

RESOLUTION NO. 78493

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING THE AMERICA CENTER PHASE III PROJECT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT TO THE LEGACY TERRACE DEVELOPMENT PLANNED DEVELOPMENT REZONING AND PREZONING ENVIRONMENTAL IMPACT REPORT (SCH #1999082004) AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES AND ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED

WHEREAS, the proposed America Center Phase III Project includes an increase to the allowed amount of Commercial Office/R&D area for the project site by 190,000 square feet, for the total allowed Commercial Office/R&D space to be 1,090,000 square feet (located within 5 buildings); modification of the General Development Plan boundaries to reflect removal of the northeastern portion of the current project area (6.7 acres) and to reflect minor lot line adjustments; construction of an approximately 192,350 square foot, six-story office building, associated amenity space, and expand the existing parking on the eastern portion of the site; all located on an approximately 63 gross acre site (with removal of 6.7 acres described above) north of California State Route (SR) 237 at the terminus of Great America Parkway, in the Alviso community of the City in San José, California (collectively referred to herein as the "Project"); and

WHEREAS, approval of the America Center Phase III Project would constitute a project under the provisions of the California Environmental Quality Act of 1970, together with related state and local implementation guidelines and policies promulgated thereunder, all as amended to date (collectively, "CEQA"); and

WHEREAS, the City of San José ("City") previously prepared and completed, in accordance with CEQA the Final Environmental Impact Report for the Legacy Terrace Development Planned Development Rezoning and Prezoning ("Legacy Terrace FEIR") (Planning File No. PDC99-05-044), which analyzed the environmental impacts of the development of office, research and development, and associated commercial uses totaling 900,000 square feet, a 175-room hotel, and approximately 25,000 square feet of Riverfront Commercial uses on approximately 45.2 acres of a 70.5 acre site; and

WHEREAS, on February 8, 2000, the Planning Commission of the City of San José certified said Legacy Terrace FEIR, which certification was not appealed; and

WHEREAS, in connection with the adoption of a resolution approving said Legacy Terrace Development Planned Development Rezoning and Prezoning (Planning File No. PDC99-05-044), the City Council adopted Resolution No. 69392 on February 15, 2000, setting forth certain findings pertaining to the Legacy Terrace FEIR and adopting a statement of overriding considerations and mitigation monitoring and reporting program, all pursuant to the provisions of CEQA; and

WHEREAS, as of the date of this Resolution, the City has approved development of 900,000 square feet of commercial office/R&D uses, a 175-room hotel, 25,000 square feet of River Commercial uses, and 25.3 acres of the site as an open space preserve under the Legacy Terrace FEIR; and two of the five office buildings and the 175-room hotel planned on the America Center site have been constructed and are in operation and two other commercial office/R&D buildings are currently under construction; and

WHEREAS, the proposed Project was evaluated and analyzed under the Legacy Terrace FEIR and it was determined a subsequent environmental report to the Legacy Terrace FEIR was required as further explained in the subsequent environmental report, as defined below, for the Project; and

WHEREAS, the City is the lead agency for the Project, and has prepared a Final Subsequent Environmental Impact Report to the Legacy Terrace FEIR for the Project pursuant to and in accordance with CEQA, which the Final Subsequent Environmental Impact Report is comprised of the Draft Subsequent Environmental Impact Report for the Project (the "Draft SEIR"), together with the First Amendment to the Draft SEIR (collectively, all of said documents are referred to herein as the "FSEIR"); and

WHEREAS, on January 10, 2018, the Planning Commission of the City of San José reviewed the FSEIR prepared for the America Center Phase III Project, and recommended to the City Council that it find the environmental clearance for the proposed Project was completed in accordance with the requirements of CEQA and further recommended the City Council adopt this Resolution; and

WHEREAS, CEQA requires that, in connection with the approval of a project for which an environmental impact report has been prepared which identifies one or more significant environmental effects of the project, the decision-making body of a public agency make certain findings regarding those effects and adopt a mitigation or monitoring program and overriding statement of consideration for any impact that may not be reduced to a less than significant level.

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

1. That the above recitals are true and correct; and
2. That the City Council does hereby find and certify that the FSEIR has been prepared and completed in compliance with CEQA; and
3. The City Council was presented with, and has independently reviewed and analyzed, the FSEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the FSEIR and the Project, prior to acting upon or approving the Project, and has found that the FSEIR represents the independent judgment of the City of San José ("City") as lead agency for the Project, and designated the Director of Planning, Building and Code Enforcement at his office at 200 East

Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and record of proceedings on which the decision of the City is based; and

4. That the City Council does hereby find and recognize that the FSEIR contains additions, clarifications, modifications, and other information in its response to comments on the Draft SEIR or obtained by the City after the Draft SEIR was issued and circulated for public review and does hereby find that such changes and additional information are not significant new information as that phrase is described under CEQA because such changes and additional information do not indicate that any of the following would result from approval and implementation of the Project: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft SEIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented, or (iii) any feasible alternative considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented; and
5. That the City Council does hereby find and determine that recirculation of the FSEIR for further public review and comment is not warranted or required under the provisions of CEQA; and
6. The City Council does hereby make the following findings with respect to the significant effects of the environment of the Project, as identified in the FSEIR, with the understanding that all of the information in this Resolution is intended as a summary of the full administrative record supporting the FSEIR, which full administrative record should be consulted for the full details supporting these findings.

AMERICA CENTER PHASE III PROJECT SIGNIFICANT ENVIRONMENTAL IMPACTS

Aesthetics

Impact: **Impact AES-1:** The proposed Project would contribute to impacts to views from SR 237 and from trails in the vicinity, which would represent an overall significant aesthetics impact.

Mitigation: None.

Finding: No feasible mitigation was identified to reduce this aesthetic impact to a less than significant level. **(Significant and Unavoidable Impact)**

Facts in Support of Finding: The America Center structures would significantly obscure scenic vistas viewed from SR 237 and from public trails in the vicinity. The Legacy Terrace FEIR concluded that development of five office/R&D buildings, a 175-room hotel and then proposed River Commercial uses would significantly obscure scenic views from SR 237, the Alviso community, Alviso Marina County Park and the San Francisco Bay Wildlife Refuge. With construction of the proposed Building 5, views would be generally limited because Building 5 is surrounded on all sides by other previously constructed or approved buildings; however, there is still the potential for the structure and parking structure extension to be viewed from the Guadalupe River Trail, Bay Trail alignments, and portions of SR 237. The proposed Project would be required to implement policies from the City's Commercial Design Guidelines and Design Guidelines for Commercial Development for Lands Outside of the Alviso Village Area to reduce the Project's effects on the visual character of the area related to architectural design, use of quality materials, and landscaping. Although the Project's compliance with these policies will reduce the aesthetic/visual impacts, the Project's visual impacts from scenic vistas are in an area that is contributing to a previously considered significant and unavoidable impact, as described within the Legacy Terrace FEIR.

Air Quality

Impact: **Impact AIR-1:** The proposed Project would contribute to an impact as a result of exceedance of BAAQMD standards for operational nitrogen oxide (NOx) emissions, as previously identified for the buildout of the America Center site in the Legacy Terrace FEIR.

Mitigation: **MM AIR-1.1:** The Project applicant shall include the following updated measures from the Legacy Terrace FEIR:

- Provide physical improvements, such as sidewalk improvements, landscaping and bicycle parking which would encourage pedestrian and bicycle modes of travel;
- Connect the site to the regional bicycle/pedestrian trail system;
- Provide shuttle bus service to the Tasman/Lafayette light rail and Altamont Corridor Express (ACE) rail system; and
- Implement other feasible transportation demand management (TDM) program measures; including a ride-matching program, guaranteed ride home programs, coordination with regional ride-

sharing organizations, and a transit incentives program. The Project applicant shall submit a Transportation Demand Management (TDM) Plan to the satisfaction of the Transportation Manager of the Department of Public Works and the Department of Planning, Building and Code Enforcement (PBCE) Supervising Environmental Planner prior to approval of a Planned Development Permit. The TDM Plan shall contain components or equivalent measures to result in a ten percent (10%) reduction in projected weekday mobile emissions. The Project will be required to submit an annual monitoring report to the Transportation Manager of the Department of Public Works and the PBCE Supervising Environmental Planner to measure the effectiveness of the TDM plan. Additional TDM measures may be required if the TDM measures are not effective in achieving a ten percent (10%) reduction.

Finding: With the implementation of MM AIR-1.1, regional air quality impacts would be lessened and would not result in substantially greater impacts than the significant and unavoidable nitrogen oxide (NOx) impact previously identified in the Legacy Terrace FEIR. However, these measures would not reduce NOx levels resulting from implementation of the proposed Project to a less than significant level. **(Significant and Unavoidable Impact)**

Facts in Support of Finding: The operational criteria pollutant emissions modeled in the Legacy Terrace FEIR exceeded all applicable BAAQMD thresholds. Since the certification of the Legacy Terrace FEIR, there have been significant changes in air quality standards and methodologies for impact calculations. Additionally, pollutant levels from auto emissions (the primary source of operational criteria pollutants) have dropped substantially due to state regulatory standards and requirements. It is anticipated that vehicle-related pollutant emissions levels will continue to drop in future years.

The entire America Center site, including the proposed Project, would not result in an exceedance of BAAQMD thresholds except with regard to NOx. The NOx exceedance would not result in a substantial increase in the severity of the previously identified significant regional air quality impact; rather, the severity of the exceedance has substantially lessened. With the implementation of Mitigation Measure AIR-1.1, NOx emissions from the operation of the proposed Project would be reduced but would still result in a significant and unavoidable impact, as described in the Legacy Terrace FEIR.

Impact: **Impact AIR-2:** Odors could occur as a result of drilling holes for support piles that penetrate the landfill cap and impact sensitive receptors in the area.

Mitigation: **MM AIR-2.1:** The Project applicant shall prepare and implement an odor-control plan prior to the onset of construction which includes the following odor control elements:

- Scheduling of construction phasing such that the amount of uncovered/disturbed waste at one time is minimized;
- Controlling odors by covering any exposed landfill material with soil, foam, or other suitable material (including application of deodorant or other odor control materials);
- Considering seasonal weather conditions that can concentrate odors or direct odors towards sensitive receptors; and
- Providing the residents of the nearby Summerset Mobile Estates and the Supervising Planner of PBCE with the name and phone number of a Project Contact who shall respond to any complaints about dust, odors, or other nuisances associated with waste excavation and relocation operations.

Finding: Implementation of MM AIR-2.1 would limit the generation of odors and resulting odor impacts to sensitive receptors in the area. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: As the work involving placement of the cap and cover is complete, significant odors are not anticipated as a result of disturbance to buried landfill materials. However, construction of the proposed Project, specifically Building 5 and the expanded parking garage, would involve drilling holes for the support piles that would penetrate the landfill cap. As required by Mitigation Measure MM HAZ-1.1, material excavated by the driller would be contained and disposed of at an appropriate facility. These activities could result in odor impacts at nearby sensitive receptors. The odor control plan will manage uncovered/disturbed waste and landfill materials through scheduling construction phasing, covering exposed materials or utilizing other odor control measures, and consideration of weather conditions (e.g. wind). Implementation of the odor control plan would reduce the odor impacts to neighboring sensitive receptors to a less than significant level.

Biological Resources

Impact: **Impact BIO-1:** If present, construction activities could cause disturbance to birds nesting and foraging in the project area.

Mitigation: **MM BIO-1.1:** The Project applicant shall implement the following measures to avoid impacts to nesting birds on and adjacent to the site during construction.

- Construction activities shall be scheduled to avoid the nesting season. If construction activities are scheduled to occur outside the nesting season, all impacts on nesting birds protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code will be avoided. The nesting season for most birds in Santa Clara County extends from February 1st to August 31st (inclusive).
- If it is not possible to schedule construction activities between September 1st and January 31st (inclusive), then pre-construction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive). During this survey, the ornithologist shall inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings) in and immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist in consultation with California Department of Fish and Wildlife (CDFW) will determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species) to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.
- A report summarizing results of the pre-construction surveys and subsequent efforts to protect nesting raptors or birds (if found to be present) shall be submitted to the City of San José Supervising Environmental Planner of PBCE.

Finding: Implementation of Mitigation Measure MM BIO-1.1 would reduce impacts to nesting raptors and other migratory birds to less than significant levels.
(Less Than Significant with Mitigation Incorporated)

Facts in Support of Finding: Conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests will ensure that raptor or migratory bird nests are not disturbed during Project construction, under the MBTA and California Fish and Game Code. The size of the buffer zones will be determined by consultation between the qualified ornithologist and the California Department of Fish and Wildlife,

and based on scientific evidence and best management practices. Compliance with Mitigation Measure MM BIO-1.1 will avoid impacts to nesting birds.

Impact: **Impact BIO-2:** If present, construction activities could cause disturbance to burrowing owls nesting and foraging in the Project area.

Mitigation: **MM BIO-2.1:** The Project applicant shall implement the following measures to avoid impacts to nesting or non-nesting burrowing owls on or immediately adjacent to the site, consistent with Condition 15 of Chapter 6 of the Santa Clara Valley Habitat Plan.

- Prior to any site disturbance, staging, or construction-related activities, a qualified biologist shall conduct burrowing owl preconstruction surveys in all suitable habitat areas on the Project site and within 250 feet of all construction activity. The purpose of the preconstruction surveys is to document the presence or absence of burrowing owls on the Project site and within 250 feet of construction activity in order to avoid direct impacts to burrowing owls. To maximize the likelihood of detecting owls, the preconstruction survey shall last a minimum of three hours. The survey shall begin one hour before sunrise and continue until two hours after sunrise (three hours total) or begin two hours before sunset and continue until one hour after sunset. Additional time may be required for large Project sites. A minimum of two surveys shall be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed shall be counted and their locations mapped.
- Surveys shall conclude no more than two calendar days prior to site disturbance, staging, or construction-related activities. Therefore, the Project applicant must begin surveys no more than four days prior to construction (two days of surveying plus up to two days between surveys and construction). To avoid last-minute changes in schedule or contracting that may occur if burrowing owls are found, the Project applicant may also conduct a preliminary survey up to 14 days before construction. This preliminary survey may count as the first of the two required surveys as long as the second survey concludes no more than two calendar days in advance of construction.
- If burrowing owls are present during the nonbreeding season (September 1st to January 31st, inclusive), a 250-foot buffer zone shall be maintained around the occupied burrow(s) as determined by a qualified biologist, if feasible. If maintaining such a buffer is not feasible, then the buffer must be great enough to avoid injury or mortality of individual owls based on monitoring results. During the breeding season (generally February 1st to August 31st, inclusive),

a 250-foot buffer, within which no newly initiated project-related activities shall be permissible, shall be maintained between project activities and occupied burrows. Owls present between February 1st and August 31st (inclusive) will be assumed to be nesting, and the 250-foot protected area shall remain in effect until August 31st. If monitoring evidence indicates that the owls are no longer nesting or the young owls are foraging independently, the buffer may be reduced based on monitoring results, in consultation with the City and CDFW.

- If nesting owls are determined to be present on the site, and Project activities cannot feasibly avoid disturbance of the area within 250 feet of the occupied burrow during the nesting season (i.e., February 1st through August 31st, inclusive) due to other seasonal constraints, a qualified biologist shall be present during all activities within 250 feet of the nest to monitor the owls' behavior. If, in the opinion of the qualified biologist, the owls are unduly disturbed (i.e., disturbed to the point of harm or reduced reproductive success), all work within 250 feet of the occupied burrow will cease until the nest is determined to no longer be active by a qualified biologist.

Finding: Implementation of Mitigation Measure MM BIO-2.1, which is an updated and expanded versions of the mitigation measure that was included in the Legacy Terrace FEIR and consistent with General Plan Policy ER-5.1 and 5.2, would reduce impacts to nesting or non-nesting burrowing owls to less than significant levels. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: Several pairs of burrowing owls, a California species of special concern, are historically known to have nested in the vicinity of the site and may forage on the Project site on occasion.

The larger America Center Project site was required to implement a burrowing owl mitigation and management program. There are no records of burrowing owls on the Project site for Building 5 and the parking garage expansion. A focused survey for suitable habitat of the burrowing owl within the proposed development footprint failed to find evidence of any burrowing owl presence and no suitable roosting, nesting, or foraging habitat was present. However, potentially suitable roosting and foraging habitat is present within 250 feet of the Project footprint. Heavy ground disturbance, noise, and vibrations caused by proposed construction could potentially disturb foraging or roosting burrowing owls and cause them to move away from work areas. As grading, demolition, and construction activities could impact burrowing owl habitat, conducting pre-construction surveys and the implementation of a construction-free buffer zone around nests and owl sighting locations, consistent with Condition 15 of the Santa Clara Valley

Habitat Plan, will ensure that the species are not disturbed during Project earthmoving activities.

Geology and Soils

Impact: **Impact GEO-1:** Differential settlement could result in structural damage to the proposed development.

Mitigation: **MM GEO-1.1:** The Project applicant shall complete a design-level geotechnical investigation for the Project site prior to issuance of any grading permits for individual site improvements to address the potential geologic hazards. Design-level engineering studies shall be submitted to the City's Public Works Department for review and approval.

Building foundations shall be designed based on this geotechnical investigation. Building loads shall be supported on driven pile foundations as appropriate to support the building loads without significant damage due to settlement. Foundation piles shall be designed to accommodate downdrag loads caused by the subsidence of landfill materials due to the natural degradation of landfill components, and under the weight of the final cover and/or soil placed on the site for development purposes. In addition, a reinforced concrete "skirt wall" around the perimeter of each building shall be installed to resist lateral loads placed on the building during a seismic event. Settlement adjacent to the skirt wall shall be monitored and soil replaced to avoid the loss of lateral support as fill settles.

Conceptual foundation installation procedures in the area include: predrilling each pile location to the full depth of the landfill (50 to 60 feet); and/or installing a cased shaft at each pile location from the ground surface to the bottom of the landfill, removing landfill materials from the cased hole, and driving the foundation piles through the casing into the supporting soil below the landfill. Alternatively, non-displacement type piles, such as steel H-piles, could be driven directly through landfill materials. Corrosion control measures to protect steel and/or concrete piles shall be included in the design-level geotechnical investigation.

MM GEO-1.2: An updated settlement map shall be prepared based upon site monitoring and additional surveys prior to the completion of the design-level geotechnical investigation. The updated settlement map shall confirm appropriate post settlement grades on the site. The map shall be provided to the City of San José Public Works Department for review and approval.

MM GEO-1.3: To allow for settlement between structures and the surrounding ground at building entrances, "hinged slabs" or interlocking

pavers shall be used. For hinged slabs, one end of the hinged slab will be fixed to the pile-supported structure and the other end will rest in the earth fill that will settle with time. The design of the hinged slab shall be based on the maximum operation slope of the slab. For pedestrian slabs, the estimated finished grade after settlement shall be based on a maximum slope required by the Americans with Disabilities Act. For vehicular slabs, the estimated finished grade after settlement shall be based on a maximum gradient differential of 11 percent between the slab and the stationary foundation, which allow use of the parking structure entrances without scraping the bottom of vehicles. Alternatively, interlocking pavers installed at building entrances can be easily adjusted to grade after settlement has occurred. Pavers shall be monitored at more frequent intervals than hinged slabs and regraded at regular intervals to avoid tripping hazards. The design of hinged slabs or pavers shall be completed using the current settlement map for the site.

MM GEO-1.4: Roadways and other paving systems shall utilize flexible materials such as asphaltic concrete, interlocking paving units, and avoid or limit the use of Portland cement concrete and other nonflexible materials. Where concrete is utilized, adequate expansion and spacing joints shall be used to accommodate differential settlement. Geotextile fabric or other materials shall be placed below the subgrade base section to provide bridging over localized "soft" areas determined by the geotechnical engineer during compaction of the fill material. Joints shall be adequately sealed between differing materials (i.e., asphalt and concrete curbs) to prevent water infiltration.

MM GEO-1.5: Pavements and other surface improvements shall be designed with adequate slope so that after settlement, reversals of stormwater flow direction or adverse flattening of the roadway pavement surface does not occur.

MM GEO-1.6: On-site utilities which operate via gravity shall be designed based upon the anticipated settlement on the site. These utilities shall be designed with adequate slope so that after settlement, reversal or flattening of the slope of utility lines does not occur.

MM GEO-1.7: Pipe materials which can accommodate differential settlement without separation of pipe joints or leakage shall be used on the site. Piping could utilize high density polyethylene or, in some cases, dual contained polyvinyl chloride pipe. For either type of pipe system, metallic fittings, valves, and flexible connections could be housed inside vaults for corrosion protection and to aid leak detection.

MM GEO-1.8: Under slab utilities, shall be connected to the structural slab using hangers constructed of a non-corrosive material, such as stainless steel. To counter the effect of soil in the utility trench settling and dislocating the utility line from the hanger, a non-cohesive backfill, such as pea gravel, shall be used in the trench. As the ground settles, the non-cohesive backfill shall be able to move around the pipe. Alternatively, no backfill shall be placed in the trench, with plywood or other materials being used to prevent concrete from the structural slab pour from entering the utility trench. As the surrounding ground settles, the utility pipe would be supported by hangers.

MM GEO-1.9: To accommodate the difference in settlement between the building and surrounding ground, flexible utility connections contained within a settlement vault shall be employed.

MM GEO-1.10: The Project applicant shall prepare and implement an Operations and Maintenance Program for the building, utilities, and pavement, and shall include a site grade monitoring schedule. Site grades shall be monitored every three months for the first two years. After two years, the monitoring duration shall be reevaluated based on the settlement rates and site characteristics. The Operations and Maintenance Program shall specify the types of repairs to be made in the event that indications of localized depressions, slope changes or cracking of pavements are found.

Finding: With the implementation of MM GEO-1.1 through MM GEO-1.10, geology and soils impacts as a result of differential settlement and expansive soils would be reduced to a less than significant level. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: As described in the Legacy Terrace FEIR, settlement of unengineered fill material as a result of the consolidation and compression of the landfill and compression of native soil could affect building foundations and the operation of utility lines. Settlement could result in adverse flattening of gravity utility slopes and lead to a reversal of flow direction or inadequate velocities to prevent accumulation within pipes. Differential settlement could also cause separation of utility lines at pipe joints, resulting in leakage of interruption lines.

Differential settlement can result in structural damage to the proposed buildings, roadways and pavement of the proposed Project due to the variable nature of the project site's non-engineered fill materials.

Under Title 27 of the California Code of Regulations (CCR), Section 21190, waste disposal site post-closure land uses are overseen by various regulatory agencies, including the Regional Water Quality Control Board (RWQCB), CalRecycle, and others. The City of San José is the designated

Solid Waste Local Enforcement Agency (LEA) with oversight authority over the project site's Post-Closure Land Use Plan. The plan must be prepared and reviewed pursuant to Section 21190 of CCR Title 27. Review and approval of the Post-Closure Land Use Plan at past solid waste disposal sites represents a major part of the LEA's responsibility to protect public health and safety and the environment. CalRecycle established regulations addressing post-closure land use activities in 1989 based on documented problems associated with poorly regulated development on disposal sites (Final Statement of Reasons, Disposal Site Standards for Closure and Post-closure, pages III-7.8 129-139). The Project site's Post-Closure Land Use Plan for the development of Phase II of the project (Buildings 3 and 4) was approved by the City of San José as the LEA in September of 2015. The City of San José will also review the Post-Closure Land Use Plan for the proposed project (Phase III) prior to the start of and grading or construction.

Modifications to the Post-Closure Land Use Plan would address differential settlement issues related to construction of Building 5 and the parking garage expansion. Mitigation Measures MM GEO-1.1 to MM GEO-1.10, were included in the Legacy Terrace FEIR for which an updated and expanded version would be included in this Project, will reduce the impacts of differential settlement on the Project site.

Hazards and Hazardous Materials

Impact: **Impact HAZ-1:** Methane gas within landfill materials could result in flammable or explosive conditions. Toxic compounds, including volatile organic compounds, and asbestos, could be present and pose health risks to construction workers and/or the public.

Mitigation: **MM HAZ-1.1:** The Project applicant shall follow the United States Environmental Protection Agency (EPA)-approved Soil Management Plan (SMP) developed for closure, capping, maintenance, and post-capping construction activities at the Highway 237 Landfill to reduce or eliminate exposure risk to human health and the environment, specifically, potential risks associated with the presence of methane, hydrogen sulfide, and volatile organic compounds (VOCs) in soil gas and potential unknown conditions. The SMP shall be followed for any development related activities that penetrate the low-permeability layer of the landfill cap, such as pile installation or excavations. As required by the SMP, prior notification of planned activities that trigger implementation of SMP protocols shall be provided to the PBCE, Environmental Services Department, the City's LEA, and other regulatory agencies providing oversight (such as the RWQCB and CalRecycle) prior to issuance of any grading permit.

MM HAZ-1.2: Contractors and subcontractors at the Project site shall develop a health and safety plan specific to their scope of work and based

upon the known environmental conditions for the site. Each health and safety plan shall be implemented under the direction of a Site Safety and Health Officer and provided to all regulatory agencies providing oversight (such as the LEA, CalRecycle, or RWQCB).

MM HAZ-1.3: The Project site is on a former landfill and shall follow environmental monitoring procedures required by CalRecycle and the San José LEA.

MM HAZ-1.4: The Project applicant shall ensure that where an irrigation system is installed for landscaping, it shall be designed to optimize watering using the most current automatic irrigation equipment and monitoring methods. To help minimize infiltration, subdrains shall be constructed for all tree planting areas. The trees shall have subdrains that discharge to the storm drain system.

MM HAZ-1.5: Prior to issuance of any grading permit for site improvements, the Project applicant shall provide the LEA, CalRecycle, and an appropriate oversight agency (such as the Department of Toxic Substances Control [DTSC] or RWQCB and the City's Department of Public Works) with a Project-level, engineering analysis that addresses, in sufficient detail, the following elements of the final project design:

- Soil gas mitigation and monitoring systems, including structure monitoring and perimeter monitoring systems;
- Differential settlement;
- Site surface drainage and final grading; and
- Any other elements of the design as required by the LEA or Department of Public Works, including specialized analysis that may be warranted by the City. The Project applicant shall bear the responsibility for providing any such specialized analysis.

MM HAZ-1.6: The Project applicant shall incorporate a landfill gas control system into all buildings constructed as a part of the Project. Proposed structures shall be constructed with a sub-slab soil gas mitigation system to vent landfill gases and other soil vapor. The soil gas mitigation system may consist of perforated pipes placed in a permeable granular layer under building and garage concrete slabs. The perforated pipes shall be connected to a system that discharges vapor to the building's exterior. The system shall include a methane sensor/venting system that is capable of venting soil vapor out from beneath the building, and a low-permeable barrier layer, such as Liquid Boot, shall be installed in the buildings and certain areas in the parking garage that have the potential to accumulate landfill gas in order to prevent soil vapors from intruding into the structures.

The low-permeable vapor barrier membrane shall be located above the permeable granular layer. The membrane shall be sealed around foundation piles, grade beams, and slab penetrations (such as utility lines). The Project applicant shall also install a landfill gas venting system beneath hardscape areas near the proposed structures.

The landfill gas control system for the office buildings shall include an integrated methane sensor/blower system that is capable of actively drawing soil vapor from beneath the building. Methane sensors provided at the discharge point of each soil gas mitigation system shall control the active operation of the venting system.

The Project applicant shall prepare and implement an Operations and Maintenance Program for the soil gas mitigation systems. The program shall include instructions for how to ensure that the system functions properly.

MM HAZ-1.7: The Project applicant shall construct site utility trenches with landfill gas cut-offs to prevent landfill gas from migrating along utility trenches. Below-grade electrical facilities shall be designed for explosive conditions, in accordance with the California Building Standards Code.

Finding: Implementation of MM HAZ-1.1 to MM HAZ-1.7 would ensure that hazardous substances on-site would not result in a significant hazard to construction workers, future users of the site, or the environment. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: As described in the FSEIR, the majority of the America Center site is elevated due to its location on top of the closed Highway 237 Landfill. The landfill was a disposal site that was in operation from 1962 to 1982. Materials reported in the landfill include municipal trash, soil, concrete, asphalt, wood, and other construction rubble. Four modern commercial office buildings (two of which are currently under construction), a hotel building, parking garage (also under construction), open space preserve, and parking lots are located on the former landfill. The closed landfill generates landfill gas, including methane, which is a combustible gas. The landfill may also contain petroleum hydrocarbons and volatile organic compounds (VOCs) generated from organics from refuse and/or underlying estuary soils, plasticizers, wood preservatives in demolition debris, glue thinners and asphalt or roofing material contained within fill materials

As evaluated in the Legacy Terrace FEIR, development of the Project site would expose construction workers to VOCs and methane in soil vapor/gas from the closed Highway 237 Landfill. Methane exposure is considered to

be an explosion hazard at locations at certain concentrations. Volatile organic compounds have the potential to migrate from soil vapor to indoor air via a vapor intrusion pathway. Additionally, asbestos-containing or other contaminated materials could be encountered where waste is removed as part of installation of drilled foundation piles.

The Project will comply with local and state monitoring procedures and prepare a project-level, engineering analysis. The preparation and implementation of a site management plan and a health safety plan will limit human health exposure risk to these compounds. Additionally, the irrigation system, landfill gas control system, and site utility trenches will be designed as described in the above mitigation measures to reduce the impacts of hazardous compounds infiltrating the project work areas and buildings. Mitigation Measures MM HAZ-1.1 to MM HAZ-1.7 were included in the Legacy Terrace FEIR, and the FSEIR for the Project includes updated versions of these mitigation measures, all of which together will reduce the impacts of hazards and hazardous materials to construction workers, future users of the site, and the environment.

Noise

Impact: **Impact NOI-1:** Pile driving noise generated in the eastern portion of the site could impact residents at Summerset Mobile Estates and commercial uses along Gold Street in the short-term.

Mitigation: **MM NOI-1.1:** Prior to the start of construction, the Project applicant shall prepare and implement a noise logistics plan to reduce construction noise levels as low as practical. The noise logistics plan shall be submitted to the Supervising Environmental Planner of PBCE for review and approval. The noise logistics plan would include, but not be limited to, the following measures:

- Construction hours within 500 feet of residential uses will be limited to the hours of 7:00 a.m. and 7:00 p.m. weekdays, with no construction on weekends or holidays. Pile driving shall be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.
- Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists.
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from adjacent land uses.

- Locate staging areas and construction material areas as far away as possible from adjacent land uses.
- Prohibit all unnecessary idling of internal combustion engines.
- If impact pile driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced.
- If impact pile driving is proposed, temporary noise control blanket barriers shall shroud pile drivers or be erected in a manner to shield the adjacent land uses. Such noise control blanket barriers can be rented and quickly erected.
- The contractor shall prepare a detailed construction plan identifying a schedule of major noise generating construction activities. This plan shall identify a noise control disturbance coordinator and procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance. This plan shall be made publicly available for interested community members.
- The disturbance coordinator shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. The telephone number for the disturbance coordinator at the construction site shall be posted and included in the notice sent to residences and commercial businesses within 100 feet regarding the construction schedule.

The Project, as currently proposed, would implement measures to reduce short-term noise impacts resulting from pile driving activities in the eastern portion of the site, but not to a less than significant level.

Finding: Despite the implementation MM NOI-1.1, and as identified within the Legacy Terrace FEIR, construction noise-related impacts on sensitive residential receptors as a result of pile-driving activities would still be considered significant and unavoidable. **(Significant and Unavoidable Impact)**

Facts in Support of Finding: Commercial/office uses along Gold Street in Alviso and residential uses in the Summerset Mobile Estates Mobile Home Park are located approximately 200 feet and 950 feet east of the Project site, respectively. Additionally, a 175-room hotel (Aloft) is located on the southern portion of the site, east of the Project entrance from Great America

Parkway. Construction noise along the eastern boundary of the America Center could result in a significant impact to residents of the mobile home park because of projected noise levels and the repetitive impulsive nature of pile driving noise, which could interfere with indoor and outdoor activity. It could also affect the commercial office and hotel uses in the vicinity.

Construction noise impacts primarily happen when construction activities occur during noise-sensitive times of the day (early morning, evening, or nighttime hours), the construction occurs in areas immediately adjoining noise sensitive land uses, or when construction durations last over extended periods of time. The Project, specifically Building 5 and the parking garage expansion, would be completed in approximately 20 months with heavy construction to be completed in less than 12 months. Although implementation of Mitigation Measure MM NOI-1.1 would reduce construction noise impacts to surrounding land uses, it would not effectively reduce the construction noise levels that substantially exceed ambient and background noise levels to less than significant at adjacent sensitive residential receptors. This impact is significant and unavoidable.

Transportation and Traffic

Impact: **Impact TRA-1:** The added trips as a result of the proposed Project would cause the critical movement delay to increase by four or more seconds and the demand-to-capacity ratio to increase by 0.01 or more at the Lafayette Street and Gold Street Connector intersection during the AM peak hour.

Mitigation: **MM TRA-1.1:** Prior to Public Works Clearance, the Project applicant shall pay a fair share amount towards improvements (including full cost for design, construction, etc.) to the Lafayette Street and Gold Street Connector intersection. Improvements would include the addition of a second northbound left-turn lane in a vacant area between the Gold Street Connector and SR 237. The improvement shall require widening of the Gold Street Connector and shifting of travel lanes to the south by approximately 12 feet to accommodate a second receiving lane for the second northbound left-turn lane. The roadway widening would also require the relocation of the Highway 237 Bikeway, south of the Gold Street Connector. The Director of Public Works shall determine the fair share based on the cost of the improvement at the time the payment is due and the Project's contribution to the impact (an estimated 5 percent). The fair share amount shall be paid to the City of San José Public Works Depositors Fund.

During construction of the intersection improvement, a trail detour shall be provided and/or the Highway 237 Bikeway relocated prior to construction of the road widening.

Finding: Impacts to the Lafayette Street and Gold Street Connector intersection would be reduced to the less than significant level with the incorporation of Mitigation Measure MM TRA-1.1. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: The Lafayette Street/Gold Street Connector would be significantly impacted by the Project under background plus Project conditions based on findings from applicable municipal (Cities of San José and Santa Clara Level of Service standards) and Santa Clara County's Congestion Management Program impact criteria.

The addition of a second northbound left-turn lane at this intersection in a vacant area between the Gold Street Connector and SR 237 was also identified as a mitigation measure for the approved City Place development in the City of Santa Clara. Traffic associated with the City Place development is included within background conditions of this study; however, since the City of San José has no authority of development within other jurisdictions or their development schedules, the Project applicant will be required to contribute a fair-share amount to the City of San José Public Works Depositors Fund for the construction of this improvement. The City of Santa Clara agreed to fully construct the mitigation as a Phase I improvement with the City Place development with a fair-share contribution by this Project toward their adopted program. For this improvement, 95% of the funding will be from the City Place development and 5% of the funding will be from the Project. Mitigation Measure MM TRA-1.1, for the fair-share contribution to the improvements at the intersection of Lafayette Street and the Gold Street Connector, would reduce the impact at this intersection to a less than significant level.

Impact: **Impact TRA-2:** Implementation of the proposed Project would have a significant impact on mixed-flow lanes and/or a high occupancy vehicle (HOV) lane during one or both peak hours on the following four freeway segments: eastbound SR 237 between Great America Parkway and North First Street, westbound SR 237 between I-880 and McCarthy Boulevard, westbound SR 237 between I-880 and McCarthy Boulevard, westbound SR 237 between McCarthy Boulevard and Zanker Road, and the HOV lane on westbound SR 237 between I-880 and McCarthy Boulevard.

Mitigation: None.

Finding: No feasible mitigation was identified to reduce these traffic impacts to a less than significant level. **(Significant and Unavoidable Impact)**

Facts in Support of Finding: The Legacy Terrace FEIR identified impacts to eastbound SR 237 between Great America Parkway and North First Street, but did not identify impacts on the other freeway segments. Full mitigation of significant Project impacts on freeway segments would require roadway widening to construct additional through mixed-flow or high-occupancy vehicle (HOV) lanes. There are no feasible mitigation measures available to reduce impacts on local freeway study segments to a less than significant level as it is beyond the capacity of any one Project to acquire right-of-way and add lanes to a state freeway. Furthermore, no comprehensive Project to increase freeway capacity on SR 237 has been developed by Caltrans or VTA. Although VTA has Voluntary Mitigation Programs for impacts along SR 237, there are no specifically identified improvement projects to which to pay fair share fees. Additionally, previous phases of the development at America Center have contributed the VTA's Voluntary Contribution Program for impacts to SR 237. The proposed TDM measures, as outlined in Mitigation Measure MM AIR-1.1, would reduce the impacts identified under Impact TRA-2, but not to a less than significant level.

Implementation of the proposed Project would have a significant impact on freeway mixed-flow lanes and/or a high-occupancy vehicle (HOV) lane during one or both peak hours. Thus, these impacts would be significant and unavoidable.

Cumulative Impacts

Impact: **Impact TRA(C)-1:** The proposed Project would result in a cumulatively considerable contribution to traffic impacts at two San José intersections (Lafayette Street and Gold Street Connector, and Great America Parkway and Eastbound SR 237) based on cumulative impact criteria.

Mitigation: **MM TRA(C)–1.1: Lafayette Street and Gold Street Connector** - See MM TRA-1.1

MM TRA(C)-1.2: Great America Parkway and Eastbound SR 237 - Improvements to the Great America Parkway/State Route 237 intersection include the addition of a third left-turn lane and second right-turn lane to the westbound approach to the intersection (SR 237 off-ramp), and would reduce the project and cumulative impact at this intersection to a less than significant level. These improvements are fully funded and will be constructed by the City of Santa Clara's City Place development, as a condition of approval.

Finding: Impacts to the Lafayette Street and Gold Street Connector intersection would be reduced to the less than significant level with the incorporation of

Mitigation Measure MM TRA-1.1. (Less than Significant Cumulative Impact with Mitigation Incorporated)

Impacts to the Great America Parkway and Eastbound SR 237 intersection would be reduced to the less than significant level with the incorporation of Mitigation Measure MM TRA(C)-1.2. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

Facts in Support of Finding: Based on the intersection level of service analysis, two City of San José intersections would be cumulatively impacted during the AM peak hour. Mitigation Measure MM TRA-1.1, for the fair-share contribution to the improvements at the intersection of Lafayette Street and the Gold Street Connector (e.g., addition of a second northbound left-turn lane), would reduce the Project and cumulative impact at this intersection to a less than significant level.

The addition of a third left-turn lane and second right-turn lane to the westbound approach to the intersection (SR 237 off-ramp) was identified as a mitigation measure for the approved City Place development in the City of Santa Clara. Traffic associated with the City Place development is included within background conditions of this study. The City of Santa Clara will fully fund and construct the improvement with the City Place development with no required contribution from the Project. With the improvements at the intersection of Great America Parkway and Eastbound SR 237 would reduce the cumulative impact at this intersection to a less than significant level.

FINDINGS CONCERNING ALTERNATIVES

In order to comply with the purposes of CEQA, it is important to identify alternatives that reduce the significant impacts that are anticipated to occur if the project is implemented and to try to meet as many of the project's objectives as possible. The CEQA Guidelines emphasize a common sense approach -- the alternatives should be reasonable, should "foster informed decision making and public participation," and should focus on alternatives that avoid or substantially lessen the significant impacts.

The alternatives analyzed in the FSEIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects. The following are evaluated as alternatives to the proposed project:

1. No Project – No Development Alternative
2. No Project – Develop Under Current PD Zoning Alternative
3. Reduced Intensity Alternative

1. No Project – No Development Alternative

- A. Description of Alternative:** Under the No Project – No Development Alternative, the buildings and parking lots existing and under construction at the site would remain. Building 5 would not be constructed. The site would remain as zoned and approved for Buildings 1 through 4 and the parking garage.
- B. Comparison of Environmental Impacts:** Under the No Project - No Development Alternative, the Project site would remain as it is, and all of the environmental impacts anticipated to occur under the proposed Project would be avoided.
- C. Finding:** The No Project - No Development Alternative would avoid the Project's significant unavoidable transportation and cumulative transportation impacts. This alternative would also avoid the other significant impacts resulting from the Project that would be reduced to a less than significant level with the incorporation of mitigation measures.

The No Project - No Development Alternative would meet some, but not all, of the proposed Project's specific objectives to provide jobs and provide a more efficient and economically productive use at the site, in that the existing America Center buildings accomplish these goals. However, the site would provide approximately 600 fewer jobs without the additional square footage proposed as part of the Project and the full built out under the original Legacy Terrance FEIR contemplated 5 buildings.

2. No Project – Develop Under Current PD Zoning Alternative

- A. Description of Alternative:** The Project site is currently designated *Combined/Industrial Commercial* in the City's General Plan and is located within a Planned Development (PD) zoning district. Under the current PD zoning (PDC99-044), 900,000 square feet of development is allowed for the Commercial Office/R&D portion of the project site. Of that total, 867,762 square feet have been constructed or is currently under construction and 32,238 square feet of Commercial Office/R&D entitlement remains.

Under the current PD zoning, a 32,238-square-foot office building could be constructed. A potential project under the No Project – Develop Under Current PD Zoning Alternative would likely be one story and would occupy the footprint of the proposed Building 5. The building would likely not be visible as it would be shielded on all sides by existing, much taller structures.

Pile driving would still be required for a smaller Building 5 and parking garage expansion.

- B. Comparison of Environmental Impacts:** The No Project – Develop Under Current PD Zoning Alternative would avoid the Project's identified transportation impacts. This alternative would still result in the same impacts to biological, cultural resources, geology, hazards materials, hydrology, and construction noise as the Project. Aesthetic impacts would be less than the proposed project as the building would be mostly shielded from views from SR 237 and recreation trails by taller surrounding structures.
- C. Finding:** This alternative would avoid the Project's transportation impacts; however, impacts to biological resources, cultural resources, geology, hazardous materials, hydrology, and noise will remain the same as the proposed Project.

The No Project–Develop Under Current PD Zoning Alternative would meet some of the Project objectives with development consistent with the General Plan and Alviso Master Plan, and would intensify the development of the site and utilize the closed landfill area. However, building a one-story 32,238-square-foot structure would not meet the efficiency goals of the large-scale development objective given the complexities of building on the closed Highway 237 Landfill site. Additionally, this alternative would result in approximately 500 fewer jobs on site than the proposed Project and would not meet project objectives related to creating buildings sizeable enough to attract large employers to the Alviso Community/San José.

3. Reduced Intensity Alternative

- A. Description of Alternative:** A Reduced Intensity Alternative would increase the amount of office/R&D allowed on the site by 55,000 square feet, resulting in the construction of a new approximately 87,000-square foot, three-story Building 5 (assuming the same footprint as the proposed Project and use of the remaining 32,238 square feet of yet unbuilt but entitled office/R&D capacity from the previous PD zoning). The building would likely not be visible from off-site as it would be shielded on all sides by existing, taller structures that are approximately six-stories in height. Pile driving may still occur with the Reduced Intensity alternative, but it is unknown the extent of pile driving that might be necessary for a three-story structure.
- B. Comparison of Environmental Impacts:** The Reduced Intensity Alternative would avoid the Project's transportation impacts, specifically the new significant and unavoidable transportation impacts which were not

identified in the Legacy Terrace FEIR. However, this alternative would still result in the same impacts to biological resources, cultural resources, geology, hazardous materials, hydrology, and construction noise as the Project, though these impacts would also be less than significant with mitigation. Aesthetically, a three-story building would be mostly shielded by taller surrounding structures approximately 90 feet and six-stories in height and would not substantially contribute to the identified impacts to views from SR 237 and trails in the Alviso area.

- C. Finding:** As the environmentally superior alternative, the Reduced Intensity Alternative would avoid the Project's significant transportation and cumulative transportation impacts; however, significant impacts to biological resources, cultural resources, geology, hazardous materials, hydrology, and construction noise would not be avoided. These impacts would remain less than significant with mitigation.

The Reduced Intensity Alternative would meet some of the Project goals, in that it would provide development consistent with the General Plan and Alviso Master Plan, and intensify the development of the site and utilize the closed landfill area. However, this alternative would not fully meet all of the Project objectives related to providing efficient, large-scale development on a former landfill site. Additionally, approximately 400 fewer jobs would be provided on site compared to the proposed Project. At half the square footage and height of the proposed Project, it would not fully meet objectives related to the efficiencies of large-scale development on a former landfill site and attract large employers to the Alviso Community/San José.

MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Exhibit "A" and incorporated and adopted as part of this Resolution herein is the Mitigation Monitoring and Reporting Program ("MMRP") for the Project required under Section 21081.6 of the CEQA Statute and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation for responsibility for mitigation implementation and the agency responsible for the monitoring action.

STATEMENT OF OVERRIDING CONSIDERATIONS

- A. Significant Unavoidable Impacts.** With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the Project will result a significant unmitigated or

unavoidable impacts, as set forth above, associated with aesthetics, air quality, noise, and transportation.

- B. **Overriding Considerations.** The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the Project are acceptable in light of the economic, legal, environmental, social, technological or other considerations noted below, because the benefits of the Project outweigh its significant adverse environmental impact of the Project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent basis for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan, Alviso Master Plan, and the San José Commercial Design Guidelines.
- C. **Benefits of the Project.** The City Council has considered the public record of proceedings on the proposed Project and other written materials presented to the City as well as oral and written testimony at all public hearings related to the Project, and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:
- **Increase Employment within San José.** The Project will advance goals of the Envision San José 2040 General Plan to increase the ratio of jobs/employed residents to attain fiscal sustainability for the City. The Project will support San José's stated job creation and job retention objectives by allowing for the development of an approximately 192,350 square foot office building that would accommodate approximately 600 new jobs on the site.
- The Project furthers redevelopment of an inactive landfill and associated former industrial and storage yard areas to a viable economic use in an economically developing area. Specifically, the Project will enhance building floor area capacity for various employment uses and provide near-term jobs to contribute to the City's long-term achievement of economic development and job growth goals.
- **Transportation Demand Management.** The Project has committed to implementing a Transportation Demand Management (TDM) program and making contributions toward transportation improvements, which will benefit the surrounding community in accordance with the City's

policies, such as General Plan Policy TR-7.1, the Zoning Ordinance, and the Greenhouse Gas Reduction Strategy.

- **Increase Economic Development.** The Project will advance goals of the Envision San José 2040 General Plan by adding approximately 192,350 square feet of office development in the Alviso area. The Project will directly contribute to the tax base of the City through an increase in the assessed value of the Project property and will also contribute by sales tax revenues generated through businesses located on the Project site and provide economic benefits to the City.
- **General Plan Goals and Policies.** The Project supports a number of the General Plan's major strategies and encourages strategic growth by locating office development on employment lands adjacent to complementary other commercial/office facilities.

- Major Strategy #4 Innovation/Regional Employment Center:

The Project site is located within the Combined Industrial/Commercial designation in the Envision San José 2040 General Plan. The Project proposes the construction of new office buildings that would accommodate new jobs. It will increase the ratio of jobs/employed residents and provides greater flexibility for commercial activity. The Project will support job growth within the current America Center area, which contains existing office uses.

- Land Use and Employment Goal IE-1:

The Project will develop an approximately 192,350 square foot office building will contribute to the supply of jobs. It will contribute to a joint use of parking facilities for office, commercial and hotel uses within the America Center area. The Project will provide and enhance economic development and job growth in San José.

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- Bay and Baylands Goal ER-3:

The Project will protect the 23.5 acres of permanent open space preserve established by the FEIR in 2000 between San Tomas Aquino Creek, the Guadalupe River, and the salt evaporation ponds. The open space preserve was established as mitigation for the Legacy Terrace Center project and provides important wildlife habitat in the South Bay. The Project will provide buffer areas and avoid direct or indirect impacts on riparian habitats

because building and parking areas will be set back a minimum of 100 feet from the Guadalupe River and San Tomas Aquino Creek. The Project will preserve natural characteristics of the Bay and adjacent lands maintaining a healthy regional ecosystem.

The City Council has weighed each of the above benefits of the proposed Project against its unavoidable environmental risks and adverse environmental effects identified in the Final Subsequent Environmental Impact Report and hereby determines that those benefits outweigh the risks and adverse environmental effects of the Project and, therefore, further determines that these risks and adverse environmental effects are acceptable and overridden.

LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at the City's Department of Planning, Building and Code Enforcement, City Hall, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113. The City Council hereby designates the City's Director of Planning, Building, and Code Enforcement at his office at 200 East Santa Clara Street, San José California 95113, as the custodian of documents and records of proceedings on which this decision is based.

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ADOPTED this 23rd day of January, 2018, by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ,
KHAMIS, NGUYEN, PERALEZ, ROCHA.

NOES: NONE.

ABSENT: LICCARDO.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

America Center Phase III Project Subsequent Environmental Impact Report File No. PDC15-058 and PD15-053 December 2017



PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Subsequent Environmental Impact Report (SEIR) prepared for the America Center Phase III Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the SEIR concluded that the impacts from implementation of the project would be less than significant.

I, Darren Barnes, the applicant, on the behalf of STEELWAVE LLC hereby agree to fully implement the mitigation measures described below which have been developed in conjunction with the preparation of an SEIR for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level, where feasible.

Project Applicant's Signature

Date

Darren Barnes
12-21-17



Planning, Building and Code Enforcement
ROSALYNN HUGHEY, INTERIM DIRECTOR

America Center Phase III Project
File Numbers:
PDC15-058 and PD15-053

Adopted Mitigation Measures	MONITORING AND REPORTING PROGRAM					
	Documentation of Compliance (Applicant/Proponent Responsibility)			Documentation of Compliance (Lead Agency Responsibility)		
	Responsibility for Implementation	Method of Compliance or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Air Quality						
Impact AIR-1: The project would contribute to an impact as a result of exceedance of Bay Area Air Quality Management District standards for operational nitrogen oxide (NOx) emissions, as previously identified for the buildout of the America Center site in the Legacy Terrace Final Environmental Impact Report.						
MM AIR-1.1: The project applicant shall include the following updated measures from the Legacy Terrace FEIR: <ul style="list-style-type: none"> • Provide physical improvements, such as sidewalk improvements, landscaping and bicycle parking which would encourage pedestrian and bicycle modes of travel; • Connect site with regional bicycle/pedestrian trail system; • Provide shuttle bus service to the Tasman/Lafayette light rail and Altamont Corridor Express (ACE) rail system; and • Implement other feasible transportation demand management (TDM) program measures; including a ride-matching program, guaranteed ride home programs, coordination with regional ride-sharing organizations, and a transit incentives program. The Project applicant shall submit a Transportation Demand Management (TDM) Plan to the satisfaction of the Transportation Manager of 	Project applicant	<p>Incorporate pedestrian and bicycle improvements and trails into building and landscape plans.</p> <p>Prepare and submit a TDM program that results in a 10 percent reduction in projected weekday mobile emissions. Submit annual TDM monitoring reports.</p>	<p>Prior to issuance of any building permits</p> <p>Prior to approval of a Planned Development Permit</p>	<p>Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement (PBCE)</p> <p>Transportation Manager of the Department of Public Works and the PBCE Supervising Environmental Planner</p>	<p>Review building and landscape plans</p> <p>Review proposed TDM program and annual TDM monitoring reports.</p>	<p>Prior to issuance of any building permits</p> <p>Prior to approval of a Planned Development Permit</p>

the Department of Public Works and the PBCE Supervising Environmental Planner prior to approval of a Planned Development Permit. The TDM Plan shall contain components or equivalent measures to result in a 10 percent reduction in projected weekday mobile emissions. The project will be required to submit an annual monitoring report to the Transportation Manager of the Department of Public Works and the PBCE Supervising Environmental Planner to measure the effectiveness of the TDM plan. Additional TDM measures may be required if the TDM measures are not effective.						
Impact AIR-2: Odors could occur as a result of drilling holes for support piles that penetrate the landfill cap and impact sensitive receptors in the area.						
MM AIR-2.1: The project applicant shall prepare and implement an odor-control plan prior to the onset of construction which includes the following odor-control elements: <ul style="list-style-type: none"> Scheduling of construction phasing such that the amount of uncovered/disturbed waste at one time is minimized; Controlling odors by covering any exposed landfill material with soil, foam, or other suitable material (including application of deodorant or other odor-control materials); Considering seasonal weather conditions that can concentrate odors or direct odors towards sensitive receptors; and Providing the Sunnyside Mobile Estates residents and the Department of Planning, Building and Code Enforcement, with the name and phone number of a Project Contact who shall respond to any complaints about dust, odors, or other nuisances associated with waste excavation and relocation operations. 	Project applicant and construction crewmembers	Preparation of an odor-control plan and implementation during construction Name and phone number of a Project Contact who shall respond to any complaints about dust, odors, or other nuisances	Prior to issuance of any building permits	City of San Jose, Local Enforcement Agency Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement	Review and approval of the odor-control plan. Coordination with Project Contact in responding to odor complaints	Prior to issuance of any building permits

Biological Resources

Impact BIO-1: If present, construction activities could cause disturbance to birds nesting and foraging in the project area.

MM BIO-1.1: The project applicant shall implement the following measures to avoid impacts to nesting birds on and adjacent to the site during construction.

- To the extent feasible, construction activities shall be scheduled to avoid the nesting season. If construction activities are scheduled to occur outside the nesting season, all impacts on nesting birds protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code shall be avoided. The nesting season for most birds in Santa Clara County extends from February 1st to August 31st.
- If it is not possible to schedule construction activities between September 1st and January 31st then pre-construction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st). During this survey, the ornithologist shall inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings) in and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist in consultation with California Department of Fish and Wildlife (CDFW), will determine the extent of a construction-free

Project applicant

Avoidance of construction activities during nesting seasons

If avoidance of construction activities during nesting seasons is not feasible, a pre-construction nesting bird survey shall be conducted by a qualified biologist and construction-free buffer zones shall be designated around any discovered nest.

Following completion of the preconstruction survey, the project applicant shall prepare a report to document the results of the survey and any designated construction-free buffer zones.

Prior to issuance of any grading, demolition, and/or building permit

Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement

Confirm that demolition and construction activities are scheduled outside of the avian nesting season.

Review the preconstruction survey report indicating the results of the survey and any designated buffer-zones.

Prior to issuance of any grading, demolition, and/or building permit.

<p>buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species) to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.</p> <ul style="list-style-type: none"> A report summarizing results of the pre-construction surveys and subsequent efforts to protect nesting raptors or birds (if found to be present) shall be submitted to the City of San José Supervising Environmental Planner. 						
Impact BIO-2: If present, construction activities could cause disturbance to burrowing owls nesting and foraging in the project area.						
<p>MM BIO-2.1: The project applicant shall implement the following measures to avoid impacts to nesting or non-nesting burrowing owls on or immediately adjacent to the site, consistent with Condition 15 of Chapter 6 of the Santa Clara Valley Habitat Conservation Plan.</p> <ul style="list-style-type: none"> Prior to any site disturbance, staging, or construction-related activities, a qualified biologist shall conduct burrowing owl preconstruction surveys in all suitable habitat areas on the project site and within 250 feet of all construction activity. The purpose of the preconstruction surveys is to document the presence or absence of burrowing owls on the project site and within 250 feet of construction activity in order to avoid direct impacts to burrowing owls. To maximize the likelihood of detecting owls, the preconstruction survey shall last a minimum of three hours. The survey shall begin one hour before sunrise and continue until two hours after sunrise (three hours total) or begin two hours before sunset and continue until one hour after sunset. Additional time may be required for large project sites. A minimum of two surveys shall 	Project applicant and qualified biologist	<p>Conduct preconstruction surveys in all suitable habitat areas on the project site and within 250 feet of all construction activity</p> <p>Maintain a 250-foot buffer zone around occupied burrow(s) as determined by a qualified biologist</p>	<p>Prior to any site disturbance, staging, or construction-related activities</p> <p>Surveys shall conclude no more than two calendar days prior to site disturbance, staging, or construction-related activities.</p>	<p>Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement</p> <p>CDFW</p>	Review the preconstruction survey report indicating the results of the survey and any designated buffer-zones.	Prior to issuance of any grading, demolition, and/or building permits

<p>be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed shall be counted and their locations mapped.</p> <ul style="list-style-type: none"> • Surveys shall conclude no more than two calendar days prior to site disturbance, staging, or construction-related activities. Therefore, the project applicant must begin surveys no more than four days prior to construction (two days of surveying plus up to two days between surveys and construction). To avoid last-minute changes in schedule or contracting that may occur if burrowing owls are found, the project applicant may also conduct a preliminary survey up to 14 days before construction. This preliminary survey may count as the first of the two required surveys as long as the second survey concludes no more than two calendar days in advance of construction. • If burrowing owls are present during the nonbreeding season (September 1st to January 31st), a 250-foot buffer zone shall be maintained around the occupied burrow(s) as determined by a qualified biologist, if feasible. If maintaining such a buffer is not feasible, then the buffer must be great enough to avoid injury or mortality of individual owls based on monitoring results. During the breeding season (generally February 1st to August 31st), a 250-foot buffer, within which no newly initiated project-related activities shall be permissible, shall be maintained between project activities and occupied burrows. Owls present between February 1st and August 31st will be assumed to be nesting, and the 250-foot protected area shall remain in effect until August 31st. If monitoring evidence indicates that the owls are no longer nesting or the young owls are foraging independently, the buffer may be 						
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<p>reduced based on monitoring results, in consultation with the City and CDFW.</p> <ul style="list-style-type: none"> If nesting owls are determined to be present on the site, and project activities cannot feasibly avoid disturbance of the area within 250 feet of the occupied burrow during the nesting season (i.e., February 1st through August 31st) due to other seasonal constraints, a qualified biologist shall be present during all activities within 250 feet of the nest to monitor the owls' behavior. If, in the opinion of the qualified biologist, the owls are unduly disturbed (i.e., disturbed to the point of harm or reduced reproductive success), all work within 250 feet of the occupied burrow will cease until the nest is determined to no longer be active by a qualified biologist. 						
Geology and Soils						
Impact GEO-1: Differential settlement could result in structural damage to the proposed development.						
<p>MM GEO-1.1: The project applicant shall complete a design-level geotechnical investigation for the project site prior to issuance of any grading permits for individual site improvements to address the potential geologic hazards. Design-level engineering studies shall be submitted to the City's Public Works Department for review and approval.</p> <p>Building foundations shall be designed based on this geotechnical investigation. Building loads shall be supported on driven pile foundations as appropriate to support the building loads without significant damage due to settlement. Foundation piles shall be designed to accommodate downdrag loads caused by the subsidence of landfill materials due to the natural degradation of landfill components, and under the weight of the final cover and/or soil placed on the site for development purposes. In addition, a reinforced concrete "skirt wall" around the perimeter of each building shall be</p>	Project applicant	Preparation of a geotechnical investigation, design-level engineering studies, and a settlement map	<p>Prior to issuance of any grading permit</p> <p>Post-construction grade monitoring for settling</p>	Public Works Department	The geotechnical investigation design-level engineering studies, and updated settlement map	<p>Prior to issuance of any building permit</p> <p>Site grades shall be monitored every three months for the first two years. After two years, the monitoring duration shall be reevaluated based on the settlement rates and site characteristics.</p>

installed to resist lateral loads placed on the building during a seismic event. Settlement adjacent to the skirt wall shall be monitored and soil replaced to avoid the loss of lateral support as fill settles.

Conceptual foundation installation procedures in the South Campus area include: predrilling each pile location to the full depth of the landfill (50 to 60 feet); and/or installing a cased shaft at each pile location from the ground surface to the bottom of the landfill, removing landfill materials from the cased hole, and driving the foundation piles through the casing into the supporting soil below the landfill. Alternatively, non-displacement type piles, such as steel H-piles, could be driven directly through landfill materials. Corrosion control measures to protect steel and/or concrete piles shall be included in the design-level geotechnical investigation.

MM GEO-1.2: An updated settlement map shall be prepared based upon site monitoring and additional surveys prior to the completion of the design-level geotechnical investigation. The updated settlement map shall confirm appropriate post settlement grades on the site. The map shall be provided to the City of San José Public Works Department for review and approval.

MM GEO-1.3: To allow for settlement between structures and the surrounding ground at building entrances, "hinged slabs" or interlocking pavers shall be used. For hinged slabs, one end of the hinged slab will be fixed to the pile-supported structure and the other end will rest in the earth fill that will settle with time. The design of the hinged slab shall be based on the maximum operation slope of the slab. For pedestrian slabs, the estimated finished grade after settlement shall be based on a maximum slope required by the

Americans with Disabilities Act. For vehicular slabs, the estimated finished grade after settlement shall be based on a maximum gradient differential of 11 percent between the slab and the stationary foundation, which allow use of the parking structure entrances without scraping the bottom of vehicles. Alternatively, interlocking pavers installed at building entrances can be easily adjusted to grade after settlement has occurred. Pavers shall be monitored at more frequent intervals than hinged slabs and regraded at regular intervals to avoid tripping hazards. The design of hinged slabs or pavers shall be completed using the current settlement map for the site.

MM GEO-1.4: Roadways and other paving systems shall utilize flexible materials such as asphaltic concrete, interlocking paving units, and avoid or limit the use of Portland cement concrete and other non-flexible materials. Where concrete is utilized, adequate expansion and spacing joints shall be used to accommodate differential settlement. Geotextile fabric or other materials shall be placed below the subgrade base section to provide bridging over localized "soft" areas determined by the geotechnical engineer during compaction of the fill material. Joints shall be adequately sealed between differing materials (i.e., asphalt and concrete curbs) to prevent water infiltration.

MM GEO-1.5: Pavements and other surface improvements shall be designed with adequate slope so that after settlement, reversals of stormwater flow direction or adverse flattening of the roadway pavement surface does not occur.

MM GEO-1.6: On-site utilities which operate via gravity shall be designed based upon the anticipated settlement on the site. These utilities shall be designed with adequate slope so that after

<p>settlement, reversal or flattening of the slope of utility lines does not occur.</p> <p>MM GEO-1.7: Pipe materials which can accommodate differential settlement without separation of pipe joints or leakage shall be used on the site. Piping could utilize high density polyethylene or, in some cases, dual contained polyvinyl chloride pipe. For either type of pipe system, metallic fittings, valves, and flexible connections could be housed inside vaults for corrosion protection and to aid leak detection.</p> <p>MM GEO-1.8: Under slab utilities, shall be connected to the structural slab using hangers constructed of a non-corrosive material, such as stainless steel. To counter the effect of soil in the utility trench settling and dislocating the utility line from the hanger, a non-cohesive backfill, such as pea gravel, shall be used in the trench. As the ground settles, the non-cohesive backfill shall be able to move around the pipe. Alternatively, no backfill shall be placed in the trench, with plywood or other materials being used to prevent concrete from the structural slab pour from entering the utility trench. As the surrounding ground settles, the utility pipe would be supported by hangers.</p> <p>MM GEO-1.9: To accommodate the difference in settlement between the building and surrounding ground, flexible utility connections contained within a settlement vault shall be employed.</p>						
<p>MM GEO-1.10: The project applicant shall prepare and implement an Operations and Maintenance Program for the building, utilities, and pavement, and shall include a site grade monitoring schedule. Site grades shall be monitored every three months for the first two years. After two years, the monitoring duration shall be reevaluated based on the settlement rates and site</p>	Project applicant	Preparation and implementation of an Operations and Maintenance Program	Prior to issuance of any grading permit	Public Works Department	Review and approval of the Operations and Maintenance Program	Prior to issuance of any building permit

characteristics. The Operations and Maintenance Program shall specify the types of repairs to be made in the event that indications of localized depressions, slope changes or cracking of pavements are found.						
Hazards and Hazardous Materials						
Impact HAZ-1: Methane gas within landfill materials could result in flammable or explosive conditions. Toxic compounds, including volatile organic compounds, and asbestos, could be present and pose health risks to construction workers and/or the public.						
<p>MM HAZ-1.1: The project applicant shall follow the U.S. Environmental Protection Agency (EPA)-approved Soil Management Plan (SMP) developed for closure, capping, maintenance, and post-capping construction activities at the Highway 237 Landfill to reduce or eliminate exposure risk to human health and the environment, specifically, potential risks associated with the presence of methane, hydrogen sulfide, and volatile organic compounds (VOCs) in soil gas and potential unknown conditions. The SMP shall be followed for any development related activities that penetrate the low-permeability layer of the landfill cap, such as pile installation or excavations. As required by the SMP, prior notification of planned activities that trigger implementation of SMP protocols shall be provided to the Department of Planning, Building and Code Enforcement, Environmental Services Department, Local Enforcement Agency (LEA), and other regulatory agencies providing oversight (such as the Regional Water Quality Control Board [RWQCB] and CalRecycle) prior to issuance of a grading permit.</p> <p>MM HAZ-1.2: Contractors and subcontractors at the project site shall develop a Health and Safety Plan specific to their scope of work and based upon the known environmental conditions for the site.</p>	Project applicant and contractors, Site Safety and Health Officer	Implementation of the U.S. EPA-approved SMP; preparation and implementation of project Health and Safety Plan(s).	Prior to issuance of any grading permit; During construction	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement, Environmental Services Department, LEA, RWQCB, and CalRecycle	Preparation and implementation of the SMP and Health and Safety Plan	<p>Prior to issuance of any grading permits</p> <p>As specified within the approved SMP during construction and operation</p>

EXHIBIT "A" (File Nos. PDC15-058; PD15-053)

Each health and safety plan shall be implemented under the direction of a Site Safety and Health Officer and provided to all regulatory agencies providing oversight (such as the LEA, CalRecycle, or RWQCB).						
MM HAZ-1.3: The project site is on a former landfill and shall follow environmental monitoring procedures required by CalRecycle and the LEA.						
MM HAZ-1.4: The project applicant shall ensure that where an irrigation system is installed for landscaping it shall be designed to optimize watering using the most current automatic irrigation equipment and monitoring methods. To help minimize infiltration, subdrains shall be constructed for all tree planting areas. The trees shall have subdrains that discharge to the storm drain system.	Project applicant	Incorporation of an irrigation system into the project landscape and utility plans	Prior to issuance of any building permits	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement	Review of the project landscape and utility plans	Prior to issuance of any building permits
MM HAZ-1.5: Prior to issuance of any grading permit for site improvements, the project applicant shall provide the LEA, CalRecycle, and an appropriate oversight agency (such as the DTSC or RWQCB and the City's Department of Public Works) with a project-level, engineering analysis that addresses, in sufficient detail, the following elements of the final project design: <ul style="list-style-type: none"> • Soil gas mitigation and monitoring systems, including structure monitoring and perimeter monitoring systems; • Differential settlement; • Site surface drainage and final grading; and • Any other elements of the design as required by the LEA or Department of Public Works, including specialized analysis that may be warranted by the City. The project applicant shall bear the responsibility for providing any such specialized analysis. 	Project applicant	Preparation of a project-level engineering analysis, and incorporation into building permit plans	Prior to issuance of any grading permits	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement, Environmental Services Department (as the LEA), Department of Public Works, RWQCB, and CalRecycle	Review of project-level engineering analysis and building permit plans	Prior to issuance of any grading permits

<p>MM HAZ-1.6: The project applicant shall incorporate a landfill gas control system into all buildings constructed as a part of the project. Proposed structures shall be constructed with a sub-slab soil gas mitigation system to vent landfill gases and other soil vapor. The soil gas mitigation system may consist of perforated pipes placed in a permeable granular layer under building and garage concrete slabs. The perforated pipes shall be connected to a system that discharges vapor to the building's exterior. The system shall include a methane sensor/venting system that is capable of venting soil vapor out from beneath the building, and a low-permeable barrier layer, such as Liquid Boot, shall be installed in the buildings and certain areas in the parking garage that have the potential to accumulate landfill gas in order to prevent soil vapors from intruding into the structures. The low-permeable vapor barrier membrane shall be located above the permeable granular layer. The membrane shall be sealed around foundation piles, grade beams, and slab penetrations (such as utility lines). The project applicant shall also install a landfill gas venting system beneath hardscape areas near the proposed structures.</p> <p>The landfill gas control system for the office buildings shall include an integrated methane sensor/blower system that is capable of actively drawing soil vapor from beneath the building. Methane sensors provided at the discharge point of each soil gas mitigation system shall control the active operation of the venting system.</p> <p>The project applicant shall prepare and implement an Operations and Maintenance Program for the soil gas mitigation systems. The Plan shall include</p>	Project applicant	<p>Incorporation of control systems and utility trenches into building permit plans</p> <p>Operations and Maintenance Program for the soil gas mitigation systems</p>	Prior to issuance of any building permits	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement, Environmental Services Department (as the LEA)	Review of building permit plans and Operations and Maintenance Program	Prior to issuance of any building permits
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<p>instructions for how to ensure that the system functions properly.</p> <p>MM HAZ-1.7: The project applicant shall construct site utility trenches with landfill gas cut-offs to prevent landfill gas from migrating along utility trenches. Below-grade electrical facilities shall be designed for explosive conditions, in accordance with the California Building Standards Code.</p>						
Noise						
Impact NOI-1: Pile driving noise generated in the eastern portion of the site could impact residents at Summerset Mobile Estates and commercial uses along Gold Street in the short-term.						
<p>MM NOI-1.1: Prior to the start of construction, the project applicant shall prepare and implement a noise logistics plan to reduce construction noise levels as low as practical. The noise logistics plan shall be submitted to the Supervising Environmental Planner of the Planning, Building and Code Enforcement Department for review and approval. The noise logistics plan would include, but not be limited to, the following measures:</p> <ul style="list-style-type: none"> • Construction hours within 500 feet of residential uses will be limited to the hours of 7:00 a.m. and 7:00 p.m. weekdays, with no construction on weekends or holidays. Pile driving shall be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. • Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists. • Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment. • Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as 	Project applicant, construction crewmembers	<p>Preparation of a noise logistics plan and implementation during construction.</p> <p>Prepare a detailed construction plan identifying a schedule of major noise generating construction activities, and identify a noise control disturbance coordinator and procedure for coordination with nearby communities.</p>	Prior to issuance of any grading permits	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement	Review of the noise logistics plan	Prior to issuance of any grading permits

<p>possible from adjacent land uses.</p> <p>Locate staging areas and construction material areas as far away as possible from adjacent land uses.</p> <ul style="list-style-type: none"> • Prohibit all unnecessary idling of internal combustion engines. • If impact pile driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced. • If impact pile driving is proposed, temporary noise control blanket barriers shall shroud pile drivers or be erected in a manner to shield the adjacent land uses. Such noise control blanket barriers can be rented and quickly erected. • The contractor shall prepare a detailed construction plan identifying a schedule of major noise generating construction activities. This plan shall identify a noise control disturbance coordinator and procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance. This plan shall be made publicly available for interested community members. The disturbance coordinator shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the case of the noise complaint and will require that reasonable measures warranted to correct the problem be implemented. The telephone number for the disturbance coordinator at the construction site shall be posted and included in the notice sent 						
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to residences and commercial businesses within 100 feet regarding the construction schedule.						
Transportation and Traffic						
Impact TRA-1: The added trips as a result of the proposed project would cause the critical-movement delay to increase by four or more seconds and the demand-to-capacity ratio to increase by 0.01 or more at the Lafayette Street and Gold Street Connector intersection (City of San José's jurisdiction) during the AM peak hour.						
<p>MM TRA-1.1: Prior to Public Works Clearance, the project applicant shall pay a fair share amount towards improvements (including full cost for design, construction, etc.) to the Lafayette Street and Gold Street Connector intersection. Improvements would include with the addition of a second northbound left-turn lane in a vacant area between the Gold Street Connector and SR 237. The improvement shall require widening of the Gold Street Connector and shifting of travel lanes to the south by approximately 12 feet to accommodate a second receiving lane for the second northbound left-turn lane. The roadway widening would also require the relocation of the Highway 237 Bikeway, south of the Gold Street Connector. The Director of Public Works shall determine the fair share based on the cost of the improvement at the time the payment is due and the project's contribution to the impact (an estimated 5 percent). The fair share amount shall be paid to the City of San José Public Works Depositors Fund.</p> <p>During construction of the intersection improvement, a trail detour shall be provided and/or the Highway 237 Bikeway relocated prior to construction of the road widening.</p>	Project applicant	Payment of fair share amount to the City of San José Public Works Depositors Fund, as determined by City of San José and in coordination with City of Santa Clara.	Prior to issuance of Public Works Clearance	Transportation Manager of the Department of Public Works Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement	Determine fair share based on the cost of the improvement at the time the payment is due and the project's contribution to the impact. Confirm transfer to City of Santa Clara.	Prior to issuance of Public Works Clearance Transfer payment to the City of Santa Clara upon issuance of improvement plan permit.

Impact TRA(C)-1: The proposed project would result in a cumulatively considerable contribution to traffic impacts at two San José intersections (Lafayette Street and Gold Street Connector, and Great America Parkway and Eastbound SR 237) based on cumulative impact criteria.	
MM TRA (C)-1.1: Lafayette Street and Gold Street Connector - See MM TRA-1.1.	See implementation of MM TRA-1.1, above
MM TRA (C)-1.2: Great America Parkway and Eastbound State Route(SR) 237 - Improvements to the Great America Parkway/State Route 237 intersection include the addition of a third left-turn lane and second right-turn lane to the westbound approach to the intersection (SR 237 off-ramp), and would reduce the project and cumulative impact at this intersection to a less than significant level. These improvements are fully funded and will be constructed by the City of Santa Clara's City Place development, as a condition of approval.	Implemented by the City of Santa Clara's City Place development, as a condition of approval.

Source: City of San José. America Center Phase III, Subsequent Environmental Impact Report. June 2017.

RESOLUTION NO. 78494

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT TO CONSTRUCT A SIX-STORY, 192,350 SQAURE FOOT OFFICE BUILDING, PARKING STRUCTURE ADDITION TO ACCOMMODATE A TOTAL OF 1,870 PARKING SPACES, LANDSCAPING AND ASSOCIATED SITE IMPROVEMENTS, ON AN APPROXIMATLEY 63 GROSS ACRE SITE LOCATED AT THE TERMINUS OF AMERICA CENTER DRIVE, APPROXIMALEY 500 FEET NORTH OF STATE ROUTE 237 (0 AMERICA CENTER DRIVE, APNS: 015-45-013, 024, 032, 048, 049, 050, 051, 051, 052, & 053)

FILE NO. PD15-053

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on October 29, 2015, an application (File No. PD15-053) was filed by the applicant, SteelWave LLC, with the City of San José for a Planned Development Permit to construct a 192,350 square new office building, an addition to the existing parking structure to accommodate a total of 1,870 parking spaces, landscaping and associated site improvements, on that certain real property situated in the A(PD) Agriculture Planned Development Zoning District and located at the terminus of America Center Drive, approximately 500 feet northerly of State Route 237 (0 America Center Drive, APN: 015-45-044, San José, which real property is sometimes referred to herein as the "subject property"); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A," entitled "Legal Description," and depicted in Exhibit "B," entitled "Site Map," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on January 10, 2018, 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, "America Center," dated received on December 20, 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 a partially developed 63.7 gross-acre site, known as the America Center site, which is currently developed with two occupied office buildings, a hotel, two additional office buildings under construction, a parking structure with 800 parking spaces, the connector roads and surface parking lots with 2,124 parking spaces. The area north of the site is designated as Open Space Preserve pursuant to the original zoning Planned Development Zoning File No. PDC99-044. The site is bordered by State Route 237 to the south, the San Tomas Aquino Creek to the west, salt evaporation ponds along the edge of the San Francisco Bay to the northwest, and the Southern Pacific railroad tracks to the east. Across San Tomas Aquino Creek is a wetlands mitigation site. There is an extended-stay hotel and two office buildings to the east of the Union Pacific Railroad (UPRR) train tracks.
2. **Project Description.** On October 29, 2015, a Planned Development Rezoning (PDC15-058) and Planned Development Permit (PD15-053) application was filed for the America Center site. The proposed Planned Development Rezoning would maintain the existing designation of A(PD) Planned Development Zoning District and remove the approximately 6.7-acre River Commercial area adjacent to the Guadalupe River/Alviso Slough from the Planned Development Zoning. This 6.7-acre area was covered under a separate Planned Development Rezoning (PDC15-016) approved on March 22, 2016 by Ordinance No. 29712. The currently proposed rezoning would also include minor lot line adjustments and would increase the allowed commercial office/R&D land use of 190,000 square feet. The existing allowed height of 90 feet will remain in place. The Planned Development Permit (PD15-053) would allow the construction of a six-story office building (Building 5) up to a maximum height of 83

feet at the top of roof, and would contain approximately 192,350 square feet of floor space. Additional parking would be accommodated through a five-story expansion of the previously approved parking structure resulting in a total of 1,870 structured parking spaces and 1,740 surface parking spaces. Onsite circulation will remain as it is currently, with the main access point located at the southern end of the site.

3. General Plan Conformance. The Project has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Combined Industrial/Commercial. This land use designation is intended for a wide variety of commercial, office, industrial developments, or a compatible mix of these uses. The project is also consistent with the following General Plan policies:

1. Land Use Policy LU-8.1: In areas that are designated for mixed industrial and commercial uses, allow only commercial uses that are compatible with industrial uses. Non-employment uses are prohibited in these areas.

Analysis: The proposed Planned Development Permit would accommodate an additional 190,000 square feet for Building 5 and the expansion of the parking structure would accommodate the additional required parking. The requested changes would make for a larger single or multi user campus. The additional square footage will provide office space and additional employment opportunities. The proposed building and parking are compatible with the existing buildings and other commercial uses on the site in that the architecture, massing and uses are consistent with the existing development on the site.

2. Environmental Resources Policy ER-2.1: Ensure that new public and private development adjacent to riparian corridors in San José are consistent with the provisions of the City's Riparian Corridor Policy Study and any adopted Santa Clara Valley Habitat Plan/ Natural Communities Conservation Plan.
3. Environmental Resources Policy ER-2.2: Ensure that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.
4. Environmental Resources Policy ER-2.3: Design new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise and toxic substances into the riparian zone.
5. Environmental Resources Policy ER-4.4: Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.
6. Environmental Resources Policy ER-5.1: Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance of activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.

7. Environmental Resources Policy ER-5.2: Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
8. Environmental Resources Policy ER-6.5: Prohibit use of invasive species, citywide, in required landscaping as part of the discretionary review of proposed development.
9. Environmental Resources Policy ER-7.1: In the area north of Highway 237 design and construct buildings and structures using bird friendly design and practices to reduce the potential for bird strikes for species associated with the Baylands or the riparian habitats of lower Coyote Creek.

Analysis: The project would respect the 100-foot riparian setback specified within of General Plan Policy ER-2.1, ER-2.2, ER-2.3 and Council Policy 6-34. Landscape plans would be in compliance with Policy ER-6.5. Mitigation measures MM BIO-1.1 and MM BIO-1.2 would be implemented consistent with General Plan Policy ER-4.4, ER-5.1, and ER-5.2. Bird-safe design features, such as no vegetated, glass-walled atria and not including glass windows or siding in the design for the parking garage, are proposed and Building 5 will incorporate View Dynamic Glass (i.e., a smart glass system that allows the tint of the glass to be varied, allowing the tint to be increased at night to prevent brightly lit windows, which can result in the disorientation of migrating birds at night) in the building. All bird-safe design features are reviewed by city staff as part of the overall design review process for consistency with City Council Policy 6-34 and Policy ER-7.1.

4. Alviso Master Plan – Land Use: The site is designated Combined Industrial/Commercial by the Alviso Master Plan, which allows for a wide range of industrial uses, including warehousing, office, research and development, and light manufacturing. This land use designation also allows for retail, restaurant, hotel, or other commercial establishments. The proposed project fits into the parameters of this land use designation. The project is also consistent with several Objectives, Goals and Policies of the Alviso Master Plan.

1. Industrial/Non-Industrial Relationships Objective: Setbacks and buffers should be established to protect environmental resources (e.g., Coyote Creek) and "sensitive uses" (e.g., residential, day care, and school uses) from potential negative impacts of industrial use.

Analysis: The proposed Planned Development Permit maintains the adopted setbacks and established open space areas included in the original Planned Development Zoning (File No. PDC99-044). The proposed Building 5 location is located at the interior of the site, between existing buildings. The proposed parking garage expansion is located along the existing rail line and away from designated open space areas.

2. River Orientation Policy 3: New Buildings adjacent to the Guadalupe River/Alviso Slough should be of an appropriate scale and character to enhance this waterway as a public-oriented recreation resource and as a natural riparian corridor.

Analysis: The Alviso Master Plan has a height limit in this area of 90 feet, which the Planned Development Permit further limits the height to approximately 83 feet. As noted above, the building and garage locations are located at the interior of the site or adjacent to the existing rail line, away from existing waterways.

3. Industrial/Non-Industrial Relationship Objective: Setbacks and buffers should be established to protect environmental resources and “sensitive uses” from potential negative impacts of industrial use.

Analysis: The proposed use is not a typical industrial use, such as manufacturing and the storage of chemicals, that has operational effects on “sensitive uses.” The proposed office building and parking garage addition will not be storing, handling, disposing of, and/or using acutely hazardous materials. Moreover, the proposed project site is located outside of the Riparian Corridor, which is located west of the existing office buildings on the site, creating a buffer between the proposed project and the riparian areas.

4. Gateway Entrances Objective: Development located near Highway 237 along both sides of Gold Street, First Street, and Zanker Road should foster a “gateway” feel through building orientation, signs, trees, landscaping, and other features.

Analysis: The proposed Building 5 and garage addition will further enhance the overall America Center site. The constructed and entitled office buildings on the site have a high degree of visibility from State Route 237 and are designed to have a distinctive high-quality, “modern” architectural style that will support the image of a high-tech, high-quality office at Gold Street.

5. Community Character Policy 2: New development should reflect Alviso 's bayside character through the design of buildings and landscaping.

6. Lands Outside of the Village Area Design Objective: Given the high visibility of most of this area, development should be attractive and should fit in the context of the larger community; and should reflect some of the elements and materials of seaside styles to contribute to Alviso's sense of place.

Analysis: The America Center development is located on the former landfill and is outside the Alviso Village area. The Alviso Master Plan includes several design guidelines for projects located outside the Village area. The proposed buildings are consistent with the development standards in that the proposed Building 5 and parking garage are under 90 feet in height and would comply with the

established setbacks, as discussed above. The building style is a simple form with softer colors compatible with the Bayfront area. The parking garage is located at the interior of the site adjacent to the railroad tracks. Landscaping around the site is comprised of a simple plant palette and located primarily with the site area.

- 5. Zoning and Planned Development Zoning Conformance.** The proposed Building 5 and parking garage expansion is a permitted use under the approved rezoning and is consistent with the project's Development Standards related to use, setbacks, height, and open space requirements. The Planned Development Rezoning maintains the existing zoning of A(PD) Agriculture Planned Development Zoning District and includes the Land Use Plan and Development Standards allowed on the subject site including allowable land uses, setbacks, height and mitigations. The Development Standards will change slightly to allow the additional square footage, parking spaces and applicable mitigation measures. The allowable uses in the designated Commercial, Office, Research and Development area include professional and/or research and development offices and parking structure uses. All uses permitted under the IP Industrial, CO Commercial Office, and CP Commercial Pedestrian districts are also permitted. Day care, conferencing, dining rooms, personal business service retail, restaurants and satellite and broadcast reception facilities are also permitted. The proposed Development Standards require a minimum 40-foot separation between the other buildings on the America Center site and a minimum 20-foot setback from the east property line for the parking garage expansion. The maximum building height is 90 feet, consistent with the Alviso Master Plan. Parking is required to provide a minimum of 1 space per 250 net square feet.

Pursuant to the project's development standards, the proposed Building 5 is an office/R&D building that provides more than 40 feet of separation from all adjacent buildings and is 83 feet in height at the top of roof. The parking garage addition maintains the 20-foot east property line setback and is a maximum height of 54 feet. Parking required for Building 5 is 770 parking spaces, which is accommodated in the expansion of the parking garage. Therefore, the proposed development complies with the Development Standards of the proposed and existing Planned Development Zoning.

In addition, the proposed rezoning includes the removal of the area encompassed in PDC15-016, which was for the Hotel (Residence Inn) at the terminus of America Center Court. This area has its own Rezoning, Land Use Plan and Development Standards that were adopted as part of PDC15-016. The area proposed to be removed from the America Center Planned Development Zoning is shown in the Zoning Map included in the development plans.

6. Council Policy 6-34 Riparian Corridor Protection and Bird Safe Design.

Council Policy 6-34 (adopted in August of 2016) provides guidance, consistent with the General Plan, for protecting and restoring riparian habitat; limiting the creation of

new impervious surface within Riparian Corridor setbacks; and encouraging bird-safe design in Bayland and riparian habitats of lower Coyote Creek north of SR 237. This policy supplements the regulations for riparian corridor protection already contained within the Habitat Plan, Municipal Code, and other existing City policies that may provide for riparian protection and bird-safe design.

Specific guidance pertaining to setbacks, allowed activities, and materials and lighting in riparian areas are included within Council Policy 6-34. Further, bird-safe design guidelines for structures north of SR 237 advise that buildings:

- Avoid use of mirrors and large areas of reflective glass;
- Avoid use of transparent glass skyways, walkways, or entryways, free-standing glass walls, and transparent building corners;
- Avoid funneling open space to a building façade;
- Strategically place landscaping to reduce reflection and views of foliage inside or through glass;
- Avoid or minimize up-lighting and spotlights; and
- Turn non-emergency lighting off, or shield it, at night to minimize light from buildings that is visible to birds, especially during bird migration season (February through May and August through November).

Analysis: The project would respect the 100-foot riparian setback specified within of General Plan Policy ER-2.1, ER-2.2, ER-2.3 and Council Policy 6-34. Landscape plans would be in compliance with Policy ER-6.5. Mitigation measures MM BIO-1.1 and MM BIO-1.2 would be implemented consistent with General Plan Policy ER-4.4, ER-5.1, and ER-5.2. Bird-safe design features as noted above are included in the building and are reviewed by city staff as part of the overall design review process for consistency with City Council Policy 6-34 and Policy ER-7.1.

7. 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. The City Council determines 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 Alviso Master 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

proposed development standards for the A(PD) Agriculture 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;

Analysis: Pursuant to City Council Policy 6-30 Public Outreach, the Project applicant posted an on-site sign at the subject property, in accordance with the City Council Policy 6-30 on November 5, 2015 and a community meeting was held on October 16, 2016. In addition, the project is also consistent with City Council Policy 6-34 Riparian Corridor Protection and Bird Safe Design in that the proposed project includes View Dynamic Glass which provides varied tinting, Building 5 is located in the center of the site and no glass has been proposed on the parking garage expansion. Lastly, the project complies with City Council Policy 8-14 Post-Construction Hyrdromodification Management through the proposed stormwater treatment management system for the project site.

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, similar height, mass and scale of the proposed Building 5 is harmonious with the surrounding built buildings and will be constructed of high quality materials. Additionally, the parking garage expansion will be harmonious with the existing parking garage in that it will use the same materials and proportions.

5. The environmental impacts of the project, including, but not limited to aesthetics, air quality, noise, and transportation/traffic, 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: A Subsequent Environmental Impact Report was prepared for the project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The proposed project CEQA impacts are discussed below. Non-CEQA related concerns are discussed in detail above.

- 8. Environmental Review.** A Draft Subsequent Environmental Impact Report (DSEIR) for the America Center Phase III Project was prepared by the Director of Planning, Building and Code Enforcement in accordance to CEQA. The DSEIR analyzed project level environmental impacts and discussed alternatives to the proposed project.

The America Center Phase III Project DSEIR is a Subsequent EIR to the previously certified Final Environmental Impact Report for the Legacy Terrace Development Planned Development Rezoning and Prezoning (Legacy Terrace FEIR), SCH#

99082004. The Legacy Terrace FEIR was adopted by City Council Resolution No. 69392 on February 15, 2000. The proposed project is within the boundaries of the Legacy Terrace site (renamed America Center prior to completion of the first phase of the project). The DSEIR provides an updated evaluation of the existing environmental setting and identifies new significant environmental effects that were not previously identified in the Legacy Terrace FEIR.

Identified Significant and Unavoidable Impacts

The DSEIR identified the following significant, unavoidable impacts related to the proposed project that was identified in the previous Legacy Terrance FEIR:

- a) Aesthetics: views of the site from SR 237 and recreational trails in the vicinity.
- b) Air Quality: vehicle-related operational emissions of NOx.
- c) Noise: short-term, construction noise at sensitive residential receptors.
- d) Transportation/Traffic: mixed-flow lane freeway segment traffic at SR 237 between Great America Parkway and North First Street (PM peak hour).

Implementation of the proposed project would also result in the following new or substantially more severe significant impacts, which are significant and unavoidable.

- a) Transportation: impacts at the following locations:
 - i. Mixed-flow lane freeway segment impacts:
 - Eastbound SR 237 between Great America Parkway and North First Street (PM Peak Hour)
 - Eastbound SR 237 between North First Street and Zanker Road (PM peak hour)
 - Westbound SR 237 between I-880 and McCarthy Boulevard (AM peak hour)
 - Westbound SR 237 between McCarthy Boulevard and Zanker Road (AM and PM peak hours)
 - ii. High Occupancy Vehicle (HOV) lane freeway segment impacts:
 - Westbound SR 237 between I-880 and McCarthy Boulevard (AM peak hour)

Less than Significant Impact with Mitigation

The proposed project impacts listed below would be reduced to a less than significant level with mitigation:

- Air Quality: construction-related dust.
- Biological Resources: impacts to nesting birds and burrowing owls.

- Geology and Soils: differential settlement and seismicity.
- Hazards and Hazardous Materials: soil contamination and landfill gas.
- Hydrology and Water Quality: contaminated stormwater runoff.
- Transportation/Traffic: intersection impacts at Lafayette Street and the Gold Street Connector.

The proposed CEQA resolution, Mitigation Monitoring and Reporting Program (MMRP), and SEIR further explains in detail how these mitigations reduce each identified above to a less than significant level.

Alternatives

As required under CEQA, the DSEIR evaluated two no-project alternatives and one design alternative. These alternatives are as follows:

1. No Project – No Development Alternative: Under the No Project – No Development Alternative, the buildings and parking lots existing and under construction at the site would remain. Building 5 would not be constructed. The site would remain as zoned and approved for Buildings 1 through 4 and the parking garage.
2. No Project – Develop Under Current PD Zoning Alternative: The project site is currently designated Combined/Industrial Commercial in the City's General Plan and is located within a Planned Development zoning district. Under the current Planned Development zoning (PDC99-044), 900,000 square feet of development is allowed for the Commercial Office/R&D portion of the project site. Of that total, 867,762 square feet have been constructed or is currently under construction and 32,238 square feet of entitlement remains.

Under the current Planned Development zoning, a 32,238-square-foot office building could be constructed. A potential project under the No Project – Develop Under Current Planned Development Zoning Alternative would likely be one story and would occupy the footprint of the proposed Building 5. The building would likely not be visible from SR 237 and nearby recreational trails as it would be shielded on all sides by existing, much taller structures. Pile driving would still be required for a smaller Building 5 and parking garage extension.

3. Reduced Intensity Alternative: A Reduced Intensity Alternative would potentially allow for 55,000 additional feet of development resulting in an approximately 87,000-square foot, three-story Building 5 (assuming the same footprint as the proposed project and use of the remaining 32,238 square feet of yet unbuilt but entitled square footage at the site). The building would likely not be visible as it would be shielded on all sides by existing, much taller structures. It is unknown at this time the extent of pile driving that might be necessary for a three-story structure.

These alternatives were thoroughly discussed and evaluated in the DSEIR. The alternatives were rejected because (i) the alternatives do not maximize the full potential of the site; (ii) fully meet the economic goals and priorities of the City; and (iii) Building 5 would be located within the existing development, thereby minimizing visibility and impacts to the adjacent area, and the parking garage addition will accommodate the additional parking needed for the development, reducing the amount of surface parking.

Circulation and Public Comments

The DSEIR was circulated for public review and comment for 45 days from June 12, 2017 to July 27, 2017. The City received a total of five written comment letters during the public circulation period. Comments received were from the California Department of Transportation (Caltrans); Santa Clara Valley Transportation Authority (VTA); Santa Clara Valley Audubon Society; MR Wolfe & Associates, P.C. on behalf of the Organizacion Comunidad de Alviso; and Steve Dunn, SteelWave, LLC. Issues raised in these comment letters include the following:

- Transportation analysis and impacts for project-generated traffic.
- Transportation improvements (Great America Parkway/State Route 237 and Lafayette Street/Gold Street Connector intersections).
- Traffic mitigation measures (MM TRA-1.1 and MM TRA(C)-1.2).
- Transportation Demand Management (TDM) program.
- Queuing analysis and queuing reductions.
- Traffic congestion impacts.
- Surrounding traffic improvements.
- Improvements to pedestrian and bicycle access.
- Bicycle parking and connectivity.
- Transit access and ridership.
- Impacts to potential sensitive archaeological sites and Native American consultation.
- Nitrogen deposition impacts.
- Air pollutant monitoring and toxic air contaminants.
- Greenhouse gas emissions assessment.

A First Amendment to the DSEIR was prepared that provided responses to the comments submitted during the public circulation period and revisions to the text of the DSEIR. The First Amendment together with the DSEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project. The DSEIR and First

Amendment to the DSEIR are available for review on the City's Active EIRs website at: <http://www.sanjoseca.gov/index.aspx?NID=5230>

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the DSEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the DSEIR for the project includes written responses to all comments received during the public review period for the DSEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the DSEIR address significant environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the DSEIR and, in some cases, correct or update information in the DSEIR. No significant new information has been added to the DSEIR since publication of the DSEIR; therefore, the DSEIR does not need to be recirculated.

Prior to taking action on this Resolution, the City Council adopted a separate resolution certifying the Final SEIR, making certain findings concerning significant impacts, mitigation measures, and alternatives, and adopting a statement of overriding consideration for construction noise and adopting a mitigation monitoring and reporting program, all in accordance with the California Environmental Quality Act of 1970, as amended. The City Council Final SEIR resolution is fully incorporated herein by this reference.

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 permittee 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, "America Center," dated received on December 20, 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. **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.
7. **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.
8. **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.
9. **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.
10. **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.
11. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
12. **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.
13. **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.
14. **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.
15. **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.

16. **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.
17. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
18. **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.* The permit file number, PD15-053 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), including paths of travel connecting all buildings on the site.
 - 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 any 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).
 - f. *Adjust of easements and property lines.* The proposed parking garage addition is located over existing parcel lines. A lot merger or parcel map will be required to correct the parcel lines and the map should show all easements around Building 5. The map will need to be approved and recorded prior to issuance of building permit for the garage or Building 5.
19. **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.

- 20. Security Gate Access.** All access control vehicle security gate(s) shall be a minimum of 20 feet clear width and may have a clear with 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 (SJFD) 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.
- 21. 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, the fire access shall include the following:
- a. An approved all weather surface;
 - b. Access road 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. Maintain 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 access way has dead ends and is in excess of 150 feet;
 - g. Maintain a maximum grade of 15 percent;
 - h. Provision of 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)
 - j. 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
 - k. 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.
- 22. Fire Hydrant Location & Spacing.** The Fire Hydrant Location & Spacing shall meet the requirements of CFC Appendix C with City of San José Amendments. Show the location and spacing of the fire hydrants on the plans meeting the following general requirements.
- a. Determine the required number and spacing of fire hydrants per CFC Appendix C, Table C102.1; (or Refer to San José Fire Flow and Hydrant Policy

<http://sanjoseca.gov/DocumentCenter/View/61703>). For the purposes of determining the required number and spacing of fire hydrants, no reduction in the Required Fire Flow is allowed even for buildings with sprinkler systems.

- b. Show the spacing of the fire hydrants along the fire apparatus access roads on the plans.
 - c. Demonstrate on plans that all exterior walls of the building(s) are within 400 feet from a fire hydrant. The distance should be calculated from a fire hydrant on a fire apparatus access road, as measured along the path of travel around the exterior of the building (and not by drawing a 400 feet radius around the fire hydrant).
23. **Available Fire Flow.** Provide a copy of the letter from the property's water company that indicates the Available Fire Flow in gallons per minute (gpm). Approval of Fire Hydrant Location & Spacing by SJFD is required before requesting Fire Flow data from the water company. Verify with the water company that a minimum of 1,000 gpm from a new proposed fire hydrant is available at minimum pressure of 20 psi.
24. **Fire sprinkler system** is required in all units and will be a deferred submittal after building permit is issued.
25. **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 shall 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>.
26. **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.
27. **Grading/Geology:**
- a) A grading permit is required prior to the issuance of a Public Works Clearance.
 - b) 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.

- c) If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- d) Because this project involves a land disturbance of one or more acres, the permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- e) 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 report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. 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.
- f) Since this is a landfill site, and is currently under the permitting power of the State of California, (LEA), there must be monitoring by the State of California Inspector regarding any alterations or penetrations into the soils on this site. Appropriate conditions regarding such will be included in any grading permit approvals.
- g) Provide a final Landfill Closure Soils Report:
 - i) Because this project rests upon a sanitary landfill site, a Landfill Closure Soils report specifically addressing the landfill closure, techniques to be used in driving piles through sanitary/solid waste, and mitigation measures which will prevent or mitigate migration of waste water into adjacent wetlands and creek areas must be submitted prior to issuance of a grading plan.
- h) Engineering Analysis:
 - i) Prior to issuance of any grading permits for individual site improvements, the permittee shall provide to the Local Enforcement Agency and the Department of Public Works a project-level, engineering analysis that addresses, in full and sufficient detail, the following elements of the final project design:

- a) Landfill gas mitigation and monitoring systems, including structure monitoring and landfill perimeter monitoring system;
 - b) Landfill settlement/differential settlement;
 - c) Seismic stability/foundation design;
 - d) Site surface drainage and final grading; and
 - e) Final landfill cap design, including landfill gas protection elements of the foundation design.
- i) Any other elements of the design as required by the Local Enforcement Agency (LEA) or Department of Public Works, including any specialized analysis that may be warranted by the City. The permittee shall bear the full responsibility for providing any such specialized analysis.

28. 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. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.

- a) The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
- b) Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- c) 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.

29. Transportation: A Traffic Impact Analysis was performed for this project based on 299 AM and 288 PM peak hour trips. As discussed in the SEIR and a traffic memo prepared by the Department of Transportation dated December 12, 2017, the proposed project would result in a cumulatively considerable contribution to traffic impacts at two San José intersections (Lafayette Street and Gold Street Connector, and Great America Parkway and Eastbound SR 237) based on cumulative impact criteria. Mitigation Measure MM TRA(C)-1.2 requires the permittee to pay a fair share amount, as determined by the Director of Public Works, to the City of San Jose Public Works Depositors Fund. See separate SEIR and the Traffic memo for additional information.

30. **Flood: Zone X:** Although the project site is located within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain, the property has been removed from the Special Flood Hazard Area (SFHA) by a Letter of Map Revision (LOMR). The property is now in Flood Zone X. Zone X is an area of moderate or minimal flood hazard. There are no City floodplain requirements for zone X.
31. **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.
32. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact San José Municipal Water Department at (408) 794-6769 for further information.
33. **Sanitary:** This project is within an area of San José which discharges through a sanitary sewer and pump system owned and operated by the City of Santa Clara. An agreement is currently in place which allows an expected discharge which will accommodate the proposed building and use. Any additional discharge or change in use shall require additional negotiation and amendment of the existing agreement.
34. **Referrals:** This project shall be referred to the California Department of Transportation (Caltrans) and Santa Clara Valley Water District.
35. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. _____.

36. **Standard Environmental Conditions:**

1. **AIR QUALITY.**

1.1. Consistent with the 2017 BAAQMD CEQA Air Quality Guidelines, GP Policy MS-13.1, and current City requirements, the project shall implement the following standard permit conditions during all phases of construction on the project site, to reduce dustfall emissions:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered twice daily.
- All haul trucks transporting soil, sand, and other loose material off-site shall be covered.
- 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.
- All vehicle speeds on unpaved roads shall be limited to 15 miles per hour.

- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- 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 operations.
- Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

2. BIOLOGICAL RESOURCES.

- 2.1. Habitat Conservation Plan. Consistent with the General Plan FPEIR analysis on indirect impacts to sensitive serpentine habitats, the project will contribute to the Habitat Plan nitrogen deposition fee program. The permittee shall submit the Santa Clara Valley Habitat Plan Application for Nitrogen Deposition-Only Projects and the payment of the nitrogen deposition fees (based on a fee rate per new daily vehicle trip) to the Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement for review and approval prior to issuance of any grading permit.

3. CULTURAL RESOURCES.

- 3.1. Archaeological Resources Impacts. In the event that any significant cultural materials (including prehistoric or historic resources or vertebrate fossils) are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement shall be notified, and an archaeologist will examine the find and make appropriate recommendations regarding the significance of the find and appropriate mitigation. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring would be submitted to the Director of Planning, Building, and Code Enforcement.

In the event that human remains are discovered during excavation and/or grading of the site, activities occurring within a 50-foot radius of the find shall

be stopped. The Santa Clara County Coroner shall be notified and make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the NAHC immediately. Once the NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.

- 3.2. Paleontological Resources Impacts. 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 permittee will be responsible for implementing the recommendations of the qualified professional paleontologist.

4. **GEOLOGY AND SOILS.**

- 4.1. Seismicity Impacts. Seismic hazards will be reduced by utilizing design and construction practices in accordance with seismic building criteria, as described in the current City of San José Building Standards Code and Fire Code. A design-level geotechnical investigation report addressing the potential hazards of liquefaction, lateral deformations for the Designed Based Earthquake, and seismic shaking shall be submitted to, reviewed and approved by the City of San José Geologist and City of San José Building Division 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 (California Geological Survey Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999).

5. **HYDROLOGY AND WATER QUALITY.**

- 5.1. Water Quality Construction Impacts. The following project-specific measures, based on RWQCB BMPs, have been included in the project to reduce construction and development-related water quality impacts. BMPs would be implemented prior to and during earthmoving activities on-site and would continue until the construction is complete, and during the post-construction period, as appropriate:

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.

- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- The permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- A NPDES General Construction Storm Water Permit will be administered by the RWQCB. Prior to construction grading for the proposed land uses, the project proponent will file an NOI to comply with the General Permit and prepare a SWPPP which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB BMPs.
- The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions. Copies of the SWPPP shall be submitted to the City of San José Department of Public Works. The following measures shall be included in the SWPPP:
 - Preclude non-stormwater discharges to the stormwater system.
 - Incorporate effective, site-specific BMPs for erosion and sediment control during the construction and post-construction periods.
 - Cover soil, equipment, and supplies that could contribute pollution prior to rainfall events or monitor runoff.
 - Perform monitoring of discharges to the stormwater system.
 - When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the SWRCB. The NOT will document that all elements of the SWPPP have been executed,

construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the site.

- Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

37. Revocation, Suspension, Modification. This Planned Development Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council, as applicable, 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**.

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EFFECTIVE DATE

The effective date of this Permit (File No. PD15-053) shall be the effective date of the A(PD) Planned Development Rezoning Ordinance for File No. PDC15-058 and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

ADOPTED this 23rd day of January, 2018, by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ,
KHAMIS, NGUYEN, PERALEZ, ROCHA.

NOES: NONE.

ABSENT: LICCARDO.

DISQUALIFIED: NONE.



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.

LEGAL DESCRIPTION**PARCEL A**

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEING ALL OF PARCEL A OF LOT LINE ADJUSTMENT FILE NO. AT12-006, AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED APRIL 30, 2012 AS DOCUMENT NO. 21644398, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

AND, TOGETHER WITH, THE FOLLOWING AREAS:

TRANSFER PARCEL 1:

BEING A PORTION OF PARCEL D, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL D;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL D, NORTH 3° 53' 26" EAST, 30.00 FEET;

THENCE SOUTH 85° 02' 36" EAST, 34.51 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL D;

THENCE ALONG SAID SOUTHERLY LINE, SOUTH 53° 29' 51" WEST, 45.31 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 3:

BEING A PORTION OF PARCEL B, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE MOST EASTERLY COMMON CORNER OF SAID PARCELS A & D;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL D, NORTH 36° 30' 09" WEST, 42.55 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 53° 29' 51" EAST, 315.95 FEET;

THENCE SOUTH 36° 30' 09" EAST, 1.56 FEET TO THE SOUTHERLY LINE OF SAID PARCEL B;

THENCE ALONG SAID SOUTH LINE, SOUTH 53° 29' 51" WEST, 315.95 FEET TO SAID EASTERLY LINE;

THENCE ALONG SAID EASTERLY LINE, NORTH 36° 30' 09" WEST, 1.56 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 5:

BEING A PORTION OF PARCEL B, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY COMMON CORNER OF SAID PARCELS A & B;

LEGAL DESCRIPTION

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B, SOUTH 53° 29' 51" WEST, 63.00 FEET;

THENCE NORTH 36° 30' 09" WEST, 67.32 FEET;

THENCE NORTH 53° 29' 51" EAST, 31.49 FEET;

THENCE NORTH 36° 30' 09" WEST, 2.11 FEET;

THENCE NORTH 53° 29' 51" EAST, 31.51 FEET;

THENCE SOUTH 36° 30' 09" EAST, 69.43 FEET TO THE POINT OF BEGINNING.

AND, EXCEPTING THEREFROM, THE FOLLOWING AREAS:

TRANSFER PARCEL 2:

BEING A PORTION OF PARCEL A, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHWEST CORNER OF SAID PARCEL D;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL D, NORTH 53° 29' 51" EAST, 45.31 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID SOUTHERLY LINE, NORTH 53° 29' 51" EAST, 40.70 FEET;

THENCE SOUTH 48° 57' 14" WEST, 37.46 FEET;

THENCE NORTH 85° 02' 36" WEST, 4.48 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 4:

BEING A PORTION OF PARCEL A, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE COMMON CORNER OF LOTS ONE AND FOUR, BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AS "N 36° 30' 09" W 71.76 FEET" AS SAID LOTS AND COURSE ARE SHOWN ON THAT TRACT MAP NO. 10003, FILED FOR RECORD ON DECEMBER 22, 2008 IN BOOK 829 OF MAPS AT PAGES 39 THROUGH 45, OFFICIAL RECORDS OF SANTA CLARA COUNTY;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT ONE AND ALSO BEING THE NORTHERLY LINE OF SAID PARCEL A, NORTH 36° 30' 09" WEST, 71.77 FEET;

THENCE SOUTH 53° 29' 51" WEST, 5.08 FEET;

THENCE SOUTH 36° 30' 09" EAST, 71.99 FEET;

LEGAL DESCRIPTION

THENCE NORTH 53° 29' 51" EAST, 308.27;

THENCE NORTH 36° 30' 09" WEST, 0.23 FEET;

THENCE SOUTH 53° 29' 51" WEST, 303.20 FEET TO THE POINT OF BEGINNING.

ALSO SHOWN AS "NEW PARCEL A" AS SAID PARCEL IS SHOWN IN THAT CERTAIN LOT LINE ADJUSTMENT PERMIT NO. AT15-046, RECORDED JANUARY 8, 2016, AS DOCUMENT NO. 23192480 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

APN 015-45-049, 050

LEGAL DESCRIPTION

PARCEL C

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEING ALL OF PARCEL C OF LOT LINE ADJUSTMENT FILE NO. AT12-006, AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED APRIL 30, 2012 AS DOCUMENT NO. 21644398, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

AND, TOGETHER WITH, THE FOLLOWING AREAS:

TRANSFER PARCEL 7:

BEING A PORTION OF PARCEL B, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY COMMON CORNER OF SAID PARCELS B & C;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL C, SOUTH 36° 30' 09" EAST, 163.00 FEET;

THENCE SOUTH 53° 29' 51" WEST, 65.70 FEET;

THENCE NORTH 36° 30' 09" WEST, 163.00 FEET TO A POINT ON SAID SOUTHERLY LINE;

THENCE ALONG SAID SOUTHERLY LINE, NORTH 53° 29' 51" EAST, 65.70 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 8:

BEING A PORTION OF PARCEL B, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE COMMON CORNER OF PARCEL B AND C, BEING THE SOUTH EASTERLY CORNER OF SAID PARCELS C;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL C, NORTH 36° 30' 09" WEST, 22.26 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 53° 29' 51" EAST, 4.95 FEET;

THENCE NORTH 36° 30' 09" WEST, 509.66 FEET;

THENCE SOUTH 2° 45' 09" EAST, 8.92 FEET;

THENCE SOUTH 36° 30' 09" EAST, 502.25 FEET TO THE POINT OF BEGINNING.

AND, EXCEPTING THEREFROM, THE FOLLOWING AREAS:

TRANSFER PARCEL 6:

LEGAL DESCRIPTION

BEING A PORTION OF PARCEL C, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF SAID PARCEL C;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL C, SOUTH 53° 29' 51" WEST, 196.09 FEET;

THENCE NORTH 36° 30' 09" WEST, 2.34 FEET;

THENCE NORTH 53° 29' 51" EAST, 192.47 FEET;

THENCE NORTH 36° 30' 09" WEST, 19.91 FEET;

THENCE NORTH 53° 29' 51" EAST, 3.61 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL C;

THENCE ALONG SAID EASTERLY LINE, SOUTH 36° 30' 09" EAST, 22.26 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 9:

BEING A PORTION OF PARCEL C, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID PARCEL D;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL D, SOUTH 36° 30' 09" EAST, 35.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 53° 29' 51" EAST, 4.04 FEET;

THENCE SOUTH 36° 30' 09" EAST, 121.50 FEET;

THENCE SOUTH 53° 29' 51" WEST, 4.04 FEET TO A POINT ON SAID EASTERLY LINE;

THENCE ALONG SAID EASTERLY LINE, NORTH 36° 30' 09" WEST, 121.50 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 10:

BEING A PORTION OF PARCEL C, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY COMMON CORNER OF SAID PARCELS C & D;

THENCE ALONG THE NORTHERLY OF SAID PARCEL C, NORTH 36° 30' 09" WEST, 53.25 FEET;

THENCE NORTH 53° 29' 51" EAST, 30.04 FEET;

LEGAL DESCRIPTION

THENCE SOUTH 36° 30' 09" EAST, 53.25 FEET;

THENCE SOUTH 53° 29' 51" WEST, 30.04 FEET TO THE POINT OF BEGINNING.

ALSO SHOWN AS "NEW PARCEL C" AS SAID PARCEL IS SHOWN ON THAT CERTAIN LOT LINE ADJUSTMENT PERMIT NO. AT15-046 RECORDED JANUARY 8, 2016 AS INSTRUMENT NO. 23192480 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

APN 015-45-052

Ai

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**LEGACY TERRACE
SITE DEVELOPMENT**
CITY OF SAN JOSE
CALIFORNIA

Site Map

GENERAL DEVELOPMENT PLAN - EXHIBIT C
Scale: 1" = 100'-0"
Date: July 14, 1993
Sheet: 4

LEGEND
Proposed Five Foot Contour Intervals
Existing Contours

0 50 100 200 300

PDC 99-05-044



City Clerk

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 30067**", the original copy of which is attached hereto, was passed for publication of title on the **23rd day of January, 2018**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **6th day of February, 2018**, by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ, KHAMIS,
NGUYEN, PERALEZ, ROCHA; LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE.

Said Ordinance is effective as of **9th day of March, 2018**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **8th day of February, 2018**.

(SEAL)

TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 30067

**AN ORDINANCE OF THE CITY OF SAN JOSE REZONING
CERTAIN REAL PROPERTY OF APPROXIMATELY 63
GROSS ACRES SITUATED AT THE TERMINUS OF
AMERICA CENTER DRIVE, (APNs: 015-45-013, 024, 032,
048, 049, 050, 051, 051, 052, & 053) FROM THE A(PD)
PLANNED DEVELOPMENT ZONING DISTRICT TO A(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; and

WHEREAS, a Subsequent Environmental Impact Report (SEIR) to the Legacy Terrace Development Planned Development Rezoning and Prezoning Final EIR certified by the City Council on February 15, 2000, by Resolution No. 69392 all in conformance with the California Environmental Quality Act of 1970 (CEQA), as amended, was prepared and approved by the City Council 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 A(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 SEIR and related Mitigation Monitoring and Reporting Program as the appropriate environmental clearance for this proposed project prior to taking any approval actions on this 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 A(PD) Planned Development Zoning District. The base district zoning of the subject property shall be the Agricultural 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 received on December 20, 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 in Exhibit "A" and depicted in Exhibit "B" 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. PDC15-058 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 23rd day of January, 2018 by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ,
KHAMIS, NGUYEN, PERALEZ, ROCHA.

NOES: NONE.

ABSENT: LICCARDO.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk

LEGAL DESCRIPTION

PARCEL A

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEING ALL OF PARCEL A OF LOT LINE ADJUSTMENT FILE NO. AT12-006, AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED APRIL 30, 2012 AS DOCUMENT NO. 21644398, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

AND, TOGETHER WITH, THE FOLLOWING AREAS:

TRANSFER PARCEL 1:

BEING A PORTION OF PARCEL D, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL D;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL D, NORTH 3° 53' 26" EAST, 30.00 FEET;

THENCE SOUTH 85° 02' 36" EAST, 34.51 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL D;

THENCE ALONG SAID SOUTHERLY LINE, SOUTH 53° 29' 51" WEST, 45.31 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 3:

BEING A PORTION OF PARCEL B, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE MOST EASTERLY COMMON CORNER OF SAID PARCELS A & D;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL D, NORTH 36° 30' 09" WEST, 42.55 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 53° 29' 51" EAST, 315.95 FEET;

THENCE SOUTH 36° 30' 09" EAST, 1.56 FEET TO THE SOUTHERLY LINE OF SAID PARCEL B;

THENCE ALONG SAID SOUTH LINE, SOUTH 53° 29' 51" WEST, 315.95 FEET TO SAID EASTERLY LINE;

THENCE ALONG SAID EASTERLY LINE, NORTH 36° 30' 09" WEST, 1.56 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 5:

BEING A PORTION OF PARCEL B, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY COMMON CORNER OF SAID PARCELS A & B;

LEGAL DESCRIPTION

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B, SOUTH 53° 29' 51" WEST, 63.00 FEET;

THENCE NORTH 36° 30' 09" WEST, 67.32 FEET;

THENCE NORTH 53° 29' 51" EAST, 31.49 FEET;

THENCE NORTH 36° 30' 09" WEST, 2.11 FEET;

THENCE NORTH 53° 29' 51" EAST, 31.51 FEET;

THENCE SOUTH 36° 30' 09" EAST, 69.43 FEET TO THE POINT OF BEGINNING.

AND, EXCEPTING THEREFROM, THE FOLLOWING AREAS:

TRANSFER PARCEL 2:

BEING A PORTION OF PARCEL A, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHWEST CORNER OF SAID PARCEL D;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL D, NORTH 53° 29' 51" EAST, 45.31 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID SOUTHERLY LINE, NORTH 53° 29' 51" EAST, 40.70 FEET;

THENCE SOUTH 48° 57' 14" WEST, 37.46 FEET;

THENCE NORTH 85° 02' 36" WEST, 4.48 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 4:

BEING A PORTION OF PARCEL A, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE COMMON CORNER OF LOTS ONE AND FOUR, BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AS "N 36° 30' 09" W 71.76 FEET" AS SAID LOTS AND COURSE ARE SHOWN ON THAT TRACT MAP NO. 10003, FILED FOR RECORD ON DECEMBER 22, 2008 IN BOOK 829 OF MAPS AT PAGES 39 THROUGH 45, OFFICIAL RECORDS OF SANTA CLARA COUNTY;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT ONE AND ALSO BEING THE NORTHERLY LINE OF SAID PARCEL A, NORTH 36° 30' 09" WEST, 71.77 FEET;

THENCE SOUTH 53° 29' 51" WEST, 5.08 FEET;

THENCE SOUTH 36° 30' 09" EAST, 71.99 FEET;

LEGAL DESCRIPTION

THENCE NORTH 53° 29' 51" EAST, 308.27;

THENCE NORTH 36° 30' 09" WEST, 0.23 FEET;

THENCE SOUTH 53° 29' 51" WEST, 303.20 FEET TO THE POINT OF BEGINNING.

ALSO SHOWN AS "NEW PARCEL A" AS SAID PARCEL IS SHOWN IN THAT CERTAIN LOT LINE ADJUSTMENT PERMIT NO. AT15-046, RECORDED JANUARY 8, 2016, AS DOCUMENT NO. 23192480 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

APN 015-45-049, 050

LEGAL DESCRIPTION

PARCEL C

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEING ALL OF PARCEL C OF LOT LINE ADJUSTMENT FILE NO. AT12-006, AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED APRIL 30, 2012 AS DOCUMENT NO. 21644398, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

AND, TOGETHER WITH, THE FOLLOWING AREAS:

TRANSFER PARCEL 7:

BEING A PORTION OF PARCEL B, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY COMMON CORNER OF SAID PARCELS B & C;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL C, SOUTH 36° 30' 09" EAST, 163.00 FEET;

THENCE SOUTH 53° 29' 51" WEST, 65.70 FEET;

THENCE NORTH 36° 30' 09" WEST, 163.00 FEET TO A POINT ON SAID SOUTHERLY LINE;

THENCE ALONG SAID SOUTHERLY LINE, NORTH 53° 29' 51" EAST, 65.70 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 8:

BEING A PORTION OF PARCEL B, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE COMMON CORNER OF PARCEL B AND C, BEING THE SOUTH EASTERLY CORNER OF SAID PARCELS C;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL C, NORTH 36° 30' 09" WEST, 22.26 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 53° 29' 51" EAST, 4.95 FEET;

THENCE NORTH 36° 30' 09" WEST, 509.66 FEET;

THENCE SOUTH 2° 45' 09" EAST, 8.92 FEET;

THENCE SOUTH 36° 30' 09" EAST, 502.25 FEET TO THE POINT OF BEGINNING.

AND, EXCEPTING THEREFROM, THE FOLLOWING AREAS:

TRANSFER PARCEL 6:

LEGAL DESCRIPTION

BEING A PORTION OF PARCEL C, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF SAID PARCEL C;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL C, SOUTH 53° 29' 51" WEST, 196.09 FEET;

THENCE NORTH 36° 30' 09" WEST, 2.34 FEET;

THENCE NORTH 53° 29' 51" EAST, 192.47 FEET;

THENCE NORTH 36° 30' 09" WEST, 19.91 FEET;

THENCE NORTH 53° 29' 51" EAST, 3.61 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL C;

THENCE ALONG SAID EASTERLY LINE, SOUTH 36° 30' 09" EAST, 22.26 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 9:

BEING A PORTION OF PARCEL C, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID PARCEL D;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL D, SOUTH 36° 30' 09" EAST, 35.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 53° 29' 51" EAST, 4.04 FEET;

THENCE SOUTH 36° 30' 09" EAST, 121.50 FEET;

THENCE SOUTH 53° 29' 51" WEST, 4.04 FEET TO A POINT ON SAID EASTERLY LINE;

THENCE ALONG SAID EASTERLY LINE, NORTH 36° 30' 09" WEST, 121.50 FEET TO THE POINT OF BEGINNING.

TRANSFER PARCEL 10:

BEING A PORTION OF PARCEL C, AS SAID PARCEL IS DESCRIBED IN SAID GRANT DEED, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY COMMON CORNER OF SAID PARCELS C & D;

THENCE ALONG THE NORTHERLY OF SAID PARCEL C, NORTH 36° 30' 09" WEST, 53.25 FEET;

THENCE NORTH 53° 29' 51" EAST, 30.04 FEET;

LEGAL DESCRIPTION

THENCE SOUTH 36° 30' 09" EAST, 53.25 FEET;

THENCE SOUTH 53° 29' 51" WEST, 30.04 FEET TO THE POINT OF BEGINNING.

ALSO SHOWN AS "NEW PARCEL C" AS SAID PARCEL IS SHOWN ON THAT CERTAIN LOT LINE ADJUSTMENT PERMIT NO. AT15-046 RECORDED JANUARY 8, 2016 AS INSTRUMENT NO. 23192480 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY.

APN 015-45-052

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**LEGACY TERRACE
SITE DEVELOPMENT**

CITY OF SAN JOSE
CALIFORNIA

Site Map

GENERAL DEVELOPMENT PLAN - EXHIBIT D

Scale: 1" = 100'-0"

Date: July 14, 1999

PDC 99-05-044

LEGEND
Proposed Fire Truck Control Intervals
Existing Contours

0 50 100 200 300

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