



PLANNING COMMISSION STAFF REPORT

File Nos.	PDC16-045 and PD16-031
Applicant	Bay Area Property Developers
Location	South side of West San Carlos Street, approximately 500 feet east of Sunol Street (750 West San Carlos Street).
Existing Zoning	HI Heavy Industrial
Proposed Zoning	R-M(PD) Planned Development
Council District	6
Historic Resource	None
Annexation Date	October 14, 1925
CEQA	Addendum to Diridon Station Area Plan Final Environmental Impact Report (Resolution No. 77096), Envision San José 2040 General Plan Final Environmental Impact Report (Resolution No. 76041), Envision San Jose 2040 General Plan Final Environmental Impact Report (Resolution No. 77617) and Addenda thereto.

APPLICATION SUMMARY:

File No. PDC16-045: Planned Development Rezoning from the HI Heavy Industrial Zoning District to the R-M(PD) Planned Development Zoning District.

File No. PD16-031: Planned Development Permit to demolish an approximately 8,170 square foot structure and remove six non-ordinance sized trees, and to construct a 7-story, 56-unit multi-family building with two stories of parking.

RECOMMENDATION:

Planning staff recommends that the Planning Commission recommend to the City Council:

1. Consider the Addendum to the Diridon Station Area Plan Final Environmental Impact Report (Resolution No. 77096), Envision San José 2040 General Plan Final Environmental Impact Report (Resolution No. 76041), Envision San Jose 2040 General Plan Final Environmental Impact Report (Resolution No. 77617) and Addenda thereto in accordance with CEQA;
2. Approve an ordinance rezoning an approximately 0.41 gross acre site located on the southside of West San Carlos Street, approximately 500 feet east of Sunol Street (750 West San Carlos Street) from the HI Heavy Industrial Zoning District to the R-M(PD) Planned Development Zoning District.
3. Adopt a Planned Development Resolution allowing the demolition of an existing structure, removal of six non-ordinance sized trees and the construction of a 56-unit multi-family building.

PROJECT DATA

GENERAL PLAN CONSISTENCY			
General Plan Designation		Transit Residential <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
Consistent Policies		Major Strategy #3, LU-2.1, LU-9.17, LU-10.4, LU-9.6, IP-8.5	
SURROUNDING USES			
	General Plan Land Use	Zoning District	Existing Use
North	Transit Residential and Urban Residential	CP Commercial Pedestrian	Retail store and art gallery
South	Transit Residential	HI Heavy Industrial	Rail lines
East	Transit Residential	HI Heavy Industrial	Industrial buildings (Roof Guard Roofing Company Inc.)
West	Transit Residential	A(PD) Planned Development (File Nos. PDC14-007 & PD14-012)	Multi-family residences

PROJECT DESCRIPTION

On September 27, 2016, a Planned Development Rezoning and Planned Development Permit applications (File Nos. PDC16-045 and PD16-031) were filed to rezone the project site from the HI Heavy Industrial Zoning District to R-M(PD) Planned Development Zoning District and to demolish the approximately 8,170 square foot structure, remove six non-ordinance sized trees and construct a seven story, 56-unit multi-family residential building with two-stories of above grade parking on an approximately 0.41 gross acre site (Figure 1). The proposed project includes nine very low income units and 47 market rate units. The very low income units will be dispersed throughout the development.



Figure 1: Rendering of proposed project along West San Carlos

The project is located within the Diridon Station Area Plan (DSAP) and has a designation of Transit Residential (65 – 250 dwelling units per acre). The Transit Residential designation is intended for transit integrated residential development and/or vertical or horizontal residential/commercial mixed use development within walking distance of the Diridon Station and along key transportation corridors like West San Carlos Street. All development within this designation is required to be pedestrian oriented with emphasis on activating the ground level; pedestrian entries and windows should be located along the sidewalk and buildings should include architectural elements that add visual interest.

The project would take access from West San Carlos Street with pedestrian entrances to the building. The parking garage would be located on the first and second floors, with residential units located on the third through seventh floors. Open space would be provided for the residents through private balconies and on the seventh floor roof deck.

The project is designed to facilitate a medium-density mixed-use project envisioned in the Diridon Station Area Plan for this area. A request for a Planned Development Zoning District best meets the intent of the Urban Residential General Plan land use designation, as a Conventional Rezoning does not provide the design and use flexibility to develop this constrained site as envisioned by the General Plan or Diridon Station Area Plan.

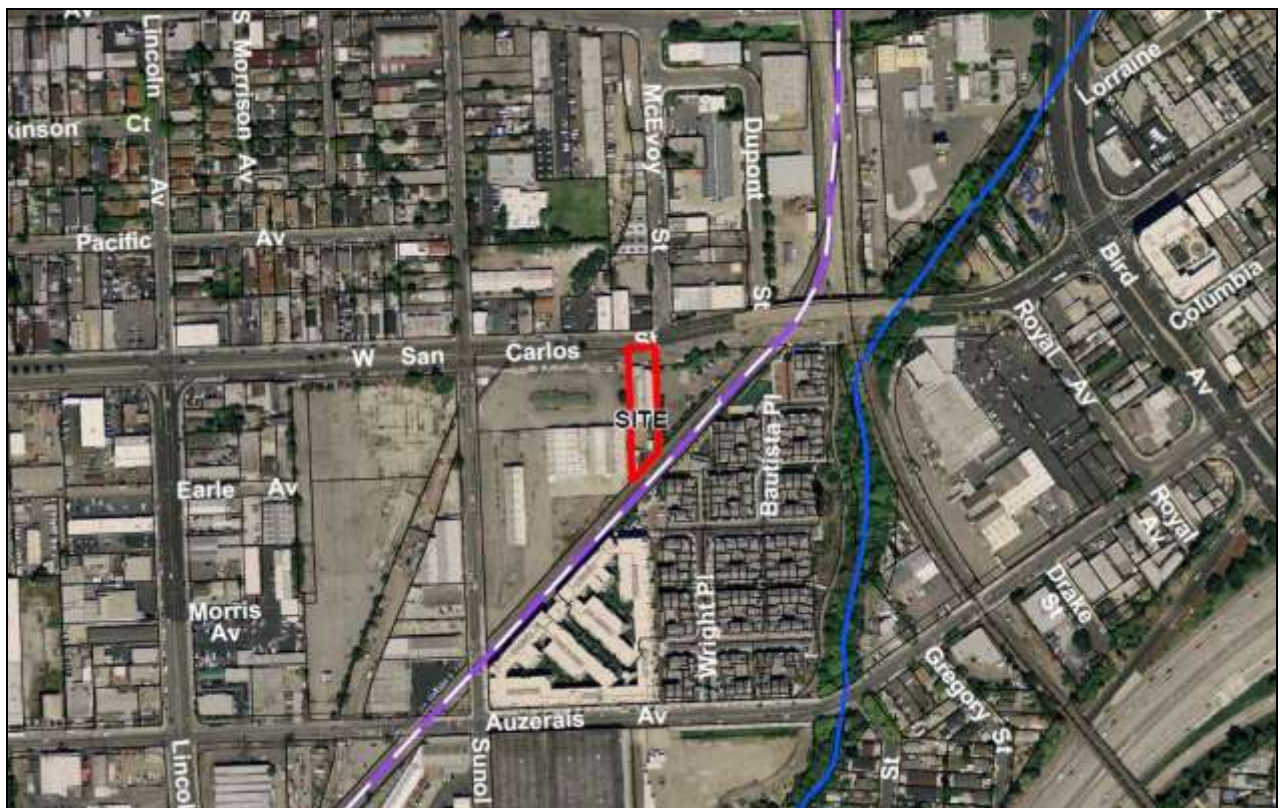


Figure 2: Aerial of Subject Site

The project site currently contains an approximately 8,170 square foot vacant commercial building. The subject site is bounded by retail and commercial uses to the north, multi-family residences to the west and south, and industrial uses to the west. Los Gatos Creek is approximately 450 feet from the project site. City Council Policy 6-34 states that a riparian project is any development or activity that is located within 300 feet of a Riparian Corridor's top of bank of vegetative edge, whichever is greater, and that requires approval of a development permit as defined in the San Jose Municipal Code. Since the project site is located more than 300 feet from the riparian corridor, it is not considered a riparian project.

ANALYSIS

The proposed Planned Development Rezoning and Planned Development Permit were analyzed with respect to conformance with: 1) the Envision 2040 General Plan; 2) the Diridon Station Area Plan, 3) the Zoning Ordinance; 4) Residential Design Guidelines, and 5) California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

The Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation for the subject site is Transit Residential. This is the primary designation for new high-density, mixed-use residential development sites that are located in close proximity to transit, jobs, amenities, and services. This designation also supports intensive commercial employment uses, such as office, retail, hotels, hospitals and private community gathering facilities. To help contribute to “complete communities,” commercial uses should be included with new residential development in an amount consistent with achievement of the planned job growth and Urban Village Plan for the relevant Urban Village area.

The proposed project is consistent with the Transit Residential General Plan land use designation, in that it provides residential uses to support commercial uses in the area and is in proximity to transit. Due to the narrow width of the site, it cannot incorporate an ample size commercial space to be viable (see discussion in the Diridon Station Area Plan section).

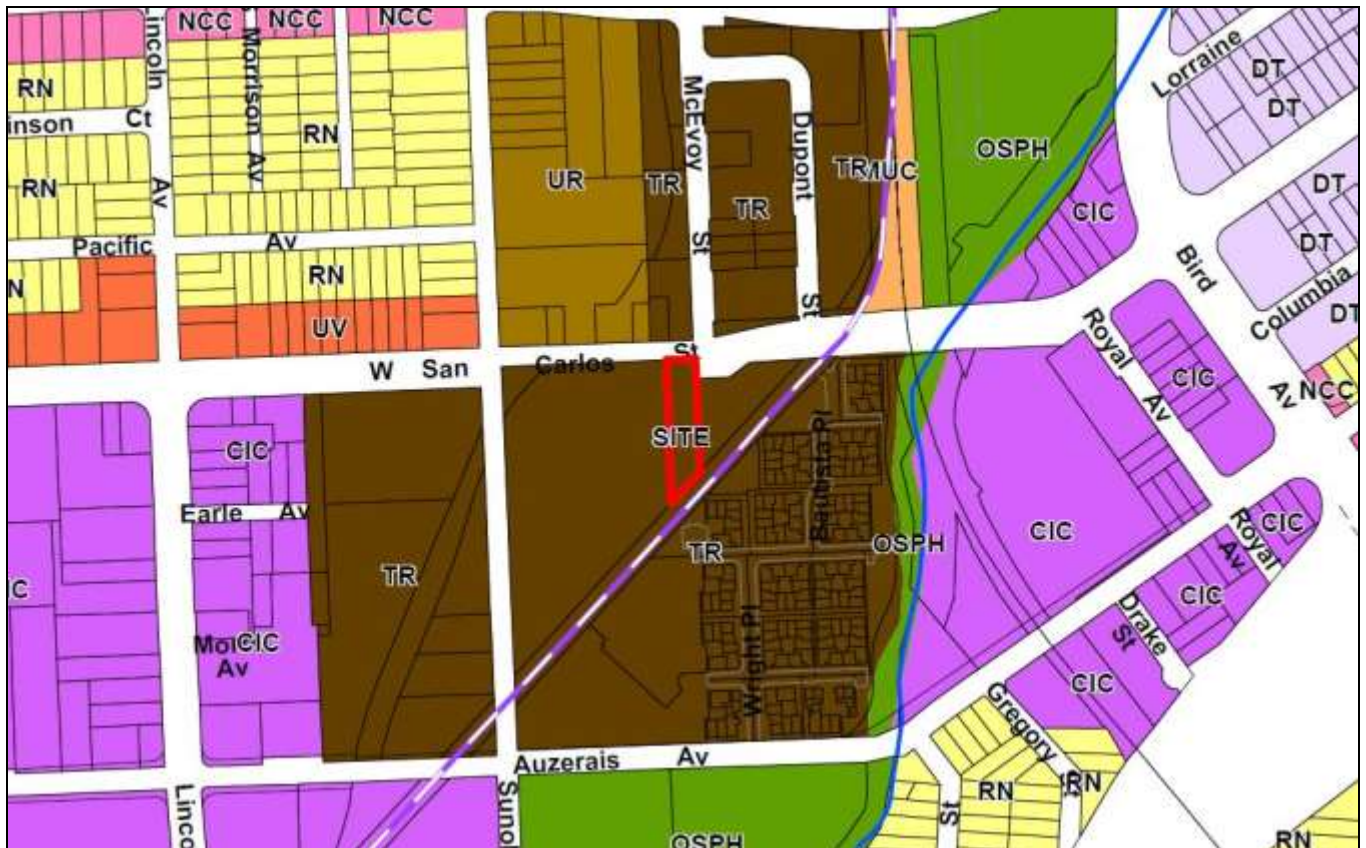


Figure 3: General Plan Map of Project Site and Surroundings

The proposed Planned Development Rezoning and Planned Development Permit are consistent with the following General Plan goals and policies:

Major Strategy #3: Focused Growth: Strategically focus new growth into areas of San José that will enable the achievement of City goals for economic growth, fiscal sustainability and environmental stewardship and support the development of new, attractive urban neighborhoods. The Plan focuses significant growth, particularly to increase employment capacity, in areas surrounding the City's regional Employment Center, achieve fiscal sustainability, and to maximize the use of transit systems within the region. The Plan supports a significant amount of new housing growth capacity, providing near term capacity for development of approximately 50,000 new dwelling units, with the ability in future Plan Horizons to ultimately build up to a total of 120,000 additional dwelling units.

Growth Areas Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified "Growth Areas" in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.

Efficient Use of Residential and Mixed-Use Lands Policy LU-10.4: Within identified growth areas, develop residential projects at densities sufficient to support neighborhood retail in walkable, main street type development.

Analysis for Major Strategy #3, Policies LU-2.1, and LU-10.4: The project site is located in the Diridon Station Area Plan, which is considered a growth area. The project proposes 56 residential units on an approximately 0.41 acre site and has a density of 137 dwelling units per acre. The project is located within 2,000 feet of the Diridon Station and is providing 54 parking spaces. The San Jose Municipal Code requires 1.25 parking spaces for every one bedroom unit and 1.7 parking spaces for every two bedroom unit. The project is proposing parking ratios from 0.5 to 1.1, which is lower than what the San Jose Municipal Code allows. The requested Planned Development Rezoning, allows flexibility from the San Jose Municipal Code. The project is facilitating a transit-oriented and pedestrian oriented design by placing the building close to the property lines, providing a reduced parking ratio and location within close proximity to transit and within a General Plan growth area. Therefore, the project is consistent with the above General Plan policies.

High-Quality Living Environments Policy LU-9.6: Require residential developments to include adequate open spaces in either private or common areas to partially provide for residents' open space and recreation needs.

Analysis: The project is providing approximately 5,098 square feet of private open space in the form of private balconies. Each residential unit will have a private balcony. The project is also providing approximately 2,324 square feet of common open space on the seventh floor. The seventh floor will include a roof terrace and a common room complete with a full sized kitchen and seating area. The project site is located approximately 0.5 miles from Cahill Park, approximately 0.6 miles from O'Connor Park and approximately 0.3 miles from Del Monte Dog Park. The residential design guidelines state that new residential developments should provide a minimum of 60 square feet of private open space per residential unit and 100 square feet of common open space per residential unit. Based on 56 units, the project should provide 3,360 square feet of private open space and 5,600 square feet of common open space. The proposed 5,098 square feet of private open space exceeds the recommended 3,360 square feet. Although the proposed 2,324 square feet of common open space is less than the 5,600 square feet of recommended common open space. Based on the overall additional private open space provided and the close proximity to public parks, the proposal's open space is adequate and in compliance with this General Plan policy.

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

Analysis: The site is currently in the HI Heavy Industrial Zoning District, which does not allow residential uses. The closest aligning conventional zoning district is the R-M Multiple Residence District; however, this zoning district does not allow development on the project site to occur in a manner that furthers the goals and policies of the General Plan. The Planned Development Zoning District will allow development to occur that is consistent with and furthers the General Plan through flexibility in setbacks, height and parking requirements contained in the San Jose Municipal Code. Additional analysis is provided in the Zoning Ordinance Conformance Section.

Diridon Station Area Plan Conformance

The project site is located within the Diridon Station Area Plan (DSAP). As mentioned previously, the project site has a land use designation of Transit Residential in the DSAP (figure 4).



Figure 4: Diridon Station Area Plan Land Use Designations

The Transit Residential land use designation is intended for transit integrated residential development and/or vertical or horizontal residential/commercial mixed use development within walking distance of the Diridon Station along key transportation corridors like West San Carlos Street. The DSAP has a minimum residential density of 65 dwelling units to the acre to facilitate the development of residential densities that are supportive of the planned high speed rail and BART systems and the existing VTA light rail and Caltrain system. The commercial mixed use portions of the properties designated Transit Residential should be focused as retail frontage along West San Carlos Street as identified in the Land Use Diagram (figure 4).

Required Retail Frontage

As figure 4 suggests, the project site is designated to require retail frontage. As proposed, the project is not providing any retail square footage or street frontage onto West San Carlos Street. The project site is approximately 70 feet wide and 290 feet long, at the longest point and is approximately 0.41 acres. In general, successful and viable commercial and retail uses are designed to have at least 75% of the street frontage dedicated to retail uses with a depth of 60-feet to provide back-of-house space, mechanical rooms and other support services. Additionally, it is encouraged that commercial and retail spaces provide at least 15-feet of clear height from the ground floor to the finished ceiling for venting and equipment purposes.

While the project site is designated to provide retail frontage, the site is not of a size and orientation that can support viable retail uses. If the project were to provide retail frontage onto West San Carlos Street, approximately 53-feet of frontage would be dedicated to retail frontage, leaving approximately 17 feet for a driveway, paths of travel and building entrances. The San Jose Municipal Code requires 26-feet wide two-way drive aisles, although this can be minimized to not less than 20-feet, provided that the safe and convenience accessibility of the parking spaces and the safety of the site is not impaired. Furthermore, retail uses should contain a depth of 60-feet to provide back-of-house space. Providing this 60-foot depth would relocate some bicycle parking, elevator, stairs, fire command center and trash room and it would potentially remove or potentially relocate 12 parking spaces. It would also reconfigure the drive ramp for the parking spaces, which would then have the potential of removing additional parking spaces.

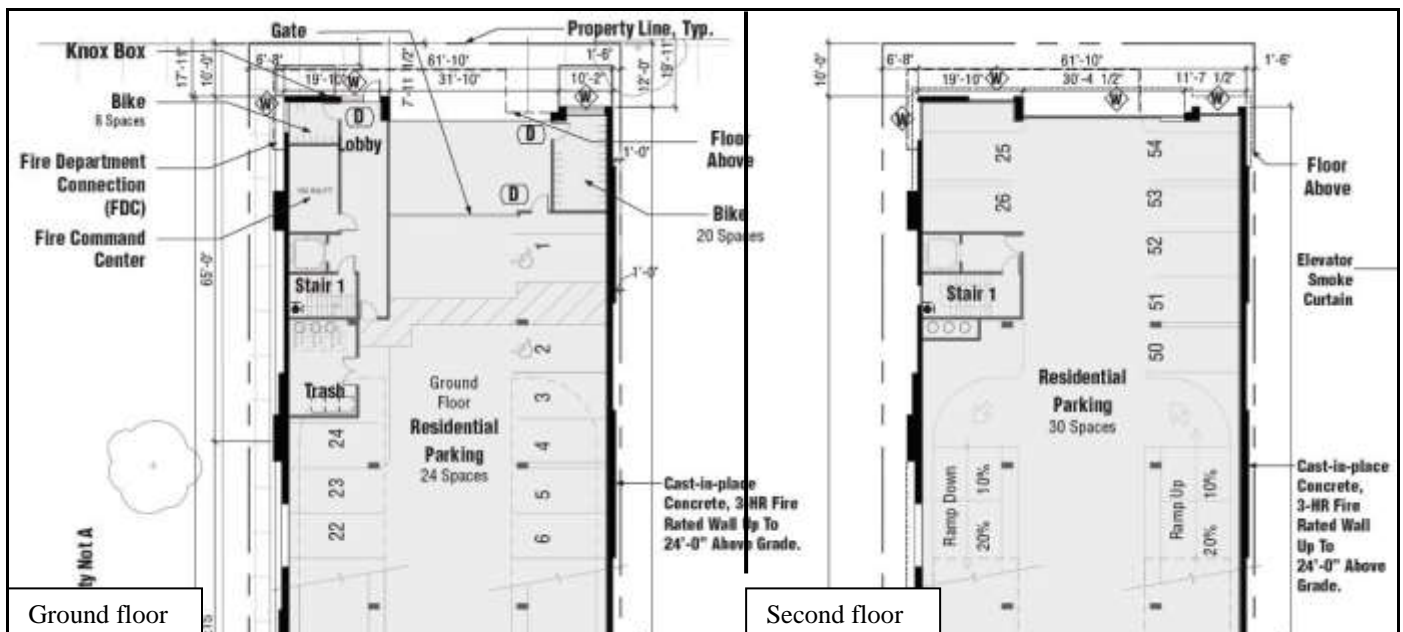


Figure 5: First and Second Floor Plan

The project is pedestrian oriented and designed in that the proposed building is built close to the property lines and is providing a ground floor entrance to the residents. The project is proposing minimal setbacks, allowing development intensification of the site that is conducive to an urban area. Furthermore, the project is locating the bicycle parking solely on the ground floor, which allows easy and convenience access. Lastly, a Condition of Approval has been added to the project requiring transparent ground-floor windows (with an exception to the garage).

The site is located in the HI Heavy Industrial Zoning District (figure 6). The current zoning district would not permit the proposed development, as residential uses are not allowed in the HI Heavy Industrial Zone.



Pursuant to Table 20-270 in Section 20.120.110 in the San Jose Municipal Code, there is no conforming zoning district to the General Plan designation of Transit Residential. General Plan Implementation Policy IP-8.5, allows the Planned Development Rezoning process to be utilized if the Planned Development Rezoning process will better conform to the General Plan goals and policies than a conventional zoning district. It is appropriate for a Planned Development Zoning District to be utilized because the closest aligning district of R-M Multiple Residence District does not allow full build-out as envisioned in the General Plan.

	R-M Zoning District	R-M(PD) Zoning District
Front setback	10 feet	10 feet minimum, 20 feet maximum
Side, interior setback	5 feet	0 feet
Rear, interior setback	25 feet	0 feet
Maximum height	45 feet	85 feet
Parking		
1 bedroom	1.25 per unit	0.5 to 1 per unit
2 bedroom	1.7 per unit	0.5 to 1.10 per unit

Although the project does not comply with the side and rear setback requirements and height requirements of the R-M Zoning District, the proposed Planned Development development standards are consistent with the intent of the General Plan land use designation and other goals and policies. The project also does not comply with the parking requirements for Multiple Dwellings; however, given the close proximity to transit (within 2,000 feet of the Diridon Station with multiple bus lines along West San Carlos), the reduction of parking is supported by the General Plan and Diridon Station Area Plan. The proposed development would otherwise conform to the uses of the R-M Multiple-Residence Zoning District as set forth in the Zoning Ordinance.

Should the Planned Development Rezoning not be effectuated with a Planned Development Permit, the base zoning district would be R-M Multiple Residence Zoning District. This would allow the conventional standards of the R-M Multiple Residence Zoning District to be utilized.

Planned Development Permit Findings

Chapter 20.100 of the San Jose Municipal Code establishes evaluation criteria for issuance of a Planned Development Permit. These criteria are applied to the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the permit. In order to make the Planned Development Permit findings pursuant to Section 20.100.720 of the San Jose Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

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

Analysis: As described above, the project is consistent with and furthers the policies of the General Plan and Diridon Station Area Plan.

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

Analysis: The Planned Development Permit conforms in all respects to the R-M(PD) Planned Development Zoning of the property, including uses, setbacks and height.

3. The Planned Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency;

As discussed below, the project is in conformance with City Council Policy 6-30 Public Outreach. A community meeting was held on May 28, 2015 at the Korean Palace Restaurant

and approximately 13 members of the community were in attendance. The project has been posted on the City's website under "Projects of High Interest" as further described in the Public Outreach Section. Planning Commission and City Council hearing notices were sent out two weeks early to provide additional time for the public to inquire about the project.

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

Analysis: The orientation, location, mass and scale of building volumes and elevations of proposed buildings are harmonious and will be constructed of high quality material. Additionally, the project is architecturally engaging as it contains both neutral and bold colors and successfully defines the base, middle and top.

5. 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 will not have an unacceptable negative effect on adjacent property or properties as the project is not anticipated to generate noise levels and odors after construction as it is a multi-family residential development. There will not be uses on-site that are anticipated to generate noise. The project has been evaluated with stormwater requirements and was found to be in compliance.

Evaluation Criteria for Demolition

Chapter 20.80 of the San Jose Municipal Code establishes evaluation criteria for issuance of a permit to allow demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Resolution.

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

Analysis: The demolition of the existing building will facilitate the construction of a seven-story 56 residential unit building that will enhance and is compatible with the surrounding neighborhood. There is no existing housing stock on the project site and the development permits sought is for a new multi-family residential project. The project site is not found to be historic and the project site is not found to be located in a district of historical significance.

Residential Design Guidelines

The project complies with the Residential Design Guidelines. This project is pedestrian scaled by providing a 12 foot setback from the sidewalk, an awning at the ground floor, and blue architectural panels that provide a distinctive base. Furthermore, reduced building setbacks are appropriate to higher density housing types in areas near downtown to reinforce the planned urban character of the neighborhood.

The project is architecturally compatible with the 808 West San Carlos project located directly west of the project site in that both projects contain modern forms and massing. Furthermore, the 808 West San Carlos site contains active ground floor uses with transparent glazing and the proposed project continues this ground floor active uses along West San Carlos by providing entrances off the sidewalk and easy access to bicycle parking. The 808 West San Carlos project provides an awning element at the first floor which helps establish the base of the building. The proposed project continues the awning element at the first floor and the projects both visually relate to each other. The adjacent 808 West San Carlos project is approximately 83-feet in height, and this project is 85-feet in height. Therefore, the project is architecturally compatible with the vision for this area.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

An Addendum to the Diridon Station Area Plan Final Environmental Impact Report (Resolution No. 77096), Envision San Jose 2040 General Plan Final Environmental Impact Report (Resolution No. 76041), and Supplemental Environmental Impact Report (Resolution No. 77617) and Addenda thereto was prepared for the project under the provisions of the environmental review requirements the California Environmental Quality Act of 1970, as amended (CEQA), including the state and local implementing regulations. The CEQA Guidelines Section 15162 states that when an EIR has been certified, no subsequent EIR shall be prepared for that project unless the lead agency determines that either substantial changes are proposed to the project which will require major revisions to the previous EIR, substantial changes will occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR, or new information of substantial importance is available.

The purpose of this Addendum is to evaluate the environmental impacts of the subject Planned Development Rezoning and Planned Development Permit to be considered for recommendation for approval to the City Council.

The project was found to be consistent with the Diridon Station Area Plan Final Environmental Impact Report (Resolution No. 77096), Envision San Jose 2040 General Plan Final Environmental Impact Report (Resolution No. 76041), and Supplemental Environmental Impact Report (Resolution No. 77617) and Addenda thereto and would not result in any new environmental impacts not previously disclosed.

The Initial Study, Addendum, and reference documents are available for review on the Planning web site at: <http://www.sanjoseca.gov/index.aspx?nid=5625>.

PUBLIC OUTREACH

A community meeting was held on May 28, 2015 at the Korean Palace Restaurant (2297 Stevens Creek Boulevard, San Jose, CA 95128). The community meeting covered the 740 West San Carlos site, the 750 West San Carlos site and the 777 West San Carlos site. At the time, there were two projects under review at the same time and approximately on the same review cycle. The community meeting was posted on the City's website and a notice was sent to property owners and tenants within 500 feet of the subject site. There were approximately 20 community members in

attendance at the meeting. The primary concerns were focused on project fit within the context of the area, insufficient parking, and height adjacent to single-family residential and the size of the sidewalks.

The project has also been posted on the City's website under the "Projects of High Interest" link. This can be found at the following link: <https://www.sanjoseca.gov/index.aspx?nid=5670>.

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed two weeks early to the owners and tenants of all properties located within 500 feet of the project site. The staff report is posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Tracy Tam

Approved by:



, Planning Official for Rosalynn Hughey,
Interim Planning Director

Date:

11/6/17

Attachments:
A) Draft Development Standards B) Draft Ordinance C) Draft Resolution D) Reduced Plan Sets

Owner:	Applicant:
Cotton Stanley A Trustee 1266 West San Carlos Street, San Jose, CA 95126	Bay Area Property Developers 26515 Carmel Rancho Boulevard, Suite 100 Carmel, CA 93923

FILE NO. PDC16-045
750 W. SAN CARLOS DRAFT DEVELOPMENT STANDARDS

In any cases where the graphic plans and text may differ, this text takes precedence.

ALLOWED USES

- Up to 56 residential units
- Permitted, Special, and Conditional uses of the R-M Multiple Residence Zoning District and the CP Commercial Pedestrian Zoning District of Title 20 of the San José Municipal Code, and as may be as amended in the future. Special and Conditional uses as identified in the R-M Multiple Residence District and the CP Commercial Pedestrian Zoning District shall be subject to approval of a Planned Development Permit or Amendment by the Planning Director.

DEVELOPMENT STANDARDS

BUILDING HEIGHT

The maximum height of any buildings shall be 85 feet. Rooftop elements that may need to exceed the maximum building height due to their function, such as stair and elevator towers, shall not exceed 10 feet beyond the maximum building height. Such rooftop elements shall be integrated into the design of the building and shall be setback from the western property line a minimum of one foot for each foot in height.

SETBACKS

All building setbacks are from the back of the public right-of-way (where private property meets public right-of-way).

- Front setback: 10 feet minimum, 20 feet maximum
- Side setbacks: 0 feet
- Rear setbacks: 0 feet
- At least 75 percent of the frontage along public streets shall have buildings where the first floor is within 15 feet of the minimum setback line.
- Minor architectural projections such as but not limited to awnings, balconies, fin signs, eaves, and bay windows may project into any setback by up to 2 feet for a length not to exceed 75% of the frontage subject to approval by the Director of Planning. Such projections may be considered with a Permit Adjustment.

OFF STREET PARKING REQUIREMENTS

Vehicular Parking Requirements:

- Multi-Family Residential:
 - One bedroom: 0.5 to 1.0 spaces per unit
 - Two bedroom: 0.5 to 1.1 spaces per unit
- Ground-floor commercial: ground-floor commercial uses (except day care centers, public or private elementary and secondary schools, and church/religious assembly uses shall conform to Chapter 20.90 of the San Jose Municipal code (Title 20—Zoning Ordinance), as may be amended in the future.
- Parking spaces for all other uses are to be provided per the San José Municipal Code, Title 20, as may be amended. For ground floor commercial uses up to 1,000 square feet of floor area, no vehicular off-street parking is required. Parking exceptions and an alternative parking arrangement as specified in Chapter 20.90 of the San Jose Municipal Code (Title 20—Zoning Ordinance), as may be amended, may be utilized.

Bicycle Parking Requirements:

- Per Chapter 20.90 of the San Jose Municipal Code (Title 20—Zoning Ordinance), as may be amended in the future.

ARCHITECTURAL & SITE DESIGN

- Projects shall be consistent with the Residential Design Guidelines and the Design Guidelines contained in the Diridon Station Area Plan, as may be amended.
- Multiple materials and façade variations shall be utilized to increase visual interest.

OPEN SPACE

- Private open space shall be provided at 60 square feet per unit (for at least 75% of the units). The minimum width of all private open space areas shall be 6 feet, however a minor reduction in that width may be considered by the Director of Planning at the Planned Development Permit stage if the overall size of open space area is increased beyond the overall minimum area requirements.
- Common open space shall be provided at a ratio of 50 square feet average per unit.

PERFORMANCE STANDARDS

- Multi-family Residential: In accordance with Chapter 20.30 of the City of San José Municipal Code (Title 20 - Zoning Ordinance), as may be amended in the future.
- Ground-floor Commercial: In accordance with Chapter 20.40 of the City of San José Municipal Code (Title 20 - Zoning Ordinance), as may be amended in the future.

ENVIRONMENTAL MITIGATION

Implement the mitigation measures identified in the adopted Addendum to the Diridon Station Area Plan Final Environmental Impact Report, And The Envision San Jose 2040 General Plan Supplemental Environmental Impact Report for 750 W. San Carlos (File No. PDC16-045) and Mitigation Monitoring and Reporting Program, as may be amended.

DRAFT

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE REZONING
CERTAIN REAL PROPERTY OF APPROXIMATELY 0.41
GROSS ACRE SITUATED ON THE SOUTH SIDE OF WEST
SAN CARLOS STREET, APPROXIMATELY 500 FEET EAST
OF SUNOL STREET (750 WEST SAN CARLOS STREET)
FROM THE HI HEAVY INDUSTRIAL ZONING DISTRICT TO
THE R-M(PD) PLANNED DEVELOPMENT ZONING
DISTRICT**

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described (“Subject Property”); and

WHEREAS, an Addendum to the Final Program Environmental Impact Report for the Diridon Station Area Plan certified by the City Council on June 17, 2014 by Resolution No. 77096, the Final Program Environmental Impact Report for the Envision San José 2040 General Plan certified by the City Council on November 1, 2011, by Resolution No. 76041, and the Supplemental Environmental Impact Report to the Envision San José 2040 General Plan certified by the City Council on December 15, 2015 by Resolution No. 77617 and the Addenda thereto, all in conformance with the California Environmental Quality Act of 1970 (CEQA), as amended, was prepared and approved by the Planning Director on August 1, 2017, for the subject rezoning; and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to R-M(PD) Planned Development Zoning District; and

WHEREAS, this Council of the City of San José has considered, and approves the application and use of said Addendum as the appropriate environmental clearance for the

proposed project prior to taking any approval actions on the project;

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

SECTION 1. The recitals above are incorporated herein.

SECTION 2. All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned as R-M(PD) Planned Development Zoning District. The base district zoning of the subject property shall be the R-M Multiple Residence Zoning District. The Planned Development zoning of the subject property shall be that development plan for the subject property entitled, "General Development Plan – Exhibit C, dated August 3, 2017 ("General Development Plan").

Said General Development Plan is on file in the office of the Director of Planning and is available for inspection by anyone interested therein, and said General Development Plan is by this reference adopted and incorporated herein the same as if it were fully set forth herein.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described and depicted in Exhibit "A" attached hereto and incorporated herein by this reference.

SECTION 3. The district map of the City is hereby amended accordingly.

SECTION 4. The land development approval that is the subject of City File No. PDC16-045 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such

land development approval may be suspended, conditioned or denied where the City Manager has determined 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 by the California Regional Water Quality Control Board for the San Francisco Bay Region.

PASSED FOR PUBLICATION of title this _____ day of _____, 2017 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO DEMOLISH AN APPROXIMATELY 8,170 SQUARE FOOT STRUCTURE, REMOVE SIX NON-ORDINANCE SIZED TREES, AND TO ALLOW THE CONSTRUCTION OF A 7-STORY, 56-UNIT MULTI-FAMILY BUILDING WITH TWO STORIES OF PARKING, LOCATED ON THE SOUTH SIDE OF WEST SAN CARLOS STREET, APPROXIMATELY 500 FEET EAST OF SUNOL STREET (750 WEST SAN CARLOS STREET, APN: 264-15-003)

FILE NO. PD16-031

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 27, 2016, an application (File No. PD16-031) was filed by the applicant, Bay Area Property Developers, with the City of San José for a Planned Development Permit to demolish an approximately 8,170 square foot structure, remove six non-ordinance sized trees, and to allow the construction of a 7-story, 56-unit multi-family building with two stories of parking, all on an approximately 0.41 gross acre site on that certain real property situated in the R-M(PD) Planned Development Zoning District and located on the south side of West San Carlos Street, approximately 500 feet east of Sunol Street (750 West San Carlos Street, APN 264-15-003, 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 and depicted 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 hearing on said application on November 15, 2017, 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 City's Planning Commission and City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "West San Carlos Residential," dated received on September 22, 2017, 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 all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. Site Description and Surrounding Uses.

The project site is located at 750 West San Carlos Street, on the south side of West San Carlos Street, approximately 500 feet east of Sunol Avenue. The approximately 0.41 gross acre site currently contains an approximately 8,170 square foot vacant commercial building. The subject site is bounded by retail and commercial uses to the north, multi-family residences to the east and south, and industrial uses to the west. Caltrain railroad tracks separate the site from the multifamily residences on the south and east. Los Gatos Creek is approximately 450 feet east of project site.

2. Project Description.

The proposed project would demolish the approximately 8,170 square foot structure, remove six non-ordinance sized trees and construct a seven story, 56-unit multi-family residential building with two-stories of above grade parking on the 0.41 gross acre site. The proposed project includes nine very low income units and 47 market rate units. The very low income units will be dispersed throughout the development.

The project is located within the Diridon Station Area Plan (DSAP) and has a designation of Transit Residential (65 – 250 dwelling units per acre) under the Envsvion 2040 General Plan. The Transit Residential designation is intended for transit integrated residential development and/or vertical or horizontal residential/commercial mixed use development within walking distance of the Diridon Station and along key transportation corridors like West San Carlos Street. The project is 2,000 feet from Diridon Train Station.

The project would take access from West San Carlos Street with pedestrian entrances to the building. The parking garage would have 54 parking spaces and be located on the first and second floors, with residential units located on the third through seventh floors. Density of the project is 137 dwelling units per acre. Open space would be provided for the residents through private balconies and on the seventh floor roof deck.

3. General Plan Conformance.

- a. Major Strategy #3: Focused Growth: Strategically focus new growth into areas of San José that will enable the achievement of City goals for economic growth, fiscal sustainability and environmental stewardship and support the development of new, attractive urban neighborhoods. The Plan focuses significant growth, particularly to increase employment capacity, in areas surrounding the City's regional Employment Center, achieve fiscal sustainability, and to maximize the use of transit systems within the region. The Plan supports a significant amount of new housing growth capacity, providing near term capacity for development of approximately 50,000 new dwelling units, with the ability in future Plan Horizons to ultimately build up to a total of 120,000 additional dwelling units.
- b. Growth Areas Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified "Growth Areas" in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.
- c. Efficient Use of Residential and Mixed-Use Lands Policy LU-10.4: Within identified growth areas, develop residential projects at densities sufficient to support neighborhood retail in walkable, main street type development.

Analysis for Major Strategy #3, Policies LU-2.1, and LU-10.4: The project site is located in the Diridon Station Area Plan, which is considered a growth area. The project proposes 56 residential units on an approximately 0.41 acre site and has a density of 137 dwelling units per acre. The project is located within 2,000 feet of the Diridon Station and is providing 54 parking spaces.

- d. High-Quality Living Environments Policy LU-9.6: Require residential developments to include adequate open spaces in either private or common areas to partially provide for residents' open space and recreation needs.

Analysis for LU-9.6: The project is providing approximately 5,098 square feet of private open space in the form of private balconies. Each residential unit will have a private balcony. The project is also providing approximately 2,324 square feet of common open space on the seventh floor. The seventh floor will include a roof terrace and a common room complete with a full-sized kitchen and seating area. The project site is located approximately 0.5 mile from Cahill Park, approximately 0.6 mile from O'Connor Park and approximately 0.3 mile from Del Monte Dog Park. The City's Residential Design guidelines state that new residential developments should provide a minimum of 60 square feet of private open space per residential unit and 100 square feet of common open space per residential unit. Based on 56 units, the project would need to provide 3,360 square feet of private open space and 5,600 square feet of common open space.

The proposed 5,098 square feet of private open space exceeds the recommended 3,360 square feet. However, the proposed 2,324 square feet of common open space is less than the 5,600 square feet of recommended common open space. The lack of the minimum square feet of common space is off-set by the project being located within ¾-mile of three neighborhood parks, which could provide the project site with common open space nearby. Based on the overall additional private open space provided and the close proximity to public parks, the proposal's open space is adequate and in compliance with this General Plan policy.

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

Analysis for IP-8.5: The site is currently in the HI Heavy Industrial Zoning District, which does not allow residential uses. The closest aligning conventional zoning district is the R-M Multiple Residence District; however, this zoning district does not allow development on the project site to occur in a manner that furthers the goals and policies of the General Plan. The Planned Development Zoning District will allow development to occur that is consistent with and furthers the General Plan through flexibility in setbacks, height and parking requirements contained in the San Jose Municipal Code. Additional analysis is provided in the Zoning Ordinance Conformance Section.

4. Diridon Station Area Plan Conformance.

The project site is located within the Diridon Station Area Plan (DSAP) and has a land use designation of Transit Residential in the DSAP. The Transit Residential land use designation is intended for transit integrated residential development and/or vertical or horizontal residential/commercial mixed use development within walking distance of the Diridon Station along key transportation corridors like West San Carlos Street. The DSAP has a minimum residential density of 65 dwelling units to the acre to facilitate the development of residential densities that are supportive of the planned high speed rail and BART systems and the existing VTA light rail and Caltrain system. The project is pedestrian oriented and designed in that the proposed building is built close to the property lines and is providing a ground floor entrance to the residents. The

project is proposing minimal setbacks, allowing development intensification of the site that is conducive to an urban area. Furthermore, the project is locating the bicycle parking solely on the ground floor, which allows easy and convenient access. Lastly, a Condition of Approval has been added to the project requiring transparent ground-floor windows except on the parking garage area.

5. Zoning Ordinance Compliance.

There is no conforming zoning district to the General Plan designation of Transit Residential. Therefore, General Plan Implementation Policy IP-8.5, allows the Planned Development Rezoning process to be utilized if the Planned Development Rezoning process will better conform to the General Plan goals and policies than a conventional zoning district. It is appropriate for a Planned Development Zoning District to be utilized because the closest aligning district of R-M Multiple Residence District does not allow full build-out as envisioned in the General Plan. The following table indicates the base zoning and that proposed in the PD.

	R-M Zoning District	R-M(PD) Zoning District
Front setback	10 feet	10 feet minimum, 20 feet maximum
Side, interior setback	5 feet	0 feet
Rear, interior setback	25 feet	0 feet
Maximum height	45 feet	85 feet
Parking		
1 bedroom	1.25 per unit	0.5 to 1 per unit
2 bedroom	1.7 per unit	0.5 to 1.10 per unit

Although the project does not comply with the side and rear setback requirements and height requirements of the R-M Zoning District, the proposed Planned Development development standards are consistent with the intent of the General Plan land use designation and other goals and policies. The project also does not comply with the parking requirements for Multiple Dwellings; however, given the close proximity to transit (within 2,000 feet of the Diridon Station with multiple bus lines along West San Carlos), the reduction of parking is supported by the General Plan and Diridon Station Area Plan. The proposed development would otherwise conform to the uses of the R-M Multiple-Residence Zoning District as set forth in the Zoning Ordinance.

Should the Planned Development Rezoning not be effectuated with a Planned Development Permit, the base zoning district would be R-M Multiple Residence Zoning District. This would allow the conventional standards of the R-M Multiple Residence Zoning District to be utilized

Parking. Chapter 20.90 of the San Jose Municipal Code requires 1.25 parking spaces for every one bedroom unit and 1.7 parking spaces for every two bedroom unit. The project is proposing parking ratios from 0.5 to 1.1, which is lower than what the San Jose Municipal Code allows. The requested Planned Development Rezoning allows flexibility because the project is facilitating a transit-oriented and pedestrian oriented design by placing the building close to the property lines, providing a reduced parking ratio, and having a location within close proximity to transit and within a General Plan growth area. Therefore, the project is consistent with the above General Plan policies.

6. Residential Design Guidelines Conformance.

The project complies with the Residential Design Guidelines. This project is pedestrian scaled by providing a 12-foot setback from the sidewalk, an awning at the ground floor, and blue architectural panels that provide a distinctive base. Furthermore, reduced building setbacks are appropriate to higher density housing types in areas near downtown to reinforce the planned urban character of the neighborhood.

The project is architecturally compatible with the 808 W. San Carlos project located directly west of the project site in that both projects contain modern forms and massing. Furthermore, the 808 W. San Carlos site contains active ground floor uses with transparent glazing and the proposed project continues this ground floor active uses along West San Carlos by providing entrances off the sidewalk and easy access to bicycle parking. The 808 W. San Carlos project provides an awning element at the first floor which helps establish the base of the building. The proposed project continues the awning element at the first floor and the projects both visually relate to each other. The adjacent 808 W. San Carlos project is approximately 83-feet in height, and this project is 85-feet in height. Therefore, the project is architecturally compatible with the vision for this area.

7. Environmental Review.

An Addendum to the Diridon Station Area Plan Final Environmental Impact Report (Resolution No. 77096), Envision San Jose 2040 General Plan Final Environmental Impact Report (Resolution No. 76041), and Supplemental Environmental Impact Report (Resolution No. 77617) and Addenda thereto was prepared for the project under the provisions of the environmental review requirements the California Environmental Quality Act of 1970, as amended (CEQA), including the state and local implementing regulations. The CEQA Guidelines Section 15162 states that when an EIR has been certified, no subsequent EIR shall be prepared for that

project unless the lead agency determines that either substantial changes are proposed to the project which will require major revisions to the previous EIR, substantial changes will occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR, or new information of substantial importance is available.

The purpose of this Addendum is to evaluate the environmental impacts of the subject Planned Development Rezoning and Planned Development Permit to be considered for recommendation for approval to the City Council.

The project was found to be consistent with the Diridon Station Area Plan Final Environmental Impact Report (Resolution No. 77096), Envision San Jose 2040 General Plan Final Environmental Impact Report (Resolution No. 76041), and Supplemental Environmental Impact Report (Resolution No. 77617) and Addenda thereto and would not result in any new environmental impacts not previously disclosed.

8. **Planned Development Permit Findings.** Chapter 20.100 of the San José Municipal Code establishes evaluation criteria for issuance of a Planned Development Permit. These criteria are applied to the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the permit. In order to make the Planned Development Permit findings pursuant to Section 20.100.720 of the San José Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

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

Analysis: As described above, the project is consistent with and furthers the policies of the General Plan and Diridon Station Area Plan.

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

Analysis: The Planned Development Permit conforms in all respects to the R-M(PD) Planned Development Zoning of the property, including uses, setbacks and height.

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

Analysis: Pursuant to City Council Policy 6-30 Public Outreach, a community meeting was held on May 28, 2015 and approximately 13 members of the community were in attendance. The project has been posted on the City's website under "Projects of High Interest" as further described in the Public Outreach Section. Planning Commission and City Council hearing notices were sent out two weeks early to provide additional time for the public to inquire about the project.

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

Analysis: The orientation, location, mass and scale of building volumes and elevations of proposed buildings are harmonious and will be constructed of high quality material. Additionally, the project is architecturally engaging as it contains both neutral and bold colors and successfully defines the base, middle and top.

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

Analysis: The project will not have an unacceptable negative effect on adjacent property or properties as the project is not anticipated to generate noise levels and odors after construction as it is a multi-family residential development. There will not be uses on-site that are anticipated to generate noise. The project has been evaluated with stormwater requirements and was found to be in compliance. Additionally, the project has been evaluated pursuant to CEQA.

- 9. **Evaluation Criteria for Demolition.** Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Resolution.

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

Analysis: The demolition of the existing building will facilitate the construction of a 7-story, 56 residential unit building that is compatible with the surrounding neighborhood. There is no existing housing stock on the project site and the

development permits sought is for a new multi-family residential project. The existing buildings located on the project site are not historic resources and the project site is not located in a district of historical significance, based on evaluation of the structures conducted for the project.

In accordance with the findings set forth above, a Planned Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted these Permits 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.

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Planned Development 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 Planned Development Permit; 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.** The Planned Development Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Planned Development 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 Planned Development 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 by 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.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval 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. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "West San Carlos Residential," dated received on August 3, 2017, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".
6. **Effective Date.** The effective date of this Permit (File No. PD16-031) shall be the effective date of the R-M(PD) Planned Development Zoning Ordinance for File No. PDC16-045 and shall be no earlier than the effective date of said Planned Development Zoning Ordinance.
7. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
8. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
9. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
10. **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.

11. **Anti-Graffiti.** During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
12. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
13. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. No outdoor storage is allowed / permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
14. **Noise.** Noise shall be contained within the buildings and the buildings shall be adequately insulated to prevent excessive sound from emanating outside. Adequate HVAC (air conditioning) shall be provided to allow all doors and windows on the subject site to remain closed during the operation and activities of the site.
15. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
16. **Building and Property Maintenance.** The property owner or management company shall maintain the property 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.
17. **Perimeter Fencing.** Fence height and materials shall be provided as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
18. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment.
19. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
20. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related Building Permit or Grading Permit has been issued.
 - a. **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. 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.

- b. **Permit Posting.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the permittee shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following:

- The copy of the Permit shall be a minimum size of 8.5 by 11.0 inches; shall be posted at each public street frontage within 2 feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the Permit is readable from the public sidewalk or right-of-way; or
- If the site does not have a public street frontage, a copy of the Permit shall be posted at a location where the Permit is readable from a common access driveway or roadway.

- c. **Presentation of Permit.** During removal of any ordinance-size tree pursuant to this Permit, the permittee shall maintain the validated Permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.

- d. **Over-Excavation.** All tree planting areas, including street trees, shall be over-excavated and new topsoil placed, to ensure the health of the trees.

21. **Demolition.** This permit allows the demolition of buildings and structures as noted on the Approved Plans. The demolition of the building and structures may occur at the issuance of grading permit.

22. **Affordable Housing Compliance Plan:** The project may be subject to the City's Inclusionary Housing Ordinance (IHO) or Affordable Housing Impact Fee (AHIF). If the development is subject to the referenced IHO or AHIF, the permittee must execute and record their Affordable Housing Agreement with the City prior to the issuance of any building permits, or any final approval of any final map.

- a. The IHO and AHIF Resolution each exempt certain developments from affordable housing obligations, if the development meets certain criteria.

However, whether an exemption is claimed or not, the permittee must submit an Affordable Housing Compliance Plan Application, and the application processing fee to the Housing Department as part of the application for First Approval.

- b. The Housing Department has reviewed and approved the Affordable Housing Compliance Plan for this project. Permittee shall strictly comply with the approved Affordable Housing Compliance Plan for this project and any other applicable requirements of the IHO or AHIF.
- c. If the project is subject to the AHIF, no building permit may issue until the AHIF is paid. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the AHIF Resolution are met.
- d. If the project is subject to the IHO, no Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO are met.

23. FAA Clearance. Prior to the issuance of any Building Permit, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for each building high point. The permittee needs to file a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for each corner high point of the building and any additional higher point(s) within the building footprint. The data on the forms should be prepared by a licensed civil engineer or surveyor using NAD83 latitude/longitude coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.

24. FAA Clearance Permit Adjustment. Prior to the issuance of any Building Permit, the permittee shall obtain a Permit Adjustment from the City to incorporate any FAA conditions identified in the FAA Determination(s) of No Hazard, e.g., installation of prescribed roof-top obstruction lighting or filing of construction-related notifications, into the Planned Development Permit conditions of approval.

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

- a. *Construction Plans.* These permit file numbers, PDC16-045 and PD16-031 shall be printed on all construction plans submitted to the Building Division.
- b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
- c. *Emergency Address Card.* The permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project

conformance will begin 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.

- e. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial).

26. Access Control. When access control devices including bars, grates, gates, electric and/or magnetic locks, or similar devices which would inhibit rapid fire department emergency access to the building are installed, such devices shall be approved by the Chief. All access control devices shall be provided with an approved means for deactivation or unlocking by the Fire Department. Access control devices shall also comply with CFC/CBC Chapter 10 for exiting.

27. Security Gate Access. All access control vehicle security gate(s) shall be a minimum of 20 feet clear width and may have a clear width of 14 feet for each direction of travel when split by median. Gates shall be recessed beyond the turning radius required by the San José Fire Department and without obstruction of any median island dividers. All gate installing shall be reviewed and approved prior to construction. Electric gate operators must have UL 325 listing and it gate must comply with ASTM F2200.

28. Emergency Vehicle Access. Width, length, and grade of the fire apparatus access roads, streets, avenues, and the like. Every portion of all building exterior walls shall be within 150 feet of an access road. To the satisfaction of the Fire Chief, fire access shall include the following:

- a. An approved all weather surface;
- b. Access roads that are at least 20 feet wide;
- c. Dimensions with a minimum 13 feet 6 inches vertical clearance;
- d. Load-bearing designs that are maintained to support the loads of fire apparatus of at least 75,000 pounds;
- e. Maintaining a minimum inside turning radius of 30 feet and an outside turning radius of 50 feet;
- f. Designs with approved provisions for turnaround of fire apparatus if it has dead ends and is in excess of 150 feet;
- g. Maintaining a maximum grade of 15 percent;
- h. Providing a second point of access is required when a fire apparatus road exceeds 1,000 feet;

- i. Curbs are required to be painted red and marked as “Fire Lane - No Parking” under the following conditions: (show exact locations on plan)
 - Roads, streets, avenues, and the like that are 20 feet wide to less than 26 feet wide measured from face-of-curb to face-of-curb shall have curbs on both sides of the road painted and marked
 - Roads, streets, avenues, and the like that are 26 feet wide to less than 32 feet wide measured from face-of-curb to face-of-curb shall have one curb painted and marked.

29. General Fire Prevention Requirements. The permittee shall provide the following improvements:

- a. *Fire Sprinkler System.* Building(s) shall be provided with an automatic fire extinguishing system in accordance with CFC 903.2 and SJFC 17.12.630. Systems serving more than 20 heads shall be supervised by an approved central, proprietary, or remote service to the satisfaction of the Fire Chief.
- b. *Requirements for Trash Areas.* Outdoor covered areas and trash enclosures may require the sprinkler system to be extended to protect them.
- c. *Fire Alarm System.* Building(s) shall be provided with an automatic fire alarm system as required by CFC 907.2 and 907.3.
- d. *Standpipes Available During Construction.* All buildings under construction, three or more stories in height, shall have at least one standpipe for use during construction. Such standpipe shall be provided with fire department hose connections. Location(s) and numbers of standpipe(s) shall be reviewed and approved by the Fire Department.
- e. *Complex Map.* A map showing the development complex shall be placed on the site that incorporates an elevated view of the building and individual unit addresses. It should be illuminated during the hours of darkness and positioned in the lobby area to be readily readable from main pedestrian access entrance. A site complex map shall also be placed contiguous to the vehicular entrance to the development where it will not cause stacking problems when being viewed.
- f. *Public Safety Radio Coverage.* Public Safety Radio Coverage shall be provided throughout the area of each floor of the building. Communication repeaters may be required to be installed in the buildings.
- g. *Elevators.* Elevators shall be in accordance with the requirements stipulated in the California Building Code Chapter 30. All buildings with one or more passenger service elevators shall be provided with not less than one medical emergency service elevator.
- h. *Management Association Responsibilities for Life & Safety Systems.* The developer/owner shall create and maintain a Management Association which will

be responsible for the fire/life safety systems inspections per Title 19 of the San José Municipal Code and access to the systems if applicable.

- i. *Hazardous Materials.* The permittee must contact the Hazardous Materials Division at (408) 535-7750 as soon as possible to initiate the process to determine if the type and quantity of hazardous material is acceptable per code and whether a Hazardous Materials Plan Review is required.
- j. *Construction Fire Protection Plan.* A “Construction Fire Protection Plan” for approval by San José Building and Fire Departments is required prior to starting construction for wood framing projects consisting of 15 or more dwelling units or construction exceeding a total of 50,000 square feet.

30. 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/index.aspx?nid=2246>.

- 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:** The traffic report has been reviewed and is in conformance with the City of San José Transportation Level of Service Policy (Council Policy 5-3), as indicated in the Department of Transportation Memorandum dated 2/28/17. The developer shall provide a contribution towards the possible future Valley Transportation Authority (VTA) light rail transit (LRT) station adjacent to the project site, prior to issuance of any building permits. If VTA does not move forward with the construction of the LRT station within 5 years of completion of the developer’s project, the contribution will be refunded to the developer.
- c. **Grand Boulevard:** This project fronts San Carlos Street which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- d. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of

- pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
- 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 alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
 - iii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed, and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- 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 have been reviewed and this project will be in conformance with City Policy 8-14.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. A post construction Final Report is required, by the Director of Public Works, from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
- f. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

- 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 Public Works clearance.
- i. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- j. **Street Improvements:**
 - i. Remove and replace curb, gutter, and sidewalk along project frontage.
 - ii. Construct curb, gutter, and 12-foot wide sidewalk with tree wells along San Carlos Street frontage.
 - iii. Construct 26-foot wide City Standard driveway for the entrance along San Carlos street frontage.
 - iv. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - v. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - vi. Paint the curb of the traffic island fronting the project site red.
 - vii. Construct non-mountable traffic island.
 - viii. Parking shall not be allowed within 20 feet in either direction of new fire hydrants along project frontage.
 - ix. The City plans to reconstruct the existing West San Carlos Street Bridge, just east of the project site, in the future. However, the project is currently unfunded. If built, the alignment would no longer allow access to the project site or the adjacent parcel to the east of the project via west San Carlos Street.
- k. **Area Plan:** This project is located within the Diridon Station Area Plan

boundaries and all public improvements shall conform to the plan.

- l. **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.
- m. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
- n. **Referrals:** This project should be referred to the Santa Clara Valley Transportation Authority (VTA).

31. **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. _____.

a. Biological Resources:

- i. Raptors (MM BIO-1) The project applicant shall schedule demolition and tree removals between September 1st and January 31st (inclusive) to avoid the raptor nesting season. If this scheduling is not feasible, pre-construction surveys for nesting raptors shall be completed by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation in accordance to the following procedures: Between February 1st and April 30th (inclusive), pre-construction surveys shall be completed no more than 14 days prior to the initiation of construction activities or tree removal. Between May 1st and August 31st (inclusive), pre-construction surveys shall be completed no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist shall, in consultation with the State of California, Department of Fish & Wildlife (CDFW), designate a construction-free buffer zone (typically 250 feet for raptors) around the nest, which shall be protected from disturbance through the duration of nesting activity. The ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the PBCE Supervising Environmental Planner prior to issuance of any grading and building permits.

- ii. Santa Clara Valley Habitat Conservation Plan: The project applicant shall comply with the Santa Clara Valley Habitat Conservation Plan (SCVHCP) and SCVHCP EIR and shall be required to pay all applicable fees prior to issuance of a grading permit.

32. Standard Environmental Conditions:

a. Air Quality:

i. On-Site Construction Measures

- 1) All active construction areas shall be watered twice daily or more often if necessary.
- 2) Increased watering frequency shall be required whenever wind speeds exceed 15_miles-per-hour (mph).
- 3) Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved access roads and parking and staging areas at construction sites and limit speeds to 15 mph.
- 4) Cover stockpiles of debris, soil, sand, and any other materials that can be windblown.
- 5) Trucks transporting these materials shall be covered.
- 6) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- 7) Subsequent to clearing, grading, or excavating, exposed portions of the site shall be watered, landscaped, treated with soil stabilizers, or covered as soon as possible.
- 8) Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas and previously graded areas inactive for 10 days or more.
- 9) Installation of sandbags or other erosion control measures to prevent silt runoff to public roadways.
- 10) Replanting of vegetation in disturbed areas as soon as possible after completion of construction.
- 11) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes. Clear signage shall be provided for construction workers at all access points.
- 12) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

- 13) Post a publicly visible sign with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

ii. Construction Equipment:

- 1) The project applicant shall ensure that all mobile diesel-powered offroad equipment larger than 50 horsepower and operating on the project site for more than two days continuously meets U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent.
- 2) Prior to issuance of any grading permit, all measures shall be printed on all construction documents, contracts, and project plans to the satisfaction of the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement (PBCE).

- b. Cultural Resources (Subsurface): An archaeologist qualified in local historical and prehistorical archaeology shall complete a subsurface presence/absence program to determine whether any intact archaeological deposits are present on-site. Preparation of that work shall include aligning pertinent historic-period maps to the project area to identify specific sensitive areas that could be impacted by the proposed development. Should any archaeological features or deposits be identified, a focused research design and treatment plan shall be prepared to address any potential resources exposed during construction activities followed by archaeological excavation of these features. In the event of the discovery of prehistoric or historic archaeological deposits or paleontological deposits, work shall be halted within 50 feet of the discovery and a qualified professional archaeologist (or paleontologist, as applicable) shall examine the find and make appropriate recommendations regarding the significance of the find and the appropriate mitigation. The recommendation shall be implemented and could include collection, recordation, and analysis of any significant cultural materials. A final report summarizing the discovery of cultural materials shall be submitted to the City's Supervising Environmental Planner prior to issuance of building permits. This report shall contain a description of the mitigation program that was implemented and its results, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusion, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Supervising Environmental Planner. All personnel involved with site clearing, grading, or trenching will undergo a training session to aid them in the identification of significant historic and prehistoric cultural resources. Training by a qualified archaeologist will also establish the protocol necessary in the event cultural resources are found on the site.

- c. Cultural Resources (Human Remains): Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site within a 50-foot radius of the remains or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, the landowner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. All personnel involved with site clearing, grading, or trenching will undergo a training session to aid them in the identification of significant historic and prehistoric cultural resources. Training by a qualified archaeologist will also establish the protocol necessary in the event cultural resources and/or human remains are found on the site. A final report shall be submitted to the City's Supervising Environmental Planner prior to issuance of building permits. If determined that the finds are related to tribal resources, the analysis in the final report shall be coordinated with appropriate tribe representative and the City's Supervising Environmental Planner. The report shall verify completion of the mitigation program to the satisfaction of the Supervising Environmental Planner.
- d. Cultural Resources (Paleontological): If vertebrate fossils are discovered during construction, all work on the site will stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant will be responsible for implementing the recommendations of the paleontological monitor.
- e. Geology & Soils: Prior to the 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 confirmation that the proposed development complies with the California Building Code and the requirements of applicable City Ordinance 25015 and Building Division Policy SJMC 24.02.310-4- 94. The report shall determine the project site's surface geotechnical conditions and address potential seismic hazards such as seismicity, expansive soils, and liquefaction. The report shall identify building techniques appropriate to minimize seismic damage. In addition, the following requirement for the geotechnical and soils report shall be met: Analysis presented in the geotechnical report shall conform to the California Division of

Mines and Geology recommendations presented in the “Guidelines for Evaluating Seismic Hazards in California.” The project shall prepare and implement an Erosion Control Plan in conformance with the requirements of the Department of Public Works.

f. Hazardous Materials

i. Demolition and Construction - In accordance with National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines, an asbestos survey shall be performed on all structures proposed for demolition that are known or suspected to have been constructed prior to 1980. If asbestos-containing materials are determined to be present, the materials shall be abated by a certified asbestos abatement contractor in accordance with the regulations and notification requirements of BAAQMD. Demolition and disposal of ACM will be completed in accordance with the procedures specified by BAAQMD's Regulation 11, Rule 2. A lead-based paint survey shall be performed on all structures proposed for demolition that are known or suspected to have been constructed prior to 1980. If lead-based paint is identified, then federal and state construction worker health and safety regulations shall be followed during renovation or demolition activities. If loose or peeling lead-based paint is identified at the building, it shall be removed by a qualified lead abatement contractor and disposed of in accordance with existing hazardous waste regulations. Requirements set forth in the CALIFORNIA CODE OF REGULATIONS will be followed during demolition activities, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings will be disposed of at landfills that meet acceptance criteria for the waste being disposed.

g. Hydrology & Water Quality - The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with construction activities. Examples of BMPs are contained in the publication Blueprint for a Clean Bay, and include preventing spills and leaks, cleaning up spills immediately after they happen, storing materials under cover, and covering and maintaining dumpsters. Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works. The Erosion Control Plan may include BMPs as specified in ABAG's Manual of Standards Erosion & Sediment Control Measures for reducing impacts on the City's storm drainage system from construction activities. The project applicant shall comply with the City of San José Grading Ordinance, including 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. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:

- i. Restriction of grading to the dry season (April 15 through October 15) or meet City requirements for grading during the rainy season;
 - ii. Utilize on-site sediment control BMPs to retain sediment on the project site;
 - iii. Utilize stabilized construction entrances and/or wash racks;
 - iv. Implement damp street sweeping;
 - v. Provide temporary cover of disturbed surfaces to help control erosion during construction; and
 - vi. Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.
- a. Noise & Vibration
- i. Construction Hours and Equipment – Construction will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses. The contractor shall use “new technology” power construction equipment with state of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components. The unnecessary idling of internal combustion engines shall be prohibited. Staging areas and stationary noise-generating equipment shall be located as far as possible from noise-sensitive receptors such as residential uses (a minimum of 200 feet). The surrounding neighborhood shall be notified early and frequently of the construction activities. A “noise disturbance coordinator” shall be designated to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site. If pile driving is necessary, multiple-pile drivers shall be considered to expedite construction. In addition, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile.
 - ii. Residential Units ventilation – Residential units shall include an alternative form of ventilation, such as noise baffled passive air ventilation systems or mechanical air conditioning systems so that windows can remain closed or

include an equivalent ventilation technology to reduce interior noise to 45 dBA.

- iii. Ground-borne Vibration – Comply with General Plan Policy EC-2.1 to reduction of ground-borne vibration levels to 75 VdB or less. Measures could incorporate design elements such as trenching, joist reinforcement, stiffening, and/or other design techniques to reduce ground-borne vibration levels to 75 VdB or less.

33. Revocation, Suspension, Modification. This Planned Development Permit and Development Exception may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, 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 of Chapter 20.100 of Title 20 of the San José Municipal Code it finds:

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

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

ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC

City Clerk

NOTICE TO PARTIES

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