

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW CONSTRUCTION OF A 19-STORY HOTEL WITH 272 GUEST ROOMS WITH AN OFF-SITE PARKING ARRANGEMENT ON AN APPROXIMATELY 0.2-GROSS ACRE SITE LOCATED ON THE NORTHEAST CORNER OF NORTH ALMADEN BOULEVARD AND WEST SANTA CLARA STREET (8 NORTH ALMADEN BOULEVARD; APN: 259-35-055)**

**FILE NO. H18-038**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 28, 2018, an application (File No. H18-038) was filed by Almaden Corner, LLC with the City of San José for a Site Development Permit to allow the construction of a 19-story hotel with 272 guest rooms with an off-site parking arrangement on an approximately 0.2-gross acre site, on that certain real property situated in the CP Downtown Primary Commercial Zoning District and located on the northeast corner of North Almaden Boulevard and West Santa Clara Street (8 North Almaden Boulevard; APN 259-35-055, 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 “Plat 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, 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 recommendation of the 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, "Almaden Corner Hotel" dated November 21, 2019, 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 the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the northeast corner of North Almaden Boulevard and West Santa Clara Street. A private parking lot currently occupies the site. The lot does not provide required parking for any specific use. Vehicle access to the site is from a driveway on North Almaden Boulevard. The site is bordered by the Axis Condos Tower to the north, by the South Almaden Boulevard landscape median and office towers to the south, by the Comerica Bank office tower to the west across North Almaden Boulevard, and by the Hotel De Anza to the east.

2. **Project Description.** The project is for a Site Development Permit to construct a 19-story hotel with 272 guest rooms and approximately 1,200 square feet of ancillary commercial space, with an off-site parking arrangement.

The project hotel would front onto West Santa Clara Street and North Almaden Boulevard, with the main entrance to the hotel lobby facing the intersection corner. The lobby area would include approximately 1,200 square feet of ancillary enclosed commercial space, including a hotel bar and restaurant on the ground floor, as well as a rooftop bar and restaurant. The rooftop bar and restaurant faces West Santa Clara Street, and includes an open roof top deck facing West Santa Clara Street, North Almaden Boulevard, and a 30-foot wide section facing the Axis Condos Tower, approximately 65 feet to the north. Neither bar and restaurant would be open past midnight. The building would include a service and loading area facing North Almaden Boulevard, enclosed by a roll-up metal door. The rear (north) of the building would face the Axis Condos Tower, and the interior side of the hotel would face the Hotel De Anza (east).

Parking for the hotel would be provided at the San Pedro Market Parking Garage, approximately 1,000 feet northeast of the site, through a 30-year parking agreement with the City. The hotel would provide valet parking service with vehicle drop off and delivery occurring within designated 40-foot-long valet zones at the North Almaden Boulevard and West Santa Clara Street curbs, adjacent to the corner hotel entrance. A Traffic Analysis of the valet operations was reviewed and accepted by the Department of Public Works. The analysis determined the curb area would be adequate for the expected trip generation of the hotel, provided that ten valet staff be present during the morning and evening peak traffic hours of 7:00 AM – 9:00 AM and 4:00 PM – 6:00 PM, respectively. This number of valet staff is included as a condition of approval.

3. **General Plan Conformance.** The project has an Envision San José 2040 General Plan Designation of Downtown. This designation includes office, retail, service, residential, and entertainment uses in the Downtown. Redevelopment should be at very high intensities, unless incompatibility with other major policies within the *Envision General Plan* (such as Historic Preservation Policies) indicates otherwise. All development within this designation should enhance the “complete community” in downtown, support pedestrian and bicycle circulation, and increase transit ridership. A floor area ratio (FAR) of up to 30 is allowed.

The project hotel is an allowed use in the Downtown designation, and has a FAR of 16.6, and is 19 stories in height, consistent with this designation. In addition, the project is consistent with the following General Plan policies:

- a. **Land Use LU-3.1** Provide maximum flexibility in mixing uses throughout the Downtown Area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize

social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the *Envision General Plan*

- b. **Community Design CD-6.1** Recognize Downtown as the most vibrant urban area of San José and maximize development potential and overall density within the Downtown

*Analysis: The project maximizes the development potential of the site, occupying nearly the entire parcel and with the maximum allowable height for maintaining FAA safety clearances.*

- c. **CD-6.5** Promote iconic architecture and encourage and incorporate innovative, varied, and dynamic design features (e.g., appearance, function, sustainability aspects) into sites, buildings, art, streetscapes, landscapes, and signage to make Downtown visually exciting and to attract residents and visitors
- d. **CD-6.6** Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings taller than 75 feet, to create distinctive silhouettes for the Downtown skyline.

*Analysis: The project incorporates an iconic design through the use of triangular facets and other geometric shapes, resulting in unique massing and form. The hotel also includes a prominent roof-top bar/view deck and a well-defined canopy element above the lobby.*

- e. **CD-6.7** Recognize Downtown's unique character as the oldest part, the heart of the City, and leverage historic resources to create a unique urban environment there. Respect and respond to on-site and surrounding historic character in proposals for development.
- f. **LU-13.8** Require that new development, alterations, and rehabilitation/remodels adjacent to a designated or candidate landmark or Historic District be designed to be sensitive to its character

*Analysis: The hotel is immediately adjacent to the Hotel De Anza, a designated Historic Landmark, which is also listed on the National Register of Historic Places. The San José Historic Landmark Nomination Form recognizes the Hotel De Anza as being significant for its Moderne (Art Deco) architectural style with Spanish Colonial influences. The environmental analysis for the project included an Historic Resource Project Assessment Review of the project hotel design by Archives and Architecture, a recognized consulting firm specializing in architectural history. The review utilized the Draft San José Downtown Historic Preservation Guidelines as a format for the analysis, and concluded the project hotel does not adversely impact the historic integrity of design, setting, feeling and association of the Hotel De Anza. The project is therefore consistent with Policies CD-6.7 and LU-13.8. Below is a summary of the Historic Resource Project assessment based on the key draft guidelines:*

**Lot patterns.** Retain and respect historic lot patterns on the street. Add larger new buildings that are divided into smaller articulated building widths with multiple entrances that are similar in size and proportion to those seen traditionally.

Analysis: Hotel De Anza spans just over half of the street frontage of the block along West Santa Clara Street. The project hotel would span the remaining portion of the block and would therefore respect the proportional historic pattern established by the Hotel De Anza. The project hotel incorporates a pattern of entrances and visible interior uses that appear similar in size and proportion to the entrances of the adjacent Hotel De Anza. The Hotel De Anza has a wide central bay, accentuated by a cantilevered fixed canopy and two major side bays. The ground floor of the project hotel building is divided visually into two major bays facing West Santa Clara Street. The project dimensions are compatible with the historic pattern of lot-pattern entrances.

**Massing.** Retain and respect the massing of historic buildings on a street; respect the overall heights of historic buildings. Add significantly higher new buildings, where appropriate, that are carefully sited in relationship to historic structures and predominant street “walls.” Building masses should not dwarf immediately adjacent historic buildings. Add new infill construction that respects the massing and detailing of historic buildings on the street. New building masses adjacent to lower historic resources should step down in height and street facades should turn the corner to provide articulated visible side facades in order to reduce the impact on historic buildings. Visible side facades should be set back from side property lines to allow for window openings. Larger buildings should be broken down into smaller masses that fit into the streetscape without overwhelming historic structures. Spatial relationships such as floor to floor heights, basement to ground floor relationships and the proportion of building widths to heights are important considerations.

Analysis: The Hotel De Anza is symmetrical facing Santa Clara Street with a central raised parapet tower as its focal point with a stucco exterior that adds visual heaviness. A core design concept is its blocky form with vertical accents.

The project massing is also visually balanced within its own site. The high-rise form is diagonally carved away above the height of the Hotel De Anza, so that it does not appear to loom over the De Anza. The tapered cutaway element is visually balanced by a similar cutaway at the corner entrance façade. The property-line setbacks separate the two tall masses, and the buildings do not crowd each other visually.

Some massing details also provide compatibility between the historic and project building. The project hotel does not specifically step down to the height of the Hotel De Anza; however, the southeast diagonal corner wedge helps achieve a massing transition, providing a shared reference point within the separate massing designs.

The project hotel has a heavy vertical column within its façade, similar in width to the sculptural vertical columns of the adjacent Art Deco building. The project building

*has a recessed double height lobby, visible in its massing, that aligns with the mezzanine wall of the Hotel De Anza to provide a continuous pedestrian scale along West Santa Clara Street. The project building has a raised roof on the east side, at the top of the vertically aligned section, and steps down to the penthouse dining area, a form compatible with the stepped building roofline of the Hotel De Anza.*

**Facades.** *Retain and respect the historic patterns and proportions of historic facades on a street. Add new facades that include features that are compatible in scale, material, detail and massing with other facades on the street. For example, if the street facades of most nearby buildings are vertical in proportion, taller than they are wide, then maintaining the vertical orientation of the building façade will result in a more compatible design. It is not appropriate to design new facades to create a false historical appearance.*

**Analysis:** *The prominent horizontal elements of the Hotel De Anza, including the lobby height, are carried through into the project hotel. The vertical mullion pattern, at the southeast corner of the front façade, is similar in size, scale and rhythm to the vertical upper bays of the Hotel De Anza. The inclusion of clear glazing in a regular pattern within the vertical mullions is compatible with the fenestration pattern of the historic upper floors. The project hotel ground floor includes a horizontal solid base material and a solid-material vertical element near the center of the design. These solid elements provide a visual connection to the stucco material of the historic structure, and they have similar dimensions, providing similar scale and detailing.*

**Exterior Materials.** *Add new building materials that match the historic materials of masonry, terra cotta, limestone, stucco, glass mosaic, cast stone, concrete, metal, glass and wood (trim, finishes and ornament only) where possible. New materials should be compatible with historic materials in scale, proportion, design, color, finish, texture and durability.*

**Analysis:** *The large scale and smooth texture glass and plaster materials of the project hotel are compatible with the correspondingly smooth stucco expanses of the Hotel De Anza. The dimensions of the more delicate ornamentation are reflected in the dimensions of the Modernist features of the historic building (for example, the width of the mullions). The compatible and aligned massing elements, the pedestrian-scale ground floor design, the rhythm of the upper-level fenestration and mullions, and the use of varying building elements throughout the design are also compatible.*

#### **4. Zoning Ordinance Compliance.**

- a. **Land Use:** The site is zoned DC Downtown Primary Commercial which allows the project hotel and off-site parking arrangement as by-right uses. A Site Development Permit is required to allow construction of the hotel building.
- b. **Development Standards.** The project is consistent with the DC Downtown Primary Commercial development standards, as follows:

- Height: Properties in Downtown (outside of the Diridon Station Area Plan) are only subject to the height limitations necessary for safe operation of the airport. The Airport Department has reviewed the project and determined it does not impair the safe operation of the airport, and the project is also required to obtain an FAA clearance prior to issuance of any Building Permits.
- Setbacks: There are no setback requirements in the Downtown Primary Commercial Zoning District.
- Automobile Parking: Each hotel room requires 0.35 parking space, or approximately one space for every three rooms. The project's 272 hotel rooms, therefore, require 96 parking spaces. Parking reductions may be granted to the project as follows:

- Up to a 50 percent reduction is allowed for projects within 2,000 feet of an existing or planned light rail station or bus rapid transit station (BRT), that also include a transportation demand management (TDM) program.

*Analysis: The project site is approximately 1,700 feet from the Santa Clara North Light Rail station and BRT station, both located at East Santa Clara Street and South 1<sup>st</sup> Street. Moreover, the planned Phase 1 BART extension includes a stop at this intersection. A bike share station is located across Santa Clara Street from the project site. The project also includes a Transportation Demand Management (TDM) plan that includes free VTA SmartPasses for employees, an employee parking incentive program; and an on-site TDM coordinator. The project is therefore allowed a 50 percent parking reduction, to 48 parking spaces.*

- An additional 15 percent reduction is allowed for projects within the Downtown pursuant to San José Municipal Code Section 20.70.330, in addition to the 50 percent reduction above, provided a TDM plan is included meeting certain criteria.

*Analysis: The project includes a TDM plan that provides evidence that the TDM program will reduce parking demand and identifies the percentage of parking demand that will be reduced through the TDM plan; therefore, the project is allowed a further 15 percent parking reduction, to 41 parking spaces. Furthermore, the required off-street parking facility for the project will continue to be provided for the project within the San Pedro Market Garage for up to a 30-year term, as specified in the Parking Agreement with the City of San Jose. In the determination of the Planning Director, 30 years is a reasonable expectation for the life of the hotel.*

- The project has an off-site parking arrangement, with all 41 parking spaces to be provided in the Market/San Pedro Square Garage.

*Analysis:* *The Market/San Pedro Square Garage is located three blocks to the east of the project site (about 1,000 feet), between North San Pedro Street and North Market Street, south of West St. John Street. The hotel would provide valet service to and from the garage for hotel guests. Employees could park in the garage and walk to the hotel (about a 4 to 5-minute walk). Hotel guests and employees would also have the option to take public transit. Several bus lines are located immediately across West Santa Clara Street from the project site. The key terms of the Parking Agreement include: 1) Up to 41 parking permits, 2) Initial 10-year term, with two ten-year options (options based on mutual (City and hotel) agreement, and initial 10-year term begins with hotel occupancy, and 3) Rates: Holding fee from agreement execution to hotel occupancy at market rates (currently \$125/permit/month). Upon hotel occupancy, rate triggered to \$150/month/permit, with annual 3.5% fee increase.*

*Conclusion: The project provides the required number of parking spaces. These parking spaces are allowed to be provided in an off-site location, in accordance with the required findings for off-street parking facilities included in the Site Development Permit Findings section below.*

- *Bicycle Parking:* *One bicycle parking space is required per ten hotel guest rooms, plus one additional space. The 272-room hotel, therefore, requires 28 bicycle spaces, and 32 bicycle spaces are provided in a bicycle room on the first floor of the hotel.*
- *Design Guidelines:* *Section 20.70.500 of the Zoning Ordinance requires projects in Downtown to be subject to design guidelines adopted by the City Council. The 2004 Downtown Design Guidelines apply to the project because the project application was filed in August of 2018, and the currently-adopted San José Downtown Design Guidelines and Standards only apply to project applications submitted after the effective date of April 23, 2019. The project complies with the 2004 Downtown Design Guidelines, as analyzed below:*
  - i. **Skyline design.** To encourage variations in massing and form, the upper floors of the building should have less mass than the lower floors, to create a sculpted appearance. Dynamic building tops are encouraged. The project begins subtracting floor mass at the ninth floor with a triangular facet angling back from the left front corner of the Hotel De Anza, providing a sculpted appearance. The project rooftop bar has an open appearance with a prominent overhead canopy, creating a dynamic top to the building.*
  - ii. **Massing and scale.** Buildings over 150 feet tall should have a discernable treatment distinguishing the base, middle and top of the building. A prominent canopy projects around the entire first floor street*



*frontage of the building, below which has distinctive glazing and a prominent entry that results in a distinctive base. The middle of the building is defined by the distinctive geometric planes of the glass curtain wall system, and the top of the building is defined by rooftop canopy suspended above the view deck. Vertical breaks are provided by a prominent solid column on the East Santa Clara Street frontage and the curtain wall facets.*

- iii. **Exterior materials.** Stone, metal and glass are appropriate materials; windows should be as transparent as possible at the base of the building. Glass above the windows should minimize reflectivity. The project includes these elements, through a highly transparent ground floor glazing system and upper level glass with low reflectivity. The project includes a glass and metal exterior with plaster forms for architectural elements.*

- c. Historic Landmarks Commission Review.** Section 20.70.110 of the Zoning Ordinance requires projects over 150 feet in height that are constructed within 100 feet of a City Landmark Structure be reviewed by the Historic Landmarks Commission, and that the comments of the HLC be considered by the City Council. The HLC reviewed the project on April 3, 2019. At that time, the hotel design included the diagonal cutaway element (chamfer) at the lower front corner of the building, next to the Hotel De Anza. This resulted in the project hotel having more massing within the upper half of the building. The current design approved as part of this Permit reverses this arrangement, with the chamfer now on the upper portion of the hotel, pulling back and away from the roofline of the De Anza. The HLC provided the following comments based on the prior design:

- i. Project Height and Massing**

- 1. The initial design did not overall respect the adjacent historic resource (Hotel De Anza). Height and adjacency are the primary issues regarding the project. The curtain wall near the Hotel De Anza is too tall and the building height should not overpower the iconic Hotel De Anza sign.
    - 2. The taller portion of the project building that originally stepped out towards the Hotel De Anza appeared to be the opposite of what would be preferred (as noted above, this arrangement has been reversed). There should be a greater setback/step-back for the portion of the building that is the nearest to the Hotel De Anza.

*Consideration of HLC comments: The current project design eliminates the stepped out portion at the top of the building and now includes an upper cutaway that angles away from the Hotel De Anza. This helps transition the building massing from the higher roofline of the project hotel to the lower roofline of the Hotel De Anza.*

ii. Architectural Compatibility

1. The current design includes too much glazing to be compatible with the Hotel De Anza, and the incorporation of stone should be considered.
2. Better complementary materials should be used on the first few levels.
3. The incorporation of horizontal elements at the street level does a good job of referencing the Hotel De Anza. The stronger belt lines in the most recent iteration are appreciated.
4. Facades that appear to reference the Hotel De Anza more strongly are situated facing the Axis, and should be closer to facing the Hotel De Anza instead.

*Consideration of HLC comments: As discussed above, the Historic Resource Project Assessment Review analyzed the exterior materials and architectural elements and found them consistent with the Draft Historic Design Guidelines.*

5. **Environmental Review.** The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942), which was circulated for public review and comment from August 19, 2019 through October 3, 2019. A First Amendment to the Draft SEIR was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the Draft SEIR. The First Amendment together with the Draft SEIR constitute the Final Supplemental Environmental Impact Report (Final SEIR) for the project.

The following discussion outlines the environmental impacts discussed in the Draft SEIR.

*Environmental Impacts and Mitigation Measures*

The Draft SEIR found that the project would not result in any significant unavoidable impacts. Therefore, a Statement of Overriding Considerations is not required. The Draft SEIR identified impacts resulting from the project to air quality from construction activities, biological resources, cultural resources, hazardous materials, and noise. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program (MMRP) prepared for the project, these impacts are reduced to less than significant levels.

*CEQA Alternative Considered, But Rejected*

Based on the public concerns and as a good faith effort, the Draft SEIR considered, but rejected alternatives as it was determined to be infeasible or an inability to avoid environmental impacts. These alternatives are described below:

**Location Alternative** – This alternative considered locating the project within areas of Downtown that would reduce construction impacts, particularly to historic structures or buildings. Given the number of historic structures and potentially historic structures in the downtown area, and the number of parcels available for redevelopment, it is likely that an alternative location within this area of the City would also result in an impact to a historic structure(s). Furthermore, many of the available parcels in the downtown core are already under consideration for redevelopment and would likely be in proximity to sensitive receptors, resulting in comparable air quality and noise impacts from construction. For these reasons, an alternative location was not analyzed further.

**Building Materials Alternative** – This alternative conceptualized the hotel with a solid exterior and punched windows similar to the design of the Hotel De Anza. However, the design of the project building has been reviewed by a qualified historian, by City staff, including the City's contracted design consultant. The exterior materials of the project building were found to be compatible with all applicable City design guidelines and were found to not impact the historic integrity of the adjacent historic Hotel De Anza. Furthermore, an alternative project of the same size with different materials would result in comparable impacts as the project. As a result, while considered, a materials alternative is not required under CEQA and was not analyzed further.

**Site Layout Alternative** – A larger setback from the building to the Hotel De Anza was considered. Under the Site Layout Alternative, the project would remove the existing surface parking lot and construct a 19-story, 272-room hotel with a maximum height of 226 feet and a larger setback of 40 feet from the Hotel De Anza property line to the east. The project footprint would be approximately 4,800 square feet, which would not likely support a hotel use. The Site Layout Alternative is therefore not consistent with the project objectives, or the goals and objectives of the General Plan and the Downtown Strategy 2040 and was not analyzed further.

**Land Use Alternative (Office)** – An office building of the same size was assumed and considered for this alternative. A different use of the same size would result in comparable impacts as the hotel project. As a result, this alternative was rejected for not minimizing or avoiding the impacts of the project. Furthermore, a Land Use Alternative is not consistent with the project objectives.

### *CEQA Alternatives*

As required under CEQA, the Draft SEIR evaluated the No-Project alternative, a Downtown Redevelopment alternative, and a Reduced Height and Massing Alternative. Since many of the environmental impacts of the project are construction related, the alternatives were focused on exploring alternatives that would reduce these impacts. These alternatives are summarized as follows:

**No Project – No Development Alternative:** The No Project – No Development Alternative assumes no redevelopment of the project site and would result in the

retention of the existing private parking lot. There would be no construction with the No Project – No Development Alternative and therefore, would not result in any environmental impacts or mitigation measures. The No Project – No Development alternative would not allow for new high-density development to be constructed on the project site consistent with the General Plan. This alternative does not meet any of the objectives of the project.

**Downtown Redevelopment Alternative** – This alternative assumes the redevelopment of the site to be consistent with the existing Downtown General Plan Land Use Designation and Downtown Primary Commercial (DC) Zoning District. The Downtown General Plan designation allows development of up to 30 stories (a minimum of 300 feet assuming 10 feet per floor), with a floor area ratio of 30.0 and residential densities up to 800 dwelling units/acre. Allowable uses include office, retail, service, residential, and entertainment. Given the General Plan land use designation as well as the objectives of the City's General Plan, any alternative project on this site, regardless of land use type (i.e., hotel, residential/mixed-use, or office) would likely be comparable in density and scale to the project, assuming that any project would try to maximize development on-site consistent with the development anticipated in the Downtown area outlined in the Downtown Strategy 2040 Final EIR. As a result, the Downtown Redevelopment Alternative would likely result in similar impacts compared to the project.

**Reduced Height and Massing Alternative** – A reduced height alternative of a seven to eight story building with no roof top bar and restaurant was evaluated. Based on the floor plan of the project, this would allow for up to 95 hotel rooms. If the reduced height and massing alternative building were designed similarly to the project, it is reasonable that this alternative would not result in a substantive adverse change to the historic resource. As this alternative would be a smaller footprint, it is likely the project would have a shorter construction timeframe, resulting in a reduction in total number of hours that heavy equipment is being used and duration of the overall construction impacts to air quality, noise, and cultural resources. However, this alternative would still require the same heavy equipment to be used as the project, so maximum vibration levels on-site during construction would be comparable to the project.

#### *Circulation and Public Comments*

The Draft SEIR was circulated for a 45-day period from August 19, 2019 to October 3, 2019. The City received 12 written comment letters during the public comment period. Comments were submitted by four individuals and eight agencies and organizations.

Issues raised in these comment letters include the following:

- Impacts to the Hotel De Anza
- Hazardous materials from previous uses
- Transportation Plan consistency

- BART Silicon Valley Extension Project coordination
- Private views
- Additional trips and traffic
- Massing
- Overall incomplete and inadequate analysis in the Initial Study and SEIR
- Insufficient parking
- Noise and vibration

The City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The First Amendment, taken together with the Draft SEIR, constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR are available for review on the project page on the City's Active EIRs website at:

<https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs>.

#### *SEIR Recirculation Unnecessary*

The comments received do not identify substantive inadequacies in the Draft SEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an SEIR is required when significant new information is added to the SEIR after public notice is given of the availability of the Draft SEIR 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 a Draft SEIR is not "significant" unless the Draft SEIR 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 Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information has been added to the SEIR since publication of the Draft SEIR; therefore, the Draft SEIR does not need to be recirculated.

6. **Site Development Permit Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Site Development Permit, which findings are made for the Project based on the above-stated findings

related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

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

*Analysis: As described above, the project hotel with off-site parking arrangement is permitted in the Downtown Land Use Designation. The height and FAR of the project are also consistent with the designation. Finally, the project is consistent with General Plan Policies addressing land use, design, and historic resources, as analyzed above.*

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

*Analysis: As described above, the project meets the requirements of the DC Downtown Primary Commercial Zoning District, including building height, setback, and parking requirements. The project is consistent with the 2004 Downtown Design Guidelines, as analyzed, as well as the required number of off-street automobile parking spaces, with allowed reductions, and required bicycle parking spaces. The project hotel use is permitted uses in the Downtown Primary Commercial Zoning District.*

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

*Analysis: The project conforms to the Outdoor Lighting Policy (City Council Policy 4-3), in that under-soffit lighting would direct light downward onto the sidewalk. The project also complies with Public Outreach Policy (City Council Policy 6-30), as described in the Public Outreach section. The project has been reviewed by the Department of Public Works and found consistent with the Stormwater Management Policy (City Council Policy 6-29).*

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

*Analysis: As described above, the project hotel is the only structure and use on the project site. The project elevations are compatible and aesthetically harmonious in that materials and finishes are consistent on all facades, and incorporate design details to articulate the base, middle and top of the building.*

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

compatible and aesthetically harmonious with adjacent development or the character of the neighborhood; and

*Analysis: The project is visually compatible and harmonious with the adjacent Hotel De Anza through the incorporation of horizontal and vertical architectural elements reflecting those of the Hotel De Anza. The building mass angles away from the top of the Hotel De Anza to transition the height between the two structures. The project hotel also employs a glass curtain wall with solid vertical and horizontal accent elements, which is compatible with the similar materials of the adjacent Axis Condos Tower to the north of the site. The project building fronts onto the street similar to the other surrounding high-rise office towers and is similar in height to these buildings.*

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

*Analysis: The project development occurs in an urbanized area on a parcel that is currently developed with a parking lot. The project includes a TDM plan to reduce automobile trips and is located within a public transit-rich area which will encourage transit use. Offsite glare from exterior lighting is minimized through the use of concealed light fixtures. Construction activities will result in temporary noise and air quality impacts. These temporary impacts are minimized through standard construction mitigation measures, as listed in the project conditions of approval. The project would therefore not have an unacceptable impact on adjacent properties.*

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

*Analysis: The project footprint occupies the entire parcel, with service systems incorporated into the building interior; accessible by a metal roll-up door. A rooftop screen wall conceals rooftop mechanical equipment.*

- h. Traffic access, pedestrian access and parking are adequate, and the number of off-street parking spaces provided in the proposed off-street parking facility adequately meets the parking requirements of the individual buildings and uses as specified in Chapter 20.90 of the Zoning Ordinance.

*Analysis: As described above, the project valet operations were analyzed by the Department of Public Works and determined to be adequate to serve the hotel, with certain conditions of approval. The project has direct access to the public sidewalks along West Santa Clara Street and North Almaden Boulevard.*

*An enclosed loading space is provided within the hotel accessible to North Almaden Boulevard via a roll-up metal door and driveway. As analyzed in the Zoning Conformance section, the required reduced number of parking stalls for the hotel will be provided through the project's off-site parking arrangement, and a TDM plan is included with measures to adequately reduce parking demand for the hotel. Moreover, the analysis shows the parking demand for the hotel, and uses in Downtown in general, will gradually diminish given: 1) ongoing trends toward increased ridesharing, 2) planned investments in expanded public transit options and mobility choices in the Downtown, (3) existing options for non-car dependent transportation including existing transit stops, bike-share and walking; and (4) likely reduction in parking requirements for projects located in the Downtown.*

- i. It is reasonably certain that the off-site parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and the parking facility is reasonably convenient and accessible to the buildings or uses to be served.

*Analysis: The required off-street parking facility for the project will continue to be provided for the project within the San Pedro Market Garage for up to a 30-year term, as specified in the Parking Agreement with the City of San José. In the determination of the Planning Director, 30 years is a reasonable expectation for the hotel given the likely future reduction in parking requirements in the Downtown, additional public transportation opportunities, and a condition of approval to make sure the project continues to meet the City's parking requirements for the life of the project. The off-street parking facility is approximately 1,000 feet northeast from the hotel site, or an approximately four to five-minute walk for those not using the valet service and would be convenient for those using the valet service.*

In accordance with the findings set forth above, a Site Development Permit to develop the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. This City Council expressly declares that it would not have approved this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Site Development Permit within the applicable appeal



period, such inaction by the permittee shall be deemed to constitute all the following on behalf of the permittee:

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- a) Acceptance of the Permit by the permittee; and
  - b) Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Site Development Permit shall automatically expire two years from and after the date of issuance hereof by said Director, 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 Site Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
  3. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by permittee shall constitute acknowledgement of receipt of notice by permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
  4. **Notification of Pending Financing Plans and Impact Fees.** The San José City Council ("City") approved the (i) Envision San José General Plan 2040 ("General Plan") in 2011, (ii) Diridon Station Area Plan ("Diridon Plan") in 2014, and (iii) Downtown Strategy 2040 ("Downtown Strategy") in 2018. The Diridon Plan and Downtown

Strategy, in conjunction with the General Plan, provides the framework for development located in Downtown San José.

The City is in the process of developing financing plans for the Diridon Plan and the entire Downtown to fund public improvements, affordable housing, and other amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof.

The City is in the process of amending the Diridon Plan and updating the Diridon Basic Infrastructure Impact Fee. Updates to the Diridon Basic Infrastructure Impact Fee may include expanding the impact fee to other areas of Downtown. The City Council has also directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. Further, the City is developing a Downtown Transportation Plan that may require funding to construct the public improvements identified in the Downtown Transportation Plan. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for public improvements, affordable housing, and other amenities and services in the Downtown.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans applicable to Downtown, as may be amended, which may include one or more of the financing mechanisms identified above.

5. **Use Authorization.** This Permit will allow the construction of a 19-story hotel with 272 guest rooms with approximately 1,200 square feet of ancillary commercial space, and an off-site parking arrangement on a 0.71-gross acre site. The off-site parking arrangement for the hotel would be provided at the Market/San Pedro Square Garage, approximately 1,000 feet northeast of the site, through a parking agreement between the City of San José and permittee for up to 30 years for a total of 41 parking spaces, as required by Section 20.900.200 of the Zoning Ordinance, as may be amended.
6. **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.* This permit file number, H18-038 shall be printed on all construction plans submitted to the Building Division.
  - b) *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c) *Emergency Address Card.* The project 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 begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - e) *Street Number Visibility.* Street numbers of the building shall be easily visible at all times, day and night
  - f) *Other.* Such other requirements as may be specified by the Chief Building Official.
7. **Conformance to Plans.** The development of the site shall conform to the approved Site Development Permit plans entitled, "Almaden Corner Hotel" dated November 21, 2019, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
  8. **Rooftop Bar/Restaurant.** The rooftop bar/restaurant shall not operate past 12:00 a.m., unless allowed through a separate Special Use Permit or other applicable Planning approval.
  9. **Parking Valet Operations.** Valet service shall be provided for automobiles accessing the hotel. A minimum of ten (10) valet staff shall be provided at maximum hotel occupancy during the AM and PM weekday peak traffic hours (7:00 AM – 9 AM and 4:00 PM – 6:00 PM, respectively).
  10. **Rooftop Window Washing Equipment.** Roof-based building maintenance equipment, shall be hidden or screened from view, when not in use.
  11. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
  12. **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 Site Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San José Municipal Code.
  13. **Refuse.** All trash areas shall be effectively screened from view, shall be covered or shall consist of self-contained weather tight compactor(s), and shall be maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
  14. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
  15. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.

16. **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.
17. **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.
18. **Sign Approval.** No signs are approved at this time. All project signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
19. **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.
20. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
21. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately.
22. **Federal Aviation Administration (FAA) Clearance.** Prior to the issuance of any building permit, the Permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for each building high point. The Permittee shall initiate the regulatory FAA review by filing a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for each building corner and any additional highest point(s) of the project structure. The data on the forms should be prepared by a licensed civil engineer or surveyor using NAD83 latitude/longitude coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.
23. **FAA Clearance Permit Adjustment.** Prior to the issuance of any building permit, the Permittee shall apply for and obtain a Permit Adjustment to incorporate any and all FAA conditions identified in the Determination of No Hazard clearances (once issued), such as installation of roof-top obstruction lighting or construction-related notifications, into the Site Development Permit conditions of approval.
24. **Avigation Easements.** Prior to the issuance of any building permit, the property owner shall grant an Avigation Easement to the City of San José. Contact either Cary Greene of the San José Airport Department at [cgreene@sjc.org](mailto:cgreene@sjc.org) (408-392-3623) or Ryan Sheelen of the San José Airport Department at [rsheelen@sjc.org](mailto:rsheelen@sjc.org) (408-392-1193) to initiate the easement dedication process.
25. **Exterior Lighting.** Design all new exterior lighting within the Airport Influence Area ("AIA") in a manner that avoids interference with aircraft operations. Such lighting shall be constructed and located so that only the intended area is illuminated and off-site glare

is fully controlled. The lighting shall be arrayed in such a manner that it cannot be mistaken for airport approach or runway lights by pilots.

## 26. Aircraft Related Noise

- a) In order to reduce aircraft-related noise impacts, outdoor activity areas (e.g., patios, balconies, and common recreation areas) shall be situated so that the structures could provide some noise shielding.
- b) Final project design plans shall show the following measures in order to achieve interior comply with the 45 dB DNL standards of the City of San José Noise Element, Title 24 and the Airport Land Use Commission ("ALUC").
- c) Maintain closed at all times all windows of the guest spaces of the project. Install windows with the minimum Sound Transmission Class (STC) ratings shown in Appendix D of the Airport Master Plan EIR. In addition to the minimum STC rating requirements, additional noise limitations are required. For all window rated STC 45 or higher, the 1/3-octave band Transmission Loss value at 125 Hz shall be no lower than 27 dB. For all windows rated between STC 36 and STC 45, the 1/3-octave band Transmission Loss value at 125 Hz shall be no lower than 21 dB. These Transmission Loss value data are provided only on the specific window acoustical test report from the independent acoustical testing laboratory for the respective window product. Windows that do not have these data available are not acceptable.
- d) Through-the-wall air-conditioning units/ventilation systems are not allowed in a guest space exterior wall where the exterior noise exposure is 73 dB DNL or higher. All through-the-wall ventilation systems in exterior walls where the exterior noise exposure is 72 dB DNL or lower shall be rated minimum STC 26.
- e) Provide some type of mechanical ventilation for all guest spaces with a closed window condition. When windows are kept closed for noise control, they may be operable or fixed (inoperable). In addition, some form of mechanical ventilation which brings in fresh air from the outside of the unit must be provided. All other windows of the development may be kept open as desired.
- f) In addition to the required STC ratings, the windows shall be installed in an acoustically-effective manner. To achieve an acoustically-effective window construction, the sliding window panels must form an air-tight seal when in the closed position and the window frames must be caulked to the wall opening around their entire perimeter with a non-hardening caulking compound to prevent sound infiltration. Many dual-pane window and glass door assemblies have inherent noise reduction problems in the traffic noise frequency spectrum due to resonance that occurs within the air space between the glass lites, and the noise reduction capabilities vary from manufacturer to manufacturer. Therefore, the acoustical test report of all sound rated windows and glass doors should be reviewed be a

qualified acoustician to ensure that the chosen windows and glass doors will adequately reduce traffic noise to acceptable levels.

**27. Transportation Demand Management (TDM) Plan.** The Transportation Demand Management plan ("TDM Plan"), prepared by Kimley Horn and Associates, Inc., dated June 21, 2019, is on file with the Department of Public Works and is incorporated fully herein by this reference. Based on the TDM measures included in the approved TDM Plan, the project shall meet the 57 percent parking reduction requirement parking conformance (41 spaces required after reduction). The project is required to submit an annual monitoring report (and pay associated administrative costs for the City's time to review) that measures the effectiveness of the approved TDM plan, in a form approved by the Director of Public Works. The report shall be provided to the City on or before each June 30th for the reporting period of the prior calendar year. Additional TDM measures, or changes to existing TDM measures, may be required at the discretion of the Director of Public Works if the TDM measures are not effective in reducing the parking demand by a minimum of 57 percent. The TDM Plan shall include the following requirements for the life of the project:

- a) Free VTA SmartPasses for all hotel employees; and
- b) Employee parking incentive; and
- c) Designated on-site transportation coordinator.

**28. Off-Site Parking Provision.** Based on the Zoning Code requirements as of the Effective Date, forty-one (41) parking spaces are required for the project. The City has approved a parking agreement entitled "Parking Agreement between the City of San José and Almaden Corner, LLC for the use of the Market /San Pedro Square Garage", dated [REDACTED]. The parking agreement provides forty-one (41) parking spaces in the Market/San Pedro Square Garage to allow the project to meet the current parking requirements. The term of the parking agreement is ten (10) years with up to two (2) additional ten (10) year options for a total of thirty (30), as further described in detail in the agreement. The parking agreement shall be fully executed prior to issuance of any Building Permits for the project. The project shall continue to meet the off-street parking requirements set forth in Section 20.90.200 of the Zoning Code, as may be amended, for the life of the project.

**29. Green Building Requirements for Mixed Use New Construction Projects.** The development is subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009 for the construction of buildings approved through the scope of this permit, the permittee shall pay a Green Building Refundable Deposit applicable to the gross square footage of said buildings which are approved through this permit. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within a year after the building permit

expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

30. **Window Glazing.** Unless otherwise indicated on the approved plan, all ground level windows shall consist of a transparent glass.
31. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
32. **Fire Flow.** Required fire flow for the site is approved by the Fire Chief. Any changes to project require a re-review and approval by the Fire Chief.
33. **Fire Hydrants.** Prior to the issuance of building permits, number of Public (off-site) and private (on-site) fire hydrants and their locations need approval through a Fire Variance and to the satisfaction of the Fire Chief.
34. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways will be confirmed at time of building permit review to the satisfaction of the Fire Chief.
35. **Fire Department Access.** Prior to the issuance of any building permits, fire equipment access needs approval through a Fire Variance and to the satisfaction of the Fire Chief.
36. **Conformance to MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. [REDACTED].

**37. Environmental Conditions:**

a) AIR QUALITY

- i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- iii. 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.
- iv. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- v. 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.

- vi. 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.
- vii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- viii. 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.

b) BIOLOGICAL RESOURCES

- i. **Habitat Conservation Plan:** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning or Director's designee of the City of San José Department of Planning, Building, and Code Enforcement (PBCE) for review and shall complete subsequent forms, reports, and/or studies as needed prior to the issuance of grading permits. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>

c) GEOLOGY AND SOIL

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



- iv. **Provide Preconstruction Worker Awareness Training.** The City will ensure that all construction personnel receive paleontological resources awareness training that includes information on the possibility of encountering fossils during construction; the types of fossils likely to be seen, based on past finds in the project area; and proper procedures in the event fossils are encountered. Worker training will be prepared and presented by a qualified paleontologist.
- v. **Stop Work.** 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, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The City will be responsible for ensuring that the project sponsor implements the recommendations of the paleontological monitor regarding treatment and reporting. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

d) **HYDROLOGY**

- i. Consistent with the Downtown Strategy 2040 FEIR, best management practices to prevent stormwater pollution and minimize potential sedimentation shall be implemented during project construction, including but not limited to the following:
  - 1) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
  - 2) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
  - 3) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
  - 4) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
  - 5) All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
  - 6) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
  - 7) Vegetation in disturbed areas shall be replanted as quickly as possible.

- 8) 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.
- 9) The project applicant 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.

e) NOISE

- i. In accordance with the General Plan FEIR as amended, and the Downtown Strategy 2040 FEIR, the project would be required by Conditions of Approval to implement the following measure:
  - 1) A detailed acoustical study shall be prepared during building design to evaluate the potential noise generated by building mechanical equipment and to identify the necessary noise controls that are included in the design to meet the City's 55 dBA DNL noise limit at the shared property line. The study shall evaluate the noise from the equipment and predict noise levels at noise-sensitive locations. Noise control features, such as sound attenuators, baffles, and barriers, shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations, such as residences. The study shall be submitted to the City of San José for review and approval prior to issuance of any building permits.
- ii. Per General Plan Policy EC-1.7, the project shall prepare a construction noise logistics plan, specifying the hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints. The logistics plan shall be implemented prior to the start of construction and during construction to reduce noise impacts on neighboring residents and other adjacent uses.
- iii. The following best management practices shall be implemented during project construction:
  - 1) Construction activities shall be limited to the hours between 7:00 am and 7:00 pm, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
  - 2) Construct solid plywood fences around construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.

- 3) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
  - 4) Unnecessary idling of internal combustion engines should be strictly prohibited.
  - 5) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. Temporary noise barriers could reduce construction noise levels by five dBA.
  - 6) Utilize "quiet" air compressors and other stationary noise sources where technology exists.
  - 7) Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
  - 8) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
  - 9) A temporary noise control blanket barrier could be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
  - 10) Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.
- iv. **Interior Noise:** The following measures would be implemented to reduce interior noise levels to 45 dBA DNL or lower for the hotel rooms and achieve the instantaneous noise objective of 50 dBA Lmax in bedrooms and 55 dBA Lmax in other rooms:
- 1) A site-specific noise analysis by an acoustical consultant shall be required to verify consistency with the City's noise standards and identify necessary design features and noise reduction measures, based on projected General Plan traffic volumes. Projections of future noise exposure would also take

into account existing and planned commercial/industrial operations and transit facilities.

- 2) Where exterior day-night average noise levels are 60 to 70 dBA DNL, interior noise levels can typically be maintained below 45 dBA DNL with the incorporation of adequate forced air mechanical ventilation systems in the rooms, which allow guests the option of controlling noise by keeping the windows closed. In areas with exterior noise levels exceeding 70 dBA DNL, the inclusion of windows and doors with high Sound Transmission Class (STC) ratings may also be necessary to meet the interior noise standard of 45 dBA DNL.

**38. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:

<https://www.sanjoseca.gov/your-government/departments/public-works/development-services/public-works-applications>.

- a) **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

b) **Transportation:**

- i. This project is in the Downtown Core, as defined in the San José Greater Downtown Strategy for Development (Strategy 2040). The City has updated the Strategy 2000 land-use capacity and policy assumptions consistent with the Envision San José 2040 General Plan. The Strategy 2040 EIR approved the additional of three (3) million square feet of office and 4,000 residential units. The amount of retail development (1.4 million square feet) and hotel room (3,600 rooms) capacities from the Downtown Strategy 2000 would be maintained. This project is covered under Strategy 2040 EIR and no CEQA Transportation Analysis will be required.
- ii. The traffic operations analysis for the project was completed on February 22, 2019. The project must meet the following conditions:
  - 1) Install lane delineators at the bike lane buffer along North Almaden Boulevard near the project valet drop-off/pick-up area to ensure that project traffic does not cross the bike lane to access the southbound right-turn lane.

- 2) Provide appropriate visible and/or audible warning signals at the loading space driveway to alert pedestrians and bicyclists of vehicles exiting the driveway.
  - 3) Restrict truck access to the loading spaces during garbage pick-up days to provide space for waste bins at the loading dock entrance.
  - 4) Reconfiguration of an ADA ramp located at W. Santa Clara Street and N. Almaden Boulevard.
  - 5) Permittee agrees to provide a fair share contribution of \$250,000 towards transportation improvements along Almaden Boulevard and the nearby signalized intersection. If the funds are not programmed for said improvements within 5-years upon receipt, then the contribution will be returned to the permittee.
- c) **Grand Boulevard:** This project fronts Santa Clara Street which is designated as one of the seven Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- d) **BART Downtown:** This project will be required to submit structural and shoring plans to the Santa Clara Valley Transportation Authority (VTA) for coordination with the future BART tunnel to ensure no conflicts or impacts to the BART project. Tie-backs may not be acceptable at certain locations/or elevations depending on the project's design
- e) **Street Vacation:** A street vacation may be required in order to accomplish the land use plan as shown. The street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to Public Works Clearance.
- f) **Grading/Geology:**
- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.

- iii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The 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.

g) **Shoring:**

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs are used in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the permittee or contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12 inches within the public right-of-way (i.e., soldier beams).
- iii. If tie-backs are used along the adjacent properties (APNs 259-35-22 & 259-35-59), agreements between the permittee and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

h) **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- i. A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.

i) **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.

j) **Assessments:** Prior to final map recordation, the permittee must do one of the following:

- i. This project is located within the Basic Zone of the Downtown San José Property-based Business Improvement District, which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for the services through annual

assessments placed on the County property tax bills, which may be increased by up to 5% each year. The assessment is calculated based on the land use and its building and lot square footages. For 2018-2019, commercial properties pay \$0.071914761 and residential properties pay \$0.048542190 per building and lot square footages. Future year assessments will be adjusted accordingly and will continue to be collected through the County property tax bills listed under Tax Code 916 "SJ DOWNTOWN PBID". Any questions may be directed to the City Development Services Department at (408) 535-6831.

- ii. This project is a hotel use. The City of San José, on September 30, 2008 implemented a special tax for Convention Center Facilities District (CCFD) No. 2008-1 for all existing hotel properties with the intent that future hotel properties would participate as well. The special tax was authorized to be levied on hotel properties for the purpose of paying for the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center. The special tax is levied and collected in addition to and in a manner similar to the City's Transient Occupancy Tax. The special tax may not be apportioned in any tax year on any portion of property in residential use in that tax year, with the understanding that transient occupancy of hotel rooms is not residential use. The base special tax is 4% of gross rents, and may be subject to an additional special tax up to 1% of gross rents. Please contact the City Development Services Department at (408) 535-6831 to coordinate the annexation process.

**k) Street Improvements:**

- i. Construct sidewalk along the project frontage on North Almaden Boulevard with a 12-foot wide attached sidewalk and tree wells.
- ii. Reconfigure ADA ramp located at W. Santa Clara Street and N. Almaden Boulevard.
- iii. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along project frontage.
- iv. Construct a 16-foot wide driveway per City of San José Standards on North Almaden Boulevard.
- v. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
- vi. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- vii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans. (To assist the permittee in better understanding the

potential cost implications resulting from these requirements, existing pavement conditions can be evaluated during the Planning permit review stage. The permittee shall be required to submit a plan and the applicable fees to the PW Project Engineer for processing. The plan should show all project frontages and property lines. Evaluation will require approximately 20 working days.)

- l) **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any sidewalk and lane closures to support the onsite construction activities.

- i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:

- 1) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).
- 2) **Multi-Phased Site-Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.

- ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:

- 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
- 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition k.ii above.

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- 3) If the traffic lane and parking closures are a part of the Revocable Permit Application, permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <https://www.sanjoseca.gov/your-government/departments/transportation/permits>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- m) **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San José Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
- n) **Electrical:**
- i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
  - ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
  - iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.
  - iv. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10 feet from high voltage lines; 3 feet from secondary voltage lines; and 1 foot from communication lines.
- o) **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.
39. **Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

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- 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 develop the subject property for said purpose specified above is hereby **approved**.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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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 Procedures Section 1094.6.*



November 25, 2019

HMH 5423.05.270

Page 1 of 1

EXHIBIT "A"  
FOR SITE DEVELOPMENT PERMIT PURPOSES

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING at the most easterly corner of Parcel B as shown on that certain map of Tract No. 9802 recorded in Book 803 of Maps at pages 21 and 22, Santa Clara County Records, said point lying on the northerly line of West Santa Clara Street; thence along said line South  $60^{\circ}06'36''$  West 90.18 feet to the beginning of a tangent curve; thence on a curve to the right having a radius of 10.00 feet, through a central angle of  $63^{\circ}04'28''$ , an arc distance of 11.01 feet to a point of compound curvature; thence on a curve to the right having a radius of 120.00 feet, through a central angle of  $27^{\circ}00'44''$ , an arc distance of 56.57 feet; thence North  $29^{\circ}48'12''$  West 20.87 feet to a point of intersection with the southwesterly extension of the northwesterly line of said Parcel B; thence along said line and southwesterly extension thereof North  $60^{\circ}06'36''$  East 112.06 feet to the most northerly corner of said Parcel B; thence along the northeasterly line of said Parcel B South  $29^{\circ}54'12''$  East 80.86 feet to the point of beginning.

Containing 8,748 square feet, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

*For assessment or development purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.*

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 11-25-19

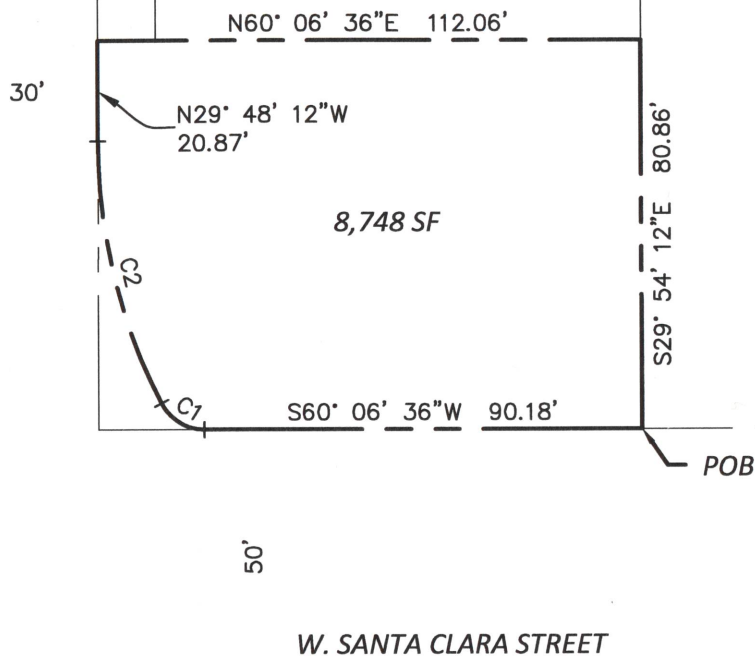
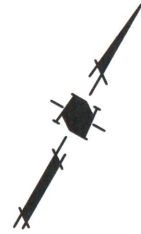
Tracy L. Giorgetti, LS 8720



N. ALMADEN BLVD

PARCEL A  
TRACT NO 9802  
803-M-21  
APN 259-59-001 TO 329  
RESIDENTIAL

0 20 40  
1 IN. = 40 FT.



LANDS OF M1 SAN JOSE  
HOLDING, LLC  
APN 259-35-022  
COMMERCIAL

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	10.00'	63°04'28"	11.01'
C2	120.00'	27°00'44"	56.57'



SHEET 1 OF 1

Date: 2019-11-25

Designed: —

Drawn: TG

Checked: —

Proj. Engr.: —

54230



EXHIBIT "B"  
PLAT TO ACCOMPANY DESCRIPTION:

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.