

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A VESTING TENTATIVE MAP TO RESUBDIVIDE FIVE PARCELS INTO TWO PARCELS ON AN APPROXIMATELY 4.84-GROSS ACRE SITE, LOCATED ON THE SOUTH SIDE OF STEVENS CREEK BOULEVARD BETWEEN SARATOGA AVENUE AND NORTHLAKE DRIVE (3896 STEVENS CREEK BOULEVARD) (APN: 303-25-023, 303-25-022, 303-25-016, 303-25-013 AND 303-25-012)**

**FILE NO. T19-038**

**WHEREAS**, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on October 7, 2019, a concurrent application (File No. T19-038) was filed by property owner, JDING Stevens Creek Properties, LLC, with the City of San José for a Tentative Map to resubdivide five parcels into two parcels an approximately 4.84-gross acre site, on that certain real property situated in the CP Commercial Pedestrian Zoning District and located on the south side of Stevens Creek Boulevard between Saratoga Avenue and Northlake Drive (3896 Stevens Creek Boulevard, 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 virtual Public Hearing on said concurrent applications on February 10, 2021, 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, the City Council conducted a virtual Public Hearing on said application, notice of which was duly given; and

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

**WHEREAS**, at said hearing this City Council received and considered the reports and recommendation of the 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 plan for the subject property entitled, "Vesting Tentative Parcel Map T19-031 3896 Stevens Creek Boulevard", dated January 15th, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement, was available for review electronically prior to the Planning Commission and Council hearings on the Department of Planning, Building and Code Enforcement webpage, and is available for inspection by anyone interested therein, 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 evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject 4.84-gross acre site, composed of five lots, is located on the southside of Stevens Creek Boulevard between Saratoga Avenue and Northlake Drive. The site is currently developed with four existing commercial buildings totaling 47,631 square feet.

The site is bordered by a Stevens Creek Boulevard and a restaurant (McDonald's) to the north, a commercial building (Pep Boys Auto) and nursing center (Courtyard Care Center) to the east, a Community Center (Islamic Community of Center or Bozniaks) and a vacant restaurant to the south, and used car dealerships to the west.

The project site is located within the Stevens Creek Urban Village Plan area.

2. **Project Description.** The project consists of the demolition of the four existing commercial buildings on site and the removal of 65 trees (41 ordinance-size and 24 non-ordinance-size) to facilitate the construction of an approximately 791,000-square foot mixed-use office building and an approximately 122,700-square foot health club with late-night use and an approximately 39 percent parking reduction on an approximately 4.84-gross acre site. To achieve the parking reduction, the project would implement a Transportation Demand Management (TDM) Plan as outlined in the San José Municipal Code section 20.90.220.

This Vesting Tentative Map facilitates this development through the resubdivision of five existing parcels into two parcels.

3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Urban Village. Implementation for a description of Planning Horizons and Urban Village Planning) to accommodate higher density housing growth along with a significant amount of job growth. This designation is also applied in some cases to specific sites within Urban Village Area Boundaries that have received entitlements for Urban Village type development. This designation supports a wide variety of commercial, residential, institutional or other land uses with an emphasis on establishing an attractive urban form in keeping with the Urban Village concept. Development within the Urban Village

designation should conform to land use and design standards established with an adopted Urban Village Plan, which specifies how each Urban Village will accommodate the planned housing and job growth capacity within the identified Urban Village Growth Area. The project is consistent with the Urban Village Land Use Designation as it would provide a commercial service to families that live and work in the surrounding area.

The project is consistent with the following General Plan Policies:

Major Strategy #3 – Focus Growth: 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.

Major Strategy #5: - Urban Village: 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.

Land Use and Employment Policy IE-1.3: As part of the intensification of commercial, Village, Industrial Park and Employment Center job Growth Areas, create complete, mixed-employment areas that include business support uses, public and private amenities, child care, restaurants, and retail goods and services that serve employees of these businesses and nearby businesses.

*Analysis: The redevelopment of the site would be consistent with the General Plan land use designation of Urban Village as the project would provide a high intensity mix of commercial uses. The project would provide jobs, retail options, and recreational opportunities in a central location with the construction of two buildings consisting of approximately 308,000 square feet of office space, a 122,000 square foot health club and 15,000 square feet of ground floor retail and restaurant space. The project would incorporate a publicly accessible plaza at the southeast corner of Stevens Creek Boulevard and Saratoga Avenue. The project would also provide*

*a 20-foot-wide paseo between the two buildings, allowing for mid-block pedestrian connection to any future development of the site to the south.*

4. **Stevens Creek Urban Village Plan.** The subject site has a land use designation of Urban Village on the Stevens Creek Urban Village Plan, which was adopted by City Council on August 8, 2017 (Resolution No. 78307). The Urban Village land use designation supports a wide range of commercial uses, including retail sales and services, professional and general offices, and institutional uses. This designation also allows residential uses in a mixed-use format. Residential and commercial mixed-use projects can be vertical mixed-use with residential above retail for example, or, where a larger site allows, they can be mixed horizontally, with commercial and residential uses built adjacent to each other, in one integrated development. All new development under this designation with frontage along Stevens Creek Boulevard must include ground floor commercial uses along Stevens Creek Boulevard.

The project is consistent with the following goals and policies of the Stevens Creek Urban Village Plan:

Land Use Policy LU-5.1: Encourage the aggregation of parcels within the Stevens Creek Urban Village to facilitate new development, especially mixed-use at higher density or intensity, and to provide for the inclusion of public accessible plazas and open spaces into new development.

Parks and Plazas Policy P-1.2: As new development occurs, space on each site will be dedicated to some form of publicly accessible open space. These spaces should be located so as to easily and logically connect with other open spaces in the surrounding area to work towards creating a connected web of open space throughout the Urban Village.

*Analysis: The project is consistent with the Urban Village land use designation as it provides a high intensity mix of commercial uses, including office, retail, restaurant, and recreational space. The project includes the resubdivision of five parcels into two parcels to facilitate the construction of approximately 791,000-square foot mixed-use office building and an approximately 122,700-square foot health club. The project also includes the construction of a privately owned, publicly accessible plaza located at the southeast corner of Stevens Creek Boulevard and Saratoga Avenue. The plaza would include landscaping, groundcover, trees, lighting, seating, and tables. A 20-foot-wide paseo would provide pedestrian access from the plaza to the parking garage as well as any future development of the site to the south*

5. **Zoning Ordinance Compliance.** The subject site is located in the CP Commercial Pedestrian Zoning District. Pursuant to Table 20-270 of the Municipal Zoning Code, the Commercial Pedestrian Zoning District is a conforming zoning district within the General Plan Land Use Designation of Urban Village.

### Lot Size, Setbacks and Height

<b>Development Standard</b>	<b>Required</b>	<b>Life Time Fitness</b>	<b>Office Building</b>
Minimum Lot Size	6,000 square feet	1.30 acre	3.43 acres
Front setback	No minimum	None	None
Side, interior setback	None	26 feet	None
Side, corner	None	N/A	None
Rear, interior	None	None	None
Maximum height	150 feet	64.5 feet	147 feet

The project conforms with the minimum lot size, setback and height requirements of the Zoning Code and Stevens Creek Urban Village Plan. The Stevens Creek Urban Village Plan allows for a maximum height of 150 feet. The maximum height of the office building would be 147 feet and the health club would be 84 feet.

### Parking

<b>Use</b>	<b>Required Vehicle Parking</b>
<u>Office</u>	
Floor Area	261,800 square feet
Ratio – 1 space/250 square feet	1,047 vehicle parking spaces
<u>Health Club</u>	
Floor Area	63,120 square feet
Ratio – 1 space/80 square feet	789 vehicle parking spaces
<u>Retail</u>	
Floor Area	10,000 square feet
Ratio – 1 space/200 square feet	43 vehicle parking spaces

Use	Required Vehicle Parking
<u>Restaurant</u>	
Floor Area	5,000 square feet
Ratio – 1 space/40 square feet	83 vehicle parking spaces
<b>Total Required</b>	1,962 Spaces
<b>Total Provided</b>	1,200 spaces (39% parking reduction)

Pursuant to Section 20.90.060 of the San José Municipal Zoning Code the project requires 1,962 vehicle parking spaces. However, pursuant to Section 20.90.220 of the Zoning Code, a parking reduction of up to 50% of the code required parking spaces may be permitted for sites within a Growth Area and a Transportation Demand Management (TDM) Plan. 1,200 parking spaces would be provided with the implementation of a TDM Plan to allow for an approximately 39% parking reduction. A TDM Plan, dated July 16, 2020 was prepared by Hexagon Transportation Consultants, Inc, which reviewed the possibility of an approximately 43% parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures in accordance with Section 20.90.220 of the Municipal Zoning Code. The project would be required to provide preferential parking for carpools, passenger loading for rideshare vehicles, commute trip reduction marketing and education, rideshare resources, ride-matching assistance, and building designs to support telecommute/flexible work schedules.

In addition to the approximately 39% parking reduction, the project requires a total of 42 motorcycle parking spaces, 60 long term bicycle parking spaces and 125 short term bicycle parking spaces. The project would provide 78 motorcycle parking spaces, 64 long term bicycle parking spaces (with 4 showers), and 130 short term bicycle parking spaces. The project also requires 96 clean air vehicle spaces and 96 are provided. A total of 72 vehicle parking spaces would be EV capable.

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

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

A formally noticed Community Meeting with the Environmental Scoping Meeting was held on January 6, 2021, to introduce the project to the community. Approximately eight members of the public attended the meeting. The questions and comments from community members included concerns related to building height, traffic, parking, noise, and differences in zoning between the San José and Santa Clara sides of Stevens Creek Boulevard.

## **7. Environmental Review.**

The City of San José, as the lead agency for the project, prepared a Draft Environmental Impact Report (Draft EIR), which was circulated for public review and comment from August 11, 2020 through September 25, 2020. The Draft EIR included analysis for the demolition of four commercial buildings, totaling 47,631 square feet, the removal of 65 trees, and the construction of an approximately 308,000 square feet of office space, 15,000 square feet of retail space, 468,000 of parking garage for 1,300 spaces, and 155,300 square feet of health club or gym space on an approximately 4.84-gross acre site.

Since the circulation of the Draft EIR, the project has reduced approximately 32,600 square feet of the club building from 155,300 square feet to 122,700 square feet. Furthermore, the project proposes to incorporate the existing mural, a potential Structure of Merit, on-site. This change does not result in new environmental impacts and the Draft EIR represents a conservative analysis of the originally proposed project. Mitigation measures identified in the Draft EIR were not revised and only one standard permit condition was revised to reflect the mural as it is no longer proposed to be removed.

A First Amendment to the Draft EIR was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the Draft EIR. The First Amendment together with the Draft EIR constitute the Final Environmental Impact Report (Final EIR) for the project.

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

### *Identified Significant Unavoidable Impacts*

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



### *Environmental Impacts and Mitigation Measures*

As part of the certification of the Final EIR, the City Council would need to approve a related Mitigation Monitoring and Reporting Program (MMRP) for the project. The following mitigation measures apply to the proposed project as further explained in the Draft EIR and MMRP:

- **Air Quality** – The applicant must prepare a construction operations plan which demonstrates off-road equipment used on site to construct the project would meet a fleet-wide average 88-percent reduction in diesel particulate matter (DPM) exhaust or greater. This includes that all diesel powered off road equipment operating on site for more than two days will meet U.S. Environmental Protection Agency (EPA) Tier 4 standards or equivalent. Implementation of these measures would reduce the temporary community health impact to a less than significant level.
- **Biological Resources** – If construction activities start during the migratory bird breeding season (February through August, inclusive), pre-construction surveys for nesting raptors or other migratory birds are required to reduce the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment impacts to less than significant levels.
- **Hazardous Materials** – Prior to any grading permits, the applicant shall complete a Site Management Plan (SMP) and submit it for review and approval with the City of San José Planning Division and the Department of Environment Services.
- **Noise and Vibration** – Prior to the issuance of any grading permits, the project shall submit a Construction Noise Logistic Plan and a construction Vibration Monitoring, Treatment, and Reporting Plan. The plans shall include documentation of equipment for construction phases, monitoring sites, existing condition documentation for nearby community center that may be affected (including photo surveys), and contingency plan. These mitigation measures are intended to document existing condition prior to ground-disturbance activities, during, and repair (if necessary) after work has been completed.
- **Transportation** – Prior to issuance of building permits and occupancy permits, the project shall submit the plan for off-site physical improvement such as removal of the pork chop island at the northwest corner of Saratoga Avenue and Stevens Creek Boulevard, removal of pork chop island at the southwest and northeast corners of Saratoga Avenue and Kiely Boulevard, and implement VTA bus stop improvement on westbound Stevens Creek Boulevard west of Saratoga Avenue and move the bus stop eastward closer to the intersection.

### *CEQA Alternative Considered, But Rejected*

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

- Location Alternative – This alternative look to consider a location that is approximately 4.8 acres or more, located within the same Urban Village, similar General Plan designation that would allow office and commercial at similar intensity, served by available transit amenities, and is immediately available. Several sites of similar size and lang use designation were found, but none of these locations would reduce construction impacts and furthermore, is not controlled by the applicant which would not be immediately available. For these reasons, while considered, this alternative was not analyzed further and rejected.
- Reduced Intensity Alternative – This alternative look to consider a smaller amount of office and fitness use. This alternative is qualitatively discussed, because a smaller project with the same uses would reduce the operational impacts to resource areas such as Greenhouse Gas (GHG) as the service population (i.e. employee) would also decrease and would not reduce the vehicle-mile-travelled (VMT). Thus, the emissions per service population for GHG and VMT impact with this alternation would remain roughly the same. However, construction related impact would be reduced with a smaller footprint, but the mitigation measures would likely to remain the same as the location is still within close proximity to existing sensitive receptors. As a result, while considered, this alternative was not analyzed further and rejected.
- Residential Alternative – This alternative look to consider a different use on site. To be consistent with the density of the General Plan and the Urban Village designations, this alternative estimated approximate 840 residential units with associated parking. This alternative could reduce GHG impact, but unknown if it would reduce VMT impacts. However, given the size of a building that would be required to accommodate the residential units, all construction impacts such as biological resources, cultural, noise and vibration would remain the same. This alternative would also not meet any of the applicant's objectives to create an economically viable commercial project. Further, the site's Urban Village land use designation and CN and CG zoning designations does not allow a completely residential project. Rather the designation allows residential uses only in a mixed-use format (i.e. residential and commercial mixed-use projects can be vertical mixed-use with residential above retail or mixed horizontally in one integrated development). As a result, while considered, this alternative was not analyzed further and rejected.

### *CEQA Alternatives*

As required under CEQA, the Draft EIR evaluated the No Project Alternative, a No Project – Existing Zoning Alternative, and Office Only Alternative. As many of the environmental impacts of the proposed projects are construction related, the alternatives were focused on exploring alternatives that would reduce these impacts. These alternatives are summarized as follows:

- No Project Alternative – The No Project Alternative assumes no redevelopment of the project site and would result in the retention of the existing buildings and parking lot. There would be no construction with the No Project Alternative and therefore, would not result in any environmental impacts or mitigation measures. The No Project alternative does not meet any of the objectives of the proposed project.
- No Project – Existing Zoning Alternative – This alternative assumes the redevelopment of the site to be consistent with the existing Neighborhood Commercial (CN), which allows a mix of commercial and office uses, and a smaller portion of the project site on the corner of Stevens Creek Boulevard and Saratoga Avenue is zoned Commercial General (CG). This alternative would contain the proposed public plaza, a reduced office building, and a reduce parking garage. This alternative would reduce the proposed office building from 12-stories to five, reduce the proposed parking garage from seven-stories to five, and reduce the overall height of the proposed health club building from 63 feet to 50 feet. This alternative would meet most of the project objectives of redeveloping an underutilized site with a public plaza, enhance pedestrian spaces, and street facing office and commercial uses. The alternative, however, would not meet the project's objective to develop office and commercial uses at the applicant's desired densities and those identified in the Stevens Creek Urban Village Plan. This Alternative could lessen the project's construction air quality, and noise impacts as it would be a smaller footprint. However, it would not lessen the project's operational GHG and VMT impacts. This alternative would result in similar or same impacts to all other environmental resources. Furthermore, The No Project – Existing Zoning Alternative would meet the majority of the project's objectives except for the objective of developing the site at densities envisioned in the Stevens Creek Urban Village Plan.
- Office Only Alternative – This alternative assumes that both buildings would house only office uses which would include a total of 436,000 square feet of office space. This alternative would assume a service population of 2,491 employees (using the office rate of one employee per 175 square feet). This alternative would reduce further reduce the operational GHG emissions impact, but all other impacts (less than significant with mitigation measures) would remain the same. This alternative would meet most of the project objectives of redeveloping an underutilized site with a public plaza, enhance pedestrian spaces, and street facing office uses. However,

this alternative would not meet the project's objectives of creating a mixed-use area with retail stores and other commercial services as envisioned in the Stevens Creek Urban Village Plan if the site contains only office space.

#### *Circulation and Public Comments*

The Draft EIR was circulated for 45-day period from August 11, 2020 to September 25, 2020. The City received four (4) written comment letters during the public comment period. Comments were submitted by four agencies and organizations, as shown below:

- City of Santa Clara
- County of Santa Clara, Roads and Airports Department (SCC RAA)
- Santa Clara Valley Transportation Authority (VTA)
- Preservation Action Council of San José (PACSJ)

Most of the issues raised are related to transportation such as cut through traffic, fair share contribution, additional request for more intersections, and TDM monitoring as it pertains to parking reduction. Furthermore, one commenter (PACSJ) raised a concern regarding the on-site mural that was proposed for demolition as part of the project. As mentioned above, since the circulation of the Draft EIR, the project has revised plans to reduce square footage to the health club and to retain the mural on site, to be situated in the open plaza.

Additionally, the City responded to all comments received on the Draft EIR and incorporated them into the First Amendment to the Draft EIR. The First Amendment, taken together with the Draft EIR, constitutes the Final EIR. The Draft EIR and First Amendment to the Draft EIR are available for review on the project page on the City's Active EIRs website at: <http://sanjoseca.gov/index.aspx?NID=6294>.

#### *EIR Recirculation Unnecessary*

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

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft EIR for the project includes written responses to all comments received during the public review period for the Draft EIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft EIR address significant

environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the Draft EIR and, in some cases, correct or update information in the Draft EIR. No significant new information has been added to the EIR since publication of the Draft EIR; therefore, the Draft EIR does not need to be recirculated.

## 8. Vesting Tentative Map Findings

The City Council concludes and finds, based on the analysis of the above facts, that:

1. Conformance with the Subdivision Ordinance and the Subdivision Map Act. In accordance with San José Municipal Code (SJMC) Section 19.12.130, the City Council may approve the vesting tentative map if the City Council cannot make any of the findings for denial in Government Code Section 66474, and the City Council has reviewed and considered the information relating to compliance of the project with the California Environmental Quality Act and determines the environmental review to be adequate. Additionally, the City Council may approve the project if the City Council does not make any of the findings for denial in San José Municipal Code Section 19.12.220. San José Municipal Code Section 19.12.130 incorporates the findings for denial in Section 66474 of the Government Code, as set forth below.

- a. The City Council finds that the proposed subdivision shown on the Vesting Tentative Map, subject to the conditions listed below and the requirements for project design and improvements is consistent with applicable General and Specific Plans of the City of San José, in that:

*Analysis: As discussed in detail above, the project is consistent with the General Plan and Stevens Creek Urban Village Plan.*

- b. The City Council has considered the proposed subdivision shown on the Vesting Tentative Map, with the imposed conditions, to determine whether to make any of the findings set forth in the subsections of Section 66474 of the Government Code of the State of California which states “A legislative body of a city or county shall deny approval of a vesting tentative map, or a parcel map for which a vesting tentative map was not required, if it makes any of the following findings:”
  - a) That the proposed map is not consistent with applicable General and Specific Plans as specified in Section 65451.
  - b) That the design or improvement of the proposed subdivision is not consistent with applicable General and Specific Plans.
  - c) That the site is not physically suitable for the type of development.
  - d) That the site is not physically suitable for the proposed density of development.

- e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

*Analysis: The project is consistent with the General Plan goals, policies, and land use designation. The project complies with the General Plan goals and policies related to Major Strategies, design, and Growth Areas. The General Plan land use designation of Urban Village allows for higher intensity commercial projects. The project site is physically suitable for the project buildings and the FAR is envisioned within the Stevens Creek Urban Village growth area. The resubdivided parcels meet the minimum parcel size requirements for a property in the CP Commercial Pedestrian Zoning District. The Environmental Impact Report evaluated all structures on-site for potential historical significance and found that none of the buildings were eligible for listing on the federal or state registers and were not eligible to be candidate city landmarks. However, the mural at 346 Saratoga Avenue qualifies as a Structure of Merit and, therefore, will be preserved and relocated to the entrance to the parking garage, facing the plaza. The project is required to improve the public sidewalks on Stevens Creek Boulevard, Saratoga Avenue, and Northlake Drive.*

**9. Parking Reduction Findings.** Section 20.90.220 of the San José Municipal Code specifies the required findings for a reduction in the required number of off-street vehicle parking spaces.

- a. The structure or use is located within two thousand (2,000) feet of a proposed or an existing rail station or bus rapid transit station, or an area designated as a Neighborhood Business District, or as an Urban Village, or as an area subject to an area development policy in the City's General Plan or the use is listed in Section 20.90.220G; and
- b. The structure or use provides bicycle parking spaces in conformance with the requirements of Table 20-90.
- c. For any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a Transportation Demand Management (TDM) program that contains but is not limited to one of the following measures:
  - i. Implement a carpool/vanpool or car-share program, e.g., carpool ride-

- matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations at the ratio set forth in the development permit or development exception considering type of use; or
- ii. Develop a transit use incentive program for employees and tenants, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA SmartPass system will satisfy this requirement).
- d. In addition to the requirements of Section 20.90.220 A, for any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a TDM program that contains but is not limited to at least two of the following measures in Section 20.90.200 A.1.d.

*Analysis: The project includes a 39% parking reduction. As previously discussed, the subject site is located in the Stevens Creek Urban Village. As discussed in the Zoning section above, the project requires 60 long term bicycle parking spaces and 125 short term bicycle parking spaces. The project provides 64 long term bicycle parking spaces (with 4 showers), and 130 short term bicycle parking space. A TDM Plan, dated July 16, 2020 was prepared by Hexagon Transportation Consultants, Inc, which studied allowing an approximately 43% parking reduction. In addition to providing the required bicycle parking spaces and showers and lockers, the project would also implement additional TDM measures in accordance with Section 20.90.220 of the Municipal Zoning Code. The project would be required to provide preferential parking for carpools, passenger loading for rideshare vehicles, commute trip reduction marketing and education, rideshare resources, ride-matching assistance, and building designs to support telecommute/flexible work schedules*

In accordance with the findings set forth above, a Vesting Tentative Map 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 Vesting Tentative Map except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

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

1. **Acceptance of Vesting Tentative Map.** Per Section 19.12.230, should the subdivider fail to file a timely and valid appeal of this Vesting Tentative Map within the applicable appeal period, such inaction by the subdivider shall be deemed to constitute all of the following on behalf of the subdivider:

- a. Acceptance of the Vesting Tentative Map by the subdivider; and
  - b. Agreement by the subdivider to be bound by, to comply with, and to do all things required of or by the subdivider pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 19 of the San José Municipal Code applicable to such Vesting Tentative Map.
2. **Expiration of Vesting Tentative Map.** This Vesting Tentative Map shall automatically expire four (4) years from and after the date of issuance hereof by the City Council. The date of issuance is the date this Vesting Tentative Map is approved by City Council.
  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 subdivider'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. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Conditional Use Permit plans entitled, "Vesting Tentative Parcel Map T19-038 3896 Stevens Creek Boulevard" dated January 15th, 2020, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set".
  5. **Improvements.** The subdivider shall, before approval and recording of the Final Map, improve or agree to improve all land within the subdivision and all land outside, but appurtenant to, the Subdivision shown on the Vesting Tentative Map for public or private streets, alleys, pedestrian ways, and easements to the satisfaction of the Director of Public Works.
  6. **Improvement Contract.** In the event subdivider has not completed the improvements required for the proposed subdivision at the time the final map is presented for approval, subdivider shall enter into a subdivision improvement agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code, and provide the improvement security and insurance required therein.
  7. **Public Use Easements.** Subdivider shall dedicate on the final map for public use easements for public utilities, emergency access, open space, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems, and parking



in and upon all areas within the subdivision shown on the Vesting Tentative Map for the subdivision to be devoted to such purposes.

8. **Conveyance of Easements.** Subdivider shall convey or cause to be conveyed to the City of San José, easements in and upon all areas as shown on the Vesting Tentative Map outside the boundaries of, but appurtenant to, the subdivision. Should a separate instrument be required for the conveyance of the easement(s), it shall be recorded prior to the recordation of the Final Map. Such easements so conveyed shall be shown on the Final Map, together with reference to the Book and Page in the Official Recorder of Santa Clara County, where each instrument conveying such easements is recorded.
9. **Affordable Housing Financing Plans.** The San José City Council ("City") approved the Envision San José General Plan 2040 ("General Plan") in 2011. The General Plan provides the framework for development located in San José.

The City is in the process of developing financing plans to help fund affordable housing and related 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 Council has adopted a commercial linkage fee to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, subdivider acknowledges it has read and understands all of the above. Subdivider 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 related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

10. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by subdivider shall constitute acknowledgement of receipt of notice by subdivider 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.

11. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
12. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
13. **Discretionary Review.** The City 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 Title 19 and Title 20, Chapter 20.100 of the San José Municipal Code.
14. **Public Works Clearance.** 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 subdivider will be required to have satisfied all of the following Public Works conditions. The subdivider 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 <http://www.sanjoseca.gov/devresources>.
  - a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Subdivision Improvement Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
  - b. **Transportation (see separate Traffic Memo dated 2/02/2021):** With the inclusion of the following conditions, the subject project will be in conformance with both the City of San José Transportation Analysis Policy (Council Policy 5-1) and the Santa Clara County Congestion Management Program. Therefore, a determination for less than significant impacts can be made with respect to transportation impacts.
    - i. Project Conditions:
      1. Implement the following multi-modal off-site mitigation measures to reduce the project employee VMT to a less than significant level and fully mitigate the VMT impact:
        - a. Remove the pork chop island at the northwest corner of the Saratoga Avenue/Stevens Creek Boulevard intersection. The mitigation measure is addition to the removal of the pork chop island at the southeast corner

along the project frontage that would be implemented as part of the project.

- b. Remove the pork chop islands at the southeast corner of the Saratoga Avenue/Kiely Boulevard intersection and modify the northwest curb return to include two directional ADA curb ramps and a reduced radius.
- c. Implement VTA bus stop improvements for the bus stop on westbound Stevens Creek Boulevard west of Saratoga Avenue and move the bus stop eastward closer to the intersection. The mitigation measure is addition to the bus stop improvements the project would implement for the bus stop on eastbound Stevens Creek Boulevard east of Saratoga Avenue as part of the project.
  - i. The following improvements may be required as part of the bus stop improvements per VTA:
    - 1. Install a new 10'x55' PCC bus pad per VTA standards.
    - 2. Provide at a minimum 8x40' passenger boarding area in the sidewalk.
    - 3. Replace wooden bench and trash can with a Victor Stanley bench and trash can.
- 2. Provide a fair-share contribution towards the widening of San Tomas Expressway per Santa Clara County's Expressway Plan 2040.
- c. **Urban Village Plan:** This project is located in a designated Urban Village per the Envision San José 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
- d. **Grand Boulevard:** This project fronts Stevens Creek Boulevard and Saratoga Avenue which are designated Grand Boulevards per the Envision San José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- e. **Street Vacation:** A street vacation is required in order to accomplish the land use plan as shown. The street vacation process requires further discretionary approval by the City Council, and the project will be subject to this process and must obtain approval by the City Council prior to Public Works clearance. The preliminary title report indicates the subdivider owns the street in fee. Upon vacation no further action by the City will be required.
- f. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance.

- 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. 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.
  - iv. Because this project involves a land disturbance of one or more acres, the subdivider 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.
  - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- g. **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 have been reviewed for conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.

- h. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydrmodification Management area and is not required to comply with the City's Post-Construction Hydrmodification Management Policy (Council Policy 8-14).
- i. **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.
- j. **Sewage Fees:** In accordance with the San José Municipal Code, 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.
- k. **Undergrounding:**
  - i. The In-Lieu Undergrounding Fee shall be paid to the City for all frontages adjacent to Saratoga Avenue prior to issuance of a Public Works Clearance. 50 percent of the base fee in place at the time of payment will be due. Currently, the 2021 base fee is \$515 per linear foot of frontage and is subject to change every January 31<sup>st</sup> 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 subdivider to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Saratoga Avenue. Subdivider shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
- l. **Street Improvements:** Any new, or modification to an existing, traffic signal will require a traffic signal "kick-off" coordination process prior to submitting the application for the Public Street Improvement permit. At least 30 days prior to submitting an application, send a request to begin the kick-off coordination with an electronic copy of a scaled conceptual traffic signal plan showing right-of-way, intersection geometrics, and signal layout.
  - i. Stevens Creek Boulevard/Saratoga Avenue intersection:
    - 1. Remove the pork chop islands at the northwest and southeast corners.
    - 2. Construct dual left-turns at the northbound Saratoga Avenue approach per the attached plan line.
  - ii. Stevens Creek Boulevard/Kiely Boulevard
    - 1. Remove the pork chop island at the southeast corner of the Saratoga Avenue/Kiely Boulevard intersection

2. Modify the northwest curb return to include to directional ADA curb ramps and a reduced radius per the attached plan line.
- iii. Saratoga Avenue frontage:
  1. Construct curb, gutter, and 20-foot wide attached sidewalk with tree wells.
  2. Relocate the bus stop closer to the intersection and construct a new bus pad.
- iv. Relocate the westbound Stevens Creek bus stop, located west of the Stevens Creek Boulevard/Saratoga Avenue intersection, closer to the intersection and construct a new bus pad.
- v. Construct curb, gutter, and 10-foot wide attached sidewalk with tree wells on North Lake Drive.
- vi. Construct directional ADA curb ramps at opposite returns across Northlake Drive at the south leg of the Stevens Creek Boulevard/Northlake Drive intersection.
- vii. Proposed driveway widths to be 26 feet per City standard.
- viii. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- ix. Subdivider shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- m. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, subdivider 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:
    1. **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are 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 (ex. swinging loads over the sidewalk are not safe for pedestrians).

2. **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- ii. Subdivider shall minimize the potential impact to vehicular and pedestrian traffic by:
  1. Implementing the closures at the time the onsite activities dictate the need for the closure.
  2. Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition m.i.1., above.
- iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, subdivider shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/index.aspx?NID=3713>. Subdivider shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
- n. **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.
- o. **Street Trees:**
  - i. 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.
  - ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.
  - iii. Recommended street trees on the following streets:
    1. Saratoga Avenue: Gingko biloba 'Autumn Gold' planted 35 feet on center.

2. Stevens Creek Boulevard: Platanus x acerifolia 'Columbia' planted 35 feet on center.
- p. **Referrals:** This project should be referred to City of Santa Clara, Valley Transportation Authority (VTA), and County of Santa Clara for coordination.
15. **Final Map.** No Final Map or Tract Map shall be approved by City Council unless and until the appeal period for the development permit, City File No. T19-038 has expired and all appeals have been exhausted.
16. **Multiple Final Maps.** Multiple Final Maps may be filed for this subdivision if each and all of the following conditions are met with each Final Map:
  - a. All fees associated with development and a part of this approval shall be apportioned and paid for each portion of this subdivision for which a Final Map is being filed, including but not limited to Parkland Dedication, undergrounding of utilities, drainage, area and sewer treatment plan.
  - b. All public streets on which each Final Map has frontage shall be improved or bonded to be improved to the satisfaction of the Director of Public Works.
  - c. All grading, drainage, and easements for drainage, adequate to protect each lot for which a Final Map is requested, and surrounding parcels which could be impacted by such design or lack of design, shall be guaranteed to the satisfaction of the Director of Public Works.
  - d. Any and all off-site improvements necessary for mitigation of impacts brought about by this project shall be apportioned to the degree possible to guarantee adequate mitigation for each area for which a Final Map is being filed, to the satisfaction of the Director of Public Works.
17. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. [REDACTED]
18. **Standard Environmental Conditions**
  - a. **Air Quality**
    - i. **MM AIR-1.1:** Prior to the issuance of any demolition, grading and/or building permits, the subdivider shall develop a construction operations plan demonstrating that the off-road equipment used onsite to construct the project would achieve a fleet-wide average 88 percent reduction in diesel particulate matter (DPM) exhaust emissions or greater. One feasible plan to achieve this reduction would include, but not limited to, the following:
      - i. All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet EPA particulate matter emissions standards for Tier 4 engines. Exceptions



could be made for equipment that meets EPA Tier 2 or 3 standards that include CARB-certified Level 3 Diesel Particulate Filters or equivalent.

- ii. Install electric power during early construction phases to avoid use of diesel generators. Stationary construction cranes (building cranes) and manlifts shall be powered by electricity.
- iii. If any of these alternative measures are proposed, the subdivider shall include them in the construction operations plan (as stated in MM AIR-1.2), which includes specifications of the equipment to be used during construction prior to the issuance of any demolition, grading, or building permits, whichever occurs the earliest. The construction operations plans shall demonstrate that the off-road equipment used onsite to construct the project would achieve a fleetwide average 88 percent reduction in DPM exhaust emissions or greater.
- ii. **MM AIR-1.2:** Prior to the issuance of any demolition, grading and/or building permits (whichever occurs first), the subdivider shall submit a construction operations plan that includes specifications of the equipment to be used during construction prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest) to the City of San José Director of Planning, Building and Code Enforcement or Director's designee. The construction operations plan shall be accompanied by a letter, signed by an air quality specialist, verifying that the equipment included in the plan meets the specified reductions set forth in these mitigation measures.

**b. Biological Resources**

- i. **MM BIO-1.1:** Avoidance: The subdivider shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive).
- ii. **MM BIO-1.2:** Nesting Bird Surveys: If demolition and construction cannot be scheduled between September 1st and January 31<sup>st</sup> (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.
- iii. **MM BIO-1.3:** Buffer Zones: If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a

construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

- iv. **MM BIO-1.4:** Reporting: Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Director of Planning, Building and Code Enforcement or Director's designee of the Department of Planning, Building and Code Enforcement.

**c. Hazards and Hazardous Materials**

- i. **MM HAZ-1.1:** Prior to the start of ground-disturbing activities or issuance of any grading and/or building permits, a Site Management Plan shall be developed for the site by a qualified environmental professional. At a minimum, the SMP shall include the following:
  - i. Stockpile management including dust control, sampling, stormwater pollution prevention and the installation of BMPs
  - ii. Proper disposal procedures of contaminated materials Monitoring, reporting, and regulatory oversight notifications
  - iii. A health and safety plan for each contractor working at the site that addresses the safety and health hazards of each phase of site operations with the requirements and procedures for employee protection
  - iv. The health and safety plan will also outline proper soil/ and or groundwater handling procedures and health and safety requirements to minimize worker and public exposure to contaminated soil/and or groundwater during construction.
  - v. A copy of the SMP shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department for review and approval.

**d. Noise**

- i. **MM NOI-1.1:** Prior to the issuance of any grading or demolition permits, the subdivider shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistic plan shall be submitted

to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits. As a part of the noise logistic plan and project, construction activities for the proposed project shall include, but is not limited to, the following best management practices:

- i. In accordance with Policy EC-1.7 of the City's General Plan, utilize the best available noise suppression devices and techniques during construction activities.
- ii. Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence (San José Municipal Code Section 20.100.450).
- iii. Construct temporary noise barriers, where feasible, to screen mobile and stationary construction equipment. The temporary noise barrier fences provide noise reduction if the noise barrier interrupts the line of-sight between the noise source and a manner that eliminates any cracks or gaps.
- iv. Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. Unnecessary idling of internal combustion engines shall be strictly prohibited.
- 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. Construction staging areas shall be established at locations that would create the greatest distance between the construction-related noise source and noise-sensitive receptors nearest the project site during all project construction.
- viii. A temporary noise control blanket barrier shall be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling.
- ix. If impact pile driving is proposed, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Predrilling reduces the number of blows required to seat the pile.

- x. Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors.
  - xi. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
  - xii. The subdivider shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
  - xiii. 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.
  - xiv. 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 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.
  - xv. All auger drilling activities and hydraulic ram system activities shall be done during weekdays between 7:00 a.m. and 7:00 p.m. Due to the nature of the Islamic Community Center of Bozniaks of the Bay Area, and prayer activities at dawn and dusk, restricting these drilling activities to summer months when sunrise and sunset are well-outside the allowable construction hours would reduce potential disruption and complaints from the neighbors.
- ii. **MM NOI-2.1: Construction Vibration Monitoring, Treatment, and Reporting Plan:** The subdivider shall implement a construction vibration monitoring plan to document conditions prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry accepted standard methods. The construction vibration monitoring plan shall include, but not be limited to, the following measures:
- i. The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration monitoring locations.
  - ii. A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be

submitted to the Director of the Department of Planning, Building, and Code Enforcement or Director's designee by the subdivider. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.

- iii. Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 20 feet of any adjacent building.
- iv. Document existing conditions at the community center (345 Northlake Drive, San José, CA 95129) prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically:
  - a. Performance of a photo survey, elevation survey, and crack monitoring survey for the building. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, and shall include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures.
  - b. Vibration limits shall be applied to vibration-sensitive structures located within 30 feet of all construction activities identified as sources of high vibration levels.
- v. Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.
- vi. At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.
- vii. If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.
- viii. Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- ix. Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made.

Make appropriate repairs or compensation where damage has occurred as a result of construction activities.

**e. Transportation**

- i. **MM TRA-1.1:** The subdivider shall construct the following off-site improvements:
  - a. Remove the pork chop island at the northwest corner of the Saratoga Avenue/Stevens Creek Boulevard intersection. This improvement is in addition to the removal of the pork chop island at the southeast corner along the project frontage that would be implemented as part of the project.
  - b. Remove the pork chop islands at the southwest and northeast corners of the Saratoga Avenue/Kiely Boulevard intersection.
  - c. Implement VTA bus stop improvements for the bus stop on westbound Stevens Creek Boulevard west of Saratoga Avenue and move the bus stop eastward closer to the intersection. This improvement is in addition to the bus stop improvements the project would implement for the bus stop on eastbound Stevens Creek Boulevard east of Saratoga Avenue as part of the project.

**19. Revocation, Suspension, Modification.** This Vesting Tentative Map is subject to revocation, suspension, or modification for violation of any of its provisions or conditions.

In accordance with the findings set forth above, a Vesting Tentative Map is hereby approved.

**EFFECTIVE DATE**

The effective date of this Vesting Tentative Map shall be the same effective date of the Rezoning Ordinance for File No. C19-020 passed for publication on \_\_\_\_\_, 2021 (the "Zoning Ordinance") and shall be no earlier than the effective date of said Rezoning Ordinance.

//

//

//

//

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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"  
FOR REZONING PURPOSES

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of those parcels of land described in the Quitclaim Deed recorded October 15, 2003 in Document No. 17418530; the Gift Deed recorded January 5, 2012 in Document No. 21487776; the Gift Deed recorded January 5, 2012 in Document No. 21487775; and the Individual Grant Deed recorded December 20, 2011 in Document No. 21465118, all of Santa Clara County Records, described as follows:

BEGINNING at the southeast corner of Parcel One as described in said Gift Deed recorded in Document No. 21487776, being on the centerline of North Lake Drive;  
Thence along said centerline, North 00°21'34" East, 359.27 feet, to the northerly line of said parcel of land described in the Grant Deed recorded in Document No. 21465118;  
Thence along said northerly line, North 89°41'40" West, 129.98 feet, to the general northerly line of said parcel of land described in the Gift Deed recorded in Document No. 21487776;

Thence along said general northerly line the following three courses:

1. Thence North 00°18'20" East, 10.00 feet;
2. Thence North 89°41'10" West, 99.11 feet;
3. Thence South 00°19'20" West, 15.00 feet, to the southerly line of Stevens Creek Boulevard;

Thence along said southerly line the following three courses:

1. Thence North 89°41'14" West, 95.32 feet;
2. Thence along a tangent curve to the left, having a radius of 140.00 feet, through a central angle of 55°36'50" for an arc length of 135.89 feet;
3. Thence South 34°41'56" West, 47.34 feet, to the general easterly line of Parcel One as described in said Gift Deed recorded in Document No 17418530;

Thence along said general easterly line the following four courses:

1. Thence North 89°41'14" West, 12.12 feet;
2. Thence North 34°41'56" East, 175.70 feet;
3. Thence South 89°41'10" East, 379.61 feet;
4. Thence North 00°21'34" East, 30.00 feet, to the centerline of Stevens Creek Boulevard;

Thence along said centerline North 89°41'10" West, 419.69 feet, to the centerline of Saratoga Avenue;

Thence along said centerline, South 34°41'56" West, 634.51 feet, to the southerly line of Parcel Two as described in said Gift Deed recorded in Document No 17418530;

Thence along the southerly and the easterly lines of said Parcel Two the following two courses:

1. Thence South 89°41'58" East, 552.85 feet;
2. Thence North 00°20'02" East, 94.34 feet, to the southerly line of Parcel One as described in said Gift Deed recorded in Document No. 21487776;

Thence along said southerly line, South 89°39'58" East, 224.81 feet, to the POINT OF BEGINNING.

Containing 6.30 acres, more or less.

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



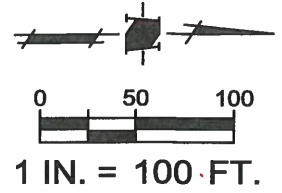
*For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.*

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

Date: 5-13-19

  
Tracy L. Giorgetti, LS 8720





SARATOGA AVENUE  
S34°41'56"W 634.51'

S89°41'58"E 552.85'

PARCEL TWO  
DOC 17418530

PARCEL ONE  
DOC 17418530

N89°41'14"W 12.12'

S34°41'56"W 47.34'

R=140.00' L=135.89'  
Δ=55°36'50"

N34°41'56"E 175.70'

DOC  
21487775

95.32'  
N89°41'14"W

N00°20'02"E 94.34'

S89°39'58"E 224.81'

PARCEL ONE  
DOC 21487776

S00°19'20"W 15.00'

N89°41'10"W 99.11'

N00°18'20"E 10.00'

DOC  
21465118

N89°41'40"W 129.98'

S89°41'10"E 379.61'

N89°41'10"W 419.69'

STEVENS CREEK BLVD

POB

N00°21'34"E 359.27'

NORTH LAKE DRIVE

N00°21'34"E 30.00'

### LEGEND

POB

POINT OF BEGINNING

SHEET 1 OF 1

Date: 2019-05-13

Designed: —

Drawn: RF

Checked: TG

Proj. Engr.: —

477810PL01



1570 Oakland Road  
San Jose, CA 95131

(408) 487-2200  
HMHca.com

EXHIBIT "B"  
PLAT TO ACCOMPANY DESCRIPTION:  
FOR REZONING PURPOSES

SAN JOSE

CALIFORNIA

EXHIBIT "B" (File Nos. C19-020; CP19-031; T19-038)