

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT AND SITE DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF A NEW NINE-STORY, 303-ROOM HOTEL AND 19-ATTACHED RESIDENTIAL UNIT MIXED-USE BUILDING WITH THREE LEVELS OF UNDERGROUND PARKING ON A 0.86-GROSS ACRE SITE LOCATED AT THE SOUTHEAST CORNER OF WEST JULIAN SREET AND STOCKTON AVENUE (292 STOCKTON AVENUE), AND TO ALLOW THE HOTEL TO BECOME ONE COMMERCIAL CONDOMINIUM UNIT**

**FILE NO. SP19-063**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on August 7, 2018, application File No. SP19-063 was filed by the applicant, KADE Development, LLC, for a Special Use Permit to allow the construction of a mixed-use development containing a 303-room hotel and 19 attached residential units within a nine-story, 342,388-square foot building with three levels of underground parking on a 0.86-gross acre site, and to allow the hotel to become a commercial condominium unit, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located at the southeast corner of West Julian Street and Stockton Avenue (292 Stockton Avenue, San José, which real property is sometimes referred to herein as the "subject property"); and

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

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, 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 the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled "The Stockton Avenue Hotel Project," dated received November 18, 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 development 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;

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

After considering all the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The 0.86-acre project site is located on the southeast corner of West Julian Street and Stockton Avenue, approximately 0.35-mile from the Diridon Station. The project site is bordered by the Union Pacific railroad corridor and the SAP Center parking lot to the northeast, a data center to the southeast, a senior center to the southwest across Julian Street, a commercial-residential mixed-use development (currently under construction) to the west across Stockton Avenue and Julian Street, and a large surface parking lot for the PG&E service center to the northwest across Julian Street.

The site is currently undeveloped and used as a surface parking lot accessible from one driveway on Stockton Avenue. There are no trees on the project site.

2. **Project Description.** The project site is proposed to be developed with a 108.8-foot tall, nine-story building with a 303-guest room hotel and 19 residential condominium units. The first floor of the building would include lobbies, lounges, reception area, kitchen and dining areas, meeting rooms and hotel offices. The second through eighth floors of the building would include the hotel rooms. In addition to the hotel rooms, the eighth floor would also include four two-story condominiums that would extend to the ninth floor. The ninth floor would include an additional 15 single-level residential condominiums for a total of 19 residential condominiums. The residential condominiums would consist of one or two-bedroom units ranging in size from 806 square feet to 2,229 square feet. The second floor would also include a fitness center and a pool deck.

An approximately 1,500-square foot, privately-owned and publicly-accessible plaza would be located at the corner of West Julian Street and Stockton Avenue. Parking would be provided in a three-level below-grade garage, accessible from a driveway entrance on Stockton Avenue. Trash collection, hotel guest drop-off and pick up, and off-street loading would occur on the first level of the garage due to the site constraints.

The project would include two separate lobbies for hotel guests and condominium residents, and separate elevators would be provided. The hotel amenities that are available to the condominium residents would be the fitness center and the pool on the second floor. The project would also include a 525 square-foot roof deck and a

660 square-foot common area on the ninth floor of the building for condominium residents only.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan designation of Urban Village. This designation supports a wide variety of commercial, residential, institutional, or other land uses with an emphasis on establishing an attractive urban form development within the Urban Village designation should conform to land use and design standards established with an adopted Urban Village Plan.

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 project is consistent with the DSAP, as discussed further below, and is therefore consistent with the Urban Village General Plan designation.

The project site is also within the boundaries of Downtown Growth Area. This area is intended as a regional job center with continued development of high-rises to support regional transit use. The hotel and residential mixed-use development is consistent with the land uses allowed in Downtown.

Additionally, the project is consistent with the following General Plan policies:

- 1) Land Use Policy LU-1.2: Encourage Walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

*Analysis:* The project would install a new crosswalk on the south leg of the Stockton Avenue and West Julian Street intersection and improve the existing 21.2-foot wide sidewalk on Stockton Avenue and 10-foot wide sidewalk on West Julian Street to provide safe and accessible pedestrian connections between the project and the adjacent public streets. In addition, the project also provides a corner plaza designed for passive recreation or resting in between destinations and is part of the pedestrian network envisioned with the DSAP's "green finger" and pedestrian connections.

- 2) Land Use Policy LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.

*Analysis:* The project's ground floor includes active spaces such as a neighborhood plaza, hotel restaurant and meeting rooms, which is consistent with LU-5.7.

- 3) Transportation Policy TR-4.1: Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA, BART, Caltrain, ACE and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.

*Analysis: The project site is approximately 0.35-mile from the Diridon Station, an approximately eight-minute walk or a four-minute bike ride. The Diridon Station is a transit hub for Caltrain, Amtrak, Capital Corridor, ACE rail, VTA Light Rail, and local and regional bus service. The closest bus stops for Bus Routes 22 and 522 are located near the intersection of Stockton Avenue/The Alameda, which is approximately 900 feet south of the project site.*

#### **4. Diridon Station Area Plan (DSAP) Conformance.**

The Urban Village designation allows up to 250 dwelling units per acre and a floor area ratio (FAR) of up to 10.0. Within the DSAP, the project site also requires a minimum commercial FAR of 0.5 for projects with residential uses. Consistent with these requirements, the project includes 19 residential units for a density of 23 dwelling units per acre and approximately 224,433 square feet of commercial space for a FAR of 6.0.

The project design is subject to the DSAP design guidelines because the project was submitted in August 2018 before the new Downtown Design Guidelines was adopted in April 2019.

The project site is in the Northern Zone – Innovation District of the DSAP. The DSAP has a series of guidelines to ensure that the architecture, open space, and site design of the proposed project are appropriate and compatible with the envisioned urban form, as follows:

##### Overall Themes and Goals & Neighborhood Squares

- Foster a vibrant public realm throughout the Station area that supports pedestrian activity and integrates public spaces into development with new plazas, parks, and public spaces.
- Neighborhood Squares should be connected with the pedestrian network, other plazas or open spaces and the neighborhoods.

*Analysis: The project includes an open, ground level “Neighborhood Plaza” (approximately 1,500 square feet) located on the site at the corner of Stockton Avenue and West Julian Street. The plaza would be privately owned and maintained but be publicly accessible. This plaza would be located on one of four corners of the intersection of West Julian Street and Stockton Avenue. When the remaining corners are redeveloped, they would also include squares, connected by pedestrian crosswalks at the intersection, thereby helping establish an interconnected pedestrian network within the DSAP area.*

##### Urban Form and Structure - Building Height.

- Create an urban district in the Station Area with buildings that maximize height potential. The Station Area should accommodate a mix of uses including commercial, office, and entertainment development.

*Analysis: The height guidelines for the project site in this area is a maximum of 100 feet pursuant to the current DSAP. Limited intrusions of 10 feet above the maximum heights are allowed for elevator shafts, rooftop equipment, architectural treatments to parapets, roof lines and the like. The project maximizes the building height to 108.8 feet to parapets and mechanical screens.*

*The project site is within the Northern Zone of DSAP, west of the existing Union Pacific and Caltrain rail line. According to current DSAP, the intent of the height guidelines in this area is to ensure compatibility with the surrounding neighborhood. The project building would include a thin fin at a height of 114.8 feet at the corner and a flag on top of the fin that reaches 123.8 feet. This height intrusion would not affect the neighborhood compatibility. Therefore, the building with the fin and flag exceeding 110 feet still meets the intent of the height guidelines.*

#### Mix of Uses

- Ground floor retail should be integrated in mixed-use buildings
- Maximize a building's active spaces along the public street by locating retail, office, or commercial uses with customer activity on the ground floor.

*Analysis: The ground floor includes a corner plaza surrounded by the hotel entrance and a seating area to provide optimum opportunity for pedestrian activation and place making. The residential and hotel lobbies, breakfast areas and meeting rooms are all located along the ground floor street frontages.*

#### Building Form and Building Siting

The Northern Zone – Innovation District guidelines promote a close public/private interaction by requiring buildings to be placed parallel to the street or public spaces, and along the edges of a site to create a tight urban fabric.

*Analysis: As a corner development, the building entries and active commercial spaces are oriented to the adjacent streets. All residential units on the top floor will also incorporate private decks open to the streets below. In addition, the guidelines state that the walls along the street should vary in architectural detail and facade treatments to provide texture and interest to the pedestrian environment.*

*The massing of the project would be varied to avoid the creation of a long monotonous unbroken plane. The street elevations incorporate the use of varied materials, architectural features (such as balconies, parapet wall, etc.) and alternating planes to create a rhythmic architectural pattern. The interior side façade includes a large break in the massing so that the middle and longest portion of the building sits back further from the adjacent building.*

*The project plans are consistent with the above guidelines through the use of recessed and projecting wall planes and a variety of compatible materials (stone,*

*porcelain tile and metal panel). All sides of the building have been architecturally designed to respond to the street and the adjacent buildings.*

#### Parking Structures

- Wherever feasible, provide underground parking garages with access located away from public streets or integrated in the building façade.

*Analysis: The project includes an underground parking garage. The access to the garage is from Stockton Avenue, the only feasible vehicular access point to the site given that there is a grade difference between West Julian Street and the project site.*

5. **Design Guidelines Conformance.** The Residential Design Guidelines apply to the residential component of the project.

#### Open Space

The Residential Design Guidelines suggests 60 square feet of private space for one half of the units (due to the highly urbanized and high residential density of the site) and 100 square feet of common open space for each unit in mixed-use developments.

*Analysis: The project includes balconies of at least 81 square feet in size for all 19 residential units. The common open space for residents would be comprised of the pool and deck area (shared with the hotel guests) on the second floor, the public plaza at the corner of West Julian Street and Stockton Avenue, and a roof deck and a common area on the 9th floor. The total common area is approximately 5,060 square feet which results in 266 square feet per each unit. Therefore, the project exceeds the private and public open space requirements.*

6. **Zoning Ordinance Conformance.** Pursuant to San José Municipal Code Section 20.100.140 for concurrent review procedures, multiple permits may be heard together using the procedure for the higher level permit, provided separate findings would be required for each permits and approval: Site Development Permit for construction of the project, Special Use Permit to allow a commercial condominium, and a Tentative Map for the subdivision of the building's airspace into condominiums.

As stated previously, the project is consistent with the DC Downtown Primary Commercial Zoning District, as follows:

#### Height and Setbacks

No minimum setbacks area required within the DC Downtown Primary Commercial Zoning District.

Heights are limited to that necessary for the safe operation of the San José International Airport and Federal Aviation Regulations Part 77 and is also subject to

the height requirement in the current DSAP. As discussed above, the project would be 108.8 feet in height, within the 110-foot height limit for parapets of the DSAP. Conditions of approval require the applicant to secure appropriate Federal Aviation Administration (FAA) and aviation clearances for the building's height prior to building permit issuance.

#### Use

Commercial and residential mixed-use projects are allowed with a Site Development Permit. Additionally, commercial condominiums require a Special Use Permit pursuant to Section 20.175.040 of the San José Municipal Code.

#### Parking Requirements

The project meets the following parking requirements in DC Downtown Primary Commercial Zoning District:

##### **Vehicle Parking**

| <b>Use Type</b> | <b>Required # of Parking Spaces</b> | <b># of Units/Rooms</b> | <b># Parking Spaces req.</b> | <b># Parking Spaces Provided</b> |
|-----------------|-------------------------------------|-------------------------|------------------------------|----------------------------------|
| Residential     | 1 space/unit                        | 19                      | 19                           | 20                               |
| Hotel           | 0.35 space/room                     | 303                     | 107                          | 109                              |
|                 | <b>Total</b>                        |                         | <b>126</b>                   | <b>129</b>                       |

##### **Bicycle Parking**

| <b>Use Type</b> | <b>Required # of Parking Spaces</b> | <b># of Units/Rooms</b> | <b># Parking Spaces req.</b> | <b># Parking Spaces Provided</b> |
|-----------------|-------------------------------------|-------------------------|------------------------------|----------------------------------|
| Residential     | 1 space/4 units                     | 19                      | 5                            | 8                                |
| Hotel           | 1 plus 1 per 10 guest rooms         | 303                     | 33                           | 39                               |
|                 | <b>Total</b>                        |                         | <b>38</b>                    | <b>47</b>                        |

7. **Environmental Review.** An Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (FEIR) was prepared by the Director of Planning, Building, and Code Enforcement for the subject project. The Downtown Strategy 2040 FEIR (Planning File No. PP15-102) was adopted by the City Council on December 18, 2018 by Resolution No. 78942 and 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 project is eligible for an Addendum pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15164 and was completed in compliance with CEQA to reflect an independent judgment and analysis of the project.



An Initial Study was prepared in support of the Addendum that provided analysis of the project actions. The Initial Study outlined relevant mitigation measures, as identified in the previous EIR, for air quality, biological resources, cultural resources, energy, hazards and hazardous materials, and noise impacts. Mitigation measures are outlined for these resource areas which will reduce any potentially significant project impacts to a less-than-significant level. These mitigation measures include preparing a diesel particulate matter emissions reduction plan for construction equipment, conducting pre-construction bird surveys, archeological testing, preparing a Historic Resources Protection plan, preparing and implementing a transportation demand management program (TDM) to reduce emissions associated with vehicle travels, regulatory oversight to address soil and groundwater contamination, discharge requirements for construction dewatering activities, mechanical noise requirements, and implementation of a vibration mitigation plan. The mitigation measures and associated compliance methods are included in the Mitigation Monitoring and Reporting Program (MMRP).

The Initial Study concluded that the Downtown Strategy 2040 FEIR adequately addressed the environmental effects of the project with supplemental evaluation, and the project would not result in significant environmental effects that are not already identified in the FEIR. The Addendum, Initial Study, Mitigation and technical reports were posted on the City's website for public review on January 16, 2020.

The Addendum identified that the implementation of the project would not result in any significant effects on the environment. The Addendum, Initial Study, MMRP, associated appendices, and other related environmental documents are available on the Planning website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/stockton-avenue-hotel-and-condominiums-project>

8. **Site Development Permit Findings.** Site Development Permit findings pursuant to San José Municipal Code Section 20.100.630, 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: As discussed in detail above, the project is consistent with the General Plan Land Use/Transportation Diagram designation of Urban Village for the subject site, which defers to the Urban Village designation requirements within the DSAP. The project conforms to a maximum density of 250 DU/AC and FAR ranging from 0.50 to 10.0 for the DSAP. The project also conforms to the Land Use Policies LU-1.2, LU-5.7, and the Transportation Policy TR-4.1 of the General Plan, and Design Guidelines of the Diridon Station Plan Area.*

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

*Analysis:* As discussed in detail above, the project conforms in all respects to the development standards in DC Downtown Primary Commercial Zoning District, including uses, setback, height and parking requirements.

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

*Analysis:* The project is in compliance with Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City's website. A development sign describing the project has been posted on site since October 12, 2018. Further, staff held a community meeting for the project on July 15, 2019. The project is also consistent with outdoor lighting policy in that the proposed outdoor lighting are all directed downwards and there would be limited light spillage over the adjacent property.

- 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.

*Analysis:* There are no other uses on site other than the project building. The project building is oriented towards West Julian Street and Stockton Avenue with pedestrian entries at the corner plaza and along Stockton Avenue. Trash collection and hotel guest drop-off and pick-up would occur on the first level of the underground parking garage that is accessed from Stockton Avenue. The project would improve the 21.2-foot wide sidewalk along the Stockton Avenue frontage, reconstruct the 10-foot wide sidewalk along the West Julian Street frontage, and install audible and visual warning signs along the garage entry to protect the pedestrians and bicyclists from vehicle circulation into and out of the site.

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

*Analysis:* The orientation, location, mass and scale of the project nine-story hotel (303 rooms) and residential (19 units) mixed-use development compliments the surrounding neighborhood and will be compatible in height and scale to the 7-story, 250-unit commercial residential mixed use development project (currently under construction) on the northwest corner of Stockton Avenue and West Julian Street. Architecturally, the project complements and enhances the surrounding mix of multi-residential and commercial development through the use of similar and upgraded materials such as stone/porcelain tile and metal panel on the ground floor façade as well as interesting articulation throughout the street facing

*elevations. Horizontal and vertical reliefs were incorporated into the designs through façade treatments to further break down the building's massing. Also as discussed above, the project includes a "Neighborhood Plaza" at the corner of the building that lightens the mass of the structure and creates an open and useable recreational space for residents and hotel guests.*

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

*Analysis: The project would not result in an increase in long-term operational noise levels and odors above the City's and regional agency's standards threshold for single-family residential development. Temporary noise and odor impact from construction activities would be reduced to less than significant levels with implementation of standard conditions to reduce construction noise and odor. The project has been evaluated by the Department of Public Works for grading, drainage and stormwater requirements, and was found in compliance pursuant to the Final Public Works Memo dated January 6, 2020. The project will, therefore, not have any unacceptable negative effect on the adjacent properties.*

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

*Analysis: As shown on the approved plan set, the landscaping, irrigation systems, all walls and fences, ventilating, plumbing, utility, and trash facilities are sufficient to maintain and upgrade the appearance of the neighborhood. All mechanical equipment is located within the building and on the roof, not visible from the street or surrounding buildings. Except the corner plaza, no outdoor activities would occur on the ground floor of this project. The outdoor swimming pool on the second floor would be concealed by the parapet and the operation hours are from 7:00 AM to 10:00 PM. Trees would be planted along the perimeter of the property of various species including strawberry trees, yew podocarpus, and miniature chusan palm trees. Other landscaping, including grass, shrubs, and vines, would also be planted along the perimeter of the building. As discussed above, the trash facilities would be located within the first level of the underground parking garage with sufficient space and height clearance for trash truck to maneuver.*

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

*Analysis: Vehicle access to the site would be on Stockton Avenue. Pedestrian access to the site is mainly from the corner plaza and from Stockton Avenue. The sidewalk along West Julian Street dead ends at the railroad track and, hence, only serves as exit access per Fire and Building Code requirements. As*

*discussed above, the project would provide three more vehicle parking spaces than required by Zoning Code.*

9. **Special Use Permit Findings.** A Special Use Permit is required for the commercial condominiums. The findings of the Special Use Permit, pursuant to San José Municipal Code Section 20.100.820, must determine that:

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

*Analysis:* In addition to the discussion above, the one commercial condominium unit for the hotel is consistent with the General Plan land use designation of Urban Village as commercial uses are permitted in the DC Downtown Primary Commercial Zoning District.

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

*Analysis:* In addition to the Zoning Conformance discussion above, Section 20.175.042 of the Municipal Code requires the minimum unit size for nonresidential condominium units to be 750 square feet. This commercial condominium unit would be 224,433 square feet, which exceeds the minimum 750 square feet requirement.

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

*Analysis:* See discussion above. There are no applicable City Council policies other than those discussed above.

- d. 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
- b) 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

*Analysis:* As described above, the project, including the commercial condominium (hotel) would not impact the peace, health, safety, morals or welfare of persons residing or working in the surrounding area as the use is mainly contained within the project, and the operation of the hotel would not impact the area outside of the building. This commercial condominium unit would not impair the utility or value of property or persons in the immediate area as the hotel use would be mainly contained in the building. The hotel would include an outdoor swimming pool on the second floor. However, the swimming pool would

*be located to the southeast of the building and is not adjacent to any sensitive use.*

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

*Analysis: As noted above, this hotel condominium unit would exceed the minimum square footage requirements for commercial condominiums. The project accommodates the development features such as parking and loading facilities within the underground garage, and landscaping along the perimeter of the property.*

- f. The proposed site is adequately served:

- a) By highways or streets of sufficient width and improved as 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.

*Analysis: Regional access to the project site is provided by State Route 87. Local site access is provided by Stockton Avenue, West Julian Street, West Santa Clara Street, and The Alameda. The street network has the capacity to handle the traffic generated by the project, as analyzed in the Initial Study prepared by David J. Powers & Associates Inc. dated December 2019. As stated above, the site is approximately 900 feet away from the bus stop for VTA Routes 22 and 522 near the intersection of Stockton Avenue/The Alameda. The site is also approximately 0.35-mile from the Diridon Station, a transit hub for Caltrain, Amtrak, Capital Corridor, ACE rail, VTA Light Rail, and local and regional bus service. The subdivision of the commercial space would not create any additional need for access. The other public and private service facilities would adequately support the proposed project.*

- g. 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: As stated above in Site Development Permit Finding #f, the project would not have any unacceptable negative effect on the adjacent properties.*

- h. The proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development or in the city as a whole.

*Analysis:* As discussed above, the project's common interest development would not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity in that the size of the commercial unit adequately accommodates a variety of potential uses, and the anticipated use such as hotel would add to the economic viability of the area.

- i. The proposed common interest development includes sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development; and

*Analysis:* A Declaration of Covenants, Conditions, and Restrictions (CC&Rs) is required prior to final map approval and would be required to include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development.

- j. The proposed common interest development includes sufficient provisions of the retention of such common areas for the use of all owners of separate interest therein.

*Analysis:* The CC&Rs, required when the Final Map is approved by the City, would state that each residential owner shall have, as appurtenant to their unit, an undivided interest in the common residential areas. This would ensure that each common interest development has sufficient retention of common areas for use by all owners as noted in the conditions of approval. The CC&Rs would also include provisions for ingress, egress, parking, emergency access, utilities, landscaping, and the like.

In accordance with the findings set forth above, a Site Development Permit and a Special Use Permit to use the subject property for said purpose specified above and subject to each and all the conditions hereinafter set forth are hereby **approved**. This City Council expressly declares that it would not have granted this permit and determination 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 permitted hereby.

## CONDITIONS

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Site Development Permit and Special Use Permit (collectively "Permit") within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:

- a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager 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 Special Use Permit plans entitled, "The Stockton Avenue Hotel Project" dated received November 18, 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. **Downtown Financing Plans.** The San José City Council ("City") approved the (i) Envision San José General Plan 2040 ("General Plan") in 2011, (ii) Diridon Station Area Plan ("Diridon Plan") in 2014, and (iii) Downtown Strategy 2040 ("Downtown Strategy") in 2018. The Diridon Plan and Downtown Strategy, in conjunction with the General Plan, provides the framework for development located in Downtown San José. The City is in the process of developing financing plans for the Diridon Plan and the entire Downtown to fund public improvements, affordable housing, and other amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. The City is in the process of amending the Diridon Plan and updating the Diridon Basic Infrastructure Impact Fee. Updates to the Diridon Basic Infrastructure Impact Fee may include expanding the impact fee to other areas of Downtown. The City Council has also directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. Further, the City is developing a Downtown Transportation Plan that may require funding to construct the public improvements identified in the Downtown Transportation Plan. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for public improvements, affordable housing, and other amenities and services in the Downtown.  
By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans applicable to Downtown, as may be amended, which may include one or more of the financing mechanisms identified above.
7. **Scope and Use Authorization of the Special Use Permit.** This Special Use Permit allows the construction of a mixed-use development containing a 303-room hotel and 19 residential condominium units within a nine-story, 342,388-square foot building with three levels of underground parking, in accordance with the approved development plans. Additionally, this Special Use Permit effectuates the street-level plaza to be used for a privately owned, publicly accessible open space plaza.



8. **Privately Owned, Publicly Accessible Open Space.** The project's plaza located on the property's street corner (as referenced on the approved Plan Set) will be a privately owned, publicly accessible ground level open space. The plaza shall be an area designated for use by the general public while owned and maintained by a private owner, as described by the following:
- a. Permittee (including property owners and successors in interest of Permittee or property owner) providing this publicly accessible open space shall, to the fullest extent permitted by law, hold harmless and indemnify the City of San José, its officers, agents and employees, from any and all damage or injury caused in any manner by the design, construction, use, or maintenance of the open space;
  - b. Permittee (including property owners and successors in interest of Permittee or property owner) shall be solely liable for any and all damage or loss occasioned by any act or negligence in respect to the design, construction, use, or maintenance of the open space.
  - c. Liability Insurance satisfactory to the City's Risk Manager and the City Attorney, naming the City of San José and its officers and employees as additional insureds, shall be provided for all such spaces. The property owner shall record with the County Recorder and provide a copy to the City prior to the issuance of building permits a special restriction on the property satisfactory in substance to the Department and sufficient to give notice to subsequent owners, lien holders, mortgagors, tenants, and others having any economic interests in the property of the open space requirement and the means by which the requirement has been, and must continue to be, satisfied.
  - d. Maintenance - Open spaces shall be maintained at no public expense. Permittee (including property owners and successors in interest of Permittee or property owner) for the property on which the open space is located shall maintain the open space by keeping the area clean and free of litter and keeping in a healthy state any plant material that is provided for the life of the publicly accessible open space and subject project.
  - e. Plaza Hours of Operation –The privately owned, publicly accessible open space shall remain open and unobstructed to public pedestrians 24 hours a day, 7 days a week.
  - f. The Permittee (including property owners and successors in interest of Permittee or property owner) shall install and maintain in good condition signage that is clearly readable and visible from the public street or public sidewalk at every entry to the public plaza within 20 feet of the public right-of-way.
9. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
10. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.

11. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
12. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
13. **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 the San José Municipal Code.
14. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
15. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
16. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
17. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
18. **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.
19. **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.
20. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
21. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
22. **Generators.** This permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.

**23. 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.
- d. If the project is subject to the IHO, no Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO are met.

**24. Green Building Requirements for Mixed-Use New Construction Projects.** 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.

**25. 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. \_\_\_\_\_.

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## **26. Environmental Conditions.**

### **a. Air Quality**

Consistent with the requirements for future development under the Downtown Strategy 2040 and DSAP, the project includes the following measures required under General Plan Policy MS-13.1 during all phases of construction on the project site to reduce dust emissions to a less than significant level:

- 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.
- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

### **b. Biological Resources**

The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permit or ground disturbance. The Permittee would be required to submit the Santa Clara Valley

Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit.

Through payment of the SCVHP fee for nitrogen deposition, as outlined in the standard permit condition above, the contribution of the project to cumulative nitrogen deposition impacts would be rendered less than cumulatively considerable.

**c. Geology & Soils**

- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. A final design-level Geotechnical Report shall be submitted, reviewed, and approved by the City Geologist. The design-level Geotechnical Report shall determine the site-specific soil conditions and identify the appropriate design and construction techniques to minimize risks to people and structures, including but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A, 2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation. The City Geologist will review the design-level Geotechnical Report and issue a Geologic Clearance.
- iii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iv. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- v. Ditches shall be installed, if necessary, to divert runoff around excavations and graded areas.
- vi. Prior to issuance of any site-specific grading or building permits, a design-level geotechnical investigation shall be prepared and submitted to the City of San José Public Works Department for review and approval. The

geotechnical investigation shall evaluate the underlying sediments and determine the potential for settlements to occur. If the geotechnical investigation determines that unacceptable settlements may occur, then alternative groundwater control systems shall be required. The proposed project would abide by the recommendations of the Geotechnical Investigation.

- vii. Prior to issuance of any site-specific grading or building permits, a design-level geotechnical investigation shall be prepared and submitted to the City of San José Public Works Department for review and approval. The project shall implement the recommendations in the investigation to minimize impacts from expansive soils. Options to address these conditions may range from removal of the problematic soils and replacement, as needed, with properly conditioned and compacted fill, lime treat soils, and to design and construct improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements.
  - viii. The City shall ensure all construction personnel receive paleontological awareness training that includes information on the possibility of encountering fossils during construction, the types of fossils likely to be seen, based on past finds in the project area and proper procedures in the event fossils are encountered. Worker training shall be prepared and presented by a qualified paleontologist.
  - ix. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building and Code Enforcement (PBCE) or Director's designee, shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The Permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of PBCE or the Director's designee.
- d. **Hazards and Hazardous Materials**
- i. Prior to the issuance of a development permit for any project structures that would exceed the FAA imaginary surface applicable to the project site, the following actions shall be accomplished (2040 General Plan Policies TR-14.2 and CD-5.8):
  - ii. The Permittee shall comply with the notification requirements of Federal Aviation Regulations, Part 77, and receive a "Determination of No Hazard" from the FAA.

- iii. Conditions set forth in the required FAA determination of No Hazard regarding roof-top lighting or marking shall be incorporated into the final design of the structure.
  - iv. Avigation and/or "no build" easements shall be dedicated to the City of San José as a condition of approval (GP Policy TR-14.4).
  - v. Comply with safety and noise policies identified in the CLUP for the Norman Y. Mineta San José International Airport (GP Policy TR-14.3).
  - vi. Design all new exterior lighting within the Airport Influence Area in a manner that avoids interference with aircraft operations. Such lighting shall be constructed and located so that only the intended area is illuminated, and off-site glare is fully controlled. The lighting shall be arrayed in such a manner that it cannot be mistaken for airport approach or runway lights by pilots (CLUP Policy G-7).
- e. **Hydrology and Water Quality**
- Consistent with the General Plan, standard permit conditions that shall be implemented to prevent stormwater pollution and minimize potential sedimentation during construction include, but are not limited to the following:
- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
  - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
  - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
  - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
  - v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks would be required to maintain at least two feet of freeboard.
  - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily with water sweepers.
  - vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
  - viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system may also be installed at the request of the City.
- f. **Noise**
- i. 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.

- ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iv. Prohibit unnecessary idling of internal combustion engines.
- v. 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.
- vi. Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- vii. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- viii. 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.
- ix. 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.
- x. 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.
- xi. A detailed acoustical study shall be prepared during final building design to evaluate the potential noise generated by building mechanical equipment and demonstrate the necessary noise control to meet the City's 60 dBA DNL goal. Noise control features such as sound attenuators, baffles, and barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations around the project site. The noise control features identified by the study shall be incorporated into the project prior to issuance of a building permit. The study shall be



submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for approval before a grading permit is obtained.

- xii. Consistent with the requirements for future development under the DSAP and California Building Code, the following measures shall be implemented to reduce interior noise levels to 45 dBA DNL for the residential portions and hotel rooms or 50 dBA DNL or lower for the non-residential portions and achieve the instantaneous noise objective of 50 dBA  $L_{max}$  in bedrooms and 55 dBA  $L_{max}$  in other rooms:
- xiii. A site-specific noise analysis by an acoustical consultant shall be required to verify consistency with the City's noise standards and identify necessary design features and noise reduction measures, based on projected General Plan traffic volumes. Projections of future noise exposure would also take into account existing and planned commercial/industrial operations and transit facilities.
- xiv. Where exterior day-night average noise levels are 60 to 70 dBA DNL, the Permittee shall ensure that interior noise levels are maintained below 45 dBA DNL by incorporating adequate forced air mechanical ventilation systems in the dwelling units and hotel rooms, which allow residents and visitors the option of controlling noise by keeping the windows closed. In areas with noise levels exceeding 70 dBA DNL, the Permittee shall include windows and doors with high Sound Transmission Class (STC) ratings necessary to meet the interior noise standard of 45 dBA DNL.

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

- a. *Construction Plans.* This permit file number, SP19-063, 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. *Common Interest Development.* Prior to issuance of any certificate of occupancy, or release for occupancy, the Permittee shall provide a self-certified statement to

the satisfaction of the City's Chief Building Official that the project, as constructed, meets the City of San José Common Interest Development standards.

- f. *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 proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
- g. *Other.* Such other requirements as may be specified by the Chief Building Official.

- 28. **FAA Clearance Required.** Prior to the issuance of any building permit, the permittee shall obtain from the Federal Aviation Administration a "Determination of No Hazard to Air Navigation" for each building high point. The Permittee shall file a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for the building corner points and two top mechanical overrun points on each building. The data on the FAA forms should be prepared by a licensed civil engineer or surveyor using NAD83 location coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.
- 29. **FAA Permit Adjustment.** Prior to the issuance of any Building Permit, the Permittee shall obtain a Permit Adjustment to incorporate all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., obstruction lights or construction-related notifications, into the Special Use Permit conditions of approval.
- 30. **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.
- 31. **Fire Flow.** Required fire flow for the site is approved by the Fire Chief. Any changes to project require a re-review and approval by the Fire Chief.
- 32. **Fire Hydrants.** Prior to the issuance of building permits, number of Public (off-site) and private (on-site) fire hydrants and their locations need approval through a Fire Variance and to the satisfaction of the Fire Chief.
- 33. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways will be confirmed at time of building permit review to the satisfaction of the Fire Chief.
- 34. **Fire Department Access.** Prior to the issuance of any building permits, fire equipment access needs approval through a Fire Variance and to the satisfaction of the Fire Chief.

35. **Parkland Dedication Ordinance.** This development is subject to the requirements of 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 the parkland dedication ordinance and the Associated Fees and Credit Resolutions.
36. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Permittee will be required to have satisfied all of the following Public Works conditions. The Permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.
- h. **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.
- i. **Transportation:**
- i. This project is located in the expanded Downtown Core and is covered under the new San José Downtown Strategy 2040 EIR; therefore, no project-specific CEQA Transportation analysis is required.
  - ii. A Local Transportation Analysis (LTA) was performed for this project, which identified and analyzed the impacts on transportation, access, and related safety elements in the proximate area of the project based on 134 a.m. and 170 p.m. peak hour trips. See separate LTA Memo dated 2/12/19 for additional information.
- j. **Private Improvements within Public Property:** The project encroachment for planters, 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. Permittee 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.
- k. **Grading/Geology:**
- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments)

to the storm drain system from the site. An erosion control plan may be required with the grading application.

- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. The project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

**I. Shoring:**

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Permittee and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12 inches within the public right-of-way (i.e., soldier beams).
- iii. If tie-backs are proposed for use along the adjacent properties (259-28-024 and 259-28-045), agreements between the Permittee and the adjacent property owners will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.
- m. **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).
- n. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site

design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- i. The project's Stormwater Control Plan and numeric sizing calculations shall conform with City Policy 6-29.
- o. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- p. **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.
- q. **Parks:** This residential project is subject to the payment of park fees in-lieu of land dedication under 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).
- r. **Undergrounding:**
  - i. The In Lieu Undergrounding Fee shall be paid to the City for all frontages adjacent to Stockton Avenue prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2019 base fee is \$489 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
  - ii. The Director of Public Works may, at his discretion, allow the permittee to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Stockton Avenue. Permittee shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
- s. **Assessment:** This project includes a hotel use. The City of San José, on September 30, 2008, implemented a special tax for Convention Center Facilities District (CCFD) No. 2008-1 for all existing hotel properties with the intent that future hotel properties would participate as well. The special tax was authorized to be levied on hotel properties for the purpose of paying for the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center. The special tax is levied and collected in addition to and in a manner similar to the City's Transient Occupancy Tax. The special tax may not be apportioned in any tax year on any portion of property in residential use in that tax year, with the understanding that transient occupancy of hotel rooms is not residential use. The base special tax is 4% of gross rents and may be subject to an

additional special tax up to 1% of gross rents. Please contact the Public Works Department at (408) 535-6831 to coordinate the annexation process.

- t. **Street Improvements:** Permittee shall be solely responsible for the construction of the following improvements:
- i. Construct curb, gutter and 10-foot wide attached City Standard traffic-rated sidewalk along the West Julian Street project frontage.
  - ii. Construct entire section of 27-inch vitrify clay pipe under sidewalk along West Julian Street. Dedication of a sanitary sewer easement of sufficient width will be determined by the Director of Public Works.
  - iii. Construct a 26-foot wide City standard driveway at project entrance along Stockton Avenue.
  - iv. Restrict project driveway to right-turns in and out only and install red-curbing along the project frontage on Stockton Avenue between the project driveway and West Julian Street, 50 feet south of the project driveway adjacent to the existing fire hydrant.
  - v. Provide appropriate visible and/or audible warning at the project driveway to alert pedestrians and bicyclists of vehicles exiting the garage.
  - vi. Close unused driveway cuts.
  - vii. Traffic signal modification will be required at the southeast corner of the Stockton Avenue/West Julian Street intersection to install a new signal pole with mast arm, APS, wiring and conduit, and striping changes for the eastbound and westbound Julian Street approaches.
  - viii. Install a new crosswalk on the south leg of the Stockton Avenue/West Julian Street intersection. The signal modification shall include a new pedestrian signal head and curb ramp at the southwest corner of the Stockton Avenue/West Julian Street intersection.
  - ix. The type and structural section of the proposed decorative pavers within the public right-of-way will be evaluated at the public improvement plan stage.
  - x. Remove and replace broken, uplifted curb and gutter as well as broken, uplifted or non-ADA compliant sidewalk along Stockton Avenue project frontage.
  - xi. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
  - xii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

xiii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.

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

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

a) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (e.g., swinging loads over the sidewalk are not safe for pedestrians).

b) **Multi-Phased Site-Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.

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

a) Implementing the closures at the time the onsite activities dictate the need for the closure.

b) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition u.i above.

iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, Permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to the Department of Transportation (DOT). These applications may be obtained at: <https://www.sanjoseca.gov/your->

government/departments/transportation/permits. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.

- v. **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.
    - i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
    - ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
    - iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.
    - iv. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10 feet from high voltage lines; 3 feet from secondary voltage lines; and 1 foot from communication lines.
  - w. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
  - x. **Referrals:** This project should be referred to the High-Speed Rail Authority, Walid Khalife, at [walid.khalife@hsr.ca.gov](mailto:walid.khalife@hsr.ca.gov) or (916) 330-5671, or Gary Kennerly at [gary.kennerley@hsr.ca.gov](mailto:gary.kennerley@hsr.ca.gov) or (510)273-3673.
37. **Underground Garbage Collection.** For underground garbage collection, the project shall comply with the following requirements, otherwise to the satisfaction of the Director of Integrated Waste Management.
- a. Clearance at point of entry into garage to the point of collection and through turn shall be no less than 16 feet unobstructed, as measured from the ground (including speed bumps or other undulating surfaces) to the lowest hanging obstruction (i.e. sprinkler piping, lighting, etc.). This clearance will accommodate front load garbage and recycling vehicles only.
  - b. Clearance for tipping shall be sufficient and adequate to perform safe collection and have a height no less than 28 feet unobstructed.



- c. Garbage trucks shall not be permitted to back out of garage.
- d. A suitable warning system must be installed at entrance to garage notifying incoming traffic whether service trucks are inside.

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

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

In accordance with the findings set forth above, a Site Development Permit and a Special Use Permit to use the subject property for said purpose specified above are hereby **approved**.

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## EFFECTIVE DATE

The effective date of this Permit shall be the effective date of the Rezoning Ordinance for File No. CP19-039 passed for publication on \_\_\_\_\_ (the "Rezoning Ordinance") 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"  
LEGAL DESCRIPTION  
292 STOCKTON AVENUE  
SAN JOSE, CALIFORNIA  
A.P.N. 259-28-028

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being Parcel One and Parcel Two of the Lands described in Document No. 20119140 recorded February 3, 2009, in the Office of the Recorder of said County and State; being more particularly described as follows:

**Beginning** at the intersection of the southeasterly line of West Julian Street with the northeasterly line of Stockton Avenue;

Thence along the southeasterly line of said West Julian Street and the northwesterly line of said Lands North  $48^{\circ}08'13''$  East, 374.00 feet to the northerly corner of said Lands;

Thence along the northeasterly line of said Lands South  $41^{\circ}45'00''$  East, 100.00 feet to the easterly corner of said Lands;

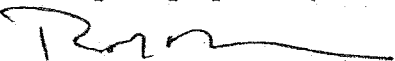
Thence along the southeasterly line of said Lands South  $48^{\circ}08'13''$  West, 374.00 feet to a point on said northeasterly line of Stockton Avenue, said point being the Southerly corner of said Lands;

Thence along said northeasterly line said Stockton Avenue and the southwesterly line of said Lands North  $41^{\circ}45'00''$  West, 100.00 feet to the **Point of Beginning**.

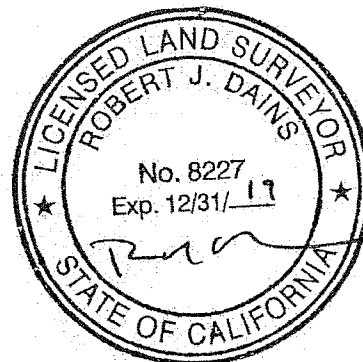
As shown on Exhibit "B", "Plat to Accompany Legal Description for Re-Zoning Purposes", attached hereto and made a part hereof.

Containing 37,400 sq. ft. more or less.

Description prepared by Dains Land Surveying

  
Robert Dains L.S. 8227

Nov. 5, 2019  
Date



SOUTHERN PACIFIC  
TRANSPORTATION COMPANY &  
PENINSULA CORRIDOR JOINT  
POWERS BOARD

EXHIBIT "B"

(S 40°45'00" E)  
S 41°45'00" E

100.00'

204.00'

204.00'

PARCEL ONE  
DOC. NO  
20119140

(S 40°45'00" E)  
N 41°45'00" W  
100.00'

PARCEL TWO  
DOC. NO  
20119140

170.00'

170.00'

POINT OF  
BEGINNING  
100.00'

N 41°45'00" W  
(N 40°45'00" W)

STOCKTON AVENUE  
(100' - WIDE)

WEST JULIAN STREET  
(60' - WIDE)

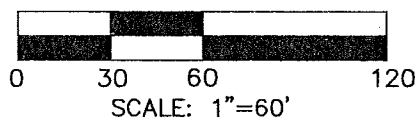
(N 49°08'00" E)  
N 48°08'13" E 374.00'

LANDS OF IMWALLE ANNEX HBD, LLC  
250 STOCKTON AVENUE  
A.P.N. 259-28-024

## NOTES:

( ) RECORD DATA PER  
DOC. NO. 20119140

BEARINGS AND DISTANCES  
SHOWN ARE BASED ON A  
FIELD SURVEY



PLAT TO ACCOMPANY LEGAL DESCRIPTION  
FOR REZONING PURPOSES

SAN JOSE

SANTA CLARA COUNTY

CALIFORNIA

PLAT:  
RJD

SCALE:  
1"= 60'

DATE:  
11/05/19

JOB #:  
17-734

DAINS LAND SURVEYING

rdains@dainslandsurveying.net

(650) 743-0831

Closure Calculations:

North: 9632.6608' East: 9983.7735'

Segment #1 : Line

Course: N48° 08' 13"E Length: 374.00'  
North: 9882.2506' East: 10262.3070'

Segment #2 : Line

Course: S41° 45' 00"E Length: 100.00'  
North: 9807.6449' East: 10328.8951'

Segment #3 : Line

Course: S48° 08' 13"W Length: 374.00'  
North: 9558.0551' East: 10050.3616'

Segment #4 : Line

Course: N41° 45' 00"W Length: 100.00'  
North: 9632.6608' East: 9983.7735'

Perimeter: 948.00' Area: 37399.93 Sq. Ft.  
Error Closure: 0.0000 Course: N0° 00' 00"E  
Error North: 0.00000 East: 0.00000

Precision 1: 948000000.00

