is not considered unduly concentrated per B&P Section 23958.4 (a)(1). Additionally, the Operations Plan provides provisions for security and employee training specific to alcohol sales. Video surveillance would also be utilized throughout the store and the exterior of the building. Staff will be trained in responsible alcohol sales and service and will be responsible for maintaining adequate lighting, and deterring theft, loitering, and vandalism. Hours of alcohol sales would coincide with hours of operation of the store (6:00 am to 12:00 am 7 days per week). Therefore,

given the primary use as a grocery and the implementation of the applicant's Operation Plan, the use would not be detrimental to public health, safety, or welfare of persons located in the area. Therefore, this finding can be made.

- iii. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the city, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or

Analysis: The project would result in an over-concentration in the number of outlets for the off-premises sale of alcoholic beverages as explained above. Therefore, this finding cannot be made.

- iv. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

Analysis: Whole Foods is expected to be the future grocery store at the project site. Whole Foods is a nationwide chain of retail stores that offers a complete shopping experience including a full range of groceries, produce, and meat, as well as alcohol. Alcohol sales would be incidental and appurtenant to the larger grocery store use. As conditioned in this Planned Development Permit, the area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 5 percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Therefore, this finding can be made.

Given the above-stated analysis, the second and third findings for the issuance of a Determination of Public Convenience or Necessity cannot be made for the off-sale of alcohol because the project site is located within 500 feet of a future public park and within 150 feet of a residentially zoned property. Therefore, a determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages must be made by the City Council where it can make a determination that not all of the required findings can be made, and that a significant and overriding public benefit or benefits will be provided by the use.

A determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages can be issued where the City Council does all of the following:

- a. Makes a determination that not all of the required findings set forth in San Jose Municipal Code Section 6.84.030.D, Subsection B. can be made; and

Analysis: Given the above-stated analysis, the second and third findings for the

Determination of Public Convenience or Necessity cannot be made for the off-sale of alcohol because the subject site is located within 500 feet of a future public park and within 150 feet of a residentially zoned property. However, two of the four findings can be made.

- b. Identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use.

Analysis: While all of the required findings cannot be made for the Determination of Public Convenience or Necessity, there are significant and overriding benefits by the project use. Off-sale alcohol is appurtenant to a larger grocery use that provides a complete, convenient, and diverse shopping experience for the community. The use is oriented in a manner that would not be a detriment to the adjacent uses including the residences to the south and proposed public parks. There is no pedestrian or vehicular access to the site from the residences to the south. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 5 percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space. Additionally, the Operations Plan provides provisions for security and employee training specific to alcohol sales. Video surveillance would also be utilized throughout the store and the exterior of the building. Grocery store employees will be trained in responsible alcohol sales and service and will be responsible for maintaining adequate lighting, and deterring theft, loitering, and vandalism. Hours of alcohol sales would coincide with hours of operation of the store (6:00 am to 12:00 am 7 days per week). Alcohol sales would be incidental and appurtenant to the larger grocery store use. As conditioned in this Planned Development Permit, the area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 5 percent of the total floor area of the retail area that is open and accessible to the general public (i.e., excluding backroom storage and office spaces). Finally, the off-sale alcohol use would further activate future mixed-use area and would provide additional retail options to the existing and future residents in the surrounding area.

12. Tree Removal Permit Findings. Section 13.32.100 of the San Jose 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: As shown on the landscape plan and discussed in the Arborist Report prepared by Hortscience and Bartlett Consulting, dated April 22, 2020, the project

includes the removal of 20 ordinance-size and 101 non-ordinance-size trees. A total of 19 trees would be preserved. 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 Callery pear, Crape myrtle, Camphor, Date palm, Birsbane box, Atlast cedar, Yew pine, Coast live oak, Evergreen ash, California pepper, Oleander, Southern magnolia, and Hollywood juniper trees. The removal of the 120 trees on-site requires the replacement of 228 (15-gallon) or 114 (24-inch box) trees on site. Based on the plans provided, 132 24-inch box trees would be planted on-site. The trees to be planted include a mix of Strawberry, Bloodgod Japanese maple, Jacaranda, Orange, Lemon, Fig, Olive, Date palm, Chinese pistache, London plane, Cherry, Pomegranate, Coast live oak, Cork oak, and Water gum trees.

13. 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 five buildings totaling approximately 126,345 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 housing and employment growth 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 Residential Design Guidelines. 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 associated Environmental Impact Report, 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 a big box commercial retail center and single-story commercial structures that do not have distinctive architectural features. 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, Conditional Use Permit, and Determination of Public Convenience or Necessity (collectively referred to as "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 approximately 126,345 square feet of existing commercial buildings, the removal of 120 trees (20 ordinance-size, 100 non-ordinance-size) for the construction of four mixed use buildings consisting of 994 residential units and 165,949 square feet of commercial space, extended construction hours (15-hour concrete pours between 6:00 am to 9:00 pm daily over a 15-day period), and a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale alcohol (Type 21 ABC License) at a future grocery store in an approximately 40,000-square foot tenant space on an approximately 10.76-gross acre site.
4. **Conformance to Plans.** The development of the site shall conform to the approved plans entitled, "El Paseo and 1777 Saratoga Avenue Mixed Use Village Planned Development Permit Application PD20-006" dated November 30, 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".
5. **Operations Plan.** The project shall conform to the Operations Plan, titled "Whole Foods Market Operations Plan", dated September 23, 2021 on File with the Department of Planning, Building and Code Enforcement. Hours of Operation are 6:00 am to 7:00 pm, 7 days per week.
6. **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. PD19-049) and only upon issuance of a Planned Development Permit for those uses.
7. **Tentative Map Required.**
 - a. Prior to the issuance of a Building Permit for Building 4 at 1777 Saratoga Avenue, the Permittee shall secure approval of a Tentative Map to consolidate the five existing lots and dedicate any necessary easements.
 - b. Prior to the issuance of a Building Permit for Buildings 1, 2, and 3 at 1312 El Paseo de Saratoga, the Permittee shall secure approval of a Tentative Map to subdivide one lot into two lots and dedicate any necessary easements.
8. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José

Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

9. **Demolition Permit.** A demolition permit may be issued for the approximately 126,345 square feet of existing commercial space only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
10. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.
11. **Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning, Building and Code Enforcement. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
12. **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.
13. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping.
14. **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.

15. **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.
16. **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.
17. **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.
18. **Conformance with ABC Requirements.** The project is required to conform with all applicable requirements for the obtainment and operation of a valid Type 21 license from the California Department of Alcoholic Beverage Control (ABC).
19. **Limitations on the Area of Alcohol Sales.** The sale of alcohol for off-site consumption allowed by this Permit shall be limited and incidental to the primary use of a grocery store, located in the approximately 40,000 square foot tenant space on the ground floor of Building 3. The area in which alcoholic beverages are displayed or otherwise offered for sale shall not exceed 5 percent of the total floor area of the retail area that is open

and accessible to the general public (i.e., excluding backroom storage and office spaces). Alcohol product displays shall not be placed outside the retail tenant space.

20. **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.
21. **Extended Construction Hours.** This Planned Development Permit allows nighttime construction for a 15-day period in order to construct the parking garage at the 1312 El Paseo de Saratoga site. This would involve 15-hour concrete pours between 6:00 am and 9:00 pm daily over a 15-day period.
22. **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.
23. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
24. **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.
25. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
26. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
27. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
28. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment to the satisfaction of the Director of Planning, Building and Code Enforcement.
29. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.

- 30. Privately Owned, Publicly Accessible Open Space.** The project's plaza (as referenced on the approved Plan Set) will be a privately owned, publicly accessible ground level open space. The plaza shall be an area designated for use by the general public while owned and maintained by a private owner, as described by the following:
- a. Permittee (including property owners and successors in interest of Permittee or property owner) providing this publicly accessible open space shall, to the fullest extent permitted by law, hold harmless and indemnify the City of San José, its officers, agents and employees, from any and all damage or injury caused in any manner by the design, construction, use, or maintenance of the open space; and
 - b. Permittee (including property owners and successors in interest of Permittee or property owner) shall be solely liable for any and all damage or loss occasioned by any act or negligence in respect to the design, construction, use, or maintenance of the open space.
 - c. Liability Insurance satisfactory to the City's Risk Manager and the City Attorney, naming the City of San José and its officers and employees as additional insureds, shall be provided for all such spaces. The property owner shall record with the County Recorder and provide a copy to the City prior to the issuance of building permits a special restriction on the property satisfactory in substance to the Department and sufficient to give notice to subsequent owners, lien holders, mortgagors, tenants, and others having any economic interests in the property of the open space requirement and the means by which the requirement has been, and must continue to be, satisfied.
 - d. Maintenance - Open spaces shall be maintained at no public expense. Permittee (including property owners and successors in interest of Permittee or property owner) for the property on which the open space is located shall maintain the open space by keeping the area clean and free of litter and keeping in a healthy state any plant material that is provided for the life of the publicly accessible open space and subject project.
 - e. Plaza Hours of Operation –The privately owned, publicly accessible open space shall remain open and unobstructed to public pedestrians 24 hours a day, 7 days a week.
 - f. Security – The Permittee (including property owners and successors in interest of Permittee or property owner) shall put in place and maintain appropriate security and safety measures including, but not limited to, adequate lighting for nighttime visibility, textured or minimal slip paving, and access to a public “blue light” emergency phone or similar device situated within the plaza.
 - g. The Permittee (including property owners and successors in interest of Permittee or property owner) shall install and maintain in good condition signage that is

clearly readable and visible from the public street or public sidewalk at every entry to the public plaza within 20 feet of the public right-of-way.

31. Standard Environmental Permit Conditions

a. Air Quality

Construction-related Air Quality (Fugitive Dust (Both Options)). The project (under either option) shall implement the following measures during all phases of construction to control dust and exhaust at the project site:

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

b. Biological Resources

Tree Replacement (Both Options): Trees removed for the project shall be replaced at ratios required by the City, as stated in Table 3.4-2 below, as amended:

Tree Replacement Ratios				
Circumference of Tree to be Removed ¹	Type of Tree to be Removed ²			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

*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.

- i. 120 trees onsite would be removed, 20 of which are ordinance-size trees.
- ii. The size of a 15-gallon replacement may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
- iii. Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the following off-site tree replacement fee(s) to plant trees at alternative sites.

Santa Clara Valley Habitat Plan. The project (under either option) is subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning or Director's designee of the City of San José Department of Planning, Building, and Code Enforcement or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of grading permits.

The Habitat Plan and supporting materials can be viewed at <https://scvhabitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

c. Cultural Resources

Subsurface Cultural Resources (Both options). In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission from 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 and Native American Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery would be submitted to the Director of PBCE or the Director's Designee, the Historic Preservation Officer of the Department of Planning, Building and Code Enforcement, and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

Human Remains (Both Options): 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. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission would then designate a Most Likely Descendant. The Most Likely Descendant shall 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 Native American Heritage Commission is unable to identify a Most Likely Descendant or the Most Likely Descendant failed to make a recommendation within 48 hours after being given access to the site;
 - ii. The Most Likely Descendant identified fails to make a recommendation; or
 - iii. The landowner or his authorized representative rejects the recommendation of the Most Likely Descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.
- d. Geology/Soils

Seismic Hazards (Both options).

- 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 sites shall be completed in conformance with the recommendations of a design-level geotechnical investigation. A soils investigation report must be submitted to and accepted by the Public Works Project Engineer in Development Services prior to the issuance of a grading permit. Foundation, earthwork, and drainage recommendations should be included in the report. The report must be signed and stamped by a Registered Geotechnical/Civil Engineer. The buildings shall meet the requirements of El Paseo/1777 Saratoga Avenue Mixed-Use Project 119 Draft EIR City of San José October 2021 applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the sites 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.

Paleontological Resources (Both Options): If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building, and Code Enforcement or 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 Director's designee.

e. *Hazards and Hazardous Materials*

Asbestos and Lead-Based Paint (Both Options).

- 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 and/or lead-based paints.
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with the California Division of Occupational Safety and Health Lead in Title 8, California Code of Regulations, 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 shall be removed in accordance with National Emission Standards for Hazardous Air Pollutants guidelines prior to demolition or renovation activities that may disturb asbestos-containing materials. All demolition activities shall be undertaken in accordance with the California Division of Occupational Safety and Health standards contained in Title 8, California Code of Regulations, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of asbestos-containing materials 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 regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with Bay Area Air Quality Management District requirements and notifications.

- vi. Based on California Division of Occupational Safety and Health rules and regulations, the following conditions are required to limit impacts to construction workers:
 - 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.
 - During demolition activities, all building materials containing lead-based paint shall be removed in accordance with the California Division of Occupational Safety and Health Lead in Construction Standard, Title 8, California Code of Regulations, 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 waste being disposed.
- f. Hydrology and Water Quality
Construction-related water quality (Both Options).
 - 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. El Paseo/1777 Saratoga Avenue Mixed-Use Project 158 Draft EIR City of San José October 2021 o All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
 - iii. Stockpiles of soil or other materials that can be blown away by the wind shall be watered or covered.
 - iv. All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
 - v. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - vi. Vegetation in disturbed areas shall be replanted as quickly as possible.
 - vii. All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - viii. 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.

g. Noise

Construction-related Noise (Both Options): The project applicant shall implement noise minimization measures that include, but are not limited to, the following:

- i. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- ii. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- iii. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- iv. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- v. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
- vi. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.

Interior Noise Standard (Non-Education Mixed-Use Option). A qualified acoustical specialist shall prepare a detailed analysis of interior residential and commercial noise levels resulting from all exterior sources during the design phase pursuant to requirements set forth in the California Building Code and CalGreen, respectively. The study shall review the final site plan, building elevations, and floor plans prior to construction and recommend building treatments, where applicable, to reduce commercial interior noise levels to 45 dBA DNL or 50 dBA Leq or lower. Treatments shall include, but are not limited to, sound-rated windows and doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, etc. 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.

32. School Impact Fee (Both Options): In accordance with California Government Code Section 65996, the project (under either option) shall pay a school impact fee to the

affected school district to offset the increased demands on school facilities caused by the proposed project.

33. **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].
34. **Tribal Cultural Resources Sensitivity Training.** A qualified 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, would provide at least one cultural sensitivity training to construction crew prior to the initial ground-breaking activities.
35. **Tribal Monitoring.** A qualified Native American monitor, registered with the NAHC for the City of San José and that is traditionally and culturally affiliated with the geographic area, shall be on-site to monitor for all major earthmoving activities, such as initial grading and foundation work. Evidence of a monitoring agreement shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of grading permits.
36. **Interior Air Quality (Air Filtration (Both Options)).** The project (under either option) shall implement the below measures to minimize long-term increased cancer risk and annual PM2.5 exposure for new project occupants:
- i. Install air filtration in the sensitive receptor buildings where increased cancer risk exceed 10 per million and annual PM2.5 concentrations exceed 0.3 µg/m³. This would include Buildings One and Two on the El Paseo Site (under either option). Air filtration devices shall be rated MERV13 or higher for all portions of the site. To ensure adequate health protection to sensitive receptors (i.e., third trimester fetuses, infants, children, and adults), all fresh air circulated into the dwelling units shall be filtered. The ventilation system shall be designed to keep the building at positive pressure when doors and windows are closed to reduce the intrusion of unfiltered outside air into the building.
 - ii. As part of implementing this measure, an ongoing maintenance plan for the buildings' heating, ventilation, and air conditioning air filtration system shall be required.
 - iii. Ensure that the use agreement and other property documents: (1) require cleaning, maintenance, and monitoring of the affected buildings for air flow leaks, (2) include assurance that new owners or tenants are provided information on the ventilation system, and (3) include provisions that fees associated with owning or leasing a unit(s) in the building include funds for cleaning, maintenance, monitoring, and replacements of the filters, as needed.

37. **Pacific Gas & Electric.** There are existing PG&E electrical easements located on the El Paseo site. The applicant is actively coordinating with PG&E to remove an existing easement on-site and provide easements for other PG&E facilities on-site. The applicant will complete necessary applications and provide deposits, as necessary.

38. **Housing Department Conditions**

a. **Conditions of Approval for Inclusionary Housing Ordinance Requirements for Residential Developments and Mixed Use Developments.** The permittee has submitted an Affordable Housing Compliance Plan Application (“Plan”) and processing/application fees. Approval of the Plan is required prior to the development’s planning application being deemed complete and prior to Planning’s first approval.

- i. Prior to earliest of: approval of any parcel or final map or issuance of any building permits, the permittee must execute and record their Affordable Housing Agreement memorializing the IHO obligations against the property, any other property required for the satisfaction of the compliance option selected in the Plan, and record the Affordable Housing Agreement or a City covenant against contiguous property under common ownership and control. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
- ii. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO or its guidelines, and submit any additional or updated documents requested by the Housing Department in connection with the satisfaction of the compliance option selected in the Plan.
- iii. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO, its guidelines and the Affordable Housing Agreement are met.

b. **Conditions for Projects with Non-Residential Uses Adding at least 5,000 Square Feet.** For all Non-Residential development adding or constructing 5,000 square feet or more of new or additional floor area. An applicant is required to submit to the Housing Department, as part of its the application for First Approval the following: (a) a fully completed, executed Satisfaction Plan, (b) all attachments to the Satisfaction Plan, (c) the required application processing fee and (d) complete an addendum to the Satisfaction Plan, if the Project is requesting a secured deferred payment option or Affordable Housing Credits

- i. For Projects deemed complete **before** May 12, 2022 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 Commercial Linkage Fee Ordinance and Guidelines are met.

- ii. For Projects deemed complete **on or after** May 12, 2022 no scheduling of the final building inspection will occur until all requirements of the Commercial Linkage Fee Ordinance and Guidelines are met.
- iii. For Office or R/D Projects adding more that 100,000 square feet that are deemed complete on or after May 12, 2022 and have selected the secured deferred payment option the following applies: Prior to issuance of any building permits, the permittee must execute an agreement regarding deferred payment specifying the security to be provided and pay 20% of the fee, Prior to the scheduling of final building inspection, those projects must pay another 20% of the fee and submit the letter of credit or payment bond securing the outstanding amount for approval.

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

- a. *Construction Plans.* This permit File No. PD20-006 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.

40. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the project must comply with the California Fire Code as adopted or updated by the City.
41. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of 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 the following: <http://www.sanjoseca.gov/devresources>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation.** A Local Transportation Analysis (LTA) has been performed for this project based on a net 386 AM and 434 PM peak hour trips (PHT) for the Non-Education Option and a net 1,525 AM and 447 PM PHT for the Education Option. The following conditions shall be implemented:
 - i. Implement the following multimodal infrastructure and TDM Plan mitigation measures, based on whichever development option moves forward, to reduce the project VMT to less-than-significant levels and fully mitigate the VMT impacts:
 - i. Non-Education Option
 - (a) Pedestrian Network Improvements **and** Traffic Calming Measures
 - (i) Construct traffic calming measures to improve pedestrian access between West Campbell Avenue and the south side of Hamilton Avenue by removing the pork chop island at the southwest corner of Campbell Avenue and Hamilton Avenue. A signal modification will be required, and improvements may include but are not limited to the following:
 1. Provide a signalized pedestrian crosswalk for the south leg.
 2. Construct new ADA directional curb ramps at all corners of the intersection (total of 5) including crosswalk across Campbell Avenue northbound right turn onto eastbound Hamilton Avenue.
 3. Construct curb/gutter/10' wide detached sidewalk along eastbound Campbell Avenue and southbound Hamilton Ave,

while maintaining existing drainage patterns. If funding is available from the City, the developer shall install street trees within the detached sidewalk. If funding is unavailable from the City, the City will install the street trees within the detached sidewalk.

4. Implement Class II bikeway to the left of the eastbound right-turn lane along Campbell Avenue.
 - (b) Provide Unbundled On-site Parking Costs per market pricing per parking space. Unbundled parking costs may be subject to annual escalation.
 - (c) Provide Commute Trip Reduction Marketing and Education to 100% of employees
 - (d) Encourage Telecommuting and Alternative Work Schedule Program with a 4/40 work week schedule (10-hour workdays for four days a week) with at least 10% expected participation from employees.
- ii. Education Option
 - (a) Pedestrian Network Improvements **and** Traffic Calming Measures (see above)
 - (b) Provide Unbundled On-site Parking Costs per marking pricing per parking space. Unbundled parking costs may be subject to annual escalation.
 - (c) Provide Commute Trip Reduction Marketing and Education with a 95% expected participation of faculty, staff, student drivers, and parents.
 - (d) Provide Rideshare/Carpool Program with an expected participation rate of 2%.
- ii. Provide a TDM plan prior to issuance of Planning Permit. Include an annual monitoring requirement establishing an average daily trip (ADT) cap of 475 AM peak-hour trips and 633 PM peak-hour trips for the Non-Education Option (1,614 AM peak-hour trips and 646 PM peak-hour trips for the Education Option). The annual monitoring report must demonstrate the project is within 10% of the ADT cap and must be prepared by a traffic engineer.
- i. If the project is not in conformance with the trip cap, the project may add additional TDM measures to meet the trip cap. A follow up report will be required within six months. If the project is still out of conformance, penalties will be assessed. See Council Policy 5-1.

- iii. Implement street improvements on Saratoga Avenue segment between Lawrence Expressway-Quito Road and 1312 El Paseo de Saratoga-1777 Saratoga Avenue project driveways, including:
 - i. Install a second westbound left-turn pocket on Saratoga Avenue approach of the Quito Road-Lawrence Expressway intersection per County of Santa Clara coordination and approval.
 - ii. Install a new eastbound left turn pocket for the 1312 El Paseo de Saratoga-1777 Saratoga Avenue project driveways.
 - iii. New traffic signal at Saratoga Avenue & 1312 El Paseo de Saratoga-1777 Saratoga Avenue Driveways shall be 8-phase operation with crosswalks on all intersection approaches.
 - iv. Median island modifications between 1312 El Paseo de Saratoga-1777 Saratoga Avenue Driveways shall be configured to maintain existing Saratoga Avenue configurations at the Saratoga Avenue & Campbell Avenue-Prospect Road intersection.
- iv. Remove the pork-chop island at the northeast and southeast corners of the Lawrence Expressway-Quito Road/Saratoga Avenue intersection and modify the signal to accommodate pork chop removals per County of Santa Clara coordination and approval.
- v. Submit a supplemental LTA detailing the on-site circulation and student pick-up/drop-off, if the development moves forward with the Education Option.
- vi. Install signage at the Quito Road driveway entrance that the driveway only provides access for residents and office employees and should not be used to access the shopping mall.
- vii. Provide a voluntary monetary contribution towards the construction of Class IV bikeways of \$121 per linear foot along the project frontage along Saratoga Avenue and Quito Road per San Jose Better Bike Plan 2025.
- c. **Urban Village Plan:** This project is located in the Paseo de Saratoga Urban Village per the Envision San Jose 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
- d. **Grand Boulevard:** This project fronts Saratoga Avenue which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.

- e. **Private Improvements within Public Property:** The proposed minor encroachment in the right-of-way for benches shall be subject to Chapter 13.37 of the Municipal Code. No further discretionary approval by City Council is required for these improvements. The property owner shall execute an Encroachment Agreement as part of Public Works Clearance requirement(s) and prior to Building Permit issuance.
- f. **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 foot 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. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
- g. **Shoring:**
 - i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
 - ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or

Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12" within the public right-of-way (i.e. soldier beams).

- iii. If tie-backs are proposed for use along the adjacent property(ies) (403-01-110, 111, 112, 113, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 403-32-062, 082, 084, 086, 089, 090, 091, 092, 093, 094, 095, 099, 101, 110, 120, 403-33-009, 015, 386-10-040, 049) agreements between the Applicant and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.
- h. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project shall 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.
 - iv. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at the following: <http://www.sanjoseca.gov/home/showdocument?id=27405>
 - v. A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.
- i. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- j. **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.

- k. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to Public Works clearance.
- l. **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.
- m. **Undergrounding:**
 - i. The In-Lieu Undergrounding Fee shall be paid to the City for all frontage(s) adjacent to Lawrence Expressway and Saratoga Avenue prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2022 base fee is \$574 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
 - ii. The Director of Public Works may, at his discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Lawrence Expressway and Saratoga Avenue. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works clearance.
- n. **Environment Assessment of Easement Dedications:** A sidewalk easement dedication is required as part of this permit. An environmental assessment of the easement dedication area from an environmental consultant is required prior to recordation of the easement.
- o. **Street Improvements:**
 - i. Per County of Santa Clara approval, construct 20-foot-wide City standard attached sidewalk, which includes 4'x5' tree wells, 6-foot-wide raised bikeway, and 10-foot wide pedestrian through zone along Saratoga Avenue project frontage per the latest DOT plan line, which will avoid relocating the utility pole at the northeast corner of the Saratoga Avenue/Quito Rd-Lawrence Expressway intersection. Provide public sidewalk easement dedication as required.
 - ii. Construct 23-foot-wide City standard attached sidewalk, which includes an 8-foot-wide VTA boarding zone, 5-foot-wide raised bikeway, and 10-foot wide

- pedestrian through zone along the proposed bus stop location at Saratoga Avenue project frontage. Provide public sidewalk easement dedication as required.
- iii. Construct 15-foot-wide City Standard attached sidewalk with 4-foot by 5-foot tree wells along Lawrence Expressway project frontage as required by County of Santa Clara. Provide public sidewalk easement dedication as required. Public improvements to be coordinated with the County of Santa Clara.
 - iv. Construct 17-foot-wide City standard attached sidewalk, which includes 4-foot by 5-foot tree wells, 5-foot-wide raised bikeway, and 8-foot-wide pedestrian through zone along Quito Road project frontage as required by County of Santa Clara. Provide public sidewalk easement dedication as required.
 - v. Construct 26-foot-wide City Standard driveway cuts on all project driveways, except at signalized intersections. A tapered curb return can be considered at the signalized entrances to accommodate a continuous sidewalk along the project frontage.
 - vi. Reconstruct raised median island along Saratoga Avenue from Lawrence Expressway to Campbell Avenue. Median island modifications between 1312 El Paseo de Saratoga-1777 Saratoga Avenue Driveways shall be configured to maintain existing Saratoga Avenue configurations at the Saratoga Avenue & Campbell Avenue-Prospect Road intersection.
 - vii. Relocate the existing Eastbound Saratoga bus stop, east of Quito/Lawrence intersection, to the far-side of the Saratoga Ave/Main Street signalized intersection. This location will provide easier access for transit riders to access school facilities. VTA proposes that the relocated bus stop be right below Main Street and be built to VTA bus stop design standards. See attachments.
 - i. Construct an 8-foot by 40-foot boarding area with a 7-foot by 25-foot shelter pad.
 - ii. Install a VTA standard 13-foot Full Back Ad shelter.
 - iii. Contact bus.stop@vta.org a month minimum prior to removal.
 - viii. Replace old bus stop shelter, Southbound Campbell, south of Saratoga bus stop with new VTA standard 13-foot Full Back Ad shelter.
 - ix. Per County of Santa Clara approval, signal modification will be required at the Saratoga Avenue/Lawrence Expressway intersection to remove Northeast and Southeast pork-chop islands, and tighten the curb radii. Traffic signal modification should retain existing 8-phase signal operation.

- i. Coordination will be needed with the County of Santa Clara and VTA for the public frontage improvements along Lawrence Expressway and the existing bus stop locations.
- x. Signal modification will be required at Campbell Avenue/Hamilton Avenue intersection to install a crosswalk at the south leg to provide enhance pedestrian crossing to the existing site across West Campbell Avenue.
 - i. Project shall realign curb line along eastbound Hamilton Avenue to connect to the southeast Campbell Avenue to allow for direct pedestrian/bicycle access from the southeast Campbell Ave/Hamilton Ave intersection corner and to minimize vehicular conflicts. Existing drainage along Campbell Avenue shall be maintained.
- xi. Per County of Santa Clara approval, traffic signal modification will be required at Saratoga Avenue & 1312 El Paseo de Saratoga-1777 Saratoga Avenue driveways to install all crosswalks on all legs and provide 8-phase operation with a new eastbound left turn lane for access to 1777 Saratoga Avenue.
 - i. Installation of new eastbound left turn to 1777 Saratoga Avenue will require analysis the westbound left turn operations at the Saratoga Avenue & Lawrence Expressway-Quito Road intersection.
 - ii. Street improvements along Saratoga Avenue shall include a lane reassignment of the 3 EB lanes along Saratoga Avenue, east of the Quito Road-Lawrence Expressway/Saratoga Avenue intersection to accommodate the new eastbound left turn into 1777 Saratoga Avenue.
- xii. Provide new 3-inch conduit between El Paseo de Saratoga Driveway/Saratoga Avenue and Campbell/ Hamilton.
- xiii. Provide 24-strand fiber installed in the conduit between the traffic controller cabinets. Existing traffic controller cabinets shall be maintained where feasible.
- xiv. Close unused driveway cut(s).
- xv. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
- xvi. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- xvii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

- p. **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.
- q. **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 curb cuts. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - ii. Replace any missing street trees in empty tree wells or park strips along Saratoga Avenue and W. Campbell Avenue 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 proposed 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 are proposed to be removed.
- r. **Referrals:**
 - i. This project should be referred to the County of Santa Clara for coordination on the Quito Road and Saratoga Avenue improvements including but not limited to the following:
 - i. Removal of NE and SE pork-chop islands at Saratoga Avenue & Lawrence Expressway-Quito Road intersection corners.
 - ii. Fair-share contribution towards Class IV protected bike lane along Quito Rd project frontage per Better Bike Plan (BBP) 2025 and these project conditions of approval.
 - iii. Construction of up to 15-foot-wide City Standard attached sidewalk with 4-foot by 5-foot tree wells along Lawrence Expressway project frontage as required by County of Santa Clara. Provide public sidewalk easement dedication as required. Public improvements to be coordinated with the County of Santa Clara.
 - ii. This project should be referred to Valley Transportation Authority (VTA) for coordination on the proposed bus stop relocation along the westbound Saratoga Avenue frontage.

EFFECTIVE DATE

The effective date of this Planned Development Permit shall be the same as effective date of the Rezoning Ordinance for File No. PDC19-049 passed for publication on _____, 2022 (the “Zoning Ordinance”) and shall be no earlier than the effective date of said Rezoning Ordinance.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

EXHIBIT "A"
Legal Description

PARCEL A
MAP 669 M 1

Being a portion of Parcel A of that certain parcel map filed for record on February 9, 1998 in Book 699 of Maps at Pages 1 & 2, Records of Santa Clara County, State of California, more particularly described as follows

LOT ONE:

BEGINNING at a point on the easterly line of Quito Road, said point also being the southwest corner of said Parcel A (699 M 1), thence along said easterly line North $00^{\circ}48'53''$ East, 279.83 feet;

Thence North $03^{\circ}38'06''$ West, 277.47 feet;

Thence North $28^{\circ}22'50''$ East, 143.58 feet to a point on the southeasterly line of Saratoga Avenue, said point also being the beginning of a non-tangent curve, concave southeasterly, having a radius of 11,995.00 feet, with a radial line that bears North $48^{\circ}53'25''$ West;

Thence northeasterly along said curve, through a central angle of $00^{\circ}06'18''$, for an arc length of 21.96 feet;

Thence leaving said southeasterly line of Saratoga Avenue South $46^{\circ}14'30''$ East, 61.72 feet;

Thence North $88^{\circ}23'38''$ East, 162.82 feet;

Thence North $43^{\circ}40'52''$ East, 98.43 feet;

Thence North $89^{\circ}24'31''$ East, 210.06 feet to the northerly prolongation of the westerly line of Parcel B of said parcel map (699 M 1);

Thence southerly along said prolongation and along said westerly line of Parcel B (699 M 1) and along the southerly prolongation of said westerly line of Parcel B (699 M 1) South $00^{\circ}38'20''$ East, 728.57 feet to the south line of said Parcel A (699 M 1);

Thence South $89^{\circ}21'40''$ West, 562.61 feet to the POINT OF BEGINNING.

Containing 385,756 square feet or 8.856 acres, more or less.

LOT TWO:

BEGINNING at a point on the easterly line of Quito Road, said point also being the southwest corner of said Parcel A (699 M 1), thence along said easterly line North $00^{\circ}48'53''$ East, 279.83 feet;

Thence North $03^{\circ}38'06''$ West, 277.47 feet;

Thence North 28°22'50" East, 143.58 feet to a point on the southeasterly line of Saratoga Avenue, said point also being the beginning of a non-tangent curve, concave southeasterly, having a radius of 11,995.00 feet, with a radial line that bears North 48°53'25" West;

Thence northeasterly along said curve, through a central angle of 00°06'18", for an arc length of 21.96 feet to the **TRUE POINT OF BEGINNING**;

Thence continuing along said southeasterly line of Saratoga Avenue and along said curve through a central angle of 00°38'36", for an arc length of 134.67 feet;

North 41°51'28" East, 21.02 feet to the beginning of a curve to the right, having a radius of 13,584.00 feet;

Thence northeasterly along said curve, through a central angle of 01°15'47", for an arc length of 299.45 feet;

Thence leaving said southeasterly line of Saratoga Avenue South 46°31'26" East, 164.72 feet;

Thence North 43°31'08" East, 327.00 feet to the southwesterly line of Campbell Avenue;

Thence southeasterly along said southwesterly line of Campbell Avenue South 46°31'26" East, 268.01 feet to the beginning of a curve to the left, having a radius of 4,308.00 feet;

Thence southeasterly along said curve, through a central angle of 02°39'34", for an arc length of 199.96 feet;

Thence South 49°11'00" East, 403.46 feet to the beginning of a curve to the right, having a radius of 4,308.00 feet;

Thence Southeasterly along said curve, through a central angle of 02°39'34", for an arc length of 199.96 feet;

Thence South 46°31'26" East, 642.50 feet;

Thence leaving said southwesterly line of Campbell Avenue South 89°21'40" West, 146.06 feet;

Thence North 20°10'22" East, 21.40 feet;

Thence South 89°21'40" West, 1,280.76 feet to the southerly prolongation of the westerly line of Parcel B of said parcel map (699 M 1);

Thence along said prolongation North 00°38'20" West, 141.98 feet to the southwest corner of said Parcel B (699 M 1);

Thence along the general southerly, easterly and northerLY lines of said Parcel B the following seven (7) courses:

1. North 89°21'40" East, 51.99 feet;
2. South 14°42'30" East, 41.47 feet;

3. North 74°15'10" East, 137.68 feet;
4. North 00°38'20" West, 205.67 feet;
5. North 45°38'20" West, 40.30 feet;
6. South 89°21'40" West, 138.00 feet;
7. South 44°21'40" West, 40.30 feet;

Thence along the northerly prolongation of said westerly line of Parcel B (699 M 1); North 00°38'20" West, 385.26 feet;

Thence South 89°24'31" West, 210.06 feet;

Thence South 43°40'52" West, 98.43 feet;

Thence South 88°23'38" West, 162.82 feet;

Thence North 46°14'30" West, 61.72 feet to the **TRUE POINT OF BEGINNING**.

Containing 950,435 square feet or 21.819 acres, more or less.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B".

BASIS OF BEARINGS:

THE BEARINGS SHOWN HEREON ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM OF 1983, CCS83, ZONE 3, IN ACCORDANCE WITH THE CALIFORNIA PUBLIC RESOURCES CODE SECTIONS 8801-8819.

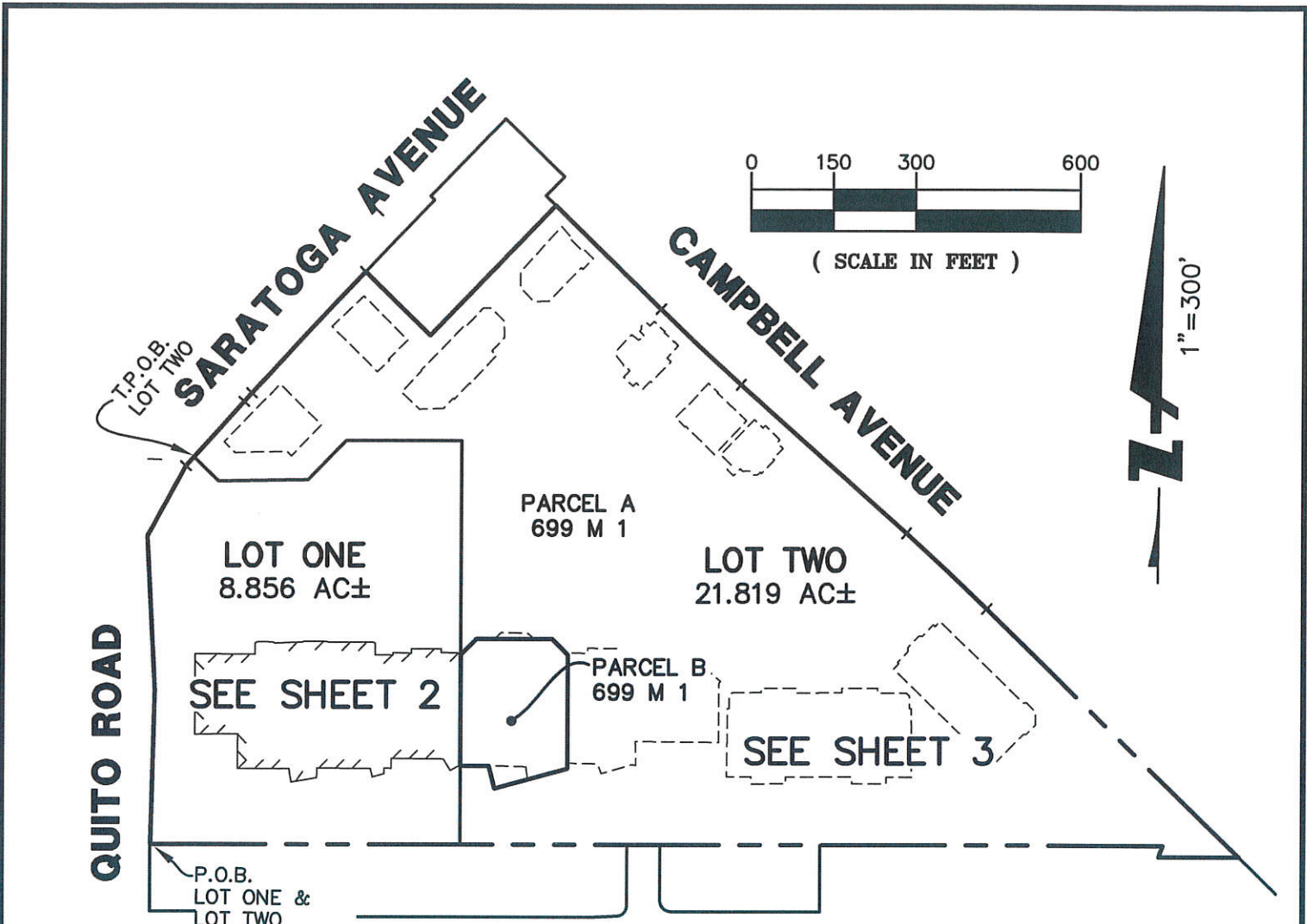
This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.



Benjamin H. Santos
P.L.S. No. 9251

12/16/19
Date





LEGEND

- EXISTING BUILDING TO REMAIN
- PORTION OF EXISTING BUILDING TO BE DEMOLISHED
- P.O.B. POINT OF BEGINNING
- T.P.O.B. TRUE POINT OF BEGINNING

NOTE: ALL OF SUBJECT SITE IS CITY OF SAN JOSE ZONE CG—COMMERCIAL GENERAL

BASIS OF BEARINGS

BASIS OF BEARINGS: THE BEARINGS SHOWN HEREON ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM OF 1983, CCS83, ZONE 3, IN ACCORDANCE WITH THE CALIFORNIA PUBLIC RESOURCES CODE SECTIONS 8801-8819.



EXHIBIT "B"
 PLAT TO ACCOMPANY
 LEGAL DESCRIPTION

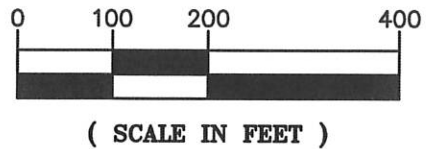
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Subject PARCEL A, PM 699 M 1
PLAT MAP
 Job No. 20191362
 By MDB Date 12-16-09 Chkd. BHS
 SHEET 1 OF 3

PLOTTED BY: barm

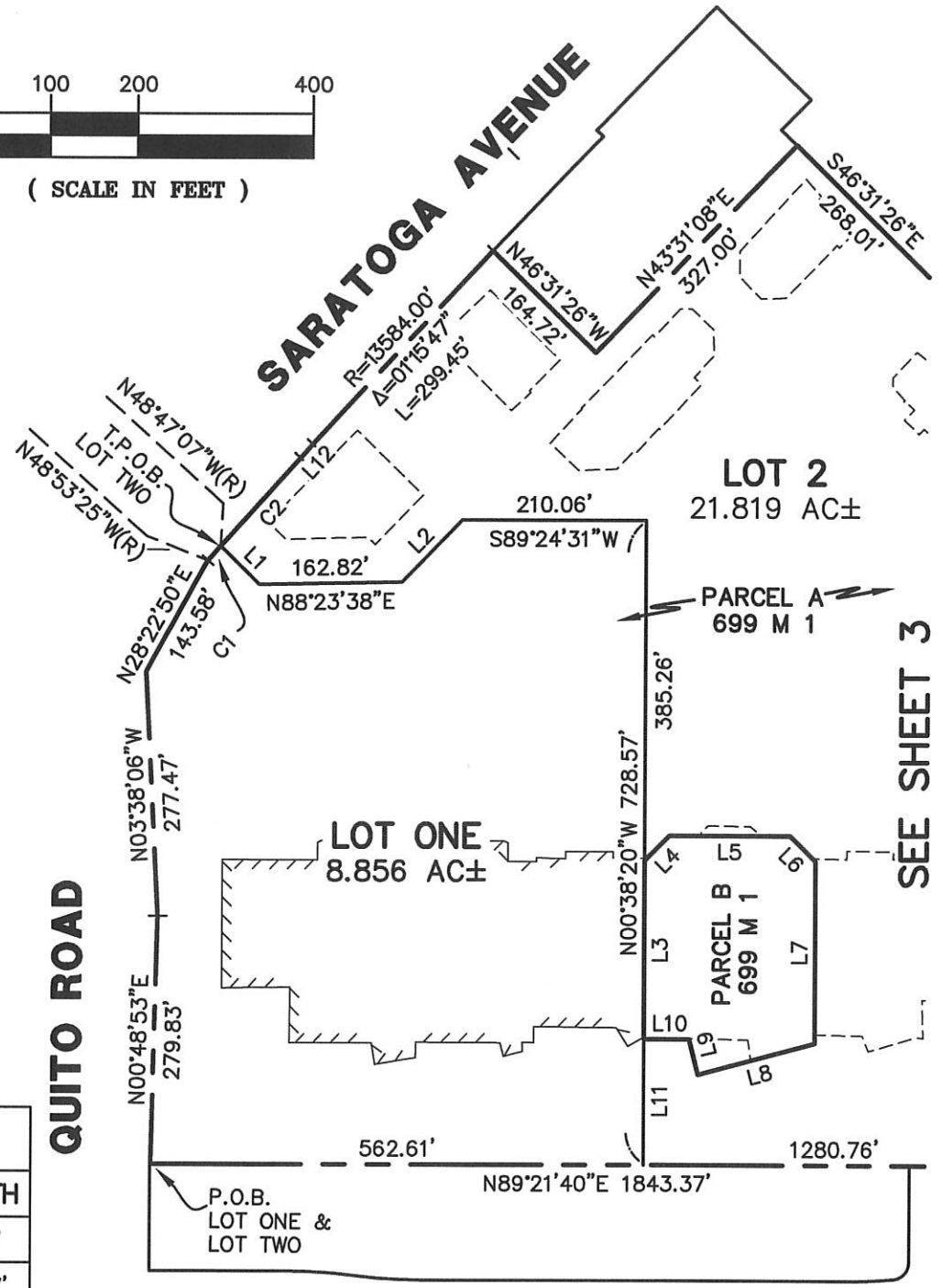


1730 N. FIRST STREET
 SUITE 600
 SAN JOSE, CA 95112
 408-467-9100
 408-467-9199 (FAX)



LINE TABLE		
NO.	BEARING	LENGTH
L1	N46°14'30"W	61.72'
L2	S43°40'52"W	98.43'
L3	S00°38'20"E	201.33'
L4	S44°21'40"W	40.30'
L5	S89°21'40"W	138.00'
L6	N45°38'20"W	40.30'
L7	N00°38'20"W	205.67'
L8	N74°15'10"E	137.68'
L9	S14°42'30"E	41.47'
L10	N89°21'40"E	51.99'
L11	N00°38'20"W	141.98'
L12	S41°51'28"W	21.02'

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	11995.00'	0°06'18"	21.96'
C2	11995.00'	0°38'36"	134.67'



SEE SHEET 3

EXHIBIT "B"
 PLAT TO ACCOMPANY
 LEGAL DESCRIPTION

K:\2019\191362_SJ_EL_PASEO_&_1777_SARATOGA_AVE\SUR\DWG\EXHBT\RECORD_REI.DWG

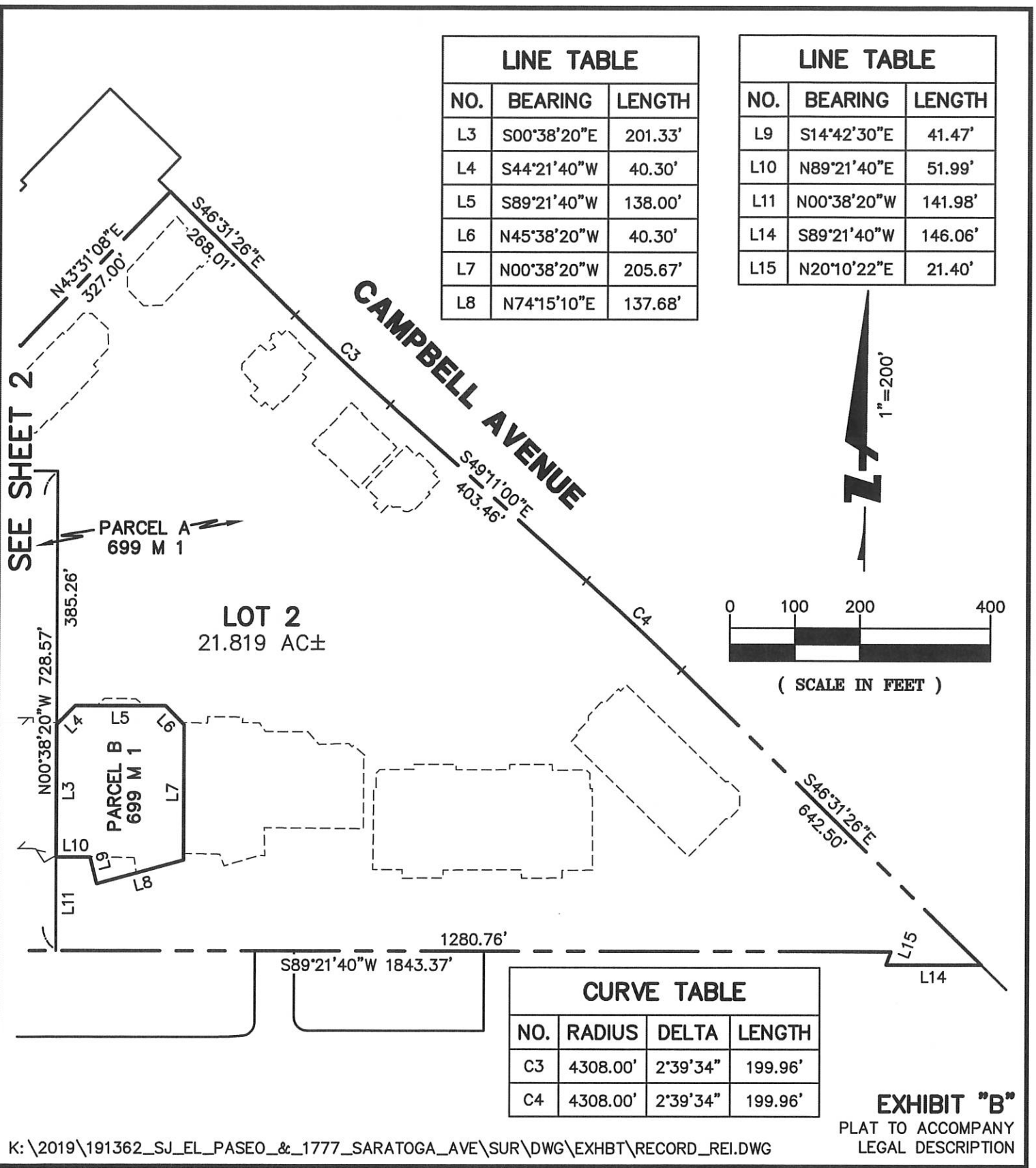


1730 N. FIRST STREET
 SUITE 600
 SAN JOSE, CA 95112
 408-467-9100
 408-467-9199 (FAX)

Subject PARCEL A, PM 699 M 1
PLAT MAP
 Job No. 20191362
 By MDB Date 12-16-09 Chkd. BHS
 SHEET 2 OF 3

EXHIBIT B-1
 (File Nos. PDC19-049; PD20-006)

PLOTTED BY: barm



LINE TABLE		
NO.	BEARING	LENGTH
L3	S00°38'20"E	201.33'
L4	S44°21'40"W	40.30'
L5	S89°21'40"W	138.00'
L6	N45°38'20"W	40.30'
L7	N00°38'20"W	205.67'
L8	N74°15'10"E	137.68'

LINE TABLE		
NO.	BEARING	LENGTH
L9	S14°42'30"E	41.47'
L10	N89°21'40"E	51.99'
L11	N00°38'20"W	141.98'
L14	S89°21'40"W	146.06'
L15	N20°10'22"E	21.40'

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C3	4308.00'	2°39'34"	199.96'
C4	4308.00'	2°39'34"	199.96'

EXHIBIT "B"
PLAT TO ACCOMPANY
LEGAL DESCRIPTION

K:\2019\191362_SJ_EL_PASEO_&_1777_SARATOGA_AVE\SUR\DWG\EXHBT\RECORD_REI.DWG



1730 N. FIRST STREET
SUITE 600
SAN JOSE, CA 95112
408-467-9100
408-467-9199 (FAX)

Subject PARCEL A, PM 699 M 1
PLAT MAP
Job No. 20191362
By MDB Date 12-16-09 Chkd. BHS
SHEET 3 OF 3

PLOT FILED BY: barm

EXHIBIT "A"
Legal Description

1777 SARATOGA AVENUE

Real property located partly in the City of San Jose and partly in the City of Saratoga, County of Santa Clara, State of California, more particularly described as follows:

PARCEL ONE:

BEGINNING at a point on the northeasterly line of Lawrence Expressway, said point being the southeasterly terminus of the course labelled "South 50° 52' 30" East 146.43 (feet)" on that certain record of survey entitled "Lawrence Expressway" filed for record on April 19, 1966 in Book 208 of Maps at Page 28, Records of Santa Clara County, thence North 49°56'00" West, 146.00 feet;

Thence North 46°21'56" West, 10.80 feet;

Thence North 09°15'08" East, 210.96 feet;

Thence South 80°44'52" East, 383.23 feet to a point on the northwesterly line of Saratoga Avenue, said point also being the beginning of a non-tangent curve, concave Southeasterly, having a radius of 13,704.00 feet, with a radial line that bears North 47°36'15" West;

Thence southwesterly along said northwesterly line of Saratoga Avenue and along said curve, through a central angle of 00°32'17", for an arc length of 128.66 feet;;

Thence South 41°51'28" West, 21.02 feet to the beginning of a curve to the left, having a radius of 12,115.00 feet;

Thence Southwesterly along said curve, through a central angle of 00°52'41", for an arc length of 185.66 feet ;

Thence North 49°56'00" West, 6.52 feet;

Thence South 57°01'36" West, 15.00 feet to the beginning of a non-tangent curve, concave Northerly, having a radius of 50.00 feet, with a radial line that bears South 24°39'23" East;

Thence Westerly along said curve, through a central angle of 63°00'50", for an arc length of 54.99 feet; to the **POINT OF BEGINNING**.

Containing 79,233 square feet or 1.819 acres, more or less.

PARCEL TWO:

BEGINNING at a point on the northeasterly line of Lawrence Expressway, said point being the northwesterly terminus of the course labelled "South 49° 42' 56" East 180.31 (feet)" on that certain record of survey entitled "Lawrence Expressway" filed for record on April 19, 1966 in Book 208 of Maps at Page 28, Records of Santa Clara County, said point also being a point on the common line between the City of San Jose and the City of Saratoga, as shown on said record of survey (208 M 28), thence leaving said

northeasterly line of Lawrence Expressway and southeasterly along said common line between the City of San Jose and the City of Saratoga South 80°44'52" East, 142.44 feet;

Thence South 09°15'08" West, 97.46 feet.

Thence North 46°21'56" West, 172.59 feet to the **POINT OF BEGINNING**;

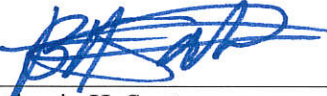
Containing 6,941 square feet or 0.159 acres, more or less

A plat showing the above-described parcels is attached herein and made a part hereof as Exhibit "B".

BASIS OF BEARINGS:

THE BEARINGS SHOWN HEREON ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM OF 1983, CCS83, ZONE 3, IN ACCORDANCE WITH THE CALIFORNIA PUBLIC RESOURCES CODE SECTIONS 8801-8819.

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



Benjamin H. Santos
P.L.S. No. 9251

12/16/19

Date



