

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW THE REMOVAL OF 21 TREES (21 ORDINANCE-SIZE, ONE NON-ORDINANCE-SIZE, WITH 75 REPLACEMENT TREES) FOR THE CONSTRUCTION OF AN APPROXIMATELY 13,902-SQUARE FOOT PRIVATE GATHERING FACILITY (WAT KHMER BUDDHIST TEMPLE) WITH AN ALTERNATIVE PARKING ARRANGMEENT ON AN APPROXIMATELY 1.86-GROSS-ACRE SITE, LOCATED ON THE NORTHEAST CORNER OF RUBY AVENUE AND NORWOOD AVENUE (2740 RUBY AVENUE) (APN: 652-29-014)**

**FILE NO. SP20-024**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on July 15, 2020, an application (File No. SP20-024) was filed by the applicant, Johnny Maas, on behalf of owner Lyna Lam, to the City of San José for a Special Use Permit to allow the removal of 21 trees (20 ordinance-size, one non-ordinance-size, with 75 replacement trees) for the construction of an approximately 13,902-square foot private gathering facility (Wat Khmer Buddhist Temple) with an alternative parking arrangement on an approximately 1.86-gross-acre site, on that certain real property situated in the PQP Public/Quasi-Public Zoning District located on the northeast corner of Ruby Avenue and Norwood Avenue (2740 Ruby 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 Exhibit "A" entitled “Legal Description,” 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 February 22, 2023, notice of which was duly given; and

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

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

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

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

**WHEREAS**, at said hearing this City Council received and considered the reports and recommendations of the 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, "Wat Khmer Kampuchea Krom" dated February 1, 2023, 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 approximately 1.86-gross-acre site is located on the northeast corner of Ruby Avenue and Norwood Avenue. The project is on a vacant lot. The project site has direct access via Ruby Avenue. The project site is surrounded by single-family residences to the north, south, east, and west.
2. **Project Description.** This Special Use Permit is to allow a private gathering facility (a Buddhist Temple) with an alternative parking arrangement (valet parking). The project includes eight on-site residents that include monks and maintenance staff. The project includes a conventional rezoning from the R-1-5 Single-Family Residence Zoning District to the Public/Quasi-Public Zoning District.

Standard weekday and weekend operations would occur between 7:00 AM and 10:00 PM. Standard weekday events (such as prayer, adult classes, meditation, meals, etc.) would include the eight residents on-site and approximately 18 visitors. Standard weekend events (such as lecture, lunch, evening offerings, prayer, etc.) would include the eight residents and approximately 50 visitors. Special events and holidays would have up to 300 visitors (not including the eight residents) and would be limited to the hours of 6:00 AM and 12:00 midnight. The events would typically not occur after 10:00 PM. Cleanup may occur between 10:00 PM and 12:00 midnight.

The project includes outdoor use of religious shrines and sacred spaces. Meditation and reflection may also occur outside. Amplified sound may occur during special events and holidays. The project includes vehicular and pedestrian gates to access the site. The vehicular gate will remain open during the hours of operation.

The project includes 52 standard on-site parking spaces. The project includes an alternative parking arrangement of valet parking to accommodate an additional 15 parking spaces on-site, for a total of 67 spaces. For special events and holidays, the project includes off-site parking utilized through an on-site loading zone with valet parking. Visitors would use the on-site loading zone to utilize the valet parking which would park the vehicles in the on-site valet parking spaces or at an off-site parking lot.

3. **General Plan Conformance.** The project site is in the has an Envision San José 2040 General Plan land use designation of Residential Neighborhood. This designation is applied broadly throughout the City to encompass most of the

established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas which comprise the majority of its developed land. Additionally, this designation also supports private community gathering facilities compatible with the surrounding residential neighborhood.

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

- a. Community Design Policy CD - 4.4: In non-growth areas, design new development and subdivisions to reflect the character of predominant existing development of the same type in the surrounding area through the regulation of lot size, street frontage, height, building scale, siting/setbacks, and building orientation.
- b. Vibrant Neighborhood Policy VN – 1.12: Design new public and private development to build upon the vital character and desirable qualities of existing neighborhoods. San José's General Plan includes several goals and policies to ensure that infill development is compatible with the prevailing neighborhood character.
- c. Vibrant Neighborhood Policy VN – 1.2: Maintain existing and develop new community services and gathering spaces that allow for increased social interaction of neighbors, (i.e., parks, community centers and gardens, libraries, schools, commercial areas, churches, and other gathering spaces).
- d. Vibrant Neighborhoods Goal – 5: Provide for the development of Private Community Gathering Facilities at locations within or near residential, commercial, or mixed residential- commercial neighborhoods throughout the City to accommodate the social and cultural activities of the San José community.

*Analysis: The project would be located on a corner lot with the temple located towards the intersection of Ruby Avenue and Norwood Avenue. The project allows the temple and its associated functions to operate within an existing and established residential neighborhood. The project would provide a 12-foot-wide sidewalk along Ruby Avenue and a 10-foot-wide sidewalk along Norwood Avenue, which currently does not have complete sidewalks along the street frontages. This project would provide additional social and cultural activities to the San José community.*

*Throughout the City, other assembly uses located within Residential Neighborhood land use designation are one to two stories. They typically have multiple buildings to accommodate the religious gathering facility and others for associated community services. They typically have neutral wall colors and roof colors, a mix of stucco, horizontal and vertical siding, and some stone. They provide surface parking lots and locate the main building close to the street frontages and circulation between other on-site buildings occurs within the middle of the site. This project provides neutral wall and roof colors. The project is located on the corner of Ruby Avenue and Norwood Avenue parallel to the street. The project is also providing a surface parking lot to meet the on-site parking requirement.*

#### 4. Zoning Ordinance Consistency.

##### Land Use

The project site is located within the R-1-5 Single-Family Residential Zoning District. The project includes a rezoning to the Public/Quasi-Public zoning district. Per Table 20-90 of the Zoning Code, the Public/Quasi-Public Zoning District allows church/religious assembly uses with a Special Use Permit. Therefore, the findings for a Special Use Permit are made below pursuant to Section 20.100.820 of the Zoning Code. The project includes the construction of a new approximately 13,902-square foot private gathering facility. Therefore, the findings for a Site Development are also made below pursuant to Section 20.100.630 of the Zoning Code.

##### Development Regulations

Section 20.40.200 under Table 20-100 of the Zoning Code provides the following development standards:

Development Standard	PQP Requirement	Provided
Minimum front setback (Norwood Avenue)	10 feet	Approximately 10 feet, 1 inch
Minimum front setback (Ruby Avenue)	10 feet	Approximately 32 feet, 1 inch
Minimum side setback	10 feet	Approximately 60 feet
Minimum rear setback	10 feet	Approximately 22 feet
Maximum height	65 feet	Approximately 64 feet, 10 inches

As shown in the table above, the project conforms with the required development standards of the PQP Public/Quasi-Public Zoning District pursuant to Section 20.40.200 of the Zoning Code.

##### Vehicle Parking

Per Section 20.90.060 of the Zoning Ordinance, the required vehicle parking for private gathering facilities is one per four fixed seats, or one per six linear feet of seating, or one per 30 square feet of area designed for assembly, used together or separately for worship.

The project does not include any seats or seating, so the required parking was based on area designed for assembly. The temple includes 1,969 square feet of area for assembly. Therefore, 66 parking spaces are required. The project includes 67 parking spaces, which

includes seven EV parking spaces, four accessible parking spaces, and ten clean air vehicle parking spaces.

Bicycle parking is required at a ratio of one per 60 fixed seats, or one per 90 linear feet of seating, or one per 450 sq. ft. of area designed for assembly, used together or separately for worship. Five bicycle parking spaces are required. The project includes ten bicycle parking spaces and is consistent with the requirement.

Although not required for the proposed use, the project includes two motorcycle spaces.

Per Section 20.90.200, off-street parking arrangements may be permitted with a Special Use Permit for parking facilities on a lot other than the lot occupied by the building and for parking facilities that accommodate the required number of parking spaces in an alternative parking design. The project includes 67 parking spaces of which 15 are valet parking spaces. The project includes a Traffic and Parking Management Plan to reduce parking overflow into the neighborhood during special events. The plan includes free valet service within the project site, off-site parking spaces, and off-site valet parking. If the on-site parking reaches capacity, the attendees will park within the on-site passenger loading zone and the valets will park the vehicle within a designated on-site valet parking space or to a designated off-site parking lot. The project is coordinating with five nearby schools and the Evergreen Islamic Center for special event overflow parking. The project provides a 40-foot stacking space for vehicles between the sidewalk and the gate and 50 feet of stacking space between the curb and first parking space. The project would keep the gate open during the hours of operation of the temple.

#### Performance Standards

Pursuant to Section 20.40.600, the maximum noise-level requirement in decibels is 55 dB at adjacent residential property lines. To determine noise impacts of the proposed project and use, a Noise Study was prepared by Wilson Ihrig, Acoustics, Noise & Vibration dated October 29, 2021.

The acoustical assessment prepared by Wilson Ihrig, Acoustics, Noise & Vibration, calculated that the sound level at the nearest residential outdoor use areas is 49 DNL during special events. The sound system for outdoor special events would be subject to a condition of approval limiting the maximum instantaneous noise levels to 71 dBA. With this 71dBA limitation, adjacent residences would experience noise levels that would not exceed the 53 dBA DNL limit. The prevailing noise density in the area and the daily DNL levels are around 49 DNL. The temple would have sound levels below 53 dBA DNL for typical daily use and special events. The operational noise will not exceed 55 dBA DNL at the adjacent property line per General Plan Policy EC-1.3. The project includes a perimeter sound screen wall. Amplified sound, which may occur during religious holidays or religious events, will adhere to city standards and regulations.

## Tree Removals

Tree Replacement Ratios				
Circumference of Tree to be Removed <sup>1</sup>	Type of Tree to be Removed <sup>2</sup>			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more <sup>3</sup>	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</p>				

Per Chapter 13.32 of the Municipal Code, a Tree Removal Permit is required for ordinance-size trees on single-family residence lots. Ordinance-size trees are trees that, measured at 4.5 feet above ground, have a circumference greater than 38 inches. For nonresidential properties a permit is also required for non-ordinance sized trees.

Based on the arborist report (Exhibit F) prepared by Urban Tree Management, Inc. dated May 20, 2019, the project includes the removal of 20 ordinance-size trees and one non-ordinance size tree. The 20 ordinance-size trees include: two Pepper trees, one Grapefruit tree, one Avocado tree, two Hollywood Juniper trees, two Common Juniper trees, two Queen Palms, three Monterey Pines, four Elm trees, two King Sago Palms, and one Strawberry tree. The non-ordinance size tree is a Plum tree. The trees to be removed are located either within the proposed building footprints, within the surface parking lot, on-site circulation, and within the newly dedicated sidewalks. Eight of the ordinance-size trees are dead, dying or diseased. The trees to be removed would be replaced at the ratios based on the tree mitigation table above. Of the 20 ordinance-size trees 10 are native trees and 10 are non-native trees. The non-ordinance size tree is a non-native tree.

Based on the City's Tree Replacement ratio, 92 15-gallon replacement trees are required. Two 15-gallon trees may be substituted with a 24-inch box tree. The project would plant 55 36-inch box trees (a mix of Persian Silk Trees, Jacarandas, Paperbark Tea trees, California Sycamores, California Pepper trees, and Emerald Sunshine Elms), 18 24-inch box trees (a mix of Crape Myrtles, Canary Island Pines, and Giant Bird of Paradise palms), and two 60-inch box trees (Coast Live Oaks). The 75 trees (equivalent to 150 15-gallon replacement trees) would meet the 92 15-gallon size replacement trees required.

## **5. City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals**

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. Due to public interest in the proposed project, two community meetings were held. The first community meeting was held on August 19, 2020 and the second community meeting with a joint EIR scoping meeting was held on June 2, 2021. An on-site sign was posted on the project frontage on February 17, 2020.

Community concerns included compatibility with, and impacts to, the surrounding neighborhood, providing surface parking instead of underground parking, operational noise, lack of parking, overflow parking in the street, pedestrian safety, and construction impacts.

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 been available to respond to questions from the public.

## **6. Design Guidelines**

The project was submitted on July 15, 2020, prior to the adoption of the Citywide Design Standards and Guidelines, which became effective on March 25, 2021. Therefore, the project is subject to the Commercial Design Guidelines (1990). The project design is consistent with the Commercial Design Guidelines in that the massing, colors, and materials are compatible with the adjacent buildings. The temple and community building compliment the adjacent residential development by using a mix of neutral and natural colors to compliment the adjacent single-family residences. The project provides courtyards and landscaping to keep the circulation internally and away from the public right-of-way and to screen the activity from the adjacent development.

Landscaping is proposed throughout the project site, including the perimeter, and includes fences, gates, and a sound wall. The internal structures are also screened by fences, gates, and landscaping.

## **7. Environmental Review.**

The City of San José, as the Lead Agency, prepared an Environmental Impact Report ("EIR") (State Clearinghouse No. 2021050524) for the Wat Khmer Kampuchea Krom Temple Project in compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines (California Code of Regulations §15000 et. seq.) and the regulations and policies of the City San José, California. The EIR evaluated the environmental impacts that might reasonably be anticipated to result from implementation of the proposed project.

The EIR was circulated from August 23, 2022, to October 7, 2022, and approximately 30 comments were received during the public review period. Several recurring concerns



were raised in the public comments, including noise during construction and operation of the project, traffic and parking, and neighborhood compatibility. The EIR, including responses to comments received during the public review period, can be found at the following link: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/wat-khmer-kampuchea-krom-temple-project-7548>.

The EIR identified relevant mitigation measures for potential impacts to air quality during construction, nesting birds and biological resources, hazards and hazardous materials from past uses on the site, and for construction-related noise and vibration. In addition, standard permit conditions are made part of the permit approval. These standard permit conditions include best management practices for construction related air quality impacts, tree replacement, compliance with the Santa Clara Valley Habitat Plan, compliance with the California Building Code for seismic safety of the proposed building, erosion control during construction activities, prehistoric and historic resources, protection of unknown subsurface cultural resources and human remains, protection of construction workers from hazards related to contaminated soils, water quality impacts during construction and operation periods, and best management practices to control noise during construction. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (“MMRP”) (Exhibit J), and both the mitigation measures and standard permit conditions are made a part of the resolution of this permit. The EIR concluded that the project would not result in any significant and unavoidable environmental impacts with implementation of identified mitigation measures.

**8. Site Development Permit Findings.** Section 20.100.630 of the San José Municipal Code specifies the required findings for the approval of a Site Development Permit.

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

*Analysis: As described above in the General Plan Conformance section, the project is consistent with the site’s Residential Neighborhood Land Use Designation. Private gathering facilities may be allowed in the Residential Neighborhood land use designation if they are compatible with the surrounding area. The project is consistent with the General Plan policies for vibrant neighborhoods and community design. This project provides neutral wall and roof colors. Additionally, the project includes extensive on-site and perimeter landscaping to further beautify the site and provide screening to adjacent residences. The project is also providing a surface parking lot to meet the on-site parking requirement. Therefore, the project was designed at a scale compatible with the surround two-story single-family residences.*

- b. The Site Development Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: As described above in the Zoning Ordinance Conformance section, the project complies with the applicable development standards of the San José Municipal Code. The project and subject site meet the necessary setbacks, height, performance standards, and parking requirements of the Municipal Code. The project requires a minimum 10-foot setback from all property lines. The buildings would be setback at least 10 feet from all property lines. The community building would be approximately 35 feet in height, the temple would be approximately 43 feet in height, and the spire would be under 65 feet in height, all within the maximum allowed height of 65 feet. The project includes a sound wall and would not generate noise exceeding 55 dB at the adjacent property lines. The project includes 67 vehicle parking spaces and 10 bicycle parking spaces, which exceed the minimum required parking.*

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

*Analysis: The project was duly noticed per City Council Policy 6-30: Public Outreach Policy for pending land use and development proposals and the on-site noticing/posting requirements. Project information signs were posted on the site on February 7, 2020. Two community meetings were held for the project. The first meeting was held on August 19, 2020 and the second meeting was held on June 2, 2021. Refer to the Public Outreach section below for a summary of community concerns. 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. Staff has been available to answer questions from the public.*

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

*Analysis: The project includes a building for the temple and a separate community building for ancillary uses. The required parking spaces would be provided on-site. The site provides internal pedestrian circulation between the proposed building and structures. The activity would occur behind vehicular and pedestrian gates. The parking lot is located approximately 90 feet from the temple. The temple, the tallest building of the project, would be placed on the southwest corner of the site, accessible via a 26-foot-wide driveway with a gate from Ruby Avenue. The parking spaces, temple, and community building share a courtyard for internal circulation.*

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

*Analysis: The project is providing a building for the temple and a separate building for ancillary uses. The required parking spaces would be provided on-site. The site provides internal pedestrian circulation between the proposed building and*

*structures. The activity would occur behind vehicular and pedestrian gates. The temple and ancillary building would meet all setback requirements of the Zoning District as previously discussed. The temple would be located on the corner of Ruby Avenue and Norwood Avenue, away from the immediately adjacent residential properties to minimize the height impacts. The surrounding residential development has a character with pitched roofs, ceramic tiles that are primarily grey and terracotta colors, and exterior walls are of stucco, vertical or horizontal siding, wood shingle, and brick. The exterior walls are primarily neutral or natural colors (gray and browns). The project buildings include a mix of wood, vertical siding, and ceramic roof tiles. Therefore, the buildings and structures are mutually compatible with the surrounding neighborhood*

*The temple is approximately 43 feet in height with a spire of approximately 65 feet in height. The community building would be 35 feet in height. The project would have a Floor Area Ratio of 0.17. Residential properties in this land use designation may have a Floor Area Ratio of up to 0.45 without a Planning permit and may go up to 0.7 with a Planning permit. The maximum height for the adjacent R-1-5 Single-Family Residence zoning properties is 35 feet. Therefore, the scale of the project would be compatible with adjacent residential development.*

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

*Analysis: The project occurs in an urbanized area that is adequately served by all required utilities and public services. The Stormwater Control Plan is consistent with the City's stormwater policies that require low impact development stormwater measures to minimize stormwater pollutant discharges. Construction would be required to comply with the Standard Environmental Conditions within the attached resolution to ensure that the project does not have an unacceptable negative effect on adjacent property or properties with regards to vibration, dust, drainage, erosion, stormwater runoff, and odor.*

*As discussed above, the project incorporates measures to address noise and vibration, stormwater runoff, water quality, drainage and erosion, hazards and hazardous materials, and biological resources. The project will be required to adhere to all applicable standard permit conditions and mitigation measures related to reducing temporary and operational sources of noise and vibration, dust, and erosion. Noise resulting from the construction of the project is limited to the posted construction hours between 7:00 a.m. and 7:00 p.m., Monday to Friday, and would be temporary in nature.*

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

*Analysis: The project includes sound walls along the perimeter, pedestrian and vehicular gates to conceal the on-site pedestrian circulation between buildings and parking, landscaping, and the required on-site parking. Trash facilities will be wheeled to the southeast corner of the parking lot and garbage collection will occur on-site. Public and private utilities will be provided to the site. The project will maintain the appearance of the neighborhood.*

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

*Analysis: Vehicular access would be provided from a new 26-foot wide full-access driveway. The project will construct a 12-foot-wide sidewalk along Ruby Avenue and a 10-foot-wide sidewalk on Norwood Avenue. As mentioned above, the project is providing 67 vehicle parking spaces and 10 bicycle parking for the project scope. This meets the City's vehicular and bicycle parking requirements.*

**9. Special Use Permit Findings.** Section 20.100.820 of the San José Municipal Code specifies the required findings for the approval of a Special Use Permit.

- a. The special use permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies; and

*Analysis: See Site Development Permit Finding 1.*

- b. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

*Analysis: Church/religious assembly uses are allowed in the PQP Public/Quasi-Public Zoning District with a Special Use Permit per Table 20-90 of the Zoning Code. The project is consistent with the setbacks, height, parking, and all other requirements of the PQP Zoning District.*

- c. The special use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: See Site Development Permit Finding 3.*

- 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 the property of other persons located within the vicinity of the site; or
- iii. Be detrimental to public health, safety or general welfare

*Analysis: The use and included site improvements would not be detrimental to public health, safety, or general welfare for the following reasons. The project complies with the development regulations listed above and would serve as a community gathering facility for the surrounding community and region. The religious assembly use has been designed at a scale compatible*

*with the surrounding neighborhood. The project includes circulation improvements, a new driveway, and an on-site parking lot. The project is required to construct a new 10-foot-wide City Standard sidewalk along Norwood Avenue and a 12-foot-wide sidewalk along Ruby Avenue, which are included in the conditions of approval for this permit. The project would provide off-site valet parking to reduce the overflow parking within the neighborhood. The development of the site will eliminate the vacant condition of the site with a neighborhood-serving use.*

- 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 areas; and

*Analysis: The approximately 1.86-gross acre site is adequate in size and shape to accommodate the temple and associated buildings, sound walls along the perimeter, landscaping, and the required on-site parking. A new driveway with a gate would provide access to the site. As previously described, the subject site would have adequate paved surfaces to allow for vehicles to enter the site and allow for stacking for the valet parking loading zone. The area is also serviced by local bus route 39.*

- f. The proposed site is adequately served:

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

*Analysis: Vehicular access would be provided from a new 26-foot wide full-access driveway off Ruby Avenue. As evidenced by the Traffic Memo dated November 15, 2022, the project is in conformance with the City of San Jose Transportation Analysis Policy (Council Policy 5-1) and a determination for less than significant impacts can be made in respect to transportation impacts. A two-way left-turn lane is provided along Ruby Avenue for inbound and outbound trips. The project provides a 40-foot stacking space for vehicles between the sidewalk and the gate and 50 feet of stacking space between the curb and first parking space. The project would keep the gate open during the hours of operation of the temple. There are Class II bikeways along Ruby Avenue and Class III bikeways along Norwood Avenue. The project area is served by local bus Route 39. The site is served by all necessary public and private utilities.*

- iii. 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: The project occurs in an urbanized area that is adequately served by all required utilities and public services. The Stormwater Control Plan is consistent with the City's stormwater policies that require low impact development stormwater measures to minimize stormwater pollutant discharges. Construction would be required to comply with the Standard Environmental Conditions within the attached resolution to ensure that the project does not have an unacceptable negative effect on adjacent property or properties with regards to vibration, dust, drainage, erosion, stormwater runoff, and odor.*

*As discussed above, the project incorporates measures to address noise and vibration, stormwater runoff, water quality, drainage and erosion, hazards and hazardous materials, and biological resources. The project will be required to adhere to all applicable standard permit conditions and mitigation measures related to reducing temporary and operational sources of noise and vibration, dust, and erosion. Noise resulting from the construction of the project is limited to the posted construction hours between 7:00 a.m. and 7:00 p.m., Monday to Friday, and would be temporary in nature.*

**10. Off-Site Alternative Parking Arrangement Findings.** Section 20.90.200(B) of the San José Municipal Code specifies the required findings for the approval of an off-street alternative parking arrangement.

- a. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this title;
- b. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and
- c. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

*Analysis: The project scope requires 66 parking spaces and would provide 67 parking spaces. The project would provide 15 valet parking spaces on-site. The valet parking would occur on-site in the loading zone. If the 52 standard parking spaces reach capacity, valet would park the vehicles on the designated on-site valet parking spaces or off-site parking location. The loading zone is within the parking lot of the project site and is located approximately 90 feet from the temple. For special events or instances where the parking needs exceed the project's capacity, the project is required to have a written agreement for off-site parking. The project must maintain the valet parking spaces and written agreement for off-site parking for the life of the*

*project as they are included as conditions of approval of this permit.*

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

- a. That the tree affected is of a size, type and condition, and is in such a location in such surrounding, that its removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
- c. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

*Analysis: The project includes the removal of 20 ordinance-sized trees and one non-ordinance size tree. The 20 ordinance size trees include: two Pepper trees, one Grapefruit tree, one Avocado tree, two Hollywood Juniper tree, two Common Juniper trees, two Queen Palms, three Monterey Pines, four Elm trees, two King Sago Palms, and one Strawberry tree. The non-ordinance size tree is a Plum tree. Of the 20 ordinance-size trees 10 are native trees and 10 are non-native trees. The non-ordinance size tree is a non-native tree. The trees to be removed are located either within the proposed building footprints, within the surface parking lot, on-site circulation, and within the newly dedicated sidewalks. Eight of the ordinance-size trees are dead, dying, or diseased. The trees to be removed would be replaced at the ratios based on the tree mitigation table. Of the 20 ordinance-size trees, 10 are native trees and 10 are non-native trees. The non-ordinance size tree is a non-native tree.*

*Based on the City's Tree Replacement ratio, 92 15-gallon replacement trees are required. Two 15-gallon trees may be substituted with a 24-inch box tree. The project would plant 55 36-inch box trees (a mix of Persian Silk Trees, Jacarandas, Paperbark Tea trees, California Sycamores, California Pepper trees, and Emerald Sunshine Elms), 18 24-inch box trees (a mix of Crape Myrtles, Canary Island Pines, and Giant Bird of Paradise palms), and two 60-inch box trees (Coast Live Oaks). The 75 trees (equivalent to 150 15-gallon replacement trees) would meet the 92 tree replacements required.*

In accordance with the findings set forth above, a Special Use 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 Special Use Permit (collectively "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 (4) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this 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.
4. **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 makes a determination that such action 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.

5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development Permit plans entitled, “Wat Khmer Kampuchea Krom” dated February 1, 2023, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the “approved plans” or the “Approved Plan Set.”
6. **Use Authorization.** Subject to all conditions stated herein, this Permit authorizes the construction of an approximately 13,902-square foot private gathering facility (religious assembly) with an alternative parking arrangement (valet parking), an off-site parking arrangement, and the removal of 20 ordinance-size trees, to be operated in accordance with the attached Operations Plan.
7. **Hours of Operation.** Regular hours of operation are between 7:00 AM to 10:00 PM. Cleanup may occur between 10:00 PM and Midnight. No late-night use is allowed. The maximum number of attendees on-site should not exceed 300 people. This does not include the eight on-site residents.
8. **Parking Management Program.** The Permittee shall employ a system for special events to direct overflow traffic when the on-site parking lot is full. Permittee shall provide employees, staff, and patrons with instructions to park within the on-site parking facilities and use the loading zone for valet parking when the on-site parking has reached its capacity. Permittee shall also discourage employees, staff, and patrons from parking in nearby residential areas.
9. **Off-Site, Alternating Use, and Alternative Parking Arrangement Permitted.** This Permit allows an alternative parking arrangement to facilitate the provision of sufficient parking as shown on the Approved Plans. Prior to the issuance of any building permits, a fully executed and signed copy of an off-site parking agreement shall be provided to the City of San José demonstrating the permittee has an off-site parking agreement in place to accommodate parking needs which exceed the facility’s parking capacity. In addition, the project shall provide 15 valet vehicle parking spaces. Should the off-site parking agreement expire, be terminated, or otherwise no longer be in effect or if there are any changes to the number of spaces to be provided for the alternative parking arrangement, such changes shall require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement in accordance with Zoning Ordinance, as amended.

10. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement.
11. **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.
12. **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 permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
13. **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 of San José.
14. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
15. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
16. **Refuse.** All trash and refuse storage areas are approved as designed and shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
17. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
18. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be

placed underground.

19. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
20. **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.
21. **Noise Control.** The project shall not include noise-generating equipment that would exceed 55 decibels at the project site's property lines.
22. **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.
23. **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.
24. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
25. **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.
26. **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 or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement.
27. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
28. **Replacement Landscaping.** All landscaping removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
29. **Irrigation Standards.** Irrigation shall 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, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
30. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building

and Code Enforcement prior to approval of the final inspection of the project.

31. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
32. **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.
33. **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.
34. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
35. **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].
36. **Standard Environmental Permit Conditions**
  - a. **Air Quality**
    - i. Water active construction areas at least twice daily or as often as needed to control dust and emissions.
    - ii. All trucks hauling soil, sand, and other loose material shall be covered and all trucks shall maintain at least two feet of freeboard.
    - iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 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.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

**b. Biological Resources**

- i. **Tree Removal and Replacement.** The trees removed by the project shall be replaced according to tree replacement ratios required by the City as provided in the table below.

Tree Replacement Ratios				
Circumference of Tree to be Removed <sup>1</sup>	Type of Tree to be Removed <sup>2</sup>			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more <sup>3</sup>	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</p>				

- ii. If there is insufficient area on the subject property to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment.
  - a) 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 subject property, at the development permit stage.
  - b) 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. The City will use the following off-site tree replacement fee(s) to plant trees at alternative sites.
- iii. **Santa Clara Valley Habitat Plan.** The project is subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Permittee shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building, and Code Enforcement or 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://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>
- c. **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- d. **Human Remains.** If any human remains are found during any field

investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Permittee shall immediately notify the Director of Planning, Building and Code Enforcement ("PBCE") or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant ("MLD"). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

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

**e. Geology and Soils.**

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

- iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- vi. Prior to issuance of any site-specific grading or building permits, a design-level geotechnical investigation shall be prepared and submitted to the City of San José Public Works Department for review and approval. The project shall implement the recommendations in the investigation to minimize impacts from expansive soils. Options to address these conditions may range from removal of the problematic soils and replacement, as needed, with properly conditioned and compacted fill, lime treat soils, and to design and construct improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements.
- f. **Paleontological Resources.** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of PBCE or the Director's designee.
- g. **Hydrology and Water Quality.** Measures shall be implemented to prevent stormwater pollution and minimize potential sedimentation during construction, including, but not limited to, the following:
  - i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
  - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
  - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
  - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.



- v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to remove mud from truck tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- ix. The Permittee 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.

**37. 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 number, SP20-024 shall be printed on all construction plans submitted to the Building Division.
- b. *San José'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](http://www.sjenvironment.org/reachcode)
- c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- e. *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.
- f. *Common Interest Development.* Prior to issuance of any certificate of occupancy, or release for occupancy, the Permittee shall provide a self-certified statement to the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San José Common Interest Development standards.
- g. *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. 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).

- h. *Other.* Such other requirements as may be specified by the Chief Building Official.

**38. Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as may be amended or updated by the City.

**39. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/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:**
  - i. In alignment with State of California Senate Bill 743 (SB743), the City of San Jose Policy, Transportation Impact Policy - Council Policy 5-3 has been replaced with a new Transportation Analysis Policy - Council Policy 5-1. Council Policy 5-1 replaces the transportation impacts threshold from Level of Service (LOS) under Council Policy 5-3 to Vehicle Miles Traveled (VMT).
  - ii. A Local Transportation Analysis (LTA) has been performed for this project based on a net 5 AM and 7 PM peak hour trips. See separate Local Transportation Analysis Memo dated August 16, 2022 for additional information.
- c. **Grading/Geology:**
  - i. A grading permit will be required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all

- underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code 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 permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
  - v. 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.
- d. **Shoring.** Shoring plans will be required for review and approval as part of the Grading Permit for this project if there are below-grade levels of basement or parking
- e. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
  - iii. A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.
- f. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area and will create and/or replace one acre or more of impervious surface. The project must comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14) which

requires demonstrating that post-project runoff is less than or equal to the estimated pre-project rates and durations.

- i. The project's HM plan and sizing calculations have been reviewed and will be in conformance with City Policy 8-14.
  - ii. Final inspection and maintenance information for the HM controls must be included on the final HM plans.
- g. **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.
- h. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- i. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact San José Municipal Water at (408) 794-6769 for further information.
- j. **Undergrounding:** There are no existing overhead utilities along the project frontage or across the street from project frontage, therefore the in-lieu undergrounding fee is not required.
- k. **Assessments:** This project is located within the boundaries of Benefit Assessment District 91-209SJ, which specifies the number of residential units allocated to undeveloped properties in the Evergreen Area. According to the district, a total of up to 6 residential units have been allocated to Assessor's Parcel Number 652-29-014. A conversion factor has been applied to the residential allocation to reflect an equivalent square foot allocation that can be applied to the building proposed, but is not sufficient to facilitate the entire proposal. The contingency lien amount is due at the first discretionary act towards development and is adjusted annually each February 1st based on the Construction Cost Index for the San Francisco Bay Area. This proposal triggers the requirement for payment of the contingency lien, which is \$27,085.91 and must be paid prior to the approval of the building permit, tract map, final map, or lot line adjustment. Any questions may be directed to Thomas Borden at (408) 535-6831.
- l. **Street Improvements:**
- i. Construct curb, gutter, and a 12-foot wide attached sidewalk with tree wells along Ruby Avenue project frontage. Required street dedication shall conform to the plan line.
  - ii. Construct curb, gutter, and a 10-foot wide attached sidewalk with tree wells along Norwood Avenue project frontage. An approximate 5-foot wide street dedication is required.

- iii. Construct a roundabout at the intersection of Ruby Avenue and Norwood Avenue. The project will be reimbursed for the construction cost of the roundabout except for its required (quadrant) frontage improvements.
- iv. Construct a 26-foot wide City standard driveway along Ruby Avenue project frontage.
- v. Construct City Standard R-10 and R-11 handicap ramps at the northeast corner of Norwood Avenue and Ruby Avenue.
- vi. Property line corner radius at the intersection of Ruby Avenue and Norwood Avenue shall be a minimum radius of 24 feet.
- vii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any improvement plans.
- viii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- m. **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.
- n. **Street Trees:**
  - i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. If street tree locations conflict with existing utilities, permittee shall be solely responsible for relocating or adjusting utilities as necessary to resolve conflict. Street trees shown on this permit are conceptual only.
  - ii. The recommended street trees for both Ruby Ave and Norwood Ave are *Ulmus propinqua 'JFS-Bieberich'* (Emerald Sunshine Elm), planted 25' on center, or consult the City Arborist for alternatives.

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

- a. A violation of any conditions of the Special Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

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

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

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
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

The land referred to is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

### PARCEL ONE:

A portion of Lot 13, as shown on that certain Map entitled, "Map of E.G. Hall's Subdivision of a portion of the Rancho Pala, which Map was filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on September 5, 1888, in Book D of Maps, at Page 17, and being more particularly described as follows:

Beginning at the point of intersection of the Southerly line of Norwood Avenue with the Southerly prolongation of the center line of Ruby Avenue as said Avenues are shown on the Map hereinabove referred to; thence from said point of beginning along said Southerly line of Norwood Avenue, North 76° East, 284.41 feet; thence parallel with the said center line of Ruby Avenue, North 14° 43' West, 392.00 feet; thence parallel with the Southerly line of said Norwood Avenue, South 76° West, 284.41 feet to a point in the said center line of Ruby Avenue; thence along said last named line South 14° 43' East, 60.00 feet to the point of intersection thereof with the Northerly line of that certain parcel of land conveyed in the Deed from D.S. Arata, Sr., et al, to Frank A. Silva, et ux, dated January 10, 1961 and Recorded January 13, 1961 in Book 5041 of Official Records, Page 439; thence along said last named line North 76° East, 147.18 feet to the Northeasterly corner of said lands so deeded to Silva; thence along the Easterly line thereof, South 14° 43' East, 74.00 feet to the Southeasterly corner thereof; thence along the Southerly line thereof South 76° West, 147.18 feet to a point in the said center line of Ruby Avenue; thence along said last named line South 14° 43' East, 258.00 feet to the point of beginning.

### PARCEL TWO:

An easement in, under, over and across a strip of land 5 feet in width for the purpose of maintaining, repairing, replacing and using an existing underground water pipe line lying therein, the Southeasterly and Northeasterly lines of said 5 foot strip being described as follows:

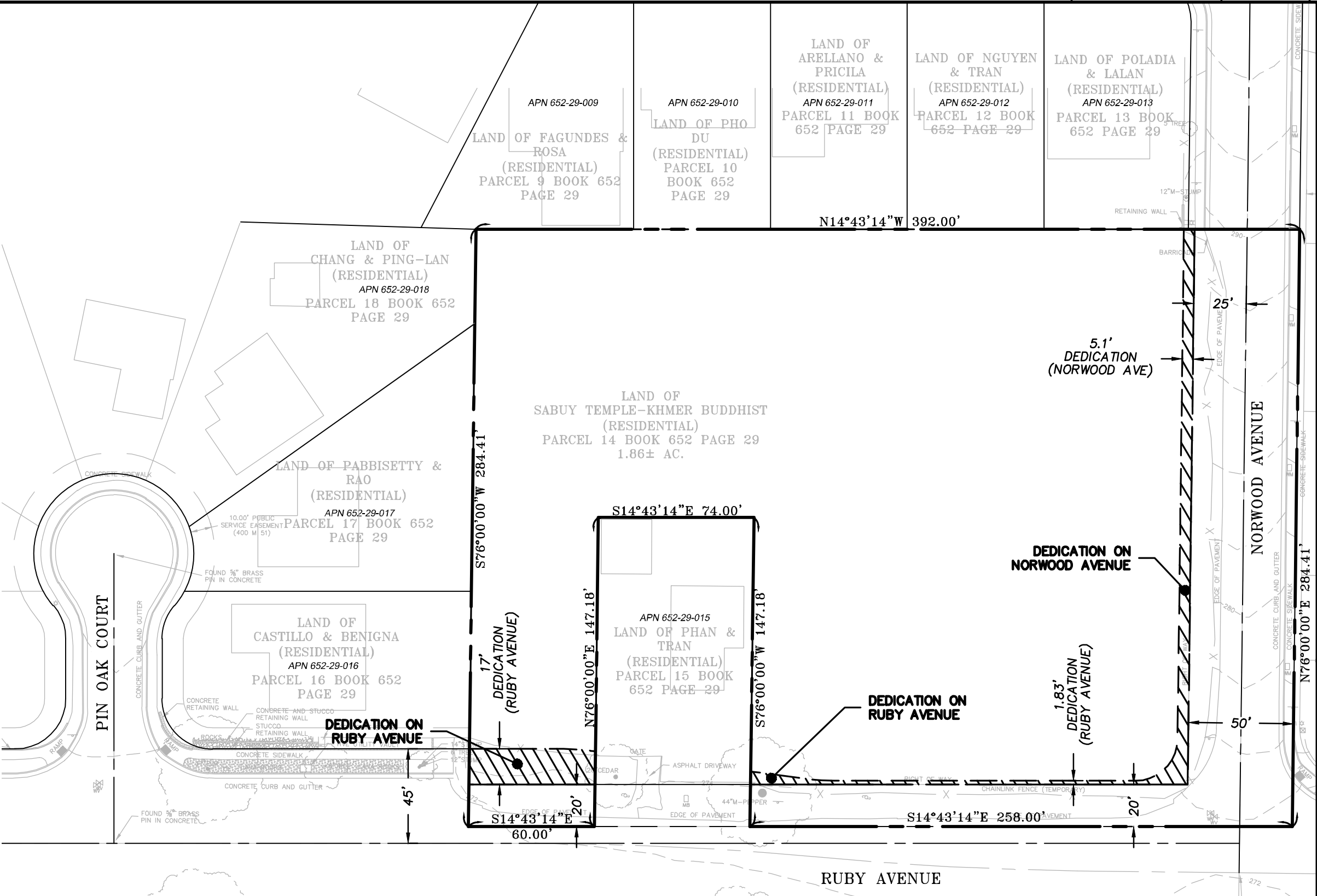
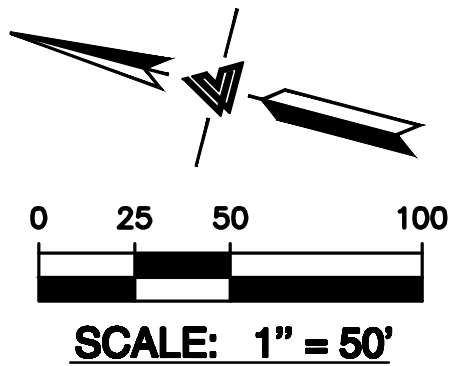
Beginning at a point on the Northerly line of Norwood Avenue as shown on the Map of E. G. Hall's Subdivision of a portion of the Rancho Pala, which Map was filed September 5, 1888, Book D of Maps, Page 17, distance thereon North 76° East 284.41 feet from the point of intersection thereof with the center line of Ruby Avenue as shown on said Map; thence from said point of beginning along said line of Norwood Avenue North 76° East 705.59 feet; more or less, to the point of intersection thereof with the Westerly line of Klein Road, as shown on said Map; thence along said last named line North 14° 40' West 300 feet, more or less, to the point of intersection thereof with the Northerly line of the existing water meter; and the terminus of said easement; the Northerly line of said easement at the Westerly terminus thereof being on a line drawn parallel with and distant North 76° East 284.41 feet from said center line of Ruby Avenue, and the Westerly line thereof at the Northerly terminus thereof being lengthened or shortened so as to intersect a line drawn Easterly and Westerly along the Northerly line of said water meter and the Easterly and Westerly prolongations thereof.

**EXHIBIT "A"**  
**(File Nos. C20-012; SP20-024)**

The foregoing right of way was granted in the Deed from Yoshio Katayama, et al, to David S. Arata, Sr., et ux, Recorded November 23, 1962 in Book 5801, Page 347.

APN: 652-29-014



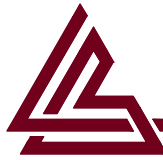


REV 1 DATE: 10/19/2021



DATE: 07-13-2020
SCALE: 1"=50'
DESIGN BY: TC / CHEKED BY: CP
JOB# 2190267
SHEET 1 OF 1

EXHIBIT "B"  
PLAT MAP  
FOR: REZONING PURPOSE  
2740 RUBY AVENUE  
SAN JOSE, CA 95148



**LEA & BRAZE ENGINEERING, INC.**  
CIVIL ENGINEERS • LAND SURVEYORS

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