RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW THE DEMOLITION OF TWO BUILDINGS TOTALING APPROXIMATELY 11,380 SQUARE FEET, THE REMOVAL OF THREE (3) ORDINANCE SIZED TREES, AND THE CONSTRUCTION OF AN APPROXIMATELY 345,000-SQUARE FOOT 100% AFFORDABLE HOUSING (EXCLUDING THE MANAGER'S UNITS) PROJECT WITH 365 AFFORDABLE, MULTI-FAMILY **RESIDENTIAL UNITS WITH AN ALTERNATIVE PARKING** ARRANGEMENT, BACK-UP GENERATOR, AND UP TO **12.5-FOOT TALL RETAINING WALL WITH STATE DENSITY BONUS REQUESTING A 29% INCREASE IN DENSITY AND** WAIVERS TO INCREASE BUILDING HEIGHT; REDUCE THE REQUIRED SETBACKS ALONG MCEVOY AND DUPONT STREETS, AND REDUCE THE AMOUNT OF REQUIRED MOTORCYCLE PARKING ON AN APPROXIMATELY 1.13-GROSS ACRE SITE SITUATED ON THE NORTH SIDE OF WEST SAN CARLOS STREET BETWEEN MCEVOY STREET AND DUPONT STREET (699 WEST SAN CARLOS STREET)

FILE NO. SP18-059

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on May 10, 2018, an application (File No. SP18-059) was filed by the applicant, Kurt Anderson as representative of First Community Housing, Inc., for a Special Use Permit to allow the demolition of two buildings totaling approximately 11,380 square feet, the removal of three (3) ordinance sized trees, and the construction of an approximately 345,000-square foot, 100% affordable housing (excluding four market rate manager's units) project with 365 affordable, multi-family residential units with an alternative parking arrangement, back-up generator, and up to 12.5-foot tall retaining wall, with a State Density Bonus request to allow a 29% increase in density and waivers to increase the building height; reduce the required setbacks along McEvoy Street, Dupont Street, the West San Carlos Street bridge, and reduce the amount of required motorcycle parking on an approximately 1.13-gross acre site, on that certain real property situated in

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the R-M Multiple Residence Zoning District and located on the north side of West San Carlos Street between McEvoy and Dupont streets (699 West San Carlos Street) 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 <u>Exhibit "A</u>," entitled "Legal Description," and depicted in <u>Exhibit "B,"</u> 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, the Planning Commission conducted a hearing on said application on January 29, 2020, notice of which was duly given; and

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

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

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

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

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the City's Planning Commission and City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "280 McEvoy Street Residential Apartments," dated October 15, 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 of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. Site Description and Surrounding Uses. The project site is located at the northeast corner of McEvoy Street and West San Carlos Street (699 West San Carlos Street). The approximately 1.13-gross acre site currently has two single-story industrial buildings on the site and a paved area for parking and storage. Access to the site is from two driveways along McEvoy Street. The buildings, constructed sometime in the 1980s, are used for metal fabrication, welding, and repair. One building is approximately 815 square feet and the other is approximately 10,565 square feet. Additionally, there are two accessory structures on site. One accessory structure is 576 square feet and the other is 1,444 square feet. All buildings and accessory structures will be demolished. A large part of the site is paved without any buildings and is used for materials storage and truck loading/unloading.

Land uses to the north, south, and east of the project site are industrial uses, including pipe bending and fitting, a trucking school, and a packaging business, respectively. To the west, there is a gallery, a theater and a surface parking lot.

2. Project Description. Special Use Permit to (i) demolish all buildings and structures on site. The two buildings total approximately 11,380 square feet and the structures

total approximately 2,020 square feet, (ii) remove three (3) ordinance sized trees, and one non-ordinance sized tree and (iii) construct an approximately 345,000-square foot 100% affordable housing (excluding four market rate manager's units) residential apartment project with 365 affordable, multi-family residential units with an alternative parking arrangement, back-up generator, and up to 12.5-foot tall retaining wall, and (iv) concessions and waivers under State Density Bonus laws to increase density, increase the building height; reduce the required setbacks along McEvoy Street, Dupont Street, the West San Carlos Street bridge, and reduce the amount of required motorcycle parking, all on an approximately 1.13-gross acre site.

The project includes the construction of two 13-story towers over a podium that contain a total of 365 units consisting of studio, junior studio, one, two, and three-bedroom units. The units are divided between the two buildings with 141 units in the designated "Family" tower and 224 units in the designated "Workforce" Tower. The project includes residential amenities, such as roof gardens, children's play areas, and community rooms. The site also includes a plaza with class space, a fitness center, and a multipurpose room/computer lab on the south side of the project. Pedestrian connection is provided through the site through a pedestrian path along the southern portion of the property to help provide access to transit. The project's 94 off-street, including four guest parking spaces will be accommodated by an automated parking lift system. The lifts are accessed on the first level of the building, and the lift allows the desired car to be called to the bottom row without requiring another car to be moved by a different resident. The entrance to the automated parking lift is accessed from a driveway off McEvoy Street.

3. General Plan Conformance. The project site has an Envision San José 2040 General Plan designation of Transit Residential and is within an Urban Village. The Transit Residential designation is the primary designation for new high-density, mixeduse residential development sites that are located in close proximity to transit, jobs, amenities, and services. This designation may also be appropriate for some sites within Urban Village areas as identified through an Urban Village Planning process. This designation also supports intensive commercial employment uses, such as office, retail, hotels, hospitals and private community gathering facilities. To help contribute to "complete communities," commercial uses should be included with new residential development in an amount consistent with achievement of the planned job growth and Urban Village Plan for the relevant Urban Village area. The allowable density/intensity for mixed-use development will be determined using a FAR 2.0 to 12.0 to better address the urban form and potentially allow fewer units per acre if in combination with other uses such as commercial or office. The allowable density for this designation is further defined within the Diridon Station Area Plan (DSAP).

The project site is within the boundaries of Diridon Station Area Plan (DSAP), an adopted Urban Village plan, and is therefore subject to the land use and design standards established within the plan. The Transit Residential designation is intended for transit integrated residential development and/or vertical or horizontal

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residential/commercial mixed-use development within walking distance of the Station and along key transportation corridors like West San Carlos Street. All development within the Transit Residential Designation is required to be pedestrian oriented with emphasis on activating the ground level; pedestrian entries and windows should be located along the sidewalk and buildings should include architectural elements (like awnings, changes in materials, articulated building façade, etc.) that add visual interest.

The project is consistent with the DSAP, as discussed further below, and is therefore consistent with the Transit Residential General Plan designation.

General Plan Policies

The project is consistent with the following key General Plan policies:

 <u>Major Strategy #5 – Urban Village:</u> The Urban Village Major Strategy promotes the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan's environmental goals. The General Plan establishes the Urban Villages concept to create a policy framework to direct most new job and housing growth to occur within walkable and bike friendly Urban Villages that have good access to transit and other existing infrastructure and facilities.

<u>Analysis</u>: The subject site is within the Diridon Station Area Plan (DSAP), adopted by City Council on June 14, 2014. The project density would promote urban development and would facilitate the project which encourages an active, bicycle-friendly environment consistent with the Major Strategies, goals, and policies of the General Plan.

- 2. <u>Major Strategy #3 Focused Growth:</u> The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified "Growth Areas" (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods. While the Focused Growth strategy directs and promotes growth within identified Growth Areas, it also strictly limits new residential development through neighborhood infill outside of these Growth Areas to preserve and enhance the quality of established neighborhoods, to reduce environmental and fiscal impacts, and to strengthen the City's Urban Growth Boundary.
- 3. <u>Growth Areas Goal LU-2</u>: Focus new growth into identified Growth Areas to preserve and protect the quality of existing neighborhoods, including mobile home parks, while establishing new mixed use neighborhoods with a compact

and dense form that is attractive to the City's projected demographics i.e., a young and senior population, and that supports walking, provides opportunities to incorporate retail and other services in a mixed-use format, and facilitates transit use.

- 4. <u>Growth Area Policy LU-2.1</u>: Provide significant job and housing growth capacity within strategically identified "Growth Areas" in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.
- 5. <u>Land Use Goal 9 High Quality Living Environments:</u> Provide High Quality Living Environments.
- <u>Efficient Use of Residential and Mixed Use Lands Policy LU-10.2</u>: Distribute higher residential densities throughout the City in identified growth areas and facilitate the development of residences in mixed-use development within these growth areas.
- 7. Efficient Use of Residential and Mixed Use Land Use Policy LU-10.3: Develop residentially- and mixed-use-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.

<u>Analysis for Major Strategy 3, LU-2, LU-2.1, LU-9, LU-10.2, LU-10.3</u>: The project is within the DSAP and is approximately 0.38-mile from Diridon Station. The project land use would allow a higher density and intensity of development on the subject site consistent with General Plan major strategy, and policies supporting focused growth and development near transit. Higher density and intensity of development near transit maximizes scarce land near transit and encourages the use of public transit while reducing vehicle miles traveled. Furthermore, the project would facilitate affordable housing development that would provide housing within a bicycle-friendly, and transit-oriented setting consistent with General Plan policies supporting high quality neighborhoods.

- 8. <u>Social Equity and Diversity Goal H-1:</u> Provide housing throughout the City in a range of residential densities, especially at higher densities, and product types, including rental and for sale housing, to address the needs of an economically, demographically, and culturally diverse population.
- Social Equity and Diversity Policy H-1.2: Facilitate the provision of housing sites and structures across location, type, price, and status as rental or ownership that respond to the needs of all economic and demographic segments of the community including seniors, families, the homeless and individuals with special needs.

- 10. <u>Social Equity and Diversity Policy H-1.9</u>: Facilitate the development of housing to meet San José's fair share of the County's and region's housing needs.
- 11. <u>Affordable Housing Goal H-2</u>: Preserve and improve San José's existing affordable housing stock and increase its supply such that 15% or more of the new housing stock developed is affordable to low, very low and extremely low income households.
- 12. <u>Affordable Housing Policy H-2.2</u>: Integrate affordable housing in identified growth locations and where other housing opportunities may exist, consistent with the Environs San José 2040 General Plan.

<u>Analysis for H-1.2, H-1.9, H-2, H-2.2</u>: The project would increase the affordable housing stock within the City by providing a 100% affordable housing community (excluding the four market rate manager's units). The residential apartment project includes 365 studio, junior studio, one, two, and three-bedroom units within the Diridon Station area . The project includes residential amenities, such as roof gardens, children's play areas, and community rooms to provide appealing housing amenities for a wide range of demographic segments of the community. Four market rate units would be reserved for the managers and the remaining would be affordable to households that earn between 30% and 80% or lower of the Area Medium Income (AMI). With a density of 323 dwelling units per acre, this is a dense housing project concentrated in an area where there are growth opportunities for both market-rate and affordable housing.

13. <u>Affordable Housing Policy H-2.4</u>: Allow affordable residential development at densities beyond the maximum density allowed under an existing Land Use/Transportation Diagram designation, consistent with the minimum requirements of the State Density Bonus Law (Government Code Section 65915) and local ordinances.

<u>Analysis</u>: The project density would allow the project site to exceed the site's density limitation of 250 dwelling units per acre by 29% or 73 residential units. Achieving this density is possible by applying the State Density Bonus Law (Government Code sections 65915-65918), which allows an increase in density and waivers to certain development standards, such as height, setback and parking requirements for affordable housing developments. These waivers under the State Density Bonus Law are discussed in detail below.

- 14. <u>Transportation Policy TR-4.1</u>: Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA, BART, Caltrain, ACE, BRT, and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.
- 15. <u>Parking Strategies Policy TR-8.6</u>: Allow reduced parking requirements for mixeduse developments and for developments providing shared parking or a

comprehensive TDM program, or developments located near major transit hubs or within Urban Villages and other Growth Areas.

16. <u>Connections Policy CD-3.5</u>: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.

<u>Analysis for TR-4.1, TR-8.6, CD-3.5</u>: The project is located within the Diridon Station Area Plan and is approximately 2,000 feet from Diridon Station. Additionally, VTA frequent bus route 23 and rapid bus route 523 run along West San Carlos Street, providing local bus services to De Anza College, Downtown, Blossom Hill, and Mountain View. The project location offers many opportunities for residents and visitors to take public transit to and from the project site. Pursuant to Section 20.190.060, projects that qualify for a density bonus are also subject to reduced parking. Further, the project is providing an alternative parking arrangement in the form of car lifts to accommodate parking on-site. These car lifts operate independently of one another, allowing the user to obtain their vehicle without relying on another occupant's vehicle to be moved.

The 365-unit residential development includes 94 vehicle parking spaces and 401 bicycle parking spaces.

4. Diridon Station Area Plan Conformance. The subject site is located within the boundary of the Diridon Station Area Urban Village, and thus subject to Diridon Station Area Plan (DSAP). On June 14, 2014, City Council adopted the DSAP and certified the Program Environmental Impact Report. The DSAP analyzes the expansion of the existing Diridon Station and the development of land uses within the 250-acre Area Plan boundary surrounding the station. The DSAP sets forth a residential capacity of 2,588 units, of which there are 972units remaining. Development of the subject site would need to be consistent with the goals, objectives, and guidelines of the DSAP.

Within DSAP, the subject site is within the Subarea D of the Southern Zone. The Southern Zone is the urban neighborhoods zone consisting predominantly of residential and mixed-use districts. During the development of the DSAP the subject site was intended to be designated as Transit Residential, however; this land use designation was ultimately not adopted by City Council in 2014 and the site maintains its current designation of Mixed Use Commercial. The City Council voted not to approve the Transit Residential land use designation on this property until an Implementation Financing Plan was adopted. City Council maintained a Mixed Use Commercial designation because the designation requires a commercial component with a FAR of 0.5 or greater whereas the Transit Residential land use designation allows for mixed-use development, but would not require any commercial uses.

Although the Transit Residential land use designation was not adopted by City Council, the Transit Residential designation would support the overall vision and intent of the DSAP by allowing high-density, residential development, consistent with the urban design and place-making proposals outlined in the DSAP for the Southern Zone.

Design Guidelines

The DSAP's Design Guidelines represent a long-term vision for the area. Various design aspects are discussed in detail below.

Additionally, as discussed below, the project was analyzed for consistency with the Downtown Design Guidelines and Residential Design Guidelines to achieve an attractive residential environment. The new Downtown Design Guidelines and Standards were adopted on April 23, 2019 and amended on May 21, 2019; these guidelines are applicable to any development application submitted after the Effective Date. The project was submitted on November 1, 2017 and is subject to the 2004 Downtown Design Guidelines.

The project complies with the 2004 Downtown Design Guidelines specifically in the following areas:

Pedestrian Spaces

Pedestrian activity and bike access are key to the development of the Diridon Station Area as a vibrant urban destination. High levels of pedestrian activity can be achieved by good overall connectivity and an interesting and varying street environment. Wide sidewalks, safe crossings, slow traffic, street trees, street furniture, and mid-block connections all contribute to a walkable and bikeable environment.

Attributes include: high-density, active ground floor uses, broken-up building massing and articulated façades at the ground level that respond to the pedestrian scale, as well as small integrated plazas and seating areas.

As identified in the Residential Design Guidelines section below, there is a plaza with community class space, a fitness center, and a multi-purpose room/computer lab on the south side of the project. The glass storefront system provides transparency and visually opens the building at the ground floor to showcase an active environment, making the pedestrian experience more interesting. Pedestrian connection is provided through the site through a pedestrian path along the southern end of the property to help provide access to transit. Additionally, sidewalks are provided along both McEvoy Street and Dupont Streets. The project would provide 401 bicycle parking spaces. The bicycle parking spaces will help encourage a multi-modal transportation network.

<u>Height</u>

Guidelines are provided on the maximum height of buildings in the Diridon Station Area. The building height guidelines in the DSAP for the Southern Zone are intended to ensure the compatibility of new development with the surrounding relatively low density residential neighborhoods. Guidelines in the DSAP discourage taller buildings adjacent to areas with existing single-family homes and require buildings to set back from the established single-family areas. The Area Plan indicates a maximum of 110 feet for this site.

T-39004 / 1687172 Council Agenda: 02-11-2020 Item No.: 10.3(e) DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document. The project is adjacent to commercial and industrial uses. The project utilizes design elements such as banding and awnings, having Level 1 be approximately 18 feet tall, and locating the playground to bring the site to a pedestrian scale which provides neighborhood compatibility.

The two 13-story residential towers are 164 feet in height, exceeding the maximum height specified in the DSAP. However, on March 12, 2019, the City Council adopted a recommendation by the Community and Economic Development Committee to use Federal Aviation Administration obstruction evaluation determinations on a project-by-project basis in the Diridon Station Area. Pursuant to the Airport Department Memo dated September 25, 2019, the increase in height is acceptable as such heights would be compatible with the City's current airspace elevation restrictions over the site, subject to FAA concurrence. Pursuant to the State Density Bonus Law, a height waiver is being requested to increase the development's maximum height to 164 feet.

Additionally, the subject site is surrounded by single or two-story industrial and commercial uses. For compatibility, with these uses, the project includes a plaza and the project is pushed back at the southwestern portion of the property to create room for a plaza across from the commercial uses to the west. For a friendly environment and to create a pedestrian scale, active uses are located on the southern portion of the property fronting Dupont Street and McEvoy Street. To help provide connectivity, and to relate to the surrounding sites, a 10-foot wide sidewalk along the project frontage on McEvoy Street and a 12-foot wide sidewalk along Dupont Street, and a continuous 9-foot wide sidewalk along the south project frontage to connect to the plaza is conditioned. Therefore, the project is consistent with the waiver request.

Mix of Uses

A mix of uses on sites and within buildings encourages walking due to a variety of activities that span over more hours during a day. By bringing important destinations close together, a mix of uses also increases convenience for pedestrians, particularly when such sites are co-located with or near their home.

This affordable housing project provides a mix of active uses on site. The project provides uses for residents including a computer lab, fitness center playground, and tot lot allowing residents easy access to these amenities. Additionally, having these active uses on the ground floor encourage pedestrian activity.

Parking Design

The DSAP requires minimization of the visual impact of non-active spaces, such as on-site parking spaces, by placing them behind active uses and landscaping.

The project will provide 94 parking spaces including car lifts. The car lift would be accessed at Level 1. The lift consists of a puzzle pit design and approximately seven feet of below ground excavation would be needed to accommodate the mechanism and car storage. The ground-floor active uses would screen parking from street view

as the parking is accessed from a driveway off of McEvoy Street and is tucked away behind the active use space.

- 5. State Density Bonus Law (California Government Code Section 65915). The State Density Bonus Law, pursuant to California Government Code Sections 65915-65918 and codified locally in Chapter 20.190 of the San José Municipal Code, is a mechanism that provides private development an opportunity to be granted waivers or concessions from development requirements in order to incentivize the development of affordable and senior housing. The State law code section allows reduced parking, reduced setback and minimum square footage requirements, and the ability to donate land for development of affordable housing to earn a density bonus. Cities and counties are required to grant a density bonus and other incentives or concessions to housing projects which meet one of the following conditions:
 - At least 5% of the housing units are restricted to very low income residents.
 - At least 10% of the housing units are restricted to lower income residents.
 - At least 10% of the housing units in a for-sale common interest development are restricted to moderate income residents.
 - The project donates at least one acre of land to the city or county for very low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
 - Pursuant to State law, waivers may be requested for a project that includes at least 30% of the units reserved for lower income residents.

The project is a 100% affordable project (excluding the four market rate manager's units) and is restricted to low (80%), and very low (30%) income residents (as defined by the Area Median Income [AMI] table). Per the applicant's waiver request letter dated December 18, 2019, the following development waivers are requested:

- a. An increase in height from the maximum 110 feet, as approved the by Diridon Station Area Plan, to 164 feet. This is an approximately 49% height increase.
- b. A reduction in the amount of required motorcycle parking. The Municipal Code requires one motorcycle parking space per four living units which would require 92 motorcycle parking spaces. The waiver requests a reduction to allow the provision of 16 motorcycle parking spaces (approximately one space per 22 living units).
- c. A 0.33-foot setback along McEvoy Street in lieu of the required 10-foot setback.
- d. A 0-foot setback along Dupont Street in lieu of the required 10-foot setback.
- e. A 2-foot, 7-inch setback along the West San Carlos Bridge in lieu of the required 10-foot setback.

The ability to build at a height of 164 feet, with reduced setbacks, and reduced motorcycle parking allows more affordable units on site. As shown in the waiver request letter submitted by the applicant dated 1/17/2020, with these waivers, 113 more affordable housing units could be built. The DSAP, calls for a 110-foot height maximum on the site, and would physically preclude the project at the density requested by eliminating four floors of both towers. By adhering to the height of 110 feet, 118 of the 365 affordable rental units could not be built. Additionally, motorcycle parking, and setback waivers have been requested. The R-M Multiple Residence Zoning District requires a 10-foot front setback, and the this would preclude the construction of the two towers with economically sized units, and required common open space. Without the waivers, a large portion of the affordable rental units could not be built. A significant amount to development costs are fixed, so reducing the number of units would increase the per unit development cost, rendering the project financially infeasible as affordable housing.

On March 12, 2019, the City Council adopted a recommendation by the Community and Economic Development Committee to use Federal Aviation Administration obstruction evaluation determinations on a project-by-project basis in the Diridon Station Area. Pursuant to the Airport Department Memo dated September 25, 2019, the increase in height is acceptable.

As identified above, a waiver for a motorcycle parking reduction is requested to allow 16 motorcycle parking spaces rather than the 92 required motorcycle parking spaces. According to the Transportation Analysis Memo dated 11/7/19 from Public Works Department, stated that with project conditions, the subject project will be in conformance with City of San José Transportation Analysis Policy (Council Policy 5-1). Therefore, a determination for a negative declaration can be made with respect to traffic impacts. If the waiver is granted motorcycle parking would be consistent with the zoning code.

Pursuant to Section 20.190.100, the applicant has entered into a Regulatory Agreement with the City. In addition, Chapter 20.190.090 requires any project with a Density Bonus or an Incentive to make the following findings:

1. The Housing Development is eligible for a Density Bonus and any Incentives, waivers or modifications requested.

<u>Analysis</u>: The project is a 100% affordable housing (excluding the four market rate manager's units) project for households earning between 30% and 80% AMI), as defined in Section 65915 of the Government Code for the State of California, and is therefore subject to the State Density Bonus Law for affordable housing projects.

As referenced in the Zoning Section above, pursuant to Section 20.190.060 of the Zoning Code, which allows for a parking reduction, the project is providing 94 vehicle parking spaces. Additionally, pursuant to Zoning Code Section 20.190.070 a waiver request has been submitted for height setbacks, and motorcycle parking

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reduction. These parking reductions and waivers will allow for an additional 83 units to be built.

2. If the Density Bonus is based all or in part on donation of land, a finding that all the requirements for a land transfer Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

<u>Analysis</u>: The project does not include a donation of land or land transfer.

 If the Density Bonus or Incentive request is based all or in part on the inclusion of a Child Care Facility, a finding that all the requirements for a Child Care Facility Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

Analysis: The project is not and does not include a Child Care Facility.

4. If the Incentive request is for a Mixed-Use development, a finding that all the requirements for a Mixed-Use Incentive development approval that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

<u>Analysis</u>: The project is a 100% affordable residential housing project with no commercial uses.

5. If the Incentive includes a request for approval of condominium conversion, a finding that all the requirements for a condominium conversion Incentive that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

<u>Analysis</u>: The project does not include a request for condominium conversion.

6. Zoning Code Conformance

Land Uses

Pursuant to the Zoning Code Section 20.120.110, the R-M multiple residence Zoning District is a conforming zoning district to the Transit Residential General Plan Designation. The project site is in the RM Residential Multi-Family Residential Zoning District. The purpose of the R-M Multi-Family Residential Zoning District is to reserve land for the construction, use and occupancy of higher density residential development and higher density residential-commercial mixed-use development. In the R-M Multiple-Residence Zoning District, generators and alternative parking arrangements can be permitted with a Special Use Permit.

Development Regulations

The project conforms to the R-M Residential Multi-Family Residential Zoning District Development Standards Zoning Section 20.30.200, except for the requested waivers to height, setback and motorcycle parking. As identified above, the applicant requests

height, setback, and motorcycle parking waivers for the project. The waivers will enable the construction of an additional 83 units.

Building Height & Stories

The project meets the Building Height and Story regulations found in Zoning Code Section 20.75.160 (except that which has been identified as a State Density Bonus Law concession) as shown in the following table. The subject site has three fronts and no rear property lines. The fronts are along West San Carlos Street, McEvoy Street and Dupont Street. The side property line runs along the northern edge of the site.

Zoning Setback and Height Requirements:

| Setback Side | Required | Project | | |
|------------------------------|-----------------|------------------|--|--|
| Front | 10 feet minimum | 4 inches | | |
| (McEvoy Street) | | - | | |
| Front | 10 feet minimum | 2 feet, 7 inches | | |
| (Existing bridge at West San | | 2 | | |
| Carlos) | N | | | |
| Front | 10 feet minimum | 0 feet | | |
| (Dupont Street) | | * 5 | | |
| Side, Interior | 5 feet minimum | 5 feet | | |
| Workforce Building Height | 45 feet maximum | 163 feet maximum | | |
| Family Building Height | 45 feet maximum | 164 feet maximum | | |

The subject site has three fronts and no rear property lines. The fronts are along West San Carlos Street, McEvoy Street and Dupont Street. The side property line runs along the northern edge of the site.

Parking

Pursuant to Zoning Code Section 20.190.060, the reduced required parking ratios for Affordable Restricted Units are as follows:

Vehicle Parking:

As shown in the parking table below, 90 parking spaces are required and 94 parking spaces are provided, so the project parking is consistent.

| | | | LOW 70% | | | | • | VERY LOW 301 | 6 | | | | ма | NAGER UNITS | | N. |
|--|--------------------------------|---|-------------|----|----------------------|----------------------------------|---|--------------|------|---|----------------------|---------------------------|----|---------------|-------------|----------|
| UNIT TYPE | NO. OF UNITS | | PARKING RAT | 10 | SUBTOTAL REQUIRED | NO. OF UNITS | | PARKING R | VTIO | | SUBTOTAL REQUIRED | NO. OF UNITS | | PARKING RATIC | > | SUBTOTAL |
| WORKFORCE - STUDIO | | | | | | | | | | | | | | | | |
| Parking Ratio | 99 | x | 0.25 | ्म | 24.8 | 43 | X | 0 | 0 | | 0 | | | | | |
| WORKFORCE -JR 1 BED Parking Ratio FAMILY - 1-BED | 56 | x | 0.25 | = | 14.0 | 24 | x | 0 | ~ | - | 0 | 2 | x | 1.25 | = | 2,5 |
| Parking Ratio FAMILY- 2-BED | 41 | × | 0.25 | = | 10.3 | 17 | × | 0 | | - | 0 | | | | | |
| Parking Ratio FAMILY- 3-BED | 26 | × | 0.5 | = | 13.0 | 11 | x | 0.25 | = | | 2.8 | | | | | |
| Parking Ratio | 31 | X | 0.5 | = | 15.5 | 13 | x | 0.25 | = | | 3.3 | 2 | x | 2.0 | = | 4 |
| | LOW INCOME REQUIRED PARKING | 5 | | | 77.5 | VERY LOW INCOME REQD, PARKING | | | | | 6.0 | MANAGER UNITS REQUIRED | | | | 6.5 |
| | PROVIDED | | | | 79 | PROVIDED | | | | | 8 | PROVIDED | | | | 7 |
| | | | | | | | | | | | | | T | RAND TOTAL | REQUIR | ED 90 |
| | | | | | | | | | | | | | | RAND TOTAL | 00000 | ED 04 |
| | | | | | | | | | | | | | 4 | OF WHICH AF | E ACCE | |

Pursuant to Municipal Code Section 20.190.050, residential parking ratios are shown in the table above. The project would require 90 residential parking spaces, and the project provides 94 parking spaces. Therefore, the project meets the vehicle parking requirement by providing 90 vehicle parking spaces and an additional 4 guest vehicle parking spaces.

Bicycle Parking:

| Use | Ratio for Bicycle Parking | Required | Bicycle Parking Provided | | |
|-----------------------|------------------------------|----------|-----------------------------|--|--|
| Family Tower– 141 | | | - | | |
| Units | 1 per 4 units | 36 | 141 | | |
| Workforce Tower- 224 | | 21 | x | | |
| Units | 1 per 4 units | 56 | 224 | | |
| Guest Bicycle Parking | N/A | N/A | 36 | | |
| TOTAL | N/A | 92 | 401 | | |

Motorcycle Parking:

| Use | Ratio for Parking | Required | Motorcycle Parking Provided | | | |
|-----------------|----------------------|-------------|--|--|--|--|
| 365 Total Units | 1 per 4 units | 92 required | 16 with waiver to reduce the number of spaces required | | | |
| TOTAL | i per 4 units | 92 | 16 | | | |

The bicycle parking ratio required by the City's code requires 1 bicycle space per 4 living units. Based on the number of residential units, the applicant would need to

provide 92 bicycle parking spaces. The project satisfies and exceeds this requirement as a total of 401 bicycle parking spaces are required.

<u>Analysis</u>: As identified above, a waiver for a motorcycle parking reduction is requested to allow 16 motorcycle parking spaces rather than the 92 required motorcycle parking spaces. According to the Transportation Analysis Memo dated 11/7/19, states that with project conditions, the subject project will be in conformance with both the City of San José Transportation Analysis Policy (Council Policy 5-1). Therefore, a determination for a negative declaration can be made with respect to traffic impacts. It the waiver is granted motorcycle parking would be consistent with the zoning code.

Alternative Parking Arrangement

Under an alternative parking arrangement, pursuant to Section 20.90.200 in the San José Municipal Code, the project's 94 off-street parking spaces will be accommodated by an automated parking lift system manufactured by City Lift, Model 3LPWP (https://cityliftparking.com/solutions/puzzle-mechanical-parking) or equivalent brand and model. The puzzle lift system allows that each space is independently accessed and does not rely on other cars to be moved to bring the requested car forward.

- a. In addition to any other findings required for a Special Use Permit, the City Council may approve such off-street parking facilities arrangements only upon making the following findings, as specified in Section 20.90.200 in the San José Municipal Code:
 - i. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.190 of this title.

<u>Analysis</u>: 90 parking spaces are required under the Municipal Code for affordable housing projects and 94 parking spaces are provided; 401 bicycle parking spaces are provided, which greatly exceeds the required 92 bicycle parking spaces. With the waiver request to allow 16 motorcycle parking spaces, the parking facilities are adequate.

ii. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use.

<u>Analysis</u>: The lifts are conditioned to be maintained and operate for the life of the project.

iii. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

<u>Analysis</u>: The lifts are located on the first level of the building, and the lift allows the desired car to be called to the bottom row without requiring another car to be moved by a different resident.

Performance Standards:

Table 20-135 of Section 20.30.700 establishes the maximum decibel level at any property line for any residential or non-residential use. Residential uses adjacent to property used or zoned for industrial uses should have a maximum noise level of 55 decibels at the property line.

Noise from the playground would be minimized by ensuring, as a condition of approval, that use of the playground would only occur between sunrise and sunset, helping to ensure the minimization of noise in the evening hours.

A backup generator that would provide power to residents in case of emergency is included as a permit condition.

To achieve the required 55 decibel level at the property line, the generator is conditioned to be enclosed within the building. Additionally, a permit adjustment must be obtained for a backup generator that is consistent with Section 20.80.2030.

Retaining Wall:

Pursuant to Section 20.30.500, walls over 2 feet need to be approved by a development permit. The project includes the installation of a retaining wall that is up to 12.5 feet along the southern portion of the site. The wall is needed because West San Carlos Street begins to elevate at the subject site.

Tree Removals (Title 13.28):

Three (3)-ordinance sized trees and one (1) non-ordinance sized tree for a total of four (4) trees on-site and they are to be removed as shown in the table below. The table also shows the number of replacement trees required.

<u>Analysis</u>: The three existing Desert Fan Palms at the corner of West San Carlos Street and McEvoy Streets will be removed for the project because of an embankment along the northern edge of the West San Carlos Street Bridge. The embankment starts at the West San Carlos-McEvoy Street intersection and extends east to the bridge columns that permit the West San Carlos Bridge to span over Dupont Street. To construct the project, the embankment needs to be removed and replaced with a retaining wall. The removal of the embankment impacts the three palm trees.

The trees are currently planted on the embankment within masonry retaining walls that would be removed as well. Additionally, the three trees also directly conflict with the pedestrian walkway that connects McEvoy and Dupont streets.

A fourth tree, a crape myrtle, located on McEvoy Street would be removed as it falls within the footprint of the podium. Based upon the above, and to accommodate the density of the affordable housing project, the tree cannot be preserved.

Additionally, ten (10) 15-gallon trees are required to be replanted as replacements for the four trees to be removed. Pursuant to the project landscaping plan, the project

would plant a total of sixty (60) 24-inch box trees on site, which exceeds the City's Tree Replacement ratios.

7. City Council Policy Conformance

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Under City Council Policy 6-30, the project is considered to be a large development. Following City Council Policy 6-30, the applicant has posted the on-site sign to inform the neighborhood of the project. A community meeting was held to discuss the project on Thursday, March 29, 2019 at the Westminster Presbyterian Hall, 1100 Shasta Avenue, San José. Approximately 7 members of the public were in attendance for the meeting. Comments received during the community meeting and project review are discussed below. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

8. Downtown and Residential Design Guidelines

The project was analyzed for consistency with the Downtown Design Guidelines_and Residential Design Guidelines to achieve an attractive residential environment. The new Downtown Design Guidelines and Standards were adopted on April 23, 2019 and amended on May 21, 2019; these guidelines are applicable to any Planning application submitted after the Effective Date. The project was submitted on November 1, 2017 and is subject to the 2004 Downtown Design Guidelines. The project complies with the 2004 Downtown Design Guidelines specifically in the following areas:

Urban Form and Massing

The Downtown Design Guidelines state that a project's massing should consider the larger physical context and urban form. The project consists of two 13-storytowers, and there have been design measures to help with massing. Both of the towers utilize a variety of colors and materials, and the tower façades mirror one another. Additionally, the towers are separated by a courtyard with seating areas, a labyrinth and landscaping. The separation between the towers also provides for solar access for most of the units at least part of the day. There is a garden at the top of each tower affording residents with a place to garden and view the surrounding city on the rooftop. All of these design measures help to break up or reduce the massing.

Project Base/Street Wall

The Downtown Design Guidelines encourage the design of the base of buildings to allow for lasting social interaction at the ground through transparency and durable materials. Further, the Guidelines state that building frontage should appear safe, welcoming, and open to the general public. The project design consists of a podium with two towers. As previously described, the workforce building is designed to be pushed back from West San Carlos Street to accommodate a plaza which can be used

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for events and class activities. There is a plaza with class space, a fitness center, and a multi-purpose room/computer lab on the south side of the project. Pedestrian connection is provided through the site through a pedestrian path along the southern portion of the property to help provide access to transit. At the project site, the elevation of West San Carlos Street begins to increase. At the second level, a playground (grades K-12), a tot lot (ages 2-5), and shade structures where people can rest and visit with one another will be constructed. Having these active uses designed at the second level also helps with the pedestrian experience along West San Carlos Street (elevated).

Architecture and Materials

The glass storefront system provides transparency and opens up the building at the ground floor to showcase an active environment, making the pedestrian experience more interesting. The balconies are designed so that they are different colors at different floors to break up the vertical and horizontal massing. Green to blue metal panel mosaics are provided allowing for more visual interest. Dark gray and green window shades are included in the design, which creates shadow and the appearance of depth.

The project is designed to have the open space and active uses facing West San Carlos Street, which is a Grand Boulevard and the street frontage with the highest pedestrian activity. The towers are oriented in such a way that the separation can also be seen from the Grand Boulevard and solar access to the playground is provided. Storefront window glazing is provided on the ground level, and the parking and vehicle entry is located of McEvoy Street and is tucked behind active uses. Street trees will be planted along McEvoy Street and Dupont Street, which will provide shade for pedestrians. The balconies are designed so that they are different colors at different floors to break up the vertical and horizontal massing.

Residential Design Guidelines

Additionally, the project is consistent with the Residential Design Guidelines, and Chapter 25a Transit-Oriented Development. The Guidelines state transit-oriented developments are focused on transit and pedestrian circulation. The project is located within the DSAP area and is high-density multi-family residential development. The project provides street improvements that are conditioned below. To help provide connectivity and to relate to the surrounding sites, the project proposes a 10-foot wide sidewalk along the project frontage on McEvoy Street and a 12-foot wide sidewalk along Dupont Street, and a continuous 9-foot wide sidewalk on the southern portion of the project frontage.

Four hundred and one bicycle parking spaces are provided, which is well over the required 92 bicycle parking spaces. There is one parking space for each unit and additional parking for guests as identified above. The bicycle parking spaces will help encourage multi-modal connectivity to transit.

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9. Environmental Review.

The Director of Planning, Building and Code Enforcement prepared an Initial Study in support of an Addendum to the Diridon Station Area Plan (DSAP) Programmatic Environmental Impact Report (PEIR) for the McEvoy Affordable Housing Project, which includes a General Plan Amendment to change the land use designation from *Mixed Use Commercial* to *Transit Residential*, a conforming rezoning from *Heavy Industrial (HI)* district to *Multiple Residence (R-M)* district, and a Special Use Permit for development of the project. The DSAP PEIR contains sufficient information to provide project-level environmental clearance for certain impacts by including standard measures that apply to all projects in San José. The Initial Study did not identify any new impacts beyond those analyzed in the DSAP PEIR. Therefore, the project meets the criteria of an Addendum pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15164 and was completed in compliance with CEQA to reflect the independent judgement of the City.

The Initial Study identified relevant mitigation measures included in the DSAP PEIR for potential impacts to air quality during construction, nesting birds, buried and unknown archaeological resources, contamination during and after construction, and construction vibration impacts on adjacent buildings and businesses. In addition, standard permit conditions are made part of the permit approval. These standard permit conditions include best management practices for controlling dust and exhaust during construction, tree replacement, compliance with the Habitat Plan, uncovering buried archaeological or historic resources and human remains during construction activities, preventing impacts from lead-based paint and asbestos during demolition activities, preventing stormwater pollution during construction, managing mechanical equipment noise, and interior noise levels. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) and both the mitigation measures and standard permit conditions are made a part of this permit.

The Initial Study concluded that the project would not result in a substantial increase in the magnitude of any significant environmental impact previously identified in the DSAP PEIR. Therefore, a supplemental or subsequent EIR is not required, and an Addendum to the DSAP PEIR is the appropriate level of CEQA clearance for the project.

The Addendum and supporting Initial Study, associated technical studies (in appendices to the Initial Study) are available on the Planning Division environmental review webpage at:

https://www.sanjoseca.gov/your-government/departments/planning-building-codeenforcement/planning-division/environmental-planning/environmental-review/activeeirs

10. Special Use Permit Findings

To make the Special Use Permit findings, the City Council must determine that:

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

<u>Analysis</u>: As noted above, this Special Use Permit is for a 100 percent affordable housing project and is consistent with the General Plan Land Use Designation of Transit Residential and General Plan Policies. The project supports affordable housing policies, including 361 deed-restricted residential units to households earning less than 80 percent of the AMI and an additional four market rate managers units. The project fronts a major transit thoroughfare (West San Carlos Street) and the reduction from the City's required parking would support the City's mode-shift goals.

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

<u>Analysis</u>: As discussed above, a waiver for height, reduced setbacks, and the reduction in the amount of motorcycle parking allows more affordable units on site. The project conforms to the setback, height, and parking requirements of the R-M Multiple Residence Zoning District, assuming the allowances based on State Density Bonus Law were to be granted.

3. The special use permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

<u>Analysis</u>: The project is subject to and conforms to the Public Outreach Policy for Pending Land Use and Development Proposals. An on-site notice was posted on the subject property and staff responded to questions and concerns from neighbors regarding the project. A community meeting was held to discuss the project on Thursday, March 29, 2019 at the Westminster Presbyterian Hall. Approximately 7 members of the public were in attendance for the meeting. Notices for the hearing were mailed to property owners and tenants within 1,000 feet of the project site. Additionally, prior to the issuance of a building permit, a permit adjustment for outdoor lighting that is consistent with the Outdoor Lighting on Private Developments and City of San José Interim Lighting Policy Broad Spectrum Lighting (LED) for Private Development is conditioned below.

- 4. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

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- Impair the utility or value of property of other persons located in the vicinity of the site; or
- c. Be detrimental to public health, safety, or general welfare; and

<u>Analysis</u>: The project would not affect the utility or value of surrounding properties in the neighborhood in a negative way, as the project would replace approximately 11,380-square feet of industrial buildings on an underdeveloped site. This project could serve as a catalyst for future development in the area and therefore could trigger more investment, improving the utility and value of surrounding properties. The increase in availability of affordable housing throughout the City would further the general welfare of the residents.

5. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

<u>Analysis</u>: As identified above, File No. T19-017 was submitted to the City for a Vesting Tentative Map to consolidate six (6) parcels into (1) parcel with three condominiums lots for a 365-unit multi-family residential apartment development on an approximately 1.13 gross acre site. The site is physically suitable for the project because all project components are designed within the project site. As identified above, the height is allowable pursuant to the Airport Memo dated 9/25/19. The site is surrounded by industrial uses to the north, south, and east, and commercial uses to the west. The workforce tower is pushed back from San Carlos Street, to provide space for a plaza with community class space, immediately across McEvoy Street from the commercial uses to help improve pedestrian connectivity between the two sites. A 6-foot pedestrian path will also be located along the southern edge of the property to help provide access to transit.

- 6. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improve necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

<u>Analysis</u>: The subject site is well-served by West San Carlos Street, McEvoy Street, and Dupont Street, as well as by bus routes and Diridon Station. The existing streets and utilities are of sufficient capacity to serve the affordable project. All public utilities are adequate as identified in the memo from Public Works dated 1/6/20.

As identified above, the project is located within the DSAP and is approximately 0.38 mile from Diridon Station. Additionally, bus routes 23 and 523 run along West

San Carlos Street, providing local bus services to De Anza College, downtown, Blossom Hill, and Mountain View.

7. 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.

<u>Analysis</u>: The project incorporates measures to address noise, stormwater runoff, drainage and erosion. The project would implement site design measures, such as creating new pervious areas, adding landscaping around walkways, sidewalks, and parking spaces, and source control measures such as use of efficient irrigation systems, covered trash and recycling containers, and providing an interior parking structure. As identified above, noise from the playground would be minimized by ensuring, as a condition of approval, that use of the playground would only occur between sunrise and sunset, helping to ensure the minimization of noise in the evening hours.

11. Alternative Parking Arrangement

In addition to any other findings required for a Special Use Permit, the City Council may approve such off-street parking facilities arrangements only upon making the following findings, as specified in Section 20.90.200 in the San José Municipal Code:

a) The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.190 of this title.

Analysis: 90 parking spaces are required by the San José Municipal Code for affordable housing projects and 94 parking spaces are provided; 401 bicycle parking spaces are provided, which greatly exceeds the required 92 bicycle parking spaces. With the waiver request to allow 16 motorcycle parking spaces, the parking facilities are adequate.

b) It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use.

<u>Analysis</u>: The lifts are conditioned to be maintained and operate for the life of the project.

c) The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

<u>Analysis</u>: The lifts are accessed on the first level of the podium. and the lift allows the desired car to be called to the bottom row without requiring another car to be moved by a different resident.

12. Site Development Permit Findings

To make the Site Development Permit findings pursuant to San José Municipal Code Section 20.100.630, the City Council must determine that:

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

Analysis: See discussion above for Special Use Permit finding number 1.

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

Analysis: See discussion above for Special Use Permit finding number 2.

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

Analysis: See discussion above for Special Use Permit finding number 3.

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

<u>Analysis</u>: The two residential towers are complementary to one another and the design shows that there was much consideration given to the design. The towers use the same material and mimic one another in design creating a mirroring effect when viewed from San Carlos Street. The project design includes a blue-hued, multi-color scheme aluminum paneling system and a clean white-toned aluminum paneling system which contribute to an interesting and varied design.

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

<u>Analysis</u>: The project would front San Carlos Street, a Grand Boulevard which serves as an east-west connector. The existing neighborhood is a mix of commercial and industrial uses. The architecture and material of the building are modern and the change in colors and materials provide a variation in design and help break up the massing. The workforce tower is pushed back from San Carlos Street, to provide space for a plaza which includes community class space, immediately across McEvoy Street from the commercial uses. This will help improve pedestrian connectivity between the two sites. Additionally, this project could serve as a catalyst for future development in the area and therefore could trigger more investment, improving the utility and value of surrounding properties. The increase in availability of affordable housing throughout the City would further the general welfare of the residents. 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: See discussion above for Special Use Permit finding number 7.

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.

<u>Analysis</u>: As shown on the plan sets, the landscaping, irrigation systems, all walls and fences, utility, and trash facilities will upgrade the appearance of the neighborhood. Much of the mechanical equipment will be behind screening on the rooftop. The pathway and storefront glazing at the pedestrian level will enhance the public street by providing activity and adding a vibrant feeling to the neighborhood.

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

Analysis: The project is accessible by a driveway off of McEvoy Street. Ninety parking spaces are required and 94 parking spaces including 4 guest parking spaces are provided. The parking also includes a carlift puzzle pit system. Therefore, the amount of parking spaces provided is adequate. There is ample pedestrian access to the site from McEvoy Street, DuPont Street and West San Carlos Street.

13. Tree Removal Findings

Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees. Findings are made for the project based on the findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the resolution.

a) That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010.

<u>Analysis</u>: As identified above, three existing Desert Fan Palms at the corner of West San Carlos Street and McEvoy Streets will be removed. Removal of these trees is required because they are located within an embankment that starts at the West San Carlos-McEvoy Street intersection and extends east to the bridge columns that permit the bridge to span over Dupont Street. To construct the project, the embankment will need to be removed and replaced with a retaining wall. Furthermore, the three trees also directly conflict with a pedestrian walkway through the site that connects McEvoy and Dupont Streets. A fourth non-ordinance sized Crape Myrtle tree will be removed along McEvoy Street as it falls within the podium footprint.

Based upon the reasons above, and to accommodate the density of the affordable housing project, the trees noted above cannot be preserved.

Additionally, ten (10) 15-gallon trees are required to be replanted. Pursuant to the project landscaping plan, the development would plant a total of sixty (60) 24-inch box trees, which well exceeds the City's Tree Replacement ratios.

14. Evaluation Criteria for Demolition

Chapter 20.80.460 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

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

<u>Analysis</u>: As noted above, the project includes the demolition of all buildings and structures on site. The demolition would facilitate a 365-unit affordable housing project and would help provide much needed affordable housing stock. The project site is located in the Diridon Station Area Plan Area where higher density, transitoriented development is encouraged. The site is surrounded by commercial and industrial uses and will provide a walking path which provides connectivity and access to transit. The project design includes a plaza area where community classes and events may be held, and help encourage pedestrian activity.

A Historic Resources Survey and Report, dated April 23, 2018, was prepared for the project site and existing structures by Archives and Architecture. According to the report, none of the properties within the project site, nor the adjacent properties within the boundaries of the Area of Potential Effect, appear on any local, state or federal lists of historically or architecturally significant structures and/or sites, landmarks, or points of interest. The project site has two buildings that are around 38 years old. None of the nearby properties within the APE appear to be eligible for the National Register of Historic Places. One property is potentially eligible for local listing; 751 West San Carlos St. (Locurto Stores and Clubhouse) approximately 47 feet to the west of the subject site across McEvoy Street. The site contains structures built during the first half of the twentieth century and reflect early development patterns that would enable their local listing on the San José Historic Resources Inventory. This site, as well as the adjacent site at 245 McEvoy St. are recorded and evaluated on DPR523 forms. Accordingly, the project will not affect any properties eligible for or listed on any national, state or local historical resources register.

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

CONDITIONS

- Acceptance of Permit. Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Special Use and Site Development Permit ("Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
- 2. Permit Expiration. The Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

- 3. Building Permit/Certificate of Occupancy. Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this permit and the permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
- 4. Sewage Treatment Demand. 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.
- 5. Conformance to Plans. The development of the site shall conform to the approved Permit plans entitled, "280 McEvoy Street Residential Apartments," dated revised on October 15, 2019, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set."
- 6. Scope and Use Authorization of the Special Use Permit. Subject to all conditions herein, this Permit allows the construction of an approximately 345,000-square foot 100% affordable housing (excluding the four manager's units) project with 365 multifamily residential units with an alternative parking arrangement, back-up generator, and up to 12.5-foot tall retaining wall, with a State Density Bonus request to allow a 29% increase in density and waivers to increase the building height; reduce the required setbacks along McEvoy Street, Dupont Street, the West San Carlos Street bridge, and reduce the amount of required motorcycle parking, in accordance with the approved development plans. Additionally, this Permit effectuates the street-level plaza to be used for residents use.

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- 7. Compliance with Local and State Laws. The subject use shall be conducted in full compliance with all local, state and federal laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
- 8. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
- 9. Nuisance. This use shall be operated in a manner that does not create a public or private nuisance or that adversely affects the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance shall be abated immediately upon notice by the City.
- 10. Anti-Litter. The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
- 11. Anti-Graffiti. During construction, the permittee shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
- 12. Loitering. Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
- 13. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering the garbage container. 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. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
- 16. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
- 17. Colors and Materials. All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and materials shall require a Permit Adjustment.

- 18. Emergency Vehicle Access. The project will be required to meet standard permit conditions for emergency vehicle access.
- 19. **No Generators Approved.** This Permit does not include the approval of any standby/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
- 20. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping.
- 21. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
- 22. Hours of Use. The hours of use for outdoor common space areas and the interior areas of the residential community building will be limited between 6:00 a.m. and 10:00 p.m. daily. Amplified sound will not be allowed in these areas.
- 23. **Construction and Demolition Hours.** Construction, demolition, and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m.
- 24. **Demolition of Structures.** No demolition permits may be issued prior to the submittal of foundation or structural building permits. Demolition Permits may be issued prior to the Final Map approval.
- 25. **Timing of Tree Removals.** Trees that will be removed to accommodate new development shall not be removed until the related Public Works Grading Permit has been issued.
- 26. **Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall

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be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

- 27. Window Glazing. Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
- 28. Landscaping. Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
- 29. Landscaping Maintenance. The permittee shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
- 30. **Irrigation Standards.** The permittee shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
- 31. Certification. Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
- 32. Street Cleaning and Dust Control. During construction, permittee shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
- 33. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
- 34. Lighting. All exterior lighting shall be as shown on the approved plans. On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.

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- 35. Fencing. Fence height and materials shall be as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
- 36. **Mechanical Equipment.** The location of mechanical equipment (AC Units) shall be located as shown on the approved plans and shall be screened from view.
- 37. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
- 38. **Permit Adjustment Required.** Prior to the issuance of any Building Permit, the permittee must obtain a Permit Adjustment for:
 - a. Outdoor Lighting: Outdoor lighting that is consistent with the Outdoor Lighting on Private Developments and City of San José Interim Lighting Policy Broad Spectrum Lighting (LED) for Private Development.
 - b. Back-up Generator: A back-up generator must meet the following:
 - i. Be enclosed within the building
 - ii. Be consistent with the Municipal Code Section 20.80.2030:
 - Operation of a temporary stand-by or backup power generation facility, by definition, shall not exceed a maximum time period of four (4) consecutive months in any twelve (12) month period.
 - 2) Testing of generators is limited to 7:00 a.m. to 7:00 p.m., Monday through Friday.
- 39. **Final Map**. With the exception of building demolition, improvements associated with this permit cannot occur until there is a City approved and recorded final map subdividing the property.
- 40. **On-site Property Management.** As a condition of approval, the project is required to provide 24-hour, on-site property management.
- 41. Affordable Housing. The project may be subject to the City's Inclusionary Housing Ordinance (IHO) or Affordable Housing Impact Fee (AHIF). If the development is subject to the referenced IHO or AHIF, the permittee must execute and record their Affordable Housing Agreement with the City prior to the issuance of any building permits, or any final approval of any final map.
 - a. The IHO and AHIF Resolution each exempt certain developments from affordable housing obligations, if the development meets certain criteria. However, whether an exemption is claimed or not, the permittee must submit an Affordable Housing Compliance Plan Application, and the application processing fee to the Housing Department as part of the application for First Approval.
 - b. The Housing Department has reviewed and approved the Affordable Housing Compliance Plan for this project. Permittee shall strictly comply with the approved

Affordable Housing Compliance Plan for this project and any other applicable requirements of the IHO or AHIF.

c. If the project is subject to the AHIF, no building permit may issue until the AHIF is paid. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the AHIF Resolution are met.

If the project is subject to the IHO, no Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO are met.

42. Airport.

- a. FAA Clearance. Prior to filing an application for a 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 structures. 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.
- b. FAA Clearance Permit Adjustment. Prior to filing an application for a Building Permit, the permittee shall apply for and obtain a Permit Adjustment to incorporate any FAA conditions identified in the Determinations of No Hazard (once issued) into the SP18-059 permit. If the FAA requires installation of roof-top obstruction lighting or other physical modification to the building, the permittee shall incorporate those requirements into the building plans prior to receiving a Building Permit for construction. If the FAA requires a completed construction notification via filing of a "Notice of Actual Construction" (FAA Form 7460-2), such filing shall be completed prior to City issuance of a Certificate of Occupancy.
- c. Avigation Easement. Prior to the issuance of a Building Permit for either building, the property owner shall grant an Avigation Easement to the City of San José. Contact either Cary Greene, cgreene@sjc.org (408-392-3623), or Ryan Sheelen, rsheelen@sjc.org (408-392-1193), of the San José Airport Department to initiate the easement dedication process.
- 43. **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.
- 44. Bureau of Fire Department Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the project must comply with the 2016 California Fire Code.

- 45. Car Lifts. The car lifts are conditioned to be maintained and operate for the life of the project.
- 46. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
- 47. Building Division Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, SP18-059 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. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
 - f. *Street Number Visibility*. Street numbers of the buildings shall be easily visible at all times, day and night
 - g. Other. Such other requirements as may be specified by the Chief Building Official.

- 48. **Common Area Landscaping.** All landscaping in common areas shall be maintained by the Homeowner's Association or other similar entity.
- 49. **Street Trees.** Street trees, as shown on Approved Plans, shall be planted on the street frontage. A permit for planting street trees shall be obtained from the City Department of Transportation, Trees and Landscaping Section, (408) 794-1900.
- 50. Fence Standards. Fences shall be erected in accordance with the standards established on the Approved Plans. Changes to the approved fencing shall comply with Section 17.24 of the City of San José Municipal Code.
- 51. **Operations Management Plan.** The rooftop garden shall operate Tuesday through Saturday, from 8:00 a.m. to 6:00 p.m. The roof shall be open to the residents of the buildings at all times.
- 52. Interior Noise Standard for Residential Development. The permittee shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential units. The permittee shall conform with any special building construction techniques requested by the City's Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.
- 53. **Construction-Related Noise.** Noise minimization measures include, but are not limited to, the following:
 - a. Limit construction hours to between 7:00 a.m. and 7:00 p.m., 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.
 - b. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - c. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - d. Prohibit unnecessary idling of internal combustion engines.
 - e. 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.
 - f. Utilize "quiet" air compressors and other stationary noise sources where technology exists.
 - g. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.

- h. 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.
- i. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- j. Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall 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 it in the notice sent to neighbors regarding the construction schedule.
- k. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a sitespecific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- 54. **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.

55. Environmental Conditions.

- a. Air Quality
 - i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
 - Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - iv. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
 - vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
 - vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measures Title 13, Section 2485 of the California Code of Regulations [CCR]). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- b. Biological Resources

The trees removed by the project would be replaced according to tree replacement ratios required by the City, as provided in Table 4.4-1 below.

| Circumference of Tree to be Removed ¹ | Type of Tree to be Removed ² | | | Minimum Size of Each |
|---|---|-------------------|----------------|----------------------------|
| | Native | Non-Native | Orchard | Replacement Tree |
| 38 inches or more ³ | 5:1 | 4:1 | 3:1 | 15-gallon container |
| 19 – 38 inches | 3:1 | 2:1 | None | 15-gallon container |
| Less than 19 inches | 1:1 | 1:1 | None | 15-gallon container |
| ¹ As measured 4.5 feet abov | e ground leve | el | | ×. |
| ² x:x = tree replacement to the | ree loss ratio | | | |
| ³ Ordinance-sized tree | | | | |
| Notes: Trees greater than o | r equal to 38 i | nches in circumfe | rence shall no | t be removed unless a Tree |
| Removal Permit, or equivale | ent, has been | approved for the | removal of suc | h trees. For multi-family |
| residential, commercial, and | | | | |
| trees of any size. | | | | |
| A 38-inch tree is 12.1 inches | s in diameter. | | | |
| One 24-inch box tree = two | 15-gallon tree | es. | | |

- i. The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.
- ii. If replacement trees cannot be fully planted on the subject project site, the project proponents shall make payment to the City for funding to plant any additional trees within the City boundary prior to the issuance of any building permits. These funds will be used for tree planting and maintenance of planted trees for approximately three years. The project proponent shall provide the payment receipt for "off-site tree planting" to the Planning Project Manager prior to issuance of any building permit.
- iii. The project applicant shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code

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Enforcement or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan supporting materials can be viewed at:

https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan.

c. Cultural Resources

If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and 2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials. The project applicant shall implement the recommendations of the qualified archaeologist.

ii. The following measures shall be applied to the project to reduce and/or avoid impacts to human remains:

If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with

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appropriate dignity in a location not subject to further subsurface disturbance:

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

d. Geology and Soils

To avoid or minimize potential damage from seismic shaking, the project shall be built 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, including the 2016 California Building Code Chapter 16, Section 1613, 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.

- a. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- b. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- c. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- d. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

The following measures shall be applied to development of the project site to reduce and/or avoid erosion and loss of topsoil:

- All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.

• Ditches shall be installed to divert runoff around excavations and graded areas if necessary.

The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices will ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

The following measures shall be applied to development of the project site to reduce and/or avoid impacts to paleontological resources:

If vertebrate fossils are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection, and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for submitting the paleontologist's report to the City's Director of Planning, Building and Code Enforcement or the Director's designee, and implementing the recommendations of the qualified professional paleontologist. The applicant shall submit a report to the City's Director of Planning, Building and Code Enforcement or the Director's designee indicating how the paleontologist's recommendations were complied with as soon as all measures have been incorporated into the project.

e. Hazards and Hazardous Materials

The project shall implement the following measures to reduce impacts related to lead-based paint and asbestos:

- In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be constructed prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials and/or lead-based paint.
- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with California Division of Occupational Safety and Health (Cal/OSHA) Lead in Title 8, CCR, Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- All potentially friable asbestos-containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution

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(NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.

- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
 - a. Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
 - b. During demolition activities, all building materials containing leadbased paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring, and dust control.
 - c. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

f. Hydrology and Water Quality

Best Management Practices to prevent stormwater pollution and minimize potential sedimentation shall be applied to project construction, including but not limited to the following:

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.

- All paved access roads, parking areas, staging areas, and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- 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.
- g. Noise

The project applicant shall implement the following Standard Permit Conditions to reduce mechanical equipment noise.

Prior to the issuance of building permits, mechanical equipment shall be selected and designed to reduce impacts on surrounding uses to meet the City's requirements. A qualified acoustical consultant shall be retained by the project applicant to review mechanical noise as the equipment systems are selected in order to determine specific noise reduction measures necessary to reduce noise to comply with the City's noise limits at the shared property lines of 55 dBA at receiving noise-sensitive land uses and 60 dBA and receiving commercial land uses. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels, installation of acoustical louvers and mufflers, and the construction of acoustical enclosures. The acoustical consultant's report shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee for approval prior to the issuance of a building permit.

The project applicant shall implement the following Standard Permit Conditions to minimize the impacts of construction-generated noise.

- Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- b. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- c. Prohibit unnecessary idling of internal combustion engines.
- d. 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.

- e. Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- f. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- g. Notify all adjacent businesses, 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.
- h. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- i. Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall 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 it in the notice sent to neighbors regarding the construction schedule.
- j. Limit construction to the hours of 7:00 AM to 7:00 PM Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- k. When refining the project's site plan, locate common outdoor areas away from adjacent noise sources and continue to shield noise-sensitive outdoor spaces with buildings or noise barriers to ensure that noise levels at common outdoor area are reduced to 60 dBA DNL.
- I. The project applicant shall be required to implement the following:
 - The project applicant shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The project applicant shall conform with any special building construction techniques requested by the City's Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

- h. Public Services
 - d. In accordance with California Government Code Section 65996, the developer shall pay a school impact fee to the School District, to offset the increased demands on school facilities caused by the project.
 - e. The project shall conform to the City's Park Impact Ordinance and Parkland Dedication Ordinance.
- 56. 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 applicant will be required to have satisfied all of the following Public Works conditions. The applicant 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.

- 57. **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.
- 58. **Transportation:** A Transportation Analysis has been performed for this project based on a net 77 AM and 90 PM peak hour trips. See separate Traffic memo dated 11/07/19 for additional information. The following conditions shall be implemented:
 - a. Provide a 26-foot wide drive aisle within the parking garage. The City's standard minimum width for two-way drive aisles is 26 feet where 90-degree parking is provided. The project requires City approval for any reduction in drive aisle width.
 - b. Install a channelization island on McEvoy Street at San Carlos Street to limit leftturns out of McEvoy Street (right-in and right-out only). The design of channelization island will be evaluated at the implementation phase.
- 59. Private Improvements within Public Property: The encroachment for balconies, windows and/or architectural features shall be subject to Chapter 13.37 of the Municipal Code. No further discretionary approval by City Council is required for balconies, windows and/or architectural features that comply with the San José Building Code. Property owner shall execute an Encroachment Agreement as part of Public Works Clearance requirement(s) and prior to Building Permit issuance. The Encroachment Agreement shall be recorded against title to the property.

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T-39004 / 1687172 Council Agenda: 02-11-2020 Item No.: 10.3(e) DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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60. Grading/Geology:

- a. A grading permit is required prior to the issuance of a Public Works Clearance.
- b. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
- c. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- d. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- e. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- 61. **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.
- 62. Stormwater Peak Flow Control Measures: The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

- 63. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- 64. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- 65. **Undergrounding**: Developer shall complete the underground conversion of the utility facilities fronting the project along McEvoy Street. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.

66. Street Improvements:

- a. Provide 34-foot curb-to-curb width within a 58-foot right-of-way along Dupont Street frontage.
- b. Provide 36-foot curb-to-curb width along McEvoy Street project frontage.
- c. Construct 10-foot wide attached sidewalk with 4-foot by 5-foot tree wells behind back of curb along McEvoy Street project frontage. Approximately 3-foot wide street dedication along McEvoy Street project frontage shall be required. Bulbouts at McEvoy Street and West San Carlos Street may be required.
- d. Construct 12-foot wide attached sidewalk with 4-foot by 5-foot tree wells behind back of curb along Dupont Street project frontage. Approximately 4-foot wide street dedication along Dupont Street project frontage shall be required.
- e. Construct 26-foot wide City Standard driveway along McEvoy Street project frontage.
- f. Provide street lighting under San Carlos Bridge to enhance pedestrian environment.
- g. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the project.
- h. Close unused driveway cut(s).
- i. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- j. Reconstruct half street along McEvoy Street and Dupont Street frontages including curb, gutter, sidewalk, and pavement sections.

- k. Reconstruction of asphalt pavement along the McEvoy Street and Dupont Street frontage will be required. The pavement reconstruction work shall be included as part of the final street improvement plans.
- I. Per San José Municipal Code 19.36.070, the property line corner radius at the intersection of two streets shall be a minimum of 24 feet. This shall be reflected on the parcel map if required.
- 67. **Strong Neighborhoods Initiative (SNI):** This project is located within the Burbank/Del Monte SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
- 68. Electrical: Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- 69. **Street Trees**: The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any street tree plantings. Street trees shown on this permit are conceptual only.
- 70. **Referrals**: This project should be referred to the California High Speed Rail Authority, Caltrain, and Union Pacific Railroad. Contact the Contract Manager of the California High-Speed Rail Authority, Walid Khalife, at walid.khalife@hsr.ca.gov or (916)330-5671. Contact the Director of Caltrain Planning, Liz Scanlon, at (650) 207-7831.
- 71. **Revocation, Suspension, Modification.** This Special Use Permit and 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 of Chapter 20.100 of Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Special Use Permit and Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

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

EFFECTIVE DATE

The effective date of this Special Use Permit (SP18-059) shall be the same effective date of the Conventional Rezoning Ordinance for File No. C18-034 passed for publication on , 2020 (and shall be no earlier than the effective date of said Rezoning Ordinance.

ADOPTED this day of , 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO Mayor

ATTEST:

TONI J. TABER, CMC City Clerk

NOTICE TO PARTIES

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

EXHIBIT "A"

(File Nos. GP17-015; C18-034; T19-017; SP18-059)

EXHIBIT A

LEGAL DESCRIPTION PARCEL 1

280 MCEVOY STREET

SAN JOSE, CALIFORNIA

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

Beginning at the intersection of W San Carlos Street and McEvoy Street AS SHAOWN ON Parcel Map filed February 18, 2009, in Book 830 of Maps, at Pages 136 to 137 in the office of the County Surveyor of Santa Clara County; thence northerly along the center line of McEvoy Street N03°37′05″W, 29.93 feet; thence N86°25′55″E, 28.00′ to the TRUE POINT OF BEGINNING; thence N86°32′02″E, 200.00′; thence N03°34′05″W, 246.24 feet; thence S86°25′19″W 200.21 feet; thence S03°37′05″E, 245.70 feet to the TRUE POINT OF BEGINNING.

Containing an Area of 49,206± S.F. (1.13± AC.)

END OF DESCRIPTION



