

Fw: City Council Meeting 8/23/22 - Agenda Item 10.5

Agendadesk <[REDACTED]>

Thu 8/18/2022 2:23 PM

To: District 2 <[REDACTED]> District1 <[REDACTED]> District3  
<[REDACTED]> District 4 <[REDACTED]> District 5  
<[REDACTED]> District 6 <[REDACTED]> District 7  
<[REDACTED]> District 8 <[REDACTED]> District  
9 <[REDACTED]> District 10 <[REDACTED]>

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From: Bart Hechtman <[REDACTED]>

Sent: Thursday, August 18, 2022 2:01 PM

To: City Clerk <[REDACTED]>

Cc: The Office of Mayor Sam Liccardo <[REDACTED]> Adam Askari <[REDACTED]>

Henry Cord <[REDACTED]> Carol Ann Bianco-Webb <[REDACTED]> Jeremy Cunningham <[REDACTED]>

PlanningSupportStaff <[REDACTED]> Burton, Chris <[REDACTED]>

Subject: City Council Meeting 8/23/22 - Agenda Item 10.5

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Dear Ms. Taber,

Attached please find an advance copy of my letter on behalf of the hotel project applicant regarding the appeal being heard by the City Council on 8/23/22 as Agenda Item 10.5. Please promptly distribute copies of the letter to the Mayor and each Council Member. The original is being sent by U.S. Mail.

Sincerely,

Bart Hechtman



BARTON G. HECHTMAN

Matteoni, O'Laughlin & Hechtman

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August 18, 2022

Norman E. Matteoni  
Peggy M. O'Laughlin  
Bradley M. Matteoni  
Barton G. Hechtman  
Gerry Houlihan

Advance Copy via Email

Mayor Sam Liccardo and  
Members of the San Jose City Council  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

**Re: A&Z Development LLC Hotel Project  
1212-1224 South Winchester Boulevard  
Appeal of Consistency Determination and  
Special Use Permit Findings (File # SP20-016)  
August 23, 2022 City Council**

Dear Mayor Liccardo and Members of the City Council:

This office represents A&Z Development LLC and Dr. Adam Askari, the owners of 1212-1224 South Winchester Boulevard and the applicants for the six-story hotel at that location (the "Project"). On behalf of the owners, we encourage the City Council to adopt the actions recommended by your Planning Staff regarding the Project appeals on your August 23 agenda, by denying the appeals and upholding the March 23, 2022 CEQA Determination of Consistency and the approval of the Special Use Permit at the Planning Director's Hearing. The following information is intended to support and augment the Staff report and the Staff recommendation.

There is No Legal Basis Supporting the Appeal of The Determination of Consistency

As explained in great detail in the Staff report, under the circumstances presented here the City is legally obligated to proceed with a Determination of Consistency and therefore to deny the appeal challenging the Planning Director's March 23, 2022 approval of the Determination of Consistency.

CEQA provides that where an IS/MND has been approved for a project, the subsequent approval of that Project does not require additional environmental review absent changes to the Project from what was studied in the IS/MND (CEQA Guidelines Section 15162). Here, the Project which is the subject of the Special Use Permit is the exact same Project that was analyzed in the IS/MND; there have been no changes in any aspect of any feature of the Project from the Project described and analyzed in the IS/MND. For that reason, the City is legally constrained from requiring additional environmental review.<sup>1</sup>

Staff recognized this legal constraint in putting forth the Determination of Consistency, and the Planning Director recognized the legal constraint in approving it on March 23, 2022. As concluded in the Staff report and supported by the voluminous analysis provided in the Staff report generally and its Exhibit E specifically, because there were no changes to the Project proposed by the Special Use Permit, and the facts or opinions raised by the appellants in their appeal were either raised or could have been raised in the processing of the IS/MND, the approval of the Determination of Consistency was required by CEQA. For the same reasons the City Council is legally constrained to deny the appeal and uphold the Determination of Consistency.

#### There is No Legal Basis Supporting the Appeal as to The Special Use Permit

In the Staff report, Staff has provided an accurate and highly detailed analysis of the appeal of the Special Use Permit, and arrived at the only supportable conclusion: The appeal must be denied because the appellants have not provided substantial evidence upon which the City Council could lawfully grant the appeal. All of the Special Use Permit findings made at the Planning Director's Hearing are supported by substantial evidence in the administrative record. As there are no facts or opinions supported by fact offered by the appellants establishing that any of the Special Use Permit findings cannot be made, their appeal must be denied.

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<sup>1</sup> The Staff report states that the MMRP for the Project was inadvertently not attached to the rezoning approval Resolution 80348 when it was adopted on January 25, 2022. However, the Project MMRP was signed by the applicant on 9/16/21 (see Exhibit H to the Staff report), and was included in the administrative record available for public review prior to the City Council's approval of the IS/MND on January 11, 2022. Consequently, the fact that the MMRP approved with the IS/MND on January 11 was not attached to the subsequently adopted Resolution approving the rezoning does not render the City Council's approval of the IS/MND defective.

Further, to the extent that the appellants appear to be using the appeal of the Special Use Permit as a collateral attack on the rezoning of the property approved by the City Council on January 11, 2022 and included in the City Council's resolution approved on January 25, 2022, any such challenge is time barred by the 90 day statute of limitations provided in Code of Civil Procedure Section 1094.6(b); the time to file suit on the rezoning expired in April.

#### The Project is Consistent with the General Plan and Urban Village Plan

As thoroughly discussed in the Staff report, the Project is entirely consistent with the General Plan Neighborhood/Community Commercial designation and the Winchester Boulevard Urban Village Plan. There apparently was some discussion at the City Council level in past hearings that these designations may have been a "mistake" due to the shallowness of these parcels compared to other deeper parcels along Winchester with the same designations.

However, the two parcels which are the subject of this Project are by no means unique within the Winchester Boulevard Urban Villages Plan area. Indeed, there are 37 such shallow parcels along Winchester in the Plan area. Additionally, the parcels directly behind the subject parcels are themselves within the Urban Village Plan area, and are designated ultimately for three story buildings.

The General Plan designation and inclusion in the Urban Village Plan for the subject parcels was not a mistake. That fact is demonstrated by the inclusion in the Urban Village Plan of the parcels directly behind the subject parcels, and the feathering of height imposed by the Urban Village Plan moving away from Winchester, creating compatibility with the adjacent residential areas beyond the Plan area over time in the implementation of the Urban Village Plan. More importantly, these designations are, in fact, the designations that currently apply to the subject property as of the date of the hearing of the appeals and therefore the City Council is bound to apply those designations in its determination of the appeals for the Project.

#### The Owners Successfully Made Meaningful Efforts to Engage with the Community

Council Policy 6-30 required a Community Meeting for the Project, and the Staff report confirms that this requirement was satisfied by a meeting held on August 10, 2020. In fact, the owner far exceeded the Policy requirement, hosting an additional 11 neighborhood meetings, on June 18 and August 13, 2020, March 24,



November 23, November 30, December 7 and December 14, 2021, and February 7, February 8, March 8 and March 15, 2022.

This exceptional effort to hear the concerns of the neighbors resulted in the following significant changes to the Project which were not required to make the Project conform to applicable City regulations:

- Removed swimming pool.
- Removed balconies facing residential neighbors.
- Relocated all activity areas to face Winchester.
- Removed windows facing residential neighbors.
- Increased side yard setbacks on both sides from allowed 0' set back to 5'.
- Removed rooftop restaurant.
- Willing to voluntarily dedicate land in excess of exaction City can lawfully require based on project impacts, for a 3rd lane of Winchester and 20' wide sidewalk.

In addition to those concessions, which are a part of the Project studied in the IS/MND that was approved by the City Council on January 11, 2022 and approved by the Director of Planning in his approval of the Determination of Consistency and the Special Use Permit on March 23, 2022, the owners offered the following concession that could have further addressed neighbor concerns but were rejected by the neighbors:

- Add extensive cypress trees facing residential neighbors' parcels.
- Replace 6 story hotel project with 5 story condominium project.
- Replace 6 story hotel project with 5 story senior center project.

Consequently, the Project record reflects that the owners did not attempt to impose on the neighborhood their original vision for the Project even though that vision entirely conformed to all City regulations, but rather made numerous concessions at significant expense in an effort to address neighborhood concerns. The surrounding neighborhood will benefit from these concessions when the Project is constructed, reflecting the value to the neighborhood of this extraordinary level of community engagement by the owners. Thus, Council Policy 6-30 was particularly effective in this instance in drawing community input to shape an improved Project.

For the foregoing reasons, and based upon the extraordinarily detailed factual information and analysis provided in the Staff report and its exhibits, we request that

the City Council follow the Staff recommendation and deny the appeals for the proposed Project, which is entirely consistent with, and implements, the applicable General Plan's Neighborhood/Community Commercial designation and the Winchester Boulevard Urban Village Plan.

Respectfully submitted,

Matteoni, O'Laughlin & Hechtman

A black rectangular redaction box covering the signature of Barton Hechtman.

By: \_\_\_\_\_

Barton Hechtman

BGH:cab

Att.

cc: A&Z Development LLC  
Henry Cord  
City Clerk

## Opposition to the Winchester Hotel Project

Marlene J Schwilk <[REDACTED]>

Tue 8/23/2022 7:36 AM

To: City Clerk <[REDACTED]>

You don't often get email from [REDACTED] [Learn why this is important](#)

[External Email]

The agenda number is 10.5.

This hotel will negatively impact our community by causing too much traffic, and having too little designated parking. It is a fire hazard, and a pedestrian/bicycle safety hazard. It is an encroachment on our single family homes because of the massive size. It will totally destroy our property values.

Sincerely,

Marlene and Fred Schwilk (long time residents of this community)

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AGENDA ITEM 10.5 for August 23, 2022 City Council Meeting

Tom Morman <[REDACTED]>

Mon 8/22/2022 10:45 PM

To: City Clerk <[REDACTED]>

[External Email]

[External Email]

Dear City Clerk Taber,

I would like to submit the attached letter with appeal issues to be entered under "Letters from the Public" for Agenda Item 10.5 of the Council Meeting on August 23, 2022.

Many thanks,  
Tom Morman

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**Tom Morman**

[REDACTED]

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August 23, 2022

Agenda Item 10.5

To Honorable Mayor and City Council:

We thank you for the opportunity to hear our appeal of the decision to approve the 1212-1224 Winchester Hotel Project. We are sympathetic to the position you are in having to consider the complexity of the current situation. We are grateful to our District 1 Councilmember Vice Mayor Jones for all the hours he has spent listening to us and being supportive of our efforts as citizens and residents of the Hamann Park neighborhood.

Many of us in the neighborhood were involved in the Winchester Urban Village Plan from the beginning. We participated in the community workshops planning the urban village, supported the Plan and continue to do so. We took note of the Urban Village Plan's description of the two-block section of Winchester which includes 1212-1224 S Winchester. The description emphasized the special circumstances of these parcels because of their size and proximity to single family homes. It called for an appropriate urban form that supported walking, transit use and public interaction, suggesting neighborhood retail and small businesses to provide services and amenities for the community.

Although the Memorandum dated 8/4/22 from San Jose Planning Director Christopher Burton to the Honorable Mayor and City Council recommends denial of the environmental appeal and the permit appeal and upholding the Director's decision, we respectfully request your consideration of our arguments on their merits.

Sincerely,

Tom & Gail Morman, [REDACTED]

Gaz Salihue & Shehana Marikar, [REDACTED]

Jeffrey and Jacqueline Williams, [REDACTED]

Mike & Galina Drabkin, [REDACTED]

Brian & Helen Matsumoto, [REDACTED]

Mabel Cheng and John Griswold, [REDACTED]

David Moller-Gunderson and Kathleen Brockdorf, [REDACTED]

## WE SUPPORT THE WINCHESTER BOULEVARD URBAN VILLAGE PLAN

The Winchester Urban Village designated the land use for a two-block section of Winchester where the Winchester Hotel Plan is located, 1212-1224 S. Winchester, as Neighborhood/Community Commercial Land Use.

*"This designation is applied to smaller, shallow parcels fronting Winchester Boulevard and abutting single-family residences. Given the size of the parcels, parking requirements in the zoning code and the urban design step down policies, these properties are appropriate for the location of smaller commercial businesses. Neighborhood/Community Commercial should have a strong connection to, and provide services and amenities for, the community. These uses should be designed to promote this connection with an appropriate urban form that supports walking, transit use and public interaction. Also this designation supports the neighborhood servicing retail and small businesses along Winchester Boulevard."*

(Winchester Urban Village Plan, p.19)

We are appealing the Winchester Hotel Plan as inconsistent with what was clearly written in the Winchester Urban Village Plan.



**CARRERA  
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GROUP  
COMPANY**

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**REVISIONS**

NO.	DESCRIPTION	DATE
1	REVISION	
2	REVISION	
3	REVISION	
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**PROPOSED  
BIRD VIEW  
RENDERING**  
**A.27**



# The Winchester Urban Village Plan: hotels are an appropriate use in Urban Village Commercial Land Use

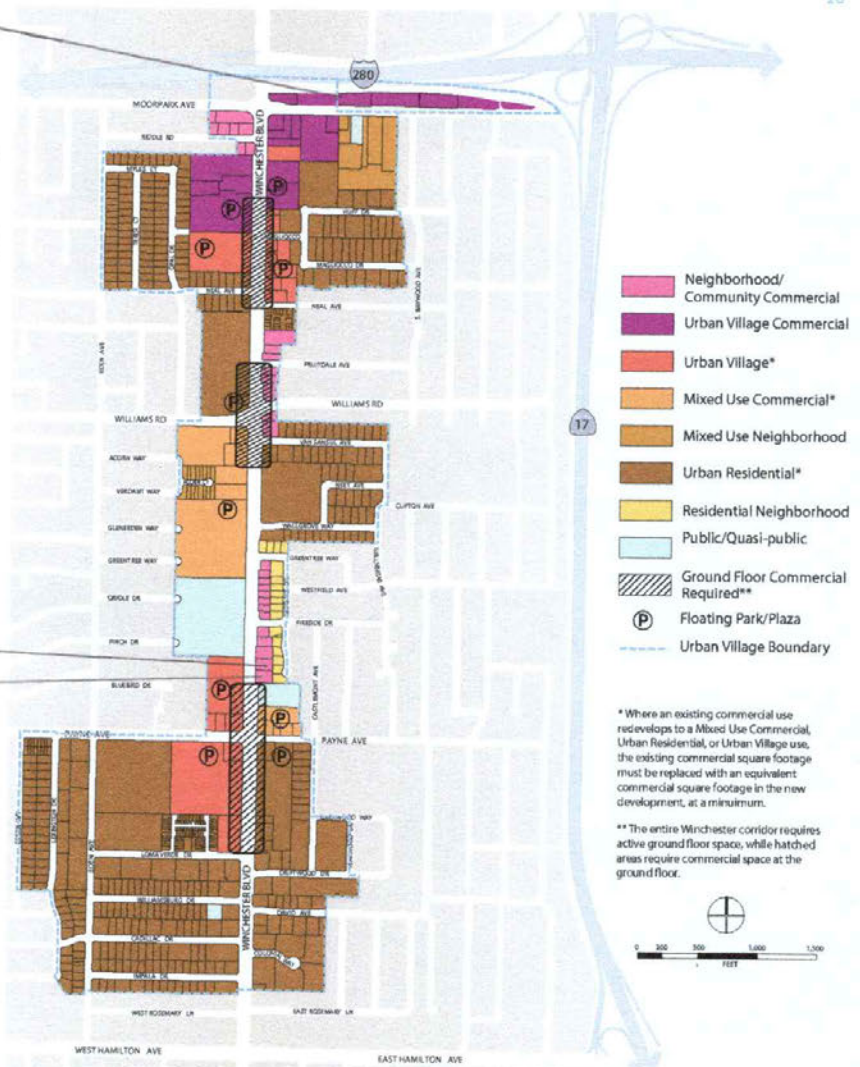
"The Urban Village Commercial land use designation is applied to properties on Winchester Boulevard and Moorpark Avenue adjacent to, and on the south side of Interstate 280. This area was identified as an opportunity for new commercial development that could build off the success and vibrancy of the commercial development in the adjacent Santana Row/ Valley Fair Urban Village. **This designation supports commercial activity that is more intensive than that of the Neighborhood/Community Commercial land use designation. Appropriate uses in this designation include a variety of commercial uses, mid-rise office buildings and hotels...**" (Winchester Urban Village Plan, p19)

Winchester Urban Village Plan Land Use Map (Figure 3:1)

Urban Village Commercial  
(Appropriate for hotels per  
Winchester Urban Village Plan)

1212 S. Winchester  
1224 S. Winchester  
(Appropriate for smaller  
commercial businesses per  
Winchester Urban Village Plan)

FIGURE 3-1: LAND USE MAP





## FIRE SAFETY

We remember the Santana Row Fire  
The Hotel Plan "Fire Layout" (C5.0):  
HOSE PATHS in place of side/rear FIRE LANES

### Nearby properties with marked Fire Lanes:

1399 S Winchester - Business Complex (Dental, Chiropractic, Spa)  
1366 S Winchester - Winchester Auto Parts  
1324 S Winchester - Village of Taxco Apartments  
1250 S Winchester - A Grace Subacute  
1245-1275 S Winchester - Solar Row (Comerica Bank, etc)  
1201 S Winchester - Bethel Church  
1058 S Winchester - Raintree Apartments  
1030 S Winchester - OCC Church (Oriental Christian Center Church)  
919 S Winchester - Lynhaven Apartments  
828 S Winchester - El Camino Health Primary Care  
801 S Winchester - Villa Cortina Condominium Complex



Memorandum dated 10/11/19 (Section 1 – Actions/Revisions Required) from Gordana Sabatelli, Fire Department to Michelle Flores, Planning Dept: "2. The applicant has the option to apply for a Fire Department Variance to mitigate deficiencies noted in this Section. The Variance must be approved prior to Planning Approval."

Memorandum dated 8/4/22 from Planning Director Christopher Burton to Honorable Mayor and City Council: "Staff confirmed with the Fire Department **that the project may proceed to a hearing prior to the approval of a fire variance.**" (p14, Fire Safety)

Project was approved without an approved Variance...  
WHY WAS THIS REVERSED?



# Pedestrian- and Bicycle-Friendly Environment Policy 3-20

***"Pedestrian- and Bicycle-Friendly Environment Policy 3-20: New development should support and enhance the pedestrian and bicycle environment and provide greater connectivity to the overall network."***

(Planning Dept Review Letter 7/22/19, p2)

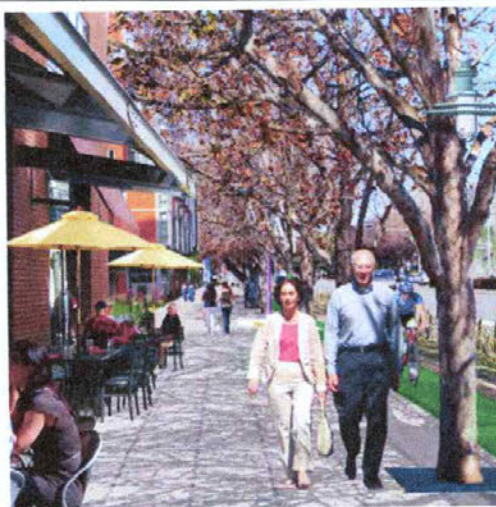
## **ADJACENT HOTEL DRIVEWAYS SPANNING 43' WIDE DO NOT ENHANCE THE PEDESTRIAN AND BICYCLE ENVIRONMENT**

### **Hotel Plan Garage driveway could block the sidewalk warning signals recommended**

*"Based on the estimated trip generation, a maximum of 37 inbound trips would need to be served at the proposed guest and valet drop-off/pick-up zone along Winchester Boulevard during the PM peak-hour, or **approximately one vehicle every 1.5 minutes...**it is recommended that **a minimum of two to three valet staff** be present during the peak arrival/departure periods for the hotel." (Hexagon Transportation Analysis, p.49)*

*"There may be brief moments when vehicles exiting and entering the parking garage would **block the sidewalk**. However, it is anticipated that **delays to pedestrians on the sidewalk** would be relatively brief and it **would generally not impact traffic** operations on Winchester Boulevard...**Recommendation: Appropriate visible and/or audible warning signals should be provided at the garage entrance to alert pedestrians and bicyclists of vehicles exiting the parking garage.**" (Hexagon Transportation Analysis, p46)*

### **Photos from the Front Cover of Winchester Boulevard Urban Village Plan**



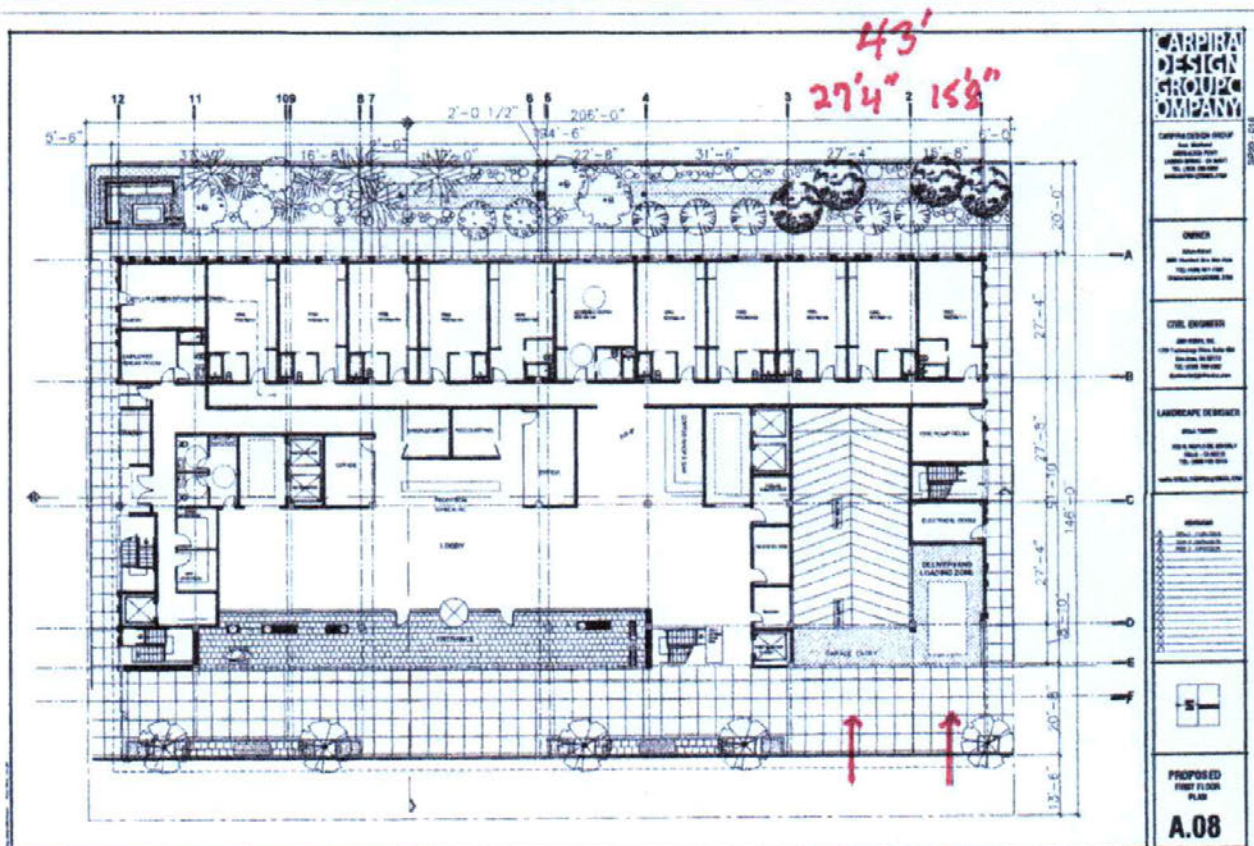


## Hexagon Transportation Analysis SHOULD HAVE BEEN UPDATED to assess the impact of the revised Hotel Plan (REV-3; 02.01.21) on Pedestrian/Bicyclist Safety

- 1) Delivery and Loading Zone moved from the street to the first floor of the hotel with a 15'8" wide driveway adjacent to the garage driveway. (Hotel Plan, Rev-3, A.08)
- 2) Passenger Pick-up/Drop-Off Operations: moved from the street to the garage. "All guests will proceed to the parking garage for hotel check-in to the parking garage for hotel check-in." (Aug 4 Memorandum, p14)
- 3) "...passenger pick-up/drop off for ride share vehicles and taxis will occur inside the garage." (Aug 4 Memorandum, p14)
- 4) Adjacent garage and Delivery Zone driveways are 43' wide across the sidewalk. (Hotel Plan, Rev-3, A.08)

Hexagon Transportation Analysis **assessment before the revision**: "There may be brief moments when vehicles exiting and entering the parking garage would block the sidewalk. However, it is anticipated that delays to pedestrians on the sidewalk would be relatively brief and it would generally not impact traffic operations on Winchester Boulevard...Recommendation: Appropriate visible and/or audible warning signals should be provided at the garage entrance to alert pedestrians and bicyclists of vehicles exiting the parking garage." (Hexagon, p46)

### Winchester Hotel Plan, REV-3, 02/01/21

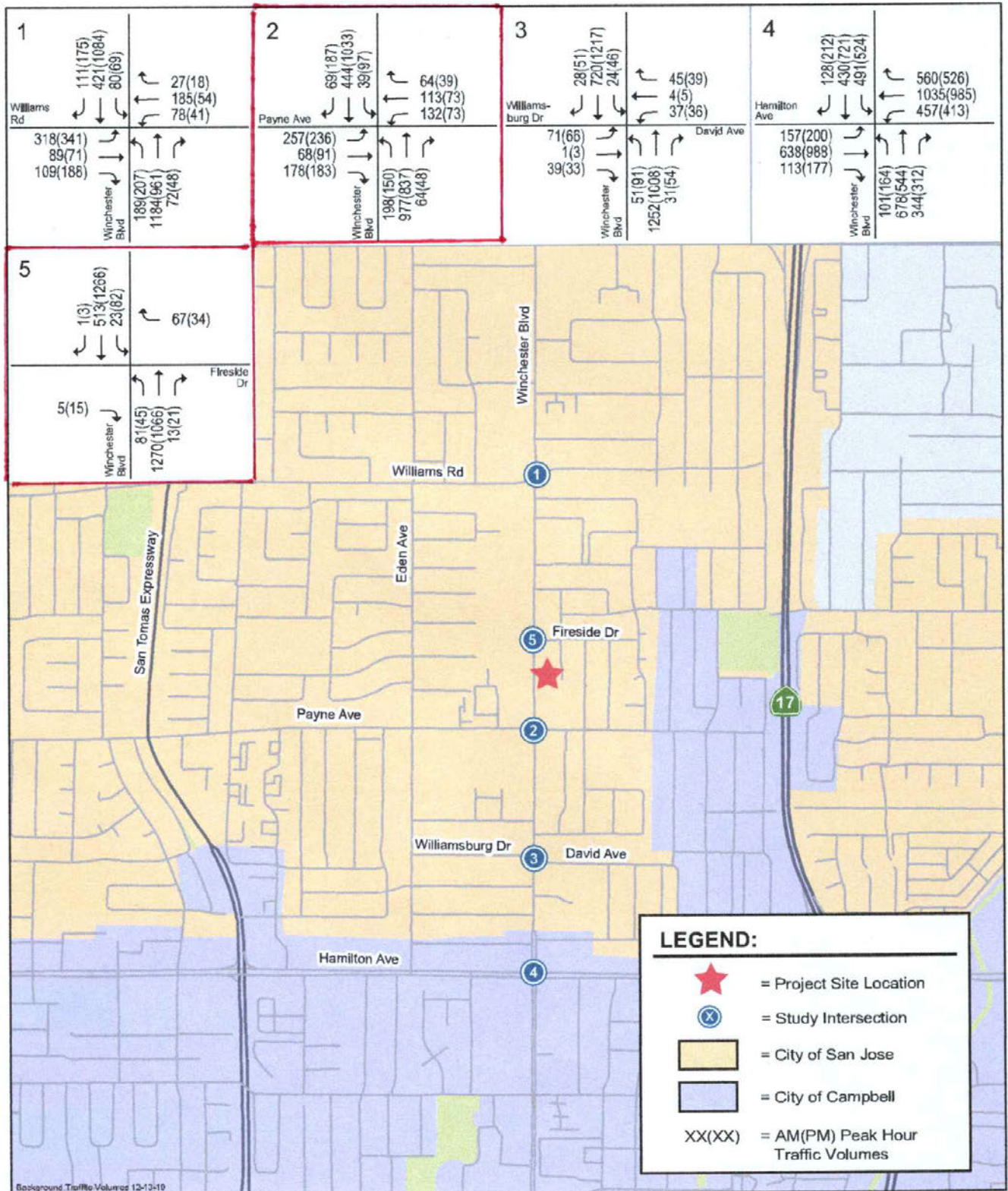




## INCREASE IN TRAFFIC FROM THE HOTEL PROJECT

Trip Generation After applying the ITE trip rates, and appropriate trip reductions, it is estimated that **the project would generate an additional 1,455 daily vehicle trips**, with 64 trips (37 inbound and 27 outbound) occurring during the AM peak hour and 75 trips (37 inbound and 38 outbound) occurring during the PM peak hour. (Hexagon Transportation Analysis, 6/18/20, p57)

### Background Traffic Volumes





# Parking Impact on Neighborhood Streets

## Surrounding On-Street Parking

"The project site is located just outside the perimeter of the Cadillac Residential Parking Program (RPP) zone, where a permit is required to use on-street parking from 10:00 PM to 6:00 AM every day except on holidays....With the implementation of the required TDM plan, the project will provide adequate parking spaces on site to satisfy its parking demand and will not have an effect on the Cadillac RPP." (Hexagon Transportation Analysis, p51)

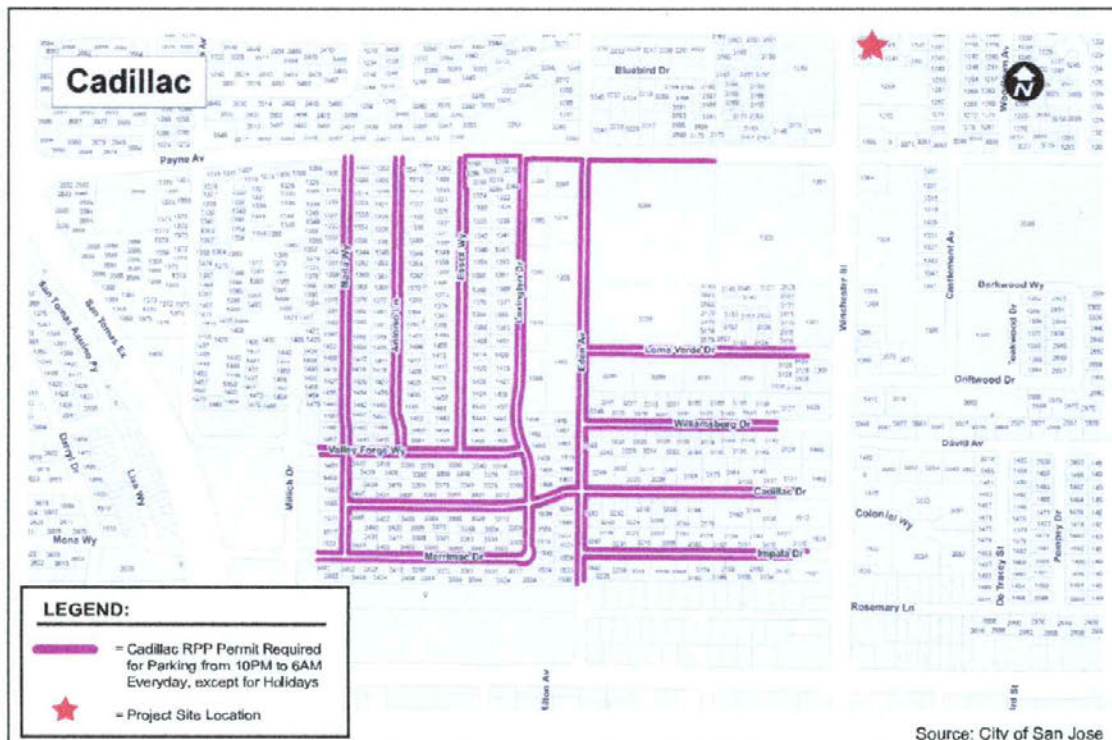
## "For any project that requires a TDM program:

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

(Hexagon Transportation Consultants, Inc, Draft Transportation Demand Management, (TDM) Plan, Jan 27,2021; p12)

1. Was this requirement met?
2. Where is the site for the replacement parking

Figure 19  
Cadillac Residential Parking Program



## THE DEVELOPER'S PARKING REDUCTION REQUEST IS NOT ACCURATE

Upon completing a common-sense review of the documents submitted for this Hotel Project, we believe that the number of workers on-site used in the parking reduction request calculation has been purposefully manipulated and is materially understated. This understatement of the number of workers on-site results in the developer's parking reduction request of 49% also being understated. These two understatements make this Hotel Project out of compliance with Section 20.90.220.A.1 of the City of San Jose Parking Code.

**How do we know this?** The developer has been perfectly transparent and tells us so in the footnote on Page 2 of the Operations Plan. **"Employee staffing plan above is intended to minimize employee parking to no more than 10 parking spaces."**

**Why is no more than 10 workers on-site important?** If there are more than 10 workers on-site the project would exceed the maximum allowable parking reduction request allowable under the City of San Jose Parking Code and would not be eligible for approval.

**Here are three specific areas where we believe the number of workers on-site during any shift have been purposefully manipulated.**

1. This project has a total of 6 housekeeping staff to support the hotel. However, to **reduce the number of workers on-site** during any shift to 10, the developer has **3 of the 6 housekeeping staff working during the hours from 3:00PM to 12:30AM** rather than the morning shift. All major hotel chains operate using the common industry standard that all rooms are serviced and ready by 4:00 PM. Under the project's Operations Plan approximately 25% of this hotel's rooms would not be serviced and ready until after 9:00 PM at night. To be in alignment with common hotel industry standards, those **3 housekeeping staff should be included as part of the morning shift and not the after/evening shift.**
2. On Page 49 of the Transportation Analysis, Hexagon recommends that a **"minimum of two to three valet staff be present** during the peak arrival/departure periods for the hotel". The **Operations Plan only includes 1 valet during each shift.** To be in compliance with the Transportation Analysis requires that **an additional 1 to 2 valets be added to both the morning shift and the afternoon shift.**
3. The project's Transportation Demand Management (TDM) Plan commits on page 13, that as part of the developer's mitigation measures **"the proposed project would offer free shuttles to guests"**. However, the Operations Plan **does not include any Shuttle Drivers and does not comply with the submitted TDM Plan.** To comply with the TDM Plan the hotel will **need to add least 1 shuttle driver, most likely 2, added to both the morning shift and the afternoon shift.**

To comply with the Transportation Analysis, the TDM Plan and common industry standards used by the major hotel chains at least **5 additional workers (1 valet, 1 shuttle driver, 3 housekeepers) are required to be on-site during the morning shift** bringing the total workers on-site up to 15. Those 5 additional morning shift workers means that the number of workers on-site used in the parking reduction request calculation is understated by at least 33%. When those additional morning shift workers are properly included in the parking reduction request calculation, the reduction required for this project exceeds the amount allowable under Section 20.90.220.A.1 of the City of San Jose Parking Code and therefore, this Hotel Project is not eligible for approval as it stands.



# NEGOTIATIONS

This is the first HOTEL PROJECT DESCRIPTION we were given, dated 11/01/2019

If items like a swimming pool or roof top restaurant were removed from the plan, it was done prior to our community engagement.

## Hotel Project Description from Hotel Plan, REV-1, 11/01/2019 (A.02)

### PROJECT DESCRIPTION

The project proposes to develop an 6-story hotel (up to a height of 64'7" feet) with up to 119 guestrooms.

The first floor would contain the main lobby reception area, guest luggage storage, coffee station and bar area, 2 office rooms , accounting, management, employees break room, men locker room, women locker room, fire control room, laundry, security, fire pump room, electrical room, and 11 guest rooms.

Common outdoor areas for hotel guests are proposed to be located on 2nd floor that contain gym and lockers, jacuzzi, steam room, restaurant area and kitchen.

18 guest rooms would also be located on 2nd floor.

Floors 3 through 6 would contain guest rooms that would range from approximately 270 to 770 square feet in size.

A total of 69 parking spaces are provided.

Parking is provided by one underground parking level which is using double parking system , which will be supported by a TDM plan.

A 20 feet rear setback and 6 feet side setback is provided, and additional sidewalk easements will be provided to allow for 26 feet sidewalk are provided on Winchester avenue.

There was an offer by the Developer to negotiate by putting trees on balconies and across the back of the hotel. There were multiple concerns about fire and placing large trees in the 20 ft setback where there is a hose path for the Fire Department.



The Developer offered a proposal for a 5 story mixed use building that would include condominiums for seniors, which could be less impactful. However, we were told we would have to sign a statement of complete support for the idea and have the statement recorded against the title of our properties. The Developer said the statement would be drawn up by his attorney and we had the right to have it reviewed by our own attorney or use his.