

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Christopher Burton

**SUBJECT:** SEE BELOW

**DATE:** August 4, 2022

Approved



Date

**8/11/2022**

**COUNCIL DISTRICT: 1**

**SUBJECT: ADMINISTRATIVE HEARING ON AN APPEAL OF THE DECISION OF THE PLANNING DIRECTOR TO: (a) ADOPT THE DETERMINATION OF CONSISTENCY WITH THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION FOR THE 1212-1224 SOUTH WINCHESTER BOULEVARD HOTEL PROJECT IN ACCORDANCE WITH CEQA; AND (b) APPROVE A SPECIAL USE PERMIT NO. SP20-016 FOR THE 1212-1224 SOUTH WINCHESTER BOULEVARD HOTEL PROJECT**

## **RECOMMENDATION**

- (a) Conduct an Administrative Hearing to consider an Appeal of the Decision of the Planning Director to:
  - (1) Adopt the Determination of Consistency with the Initial Study/Mitigated Negative Declaration for the 1212-1224 South Winchester Boulevard Hotel Project in accordance with CEQA; and
  - (2) Approve a Special Use Permit File No. SP20-016 for the 1212-1224 South Winchester Boulevard Hotel Project to allow the demolition of two existing commercial buildings and the removal of nine trees (four ordinance-size, five non-ordinance size) for the construction of an approximately 107,079-square foot, six-story, 119-room hotel with an approximately 49 percent parking reduction and an alternative parking arrangement on an approximately 0.69-gross acre site.
- (b) Adopt a resolution denying the Environmental Appeal of and upholding the Determination of Consistency with the previously adopted 1212-1224 South Winchester Boulevard Hotel Project Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program, and finding that:
  - (1) The City Council has read and considered the Determination of Consistency with the Initial Study/Mitigated Negative Declaration for the 1212-1224 South Winchester

Boulevard Hotel Project and related administrative records in connection with Special Use Permit File No. SP20-016;

- (2) The Determination of Consistency with the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration was prepared in full compliance with the California Environmental Quality Act (CEQA) of 1970, as amended, together with state and local implementation guidelines;
  - (3) Adoption of the Determination of Consistency with the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration reflects the independent judgment and analysis of the City of San José; and
  - (4) Preparation of a new environmental document is not required because the Determination of Consistency with the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration thoroughly and adequately analyzed the project and the environmental appeal does not raise any new significant impacts that have not already been analyzed or addressed in the Initial Study/Mitigated Negative Declaration in accordance with Public Resources Code section 21083 or CEQA Guidelines sections 15073 and 15185.
- (c) Adopt a resolution denying the permit appeal and approving, subject to conditions, a Special Use Permit to allow the demolition of two existing commercial buildings and the removal of nine trees (four ordinance-size, five non-ordinance size) for the construction of an approximately 107,079-square foot, six-story, 119-room hotel with an approximately 49 percent parking reduction and an alternative parking arrangement on an approximately 0.69-gross acre site located on the east side of South Winchester Boulevard, approximately 270 feet south of Fireside Drive (1212-1224 South Winchester Boulevard; APNs: 279-17-020 and 279-17-021).

## **OUTCOME**

The hearing before the City Council is an appeal of the CEQA environmental determination pursuant to section 21.06.030 of the City of San José's (City) Environmental Clearance Ordinance and an appeal of the granting of a Special Use Permit pursuant to Section 20.100.280 of the City's Zoning Ordinance. An appeal under these sections is conducted *de novo*, which means that the City Council considers the permit request anew, along with the revised Special Use Permit Resolution (Exhibit G), Determination of Consistency (Exhibit D), Mitigation Monitoring and Reporting Program (MMRP) (Exhibit H), the environmental documents including the Initial Study/Mitigated Negative Declaration, Technical Reports, and Responses to Comments (Exhibit D), comments from the appellants and applicant, and the totality of the administrative record.

Under Section 21.06.030(B) of the San José Municipal Code, when hearing this environmental appeal, the City Council may:

1. Deny the appeal and uphold the adoption of the Determination of Consistency with the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration, or
2. Grant the appeal and require that additional environmental review be conducted, resulting in a new or revised environmental document prior to consideration of the Special Use Permit, or the applicant not moving forward with the project.

Denying the environmental appeal and adopting the Determination of Consistency with the 1212-1224 South Winchester Boulevard Initial Study/Mitigated Negative Declaration would allow the City Council to consider the Special Use Permit appeal and make the required findings to approve or deny the Special Use Permit. If the permit appeal is denied and the Special Use Permit approved, the project applicant would be able to move forward with the building permit phase of the project to allow an approximately 107,079-square foot, six-story, 119-room hotel on an approximately 0.69-gross acre site.

Granting the environmental appeal would void both the Planning Director's adoption of the Determination of Consistency with the 1212-1224 South Winchester Boulevard Initial Study/Mitigated Negative Declaration and approval of the Special Use Permit. The project applicant would be required to prepare a new or revised environmental document prior to reconsideration of the proposed project. Alternatively, the project may not take place at all.

### **EXECUTIVE SUMMARY**

The project site is located at 1212-1224 South Winchester Boulevard and is currently developed with two commercial buildings formerly used as single-family residences. On January 11, 2022, at a scheduled hearing, the City Council was presented with a Conforming Rezoning (File No. C19-031) to rezone the property from the R-1-8 Single-Family Residence Zoning District to the CP Commercial Pedestrian Zoning District and a Special Use Permit (File No. SP20-016) to allow the demolition of the existing structures for the construction of the proposed hotel. During public testimony, applicant Adam Askari requested that only the Conforming Rezoning be considered and approved in accordance with Senate Bill 1333. The applicant also agreed to drop the Special Use Permit from consideration to continue a dialogue with the neighbors in the surrounding area. Vice Mayor Charles "Chappie" Jones made a motion to approve the rezoning and adopt the Initial Study/Mitigated Negative Declaration for the project but drop the Special Use Permit from the agenda. The Conforming Rezoning Ordinance (Ordinance No. 30713) and the resolution (Resolution No. 80348) adopting the 1212-1224 Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration were approved 10-0-1 (Arenas absent) on January 11, 2022; the ordinance was adopted January 25, 2022, at the City Council's final reading.

The subject Special Use Permit, SP20-016, and Determination of Consistency for the project were considered and approved at a Planning Director's Hearing on March 23, 2022. The Special

Use Permit consisted of the demolition of two existing commercial buildings and the removal of nine trees (four ordinance-size, five non-ordinance size) for the construction of an approximately 107,079-square foot, six-story, 119-room hotel with an approximately 49 percent parking reduction and an alternative parking arrangement on an approximately 0.69-gross acre site.

A timely appeal of the Environmental Determination was filed on March 28, 2022 by Gaz Salihue, Shehana Marikar, and other residents of the Hamann Park neighborhood (Exhibit A). The environmental appeal raised concerns about the adequacy of the Initial Study/Mitigated Negative Declaration in terms of the project's inconsistency with the General Plan designation of Neighborhood/Community Commercial, the project's inconsistency with the Winchester Boulevard Urban Village Plan, fire safety, pedestrian/bicyclist safety, guest and valet drop-off/pick-up zone operations, traffic on South Winchester Boulevard and Payne Avenue, rooftop solar, and the impact of the project's new impervious surface. As discussed in this memorandum, the Initial Study/Mitigated Negative Declaration, adopted by the City Council on January 11, 2022, was thoroughly based on facts and reasoned analysis, and provides adequate details and information for decision makers to consider the project and therefore, the Determination of Consistency is also adequate. The comments raised in the environmental appeal did not raise any new issues about the project's environmental impacts, nor was information provided that indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration.

A timely appeal of the Special Use Permit was also filed on April 1, 2022 by Shehana Marikar and other residents of the Hamann Park neighborhood who reside within 1,000 feet of the project site (Exhibit B). The appeal cited the project's inconsistency with the General Plan and Winchester Boulevard Urban Village land use designation of Neighborhood/Community Commercial; inconsistency with applicable General Plan policies; incompatibility of the building height with the surrounding neighborhood; and issues regarding side setback requirements, fire safety, pedestrian safety, passenger pick up/drop off operations, lack of parking, trash pick-up operations, security concerns, traffic congestion, and the Building Division's project review.

The appealed Special Use Permit resolution and analysis in this memorandum outline the project's conformance with the General Plan policies, San José Municipal Code requirements, and City Council policies that address the appeal issues.

Staff recommends denial of the environmental appeal and permit appeal and upholding the Director's decision. The comments in the environmental appeal do not raise new information that would result in a new analysis, significant impacts, or mitigation measures, as compared to those analyzed and disclosed in the Initial Study/Mitigated Negative Declaration and associated appendices. Therefore, the Determination of Consistency with the Initial Study/Mitigated Negative Declaration and associated documents are adequate in their analyses of the proposed project. The comments raised in the permit appeal do not negate any of the Special Use Permit findings or Site Development Permit findings and the proposed project continues to be consistent with the goals and policies of the General Plan, Winchester Boulevard Urban Village Plan, San José Municipal Code, and City Council policies.

## **BACKGROUND**

### ***Site Location***

The subject site is located on the east side of South Winchester Boulevard approximately 270 feet south of Fireside Drive. The site is currently developed with two commercial buildings formerly used as single-family residences. The site is surrounded by single-family residences to the north and east, a senior care facility to the south, and an office building across South Winchester Boulevard to the west.

### ***Proposed Project***

The project includes the demolition of the two existing buildings and the removal of nine trees (four ordinance-size, five non-ordinance size) for the construction of an approximately 107,079-square foot, six-story, 119-room hotel. The existing buildings to be demolished are two commercial businesses that were previously converted from single-family residences. Based on available building permits, the single-family residence at 1224 South Winchester Boulevard was legally converted from a residence to a business in November 2012. Based on available business tax records, the site at 1212 South Winchester Boulevard has existed as a commercial use since at least September 2005.

The first floor of the proposed hotel building will contain the main lobby reception area, guest luggage storage, a coffee station, a bar area, two offices, an employee break room, a men's locker room, a women's locker room, laundry facilities, a fire control room, a fire pump room, an electrical room, and 12 guest rooms. The second floor will include common outdoor areas for hotel guests as well as a gym, jacuzzi, steam room, breakfast area, kitchen, and 18 guest rooms. Floors three through six will contain the remaining guest rooms sized between approximately 270 to 700 square feet per room. Based on the Operations Plan (Exhibit I) provided, the hotel will employ ten staff in up to three shifts.

A total of 66 parking spaces will be provided in a subterranean garage of the hotel, representing an approximately 49 percent reduction in the required number of vehicle parking spaces and will include a vehicle lift system. A parking reduction would include the implementation of a Transportation Demand Management (TDM) plan (Exhibit J). TDM measures that support the reduction in required vehicle parking include bicycle parking, on-site bicycles for guest use, guest shuttle services, on-site access to car-share vehicles for hotel employees and guests, on-site paid parking, free annual Santa Clara Valley Transportation Authority Smart Passes for employees, financial incentives for employees who bike or walk to work, and an on-site designated TDM coordinator and services.

Vehicular access to the subterranean garage will be provided from a right in/right out 27-foot-wide driveway on South Winchester Boulevard. The driveway will be located at the southern end of the building, adjacent to the loading and delivery area to the south. The project will be accessible to pedestrians from a 20-foot-wide sidewalk along South Winchester Boulevard. The

project will provide 66 vehicle parking spaces, 37 bicycle parking spaces, and eight motorcycle parking spaces in accordance with the City's Zoning Code.

***City Council Hearing – January 11, 2022***

At the City Council Hearing on January 11, 2022, the City Council was presented with the proposed project. The project included a Conforming Rezoning (File No. C19-031) to rezone the property from the R-1-8 Single-Family Residence Zoning District to the CP Commercial Pedestrian Zoning District, and a resolution for a Special Use Permit (File No. SP20-016) to allow the demolition of the existing structures for the construction of the proposed hotel. At the meeting on January 11, 2022, the applicant requested that only the Conforming Rezoning be considered in accordance with Senate Bill 1333. The applicant, Adam Askari, also agreed to drop the Special Use Permit for consideration and continue a dialogue with the neighbors in the surrounding area. Vice Mayor Jones made a motion to approve the rezoning, adopt the resolution adopting the associated 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration, and drop the Special Use Permit from the agenda. The motion passed 10-0-1 (Arenas absent). City Council did not direct staff to bring the Special Use Permit back to the City Council. Therefore, in accordance with Section 20.100.810 of the City's Zoning Code, the Special Use Permit was heard at a Director's Hearing.

As part of this action, City Council adopted the Initial Study/Mitigated Negative Declaration (Resolution No. 80348), which evaluated the entirety of the project including the rezoning and special use permit. Prior to the January 11, 2022 meeting, the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration was circulated for public review and comment for 20 days from May 26, 2021 through June 15, 2021. Comments were received from public agencies and private parties, including neighbors. Comments received concerned the traffic impact of the hotel, inadequate parking, and on-site vehicle circulation for the hotel operation, noise and vibration impact to neighboring properties, health effects from project construction including construction pollutants, trash removal, shade and shadow impact on neighborhood, dust control measures, availability of technical reports, hotel operations, and lack of privacy because of the height of the development. The Initial Study/Mitigated Negative Declaration concluded that the proposed project would not result in any significant and unavoidable environmental impacts with the implementation of identified mitigation measures. The Mitigated Negative Declaration includes impacts related to air quality, biological resources, hazards and hazardous materials, and noise. The project includes a (MMRP) to lessen the identified impacts to a less than significant level.

***Planning Director's Hearing – March 23, 2022***

The Special Use Permit for the demolition of the existing structures and construction of the hotel and a Determination of Consistency with the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration was heard at the Planning Director's hearing on March 23, 2022. Nothing about the proposed project changed between the time the Special Use Permit was withdrawn at the City Council hearing on January 11, 2022, and when the project was heard at the Director's hearing on March 23, 2022. As discussed above, the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative

Declaration was adopted by the City Council on January 11, 2022 (Resolution No. 80348) with the Conforming Rezoning project; the subject Special Use Permit did not include any changes from the project evaluated in the adopted Initial Study/Mitigated Negative Declaration, therefore, a Determination of Consistency with the Initial Study/Mitigated Negative Declaration was determined to be the appropriate CEQA clearance. Ten members of the public spoke in opposition to the project:

- Jeff Williams questioned the validity of the TDM Plan that would be implemented to support the proposed parking reduction. Mr. Williams also noted that the Operations Plan seriously understated the number of employees such as valet and housekeeping staff required to operate a hotel.
- Tom Mormon stated that the MMRP attached to the packet at the January 11, 2022 City Council hearing was incorrect. Therefore, the Initial Study/Mitigated Negative Declaration was not supported by accurate information and therefore inadequately addressed by the City Council and should be brought back to the City Council for review. Mr. Mormon also stated that the Special Use Permit should also return to the City Council.
- Jill Borders requested the preservation of as many trees as possible.
- Shehana Marikar questioned whether the allowable Floor to Area Ratio of 3.5 (1-5 stories) of the General Plan land use designation of Neighborhood/Community Commercial is accurate and wondered why a six-story building could be approved. Ms. Marikar also noted that the new building would cast a major shadow on the neighboring property to the north and asked what measures would be proposed to reduce shade and shadow impacts on her property.
- Galina Drabkin argued that the number of parking spaces would be inadequate and that any overflow vehicles would park in the surrounding neighborhood. Ms. Drabkin also noted that there was no designated hotel guest or employee drop-off and pick-up area.
- John Griswold, representing the adjacent property at 1235 Redoaks Drive, noted that the project would be inconsistent with the Commercial Design Guidelines. Mr. Griswold noted that a six-story hotel within six feet of a single-story single-family home would be an abrupt change in building heights and the hotel would not serve the local community.
- Gail Mormon, a resident of the Hamann Park neighborhood, argued that a hotel is inappropriate at the site.
- Hal Stone, a resident of Castlemont Drive, asked why trash removal would be allowed to occur directly on Winchester Boulevard. Mr. Stone noted that this would set a dangerous precedent for having trash pick-up in urban villages.
- Mike Drabkin noted that there would not be an adequate passenger drop-off zone and trucks making deliveries would be required to back out onto the street.
- Vince Navarra, President of the Hamann Park Neighborhood Association, argued that the building does not fit in with the fabric of the neighborhood. Mr. Navarra noted that the neighbors object to the project because of impacts to traffic and parking, and the size of

the lot. He noted that cut-through traffic would be dangerous, and the encroachment of the building would reduce the value of homes in the area.

- Brian Matsumoto expressed his concern that the Fire Department would not be able to properly access the site to fight fires.

The applicant, Adam Askari, stated that the TDM Plan went through two years of study. He also noted that an outside company would be contracted for room cleaning services. Mr. Askari finally mentioned that vehicle rideshare (e.g., Uber, Lyft, etc.) coupon codes would be provided to staff.

Hearing officer and Director's designee, Robert Manford, asked staff to respond to the comments by the speakers. Environmental Project Manager Maira Blanco noted that the correct MMRP was publicly posted when the Initial Study/Mitigated Negative Declaration was circulated for review prior to its adoption by City Council on January 11, 2022.

Public Works Senior Engineer Joe Provenzano addressed the concerns regarding the loading and unloading operations. While not ideal, on-street loading and unloading, particularly for garbage trucks, is often required in denser areas of the city. This is expected to occur more often as urban villages develop. Mr. Provenzano also noted that there is a loading zone identified on site for smaller delivery vehicles. Deliveries would also be restricted to off-street hours.

Planning Project Manager Alec Atienza noted that the implementation of the TDM Plan is included as a condition of approval within the Special Use Permit. Mr. Atienza also clarified that the Fire Department only reviews planning permits at a preliminary level. The project would require a fire variance, however, the review of the variance would be deferred until the building permit stage when more detailed plans are provided. Mr. Atienza also confirmed that the project meets rear setback and stepback requirements identified by the Winchester Boulevard Urban Village Plan.

After consideration, Mr. Manford approved the Special Use Permit.

Shehana Marikar, on behalf of a group of six neighbors, appealed both the Environmental Clearance and Special Use Permit. The Environmental Clearance was formally appealed on March 28, 2022. The Special Use Permit was formally appealed on April 1, 2022.

### ***Environmental Determination Appeal and Permit Appeal***

Under Section 21.04.140 of the San José Municipal Code, any interested person can submit a timely request to appeal, to the City Council, a determination made by the Planning Director, the Planning Commission, or a non-elected decision-making body regarding the appropriate environmental clearance for a project. At the appeal hearing, the City Council may uphold the Planning Director's adoption of the Determination of Consistency with the Initial Study/Mitigated Negative Declaration or require the preparation of new environmental documents in accordance with Title 21 of the San José Municipal Code.



An appeal of the Environmental Determination was filed on March 28, 2022 by Gaz Salihue, Shehana Marikar, and neighbors (Exhibit A). The reasons for the environmental appeal are a combination of previously raised concerns during the public circulation of the Initial Study/Mitigated Negative Declaration and the public hearings at the City Council meeting on January 11, 2022 and Director's Hearing on March 23, 2022. The appeal letters cited the following issues:

- Project's inconsistency with the General Plan designation of Neighborhood/Community Commercial.
- Project's inconsistency with the Winchester Boulevard Urban Village Plan (land use and development standards).
- Fire Safety.
- Pedestrian/Bicyclist Safety.
- Guest and Valet drop-off/pick-up zone operations.
- Traffic on South Winchester Boulevard and Payne Avenue.
- Rooftop solar.
- The MMRP for the hotel project at 1212-1224 South Winchester Boulevard (attached to the January 11, 2022 City Council agenda packet and fully incorporated into the City Council adopted Resolution) is not the applicable MMRP for the project but is an MMRP for an entirely different project.
- The Hotel Operations Plan does not list security personnel on the employee staff list, and
- The expanded driveway along South Winchester Boulevard from 27 feet to 43 feet; and impervious coverage in relation to project site drainage and stormwater control.

A timely appeal of the Special Use Permit was also filed on April 1, 2022, by Shehana Marikar who lives within 1,000 feet of the project site (Exhibit B). The appeal cited the following issues:

- Inconsistency with the General Plan and Winchester Boulevard Urban Village land use designation of Neighborhood/Community Commercial.
- Inconsistency with applicable General Plan policies.
- Side setback requirements.
- Incompatibility of building height.
- Fire Safety.
- The Building Division's project review.
- Pedestrian Safety.
- Passenger pick-up/drop-off operations.
- Lack of parking.

- Trash pick-up operations.
- Security concerns, and  
Traffic congestion.

Pursuant to Section 20.100.220, Table 20-260, note 2 of the City's Zoning Code, the City Council is the appeal decision-making body for all projects in which appeals have been filed for both approval of the project and environmental clearance for the project. The environmental determination appeal and permit appeal issues are analyzed and further clarified below.

## **ANALYSIS**

### ***Environmental Determination Appeal***

As noted above, the environmental determination appeal cites concerns that have already been thoroughly addressed in the Response to Comments and Text Changes to the publicly circulated Initial Study/Mitigated Negative Declaration, dated October 2021 (Exhibit D). This document was posted to the City's website for the project on October 15, 2021, prior to the public hearings on the project. Because the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration was adopted by the City Council on January 11, 2022, and it evaluated the entirety of the project (i.e., Conforming Rezoning and the Special Use Permit) and no significant changes were made to the Special Use Permit, a Determination of Consistency with the Initial Study/Mitigated Negative Declaration was determined to be the appropriate CEQA clearance for the Special Use Permit (File No. SP20-016) heard at the subsequent Director's hearing held March 23, 2022. Therefore, the environmental appeal is an appeal of the Determination of Consistency with the 1212-1224 South Winchester Boulevard Hotel Project Initial Study/Mitigated Negative Declaration, and not an appeal of the 1212-1224 South Winchester Boulevard Hotel Initial Study/Mitigated Negative Declaration which was previously adopted by City Council under a separate action in January 2022. Below is a summary of new concerns raised in the appeal and staff's responses. A more detailed Response to the Environmental Appeal is available in Exhibit E of this document.

### **MMRP**

Appellants allege that the MMRP for the hotel project at 1212-1224 South Winchester Boulevard that was attached to the January 11, 2022 City Council agenda packet, and fully incorporated into the City Council adopted Resolution No. 80348, was not the applicable MMRP for the project but is an MMRP for an entirely different project.

Staff responded at the March 23, 2022 Director's Hearing that the incorrect MMRP was attached to the Mitigated Negative Declaration Resolution No. 80348 for the project's rezoning from the R-1-8 Single-Family Residence Zoning District to the CP Commercial Pedestrian Zoning District (File No. C19-031) approved at the January 11, 2022 City Council meeting. This was a clerical error that has been corrected. This error has been remedied and, therefore, reapproving

the rezoning ordinance is not required. The correct MMRP is attached to this memorandum (Exhibit H).

Further, staff stated that the impacts and mitigation measures for the 1212-1224 Winchester Hotel Project were appropriately disclosed in the publicly circulated Initial Study/Mitigated Negative Declaration. The 1212-1224 Winchester Hotel Project Initial Study/Mitigated Negative Declaration, adopted by City Council, was accurately described in the staff report for the rezoning and the resolution with only the incorrect MMRP attached. To be clear, the posted and circulated Mitigated Negative Declaration was accurate and enumerated all significant environmental impacts and mitigation measures to lessen those impacts to a less than significant level. The project's MMRP was signed by the applicant and requires compliance prior to the issuance of Grading/Building Permits. MMRP compliance is a condition of approval for the subject project, File No. SP20-016.

#### Hotel Operations Plan (Security Personnel)

Appellants claim that the Hotel Operations Plan does not list security personnel on the employee staff list.

Staff has determined that this comment does not address the adequacy of the draft Initial Study/Mitigated Negative Declaration. No further CEQA analysis is required. City Council's action on the rezoning ordinance and the environmental clearance is separate from the subject project, Special Use Permit, File No. SP20-016.

While not part of CEQA analysis, staff notes a security guard is not a Zoning Ordinance requirement for the use and operation of a hotel. The hotel, once operational, will have staff on site at all times and will have security cameras. The applicant has the option to provide a security guard. If the provision of a security guard requires additional parking, the applicant may be required to amend his TDM plan with a Special Use Permit amendment.

#### Expanded Driveway, Site Drainage, and Stormwater Control

Appellants are concerned about an expanded driveway along South Winchester Boulevard from 27 feet to 43 feet; and impervious coverage in relation to project site drainage and stormwater control.

Staff notes that the project description in section 3.2 of the Initial Study/Mitigated Negative Declaration, that 27,393 square feet, or 91 percent of the 0.69-acre project site would be impervious. Staff also notes that this impervious coverage is more conservative than the actual impervious coverage identified on the project's plan set. Per the Stormwater Control Plan in the project's plan set, 14,989 square feet of impervious coverage will be replaced, and the project, once completed, will create an additional 5,583 square feet of impervious area, totaling 20,572 square feet of impervious area or approximately 68 percent of the site and 2,683 square feet of pervious area.

The project is subject to the City's Post-Construction Urban Runoff Management Policy (Council Policy 6-29) which requires the implementation of best management practices that include site design measures, source control measures, and numerically sized low impact development stormwater treatment measures to minimize stormwater pollutant discharges. Per the project plans, on-site treatment control measures will include bioretention lined with underdrain and media filter system resulting in 23,255 square feet of drainage area to limit the flow of stormwater off site. Further, the project is located in a non-hydromodification management area and is, therefore, not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14) which applies to projects creating and/or replacing one acre or more of impervious surface and are located in subwatersheds or catchment areas that are less than 65 percent impervious or are "Under Review."

As discussed in Hydrology and Water Quality section 4.10 of the Initial Study/Mitigated Negative Declaration, the proposed project would not substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin. The project will not include any wells or groundwater pumps and as described above, the project's increase in impervious surfaces would be required to comply with the City's Urban Construction Runoff Management Policy (Council Policy 6-29) to minimize and treat stormwater runoff. This comment does not identify any new information or impacts and therefore, no further CEQA analysis is required.

None of the comments by the appellants raised any new issues about the project's environmental impacts, nor do they provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the supporting Initial Study/Mitigated Negative Declaration circulated for public review from May 26, 2021 to June 15, 2021 and adopted by City Council on January 11, 2022 (Resolution No. 80348). Please refer to Exhibit E for additional detailed responses to the comments raised on the environmental appeal.

Based on the circulated Initial Study/Mitigated Negative Declaration, the response to comments received during public circulation, and the subsequent response to comments included in Exhibit E, the City finds that a Determination of Consistency with the previously adopted Initial Study/Mitigated Negative Declaration for the project and associated documents are adequate for the purposes of CEQA.

### ***Permit Appeal Analysis***

The permit appeal referred to inconsistency with the General Plan and Winchester Boulevard Urban Village land use designation of Neighborhood/Community Commercial, inconsistency with applicable General Plan policies, side setback requirements, compatibility of building height with the surrounding neighborhood, fire safety, Building Division project review, pedestrian safety, passenger pick up/drop off operations, lack of parking, trash pick-up operations, security concerns, and traffic congestion. Below is a summary of the issues and staff's response. A detailed response is available in Exhibit F.

Consistency with Neighborhood/Community Commercial Land Use Designation

The project is consistent with the General Plan and Winchester Boulevard Urban Village Plan land use designation of Neighborhood/Community Commercial. The Neighborhood/Community Commercial land use designation supports a broad range of commercial activity and is not exclusive to the kinds of commercial uses described in the land use designations in the General Plan and Winchester Boulevard Urban Village Plan. A hotel is a commercial use that may serve local areas by providing accommodations for visiting families, friends, and workers in the surrounding area. The City has historically approved hotels with Neighborhood/Community Commercial land use designations, including some in City Council District 1 (e.g., Aloft on Moorpark Avenue and Hampton Inn on South De Anza Boulevard).

Side Setback Requirements

The property adjacent to the subject site to the north is designated Neighborhood/Community Commercial on the General Plan and Winchester Urban Village land use plans. The property to the south is designated Public/Quasi-Public on the General Plan and Winchester Boulevard Urban Village land use plans. Pursuant to the urban village plan, a side setback is only required if the adjacent properties are designated either Urban Residential or Residential Neighborhood. As neither properties adjoining the property to the north or south are designated Urban Residential or Residential Neighborhood, the side setbacks of five and six feet conform with the required side setbacks and are adequate. Additionally, in accordance with Senate Bill 1333, the property to the north would be required to be rezoned to a commercial zoning district that conforms with the Neighborhood/Community Commercial land use designation. As part of the City's efforts to comply with Senate Bill 1333, the subject site to the north would be rezoned to a conforming zoning district to the Neighborhood/Community Commercial land use designation. While the project is required to incorporate a rear setback, there are no side setback requirements for new projects within the urban village.

Compatibility of Building Height with the Surrounding Neighborhood

Development standards such as heights and setbacks are set by the approved Winchester Boulevard Urban Village Plan. As proposed, the project is consistent with the applicable height and setback requirements of the urban village plan. The Winchester Boulevard Urban Village Plan allows a maximum height of 65 feet at the subject site, not including architectural projections. Architectural projections such as stairwells and elevator shafts may extend up to ten feet above the top of the roof. As shown on the plan set, the architectural projections of the building would extend up to nine feet and six inches above the top of the roof. Therefore, the total project height of 74 feet six inches would conform with the allowable height of 75 feet. The rear of the building would be set back 20 feet from the residential area to the east. Additionally, the building would incorporate a setback at a height of 35 feet to reduce shadows and maintain the privacy of the adjacent residences.

### Fire Safety

Staff confirmed with the Fire Department that the project may proceed to a hearing prior to the approval of a fire variance. Fire variances are often deferred to the building permit stage as more detailed drawings are provided after the Planning Division review. The project would be required to comply with all required Building and Fire Code requirements and the proposed development would not result in a physical barrier to impeded emergency services. The project would not result in substantial adverse physical impacts associated with the provision of or need for new or physically altered fire protection facilities in order to maintain acceptable service ratios, response times, or other performance objectives. Additionally, the project would not result in an impact to the operation of emergency services or emergency evacuation plans.

### Building Division Project Review

The Building Division is limited to a preliminary review of Building Code issues at the planning stage. After a project receives approval from the Planning Division, the applicant would be allowed to proceed with an application for building permits. At the building permit stage, the project is reviewed in detail by the Building Division, Fire Department, and other agencies to ensure that the project conforms with the Building Code. This is the case across all projects in the City.

### Pedestrian Safety

Pages 51-54 of the Transportation Analysis prepared by Hexagon Transportation Consultants, Inc. (Exhibit K) provide a discussion of the pedestrian and bicycle facilities in the project vicinity. There currently are no sidewalks along the project's frontage on Winchester Boulevard. The proposed project will install a 20-foot sidewalk along its frontage on Winchester Boulevard. Additionally, the project includes a condition of approval to install an audible warning signal at the garage entrances to alert pedestrians and bicyclists of vehicles exiting the parking garage. Therefore, the project will improve pedestrian travel along its frontage on Winchester Boulevard.

### Passenger Pick-up/Drop-Off Operations

The project is not proposing, nor will the City allow, an on-street or on-site passenger drop-off zone on Winchester Boulevard. All guests will proceed to the parking garage for hotel check-in. The implementation of safety devices such as the recommended visible and/or audible warning signs is not in conflict with City policies that are intended to also improve pedestrian and bicyclist safety. Per the Hotel Operations Plan (Exhibit I), passenger pick-up/drop-off for rideshare vehicles and taxis will occur inside the garage.

### Lack of Parking

The Planning Division is supportive of maximizing parking reductions and encouraging the use of alternative modes of transit, especially in areas designated as urban villages. Pursuant to Chapter 20.90 of the San José Municipal Code (Title 20, Zoning Ordinance), the project requires

129 vehicle parking spaces; the project provides 66 spaces. Pursuant to section 20.90.220 of the San José Municipal Code, a parking reduction of up to 50 percent of the code-required parking spaces may be permitted for sites within a growth area with the implementation of a TDM plan. The project would provide 66 vehicle parking spaces with the implementation of a TDM plan to allow for an approximately 49 percent parking reduction. A TDM Plan dated January 27, 2021 prepared by Hexagon Transportation Consultants, Inc reviewed the possibility of an approximately 49 percent parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures in accordance with section 20.90.220 of the San José Municipal Code. The TDM Plan identifies viable alternatives to traditional driving practices that will support guests who arrive by means other than by private cars, such as a hotel guest shuttle, bicycle, and car-share vehicles; bicycle parking; financial incentives for hotel employees who walk or bicycle to work; and free Santa Clara Valley Transportation Authority Smart Pass cards for employees. The project's parking garage will include a location for valet vehicle queuing and the ground floor has a loading space for delivery trucks. As a Condition of Project Approval, the project would implement the TDM plan and any violation of the TDM plan would be subject to revocation, suspension, or modification of the permit.

#### Trash Pick-up Operations

The trash bin storage location will be hidden from public view in accordance with the Winchester Boulevard Urban Village Plan. Per the Hotel Operations Plan, the trash bins will be wheeled out to South Winchester Boulevard for garbage collection. The trash bin staging will be temporary and as conditioned in the project permit, bins will be returned to the trash enclosure following garbage collection. Furthermore, the project permit (that runs with the land) will include an anti-litter condition of approval that requires the site and the surrounding area to be maintained free of litter, refuse, and debris.

#### Security Concerns

The appellants raised the concerns that the hotel would not have adequate security as the operations plan did not list a security guard as a staff member. A security guard is not a Planning Division or ordinance requirement for the use or operation of a hotel. The project will have staff on-site at all times and on site security cameras will be provided. The applicant has the option to provide a security guard if he chooses to do so. If the provision of a security guard requires additional parking, the applicant may be required to amend the TDM Plan with a Special Use Permit amendment.

#### Traffic Congestion

The Transportation Analysis (Appendix H of the Initial Study/Mitigated Negative Declaration) prepared for the project by Hexagon Transportation Consultants, Inc. included a signal warrant analysis to determine if a signal would need to be installed due to the hotel project. As stated in the analysis, a peak-hour traffic signal warrant check was conducted for the unsignalized intersection of Winchester Boulevard and Fireside Drive. The results indicated that the projected

traffic volumes at the intersection will fall below the thresholds that warrant signalization under all study scenarios during the morning and afternoon peak hours, and with the addition of project traffic, the 95<sup>th</sup> percentile vehicle queues could be accommodated by the storage provided at all study locations. Additional pedestrian, bicycle, and transit analyses are included under the Local Traffic Analysis that are beyond the analysis needed for CEQA. As noted in the Local Traffic Analysis section of the Transportation Analysis, all of the roadways in the vicinity of the project site have sidewalks on both sides of the street, except a short segment on the east side of Winchester Boulevard, along the frontages of the project site, and one adjacent property to the north. The project would install a 20-foot sidewalk along its frontage on Winchester Boulevard. The Urban Design Framework for the Winchester Urban Village contains features that strengthen the connectivity to and from Winchester Boulevard, including several potential mid-block crossings (proposed at least every 300 feet). Although a mid-block crossing is identified south of Fireside Drive, it has not been identified as a project component, as it is beyond the project site and scope. This aside, the Transportation Analysis would not be affected because it properly accounts for the vehicle miles traveled generated by the project. The mid-block crossing will be analyzed with future redevelopment near the crossing.

### ***Summary***

The comments in the Environmental Determination Appeal neither represent substantial evidence that raises a fair argument under CEQA for the preparation of an Environmental Impact Report, nor raise new information that would result in a new analysis, significant impacts, or mitigation measures, as compared to those analyzed and disclosed in the Initial Study/Mitigated Negative Declaration and associated appendices. Therefore, the Determination of Consistency with the Initial Study/Mitigated Negative Declaration and associated documents are adequate in their analyses of the proposed project.

The comments raised in the Permit Appeal do not negate any of the permit findings and the proposed project is consistent with the goals and policies of the Neighborhood/Community General Plan land use designation, the Winchester Boulevard Urban Village Plan, the CP Commercial Pedestrian Zoning District, and City Council development policies.



## **CONCLUSION**

The Determination of Consistency with the Initial Study/Mitigated Negative Declaration was prepared in full compliance with CEQA and the Special Use Permit conforms with the Special Use Permit findings set forth in San José Municipal Code Section 20.100.820. Staff recommends that the City Council adopt the resolution denying the environmental appeal and uphold the Determination of Consistency with the 1212-1224 South Winchester Boulevard Hotel Project Mitigated Negative Declaration and associated MMRP. Additionally, staff recommends that the City Council adopt the proposed resolution denying the permit appeal and approve the Special Use Permit No. SP20-016. Support for these recommendations are based on this memorandum, the resolution, and evidence in the administrative record. The subject project conforms to the applicable General Plan policies, San José Municipal Code, and City Council development policies.

## **EVALUATION AND FOLLOW UP**

If the City Council denies the environmental determination appeal and upholds the Determination of Consistency with the Initial Study/Mitigated Negative Declaration and MMRP, and denies the permit appeal and approves the Special Use Permit, the applicant may move forward with grading and building permits for the project to allow the demolition of two existing commercial buildings and the removal of nine trees (four ordinance-size, five non-ordinance size) for the construction of an approximately 107,079-square foot, six-story, 119-room hotel with an approximately 49 percent parking reduction and an alternative parking arrangement on an approximately 0.69-gross acre site. The project would be required to adhere to the project's conditions of approval and MMRP.

## **CLIMATE SMART SAN JOSE**

The recommendation in this staff report aligns with one or more Climate Smart San José energy, water, or mobility goals. The project would facilitate the energy efficiency of a newly constructed commercial building and will be required to meet the requirements of San José Municipal Code Chapter 17.84.220, Green Building Compliance Requirements. The project will provide employment to approximately ten employees at the site and will implement a TDM plan to reduce vehicle trips and encourage multi-modal access to the site.

## **POLICY ALTERNATIVES**

1. For the Environmental Appeal, City Council may either:
  - a. Deny the appeal and uphold the adoption of the Determination of Consistency, or

- b. Grant the appeal and require that additional environmental review be conducted, resulting in a new or revised environmental document prior to consideration of the Special Use Permit, or the applicant not moving forward with the project.

Granting the environmental appeal would void both the Planning Director's adoption of the Determination of Consistency and approval of the Special Use Permit.

- 2. If City Council denies the environmental appeal, then it can consider the appeal of the Special Use Permit. In such circumstances, City Council may:
  - a. Approve the Special Use Permit as approved by the Planning Director, or
  - b. Approve the Special Use Permit with additional modifications to the conditions, or
  - c. Deny the Special Use Permit.

Staff recommends that the City Council deny the environmental appeal and uphold the Determination of Consistency and deny the permit appeal and approve the Special Use Permit.

### **PUBLIC OUTREACH**

Staff followed Council Policy 6-30: Public Outreach Policy. A community meeting was held on August 10, 2020. Concerns raised at the community meeting included the suitability of a hotel at the site, proximity to residential areas, insufficient parking, the number of proposed staff (ten), the height of the building, and traffic. See Exhibit L for a list of public comments received prior to the hearing. 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. An on-site sign was also posted on the project frontage. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

This memorandum will be posted to the City's Agenda website for the August 23, 2022 City Council meeting.

### **COORDINATION**

The preparation of this memorandum has been coordinated with the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action; the project was considered at a Director's Hearing on March 23, 2022.

**CEQA**

Determination of Consistency with the 1212-1224 South Winchester Boulevard Hotel Project  
Initial Study/Mitigated Negative Declaration.

/s/  
Christopher Burton, Director  
Planning, Building and Code Enforcement

For questions, please contact Deputy Director Robert Manford at (408) 535-7900.

**Attachments:**

- Exhibit A: Appeal of the Environmental Determination
- Exhibit B: Appeal of the Special Use Permit
- Exhibit C: Appealed Special Use Permit (SP20-016) Plan Set
- Exhibit D: Determination of Consistency with the Initial Study, Mitigated Negative Declaration, Technical Reports, and Responses to Comments
- Exhibit E: Response to the Environmental Appeal
- Exhibit F: Response to the Special Use Permit Appeal
- Exhibit G: Revised Draft Special Use Permit Resolution
- Exhibit H: Mitigated Negative Declaration (MND) Resolution and Mitigation Monitoring and Reporting Program (MMRP)
- Exhibit I: Operations Plan
- Exhibit J: TDM Plan
- Exhibit K: Transportation Analysis
- Exhibit L: Public Comments