

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT TO ALLOW THE DEMOLITION OF FOUR COMMERCIAL BUILDINGS, TOTALING 47,631 SQUARE FEET, THE REMOVAL OF 65 TREES, AND 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, 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. CP19-031

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on October 7, 2019, a concurrent application (File No. C19-031) was filed by property owner, JDING Stevens Creek Properties, LLC, with the City of San José, for a Conditional Use Permit to allow the demolition of all existing commercial buildings on site, totaling approximately 47,631 square feet, the removal of 65 trees (41 ordinance-size, 24 non-ordinance-size) and the construction of an approximately 791,000-square foot commercial mixed-use office building and a 122,700-square foot health club with late-night use on 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. (3806 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 Public Hearing on said concurrent applications on February 10, 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 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, "3896 Stevens Creek Boulevard Conditional Use Permit CP19-031" dated received January 15th, 2020, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested

herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

WHEREAS, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

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

After considering 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 is located on the south side 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 Stevens Creek Boulevard, the City of Santa Clara, 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 of Bozniaks) and a vacant restaurant to the south and used car dealerships to the west.

- 2. Project Description.** The project consists of the demolition of the four existing commercial buildings on site, totaling 47,631 square feet 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.

The 12-story, 147-foot-high commercial mixed-use office building would be located at the eastern portion of the site, at the southwest corner of Stevens Creek Boulevard and Northlake Drive. The office building would include a five-story, approximately 468,000-square foot attached garage, 5,000 square feet of ground floor restaurant space, 10,000 square feet of ground floor retail space, and approximately 308,000 square feet of office space.

The four-story, 84-foot-high health club (Life Time Fitness) would be located at the southwestern portion of the site along Saratoga Avenue. The health club would include ground floor and rooftop outdoor use and 24-hour use. The health club would include a reception/lobby and check-in area, a café and kitchen area, spa, massage, and salon center, women's, men's, and family locker rooms, and a lap pool on the first floor. The first floor would also include the outdoor area designated as the "Alpha" area. Both the first floor Alpha area and rooftop outdoor areas would be used throughout the day for a variety of outdoor activities, including group fitness classes and active club events. The Alpha area would be semi-enclosed by an approximately 18-to 20-foot-high architectural screen wall consisting of a combination of columns and full-length transparent windows. A Yoga area, Barre fitness area, group fitness rooms, a fully supervised children's play area, cycle room, education center, and sales/lounge area would be located on the second floor. A gymnasium, weight room, cardio rooms and recovery area, and physical therapy/lounge area would be located on the third floor. The rooftop would include a lap pool, outdoor lounge and seating area, as well as a full bistro with associated bar and seating. While Life Time is a membership facility, the café, lounge, salon, and chiropractic/physical therapy services are available to non-members. Based on the Operations Plan provided, the health club would operate from 4am to 12am, 7 days per week. The Life Café would operate Monday through Sunday no later than 11 pm. The poolside bistro would operate Monday through Sunday from 11am to 9pm. The Café and bistro would apply for a Type 47 ABC License, which authorizes the sale of beer, wine, and distilled spirits for consumption on the premises. The health club would employ approximately 250 to 300 part-time and full-time employees.

The project site is accessible from a right in/right out 26-foot-wide driveway on Saratoga Avenue. The driveway runs east to west at the southern end of the Life Time Fitness building before turning north and entering the parking garage attached to the office building from the south. Access to the parking garage is also provided at the eastern end of the site from Northlake Drive. The site is accessible to pedestrians from Saratoga Avenue, Stevens Creek Boulevard, and Northlake Drive. The five-story attached parking garage would provide 1,200 vehicle parking spaces, an approximately 39% parking reduction from the required 1,962 code required vehicle parking spaces. 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, described below. The site would have 78 motorcycle parking spaces, and 130 short term and 64 long term bicycle parking spaces would be provided throughout the site near both entrances and inside of the buildings.

The project includes an approximately 18,800 square foot plaza, which would be a privately owned, publicly accessible open space located at the southeast corner of Stevens Creek Boulevard and Saratoga Avenue. The plaza would be accessible from the entrances of both the office building and health club. The plaza would include

paved areas with seating and tables for dining and work space, landscaping, planters, trees, a lawn area, and lighting. A 20-foot-wide paseo would also be constructed between the two buildings, connecting the plaza area to the parking garage as well as any future development to the south.

- 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. The Urban Village designation is applied within the Urban Village areas that are planned in the current Horizon (see Chapter 7 – 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 Goals and 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.

High Quality Facilities and Programs Policy PR-1.9: As Urban Village areas redevelop, incorporate urban open space and parkland recreation areas through a combination of high quality, publicly accessible outdoor spaces provided as part of new development projects; privately or, in limited instances, publicly owned and maintained pocket parks; neighborhood parks where possible; as well as through access to trails and other park and recreation amenities

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.

Community Design Policy CD-3.5: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.

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, within a growth area, through the development of approximately 308,000 square feet of office space, a 468,000-square foot attached parking garage, a 122,000-square foot health club and 15,000 square feet of ground floor retail and restaurant space. Consistent with the General Plan policies for the development of Urban Villages, 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. The project also includes an approximately 39% parking reduction and shared parking arrangement through the implementation of a Transportation Demand Management (TDM) Program. The TDM program would include a package of measures to reduce vehicle trips and encourage transit ridership. TDM measures include providing 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. The subject site is served by five existing Valley Transportation Authority (VTA) bus lines (Routes 23, 57, 58, 330, and 323). The project would also include ample bicycle parking and street/sidewalk improvements that would facilitate bicycle and pedestrian access to the site.

4. Stevens Creek Urban Village Plan

The subject site has a land use designation of Urban Village on the Stevens Creek Urban Land Use 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-2.2: New development along Stevens Creek Boulevard, Kiely Boulevard, Saratoga Avenue, and Albany Drive should include ground floor commercial and/or active spaces such as lobbies fronting the street and wrapping the corner when located on a corner lot.

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.

Placemaking/Public Art Policy P-3.1: Public art should increase the sense of place and identity of the Stevens Creek Urban Village.

Land Use Policy LU-5.4: Ensure that new development provides convenient, walkable pedestrian connections through the site and to existing and planned open spaces.

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 frontages include ground floor commercial space and active space on both Stevens Creek Boulevard and Saratoga Avenue. Approximately 15,000 square feet of retail and restaurant space would be located on the ground floor of the office building along Stevens Creek Boulevard. The Life Time Café, a publicly accessible café would be located at the north end of the health club facing the plaza. Additionally, the “Alpha” area of the health club would provide ground floor active space along Saratoga Avenue. The project would also preserve and relocate an existing mural, a potential historical structure of merit. The mural would be relocated from one of the commercial buildings to be demolished to the outside wall of the parking structure, facing the plaza. The project also includes a publicly accessible plaza located at the

southeast intersection 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.

Stevens Creek Urban Village Design

The project conforms with the following key standards and guidelines of the Stevens Creek Urban Village Plan, Chapter 4 Urban Design. This Chapter provides an overall urban design framework for development within the Stevens Creek Urban Village. As outlined in the Plan, the subject site is located in the “Heart of Stevens Creek.” The Heart of Stevens Creek is envisioned to become the major activity center and community hub in this Urban Village. Height will be focused in commercial structures at the intersection of Saratoga Avenue and Stevens Creek Boulevard.

Site Planning Guideline 1: Orient all buildings on a public street towards the street.

Urban Design Policy UD-1.2: Encourage the placement of ground-floor commercial space in new development especially along the street frontages of Stevens Creek Boulevard, Kiely Boulevard, and Saratoga Avenue.

Ground Level Design Guideline 2: Design the ground floor to have large areas of glass and avoid excessive mullions.

Ground Level Design Standard 2: To accommodate a variety of uses, the depth of ground floor commercial space shall be a minimum of 50 feet and preferably 60 feet.

Setback and Stepback Standard 4: Provide a front setback to achieve a minimum 20-foot wide pedestrian environment along the ground floor of a non-residential development fronting onto Stevens Creek Boulevard, Saratoga Avenue, and Kiely Boulevard.

Analysis: *Both the office building and health club would be located and oriented towards Stevens Creek Boulevard, Saratoga Avenue, and the newly constructed plaza. Both buildings would provide entrances, active frontages, and transparent glass at each frontage. The office portion of the project would provide approximately 15,000 square feet of ground floor retail and restaurant space along Stevens Creek Boulevard. The retail space would have a minimum depth of 70 feet. The health club would include a café, which would be open to the public, and would provide outdoor seating in the plaza area. The health club would also include an active ground floor enclosed outdoor space along Saratoga Avenue (known as the Alpha area). The project would improve pedestrian circulation and access with the construction of 20-foot-wide sidewalks along Stevens Creek Boulevard and Saratoga Avenue as well as 10-foot-wide sidewalks along Northlake Drive.*

Urban Design Policy UD-3.1: Consider strategies such as providing mid-block connections and breaking up long blocks, consistent with the multi-modal connectivity goals and policies of this plan.

Urban Design Policy UD-2.2: Explore creative strategies and opportunities to integrate community spaces including parks, plazas, open spaces, indoor/outdoor event spaces, and community centers into new development.

Open Space Placement and Location Guideline 1: Locate new parks and open spaces so that they are visible and/or accessible from public rights-of-way as well as interior pathways.

Analysis: The project includes a publicly accessible plaza located at the southeast corner of Stevens Creek Boulevard and Saratoga Avenue. The plaza would be highly visible from the public right-of-way and would provide direct access to the entrances of both the office building and health club. 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.

Urban Design Policy UD-5.2: Located vehicle parking so that it is not attached to a single development or use, but can be shared.

Urban Design Policy UD-5.3: Limit the amount of vehicle parking to incentivize sharing and minimize the amount of land dedicated exclusively to parking.

Parking Standard 1: All parking areas shall be screened from streets and adjoining properties. Open area between the property line and the public-right-of-way shall be landscaped.

Parking Guideline 3: Encourage vehicle access for parking areas along side streets for new developments wherever possible.

Site Planning Standard 5: Include building features and site amenities that encourage mode shift to bicycling including secure bicycle parking, showers, and lockers.

Analysis: All vehicle parking would be provided in a 1,200-space attached parking garage located on the first five floors of the office building. The garage would be located at the rear of the site, adjacent to existing commercial and public/quasi-public uses to the south. The garage would serve the office building, health club, restaurant, and retail spaces. The garage would be screened with a formatted metal panel and architectural metal finish. The garage would be further screened with perimeter landscaping. The garage would be accessible from driveways along Saratoga Avenue and Northlake Drive. The project would include short term bicycle parking at building entrances and long-term bicycle parking and showers indoors.

- 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 with the General Plan Land Use Designation of Urban Village.

Pursuant to Section 20.40.100 and Table 20-90 of the Municipal Zoning Code, an office and health club are permitted uses in the Commercial Pedestrian Zoning District. However, the health club portion of the project also includes late-night use (hours of operation from 4am to 12am). Therefore, a Conditional Use Permit is required. Additionally, a Site Development Permit is required to allow the construction of the mixed-use office building and health club.

Lot Size, Setbacks and Height

Development Standard	Required	Life Time Fitness	Office Building
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	84 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.

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Parking

Use	Required Vehicle Parking
<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
<u>Restaurant</u>	
Floor Area	5,000 square feet
Ratio – 1 space/40 square feet	83 vehicle parking spaces
Total Required	1,962 Spaces
Total Provided	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, in 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 that implement a Transportation Demand

Management (TDM) Plan. A total of 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.

Noise

Pursuant to Section 20.40.600 20 of the Municipal Code, the maximum noise level for commercial uses adjacent to a commercial property line is 60 decibels. A Noise Study, titled "3896 Stevens Creek Boulevard Noise and Vibration Assessment", was prepared by Illingworth & Rodkin Inc. on April 3, 2020. The San José Municipal Zoning code requires that no commercial use may exceed 60 decibels adjacent to a property used or zoned for commercial or other non-residential purposes. The noise study evaluated noise related to the operations and construction of the project, from various noise sensitive receptors surrounding the project site. Specifically, the noise study evaluated outdoor use areas at the proposed site, including the common use plaza, balconies on the office building, outdoor exercise and play area, and the rooftop bistro and lounge of the fitness building. The noise study found that operational noise relating to the outdoor balconies, rooftop lounge and pool area, and plaza area would not exceed the existing ambient noise levels of 69-72 decibels for traffic along Stevens Creek Boulevard and Saratoga Avenue. The outdoor balconies on the office building would be located on the northern façade and southwestern corner building, facing Stevens Creek Boulevard and the plaza. Therefore, any noise generating activities from the balcony areas would shield the building from the more sensitive uses (community center and nursing center to southeast and east). Furthermore, the noise study found that noise generating activities in the plaza area would be shielded by the both the Life Time Fitness building and office building. Additional operations noise including additional traffic on Northlake Drive, mechanical equipment (office building and health club), and truck loading/unloading would be below the 60 decibel threshold of the Municipal Zoning Code for a Commercial Use adjacent to a property used or zoned for commercial or non-residential purposes. As previously stated, the rooftop bistro would operate until

not later than 9pm. The café would operate not later than 11pm. Furthermore, the café would be located on the publicly accessible plaza at the furthest point from any residential uses to the southeast of the site. Furthermore, all late-night activity (hours of operation from 4am to 12am) related to the Life Time Fitness building would occur indoors. Standard construction materials, in combination with adequate forced-air mechanical ventilation systems would reduce the interior noise level to below 50 decibels. All future mechanical equipment would be required to conform with the noise requirements of the Municipal Zoning Code.

All construction noise would be temporary and is expected to last 20 months. The Environmental Impact Report includes mitigation measures to address noise impacts related to construction. Mitigation measures require the project applicant to submit a noise logistics plan as outlined in the 3896 Stevens Creek Boulevard Commercial Project Environmental Impact Report. As the site is located within 500 feet of a residence, the construction hours would be limited to 7:00 AM to 7:00 PM Monday through Friday.

Tree Removals

The project includes the removal of 41 ordinance-size and 24 non-ordinance-size trees. The trees proposed to be removed are located either within the proposed building footprint, within the newly dedicated sidewalks, within the plaza or paseo area, or within necessary driveways. The trees proposed for removal could not be preserved because the project must satisfy the urban design requirements of the Urban Village land use designation and the Stevens Creek Urban Village Plan. The trees to be removed include Magnolia (18), Liquidambar (17), Coast Redwood (14), Evergreen Pear (1), Tree of Heaven (1), Queen Palm (4), Lemon Tree (1), Coast Live Oak (1), Black Walnut (1), Ash (2), Birch (2) and Japanese Maple (3). The removal of all 65 trees on-site requires the replacement of 112 trees (24-inch box trees) on site. Based on the plans provided, 97 24-inch box trees would be planted on-site. The trees to be planted include a mix of Chinese Elm, London Plane, Blue Oak, California Pepper Tree, and Maidenhair Trees. As not all required replacement trees would be planted on site, an in-lieu fee of \$11,325 is due prior to the issuance of grading permits.

6. City Council Policy 6-27: Evaluation of 24-hour Uses

The proposed health club would operate from 4am to 12am Monday through Friday. Therefore, the project was evaluated for consistency with the following relevant criteria of City Council Policy 6-27:

- a. Area Use Compatibility. Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area. Uses which are largely take-out and convenience in nature tend to have the most problematic neighborhood impacts, specifically: higher traffic volumes, quick turnover with vehicles left running and radios on, litter problems, consuming food and beverages in cars while on site. Given the potential

for problems arising from such uses which may or may not have been anticipated at the time of approval, all such permits should include a condition for a Compliance Review based on written complaints, and all such complaints should be referred to the Planning Commission.

Analysis: The proposed late-night use is a health club. The health club would operate from 4am to 12am Monday through Friday. Based on the Operations Plan provided, no outdoor activities would occur between the hours of 12:00 midnight and 6:00 a.m. and all late-night use would occur indoors and all patrons utilizing the facility, except for the café and physical therapy areas, are required to be members. The café would operate from 6am to 10pm Monday through Thursday, 6am to 11pm on Friday, 8am to 11pm on Saturday, and 9am to 10pm on Sunday. The rooftop bistro would operate from 11am to 9pm Monday through Sunday. The Operations Plan provided includes mitigation measures for trash, litter, graffiti, maintenance, and loitering.

- b. Use Separation. Physical separation of incompatible uses is the best means to avoid potential problems. Generally, 24-hour uses should not be located within 300 feet (measured from the building entrance and "Designated Parking Area" and/or "Outdoor Use Area" to the residential property line) from any property residentially zoned, planned, or used. Exceptions to the 300-foot separation may be made if the project site is located in the Downtown Core Area or in transition areas where the proximate residential uses are not zoned or planned for residential uses in the long term. The 300-foot separation requirement may be increased or decreased on a case-by-case review of the specific circumstances of the site and proposed use based on the intensity of use, location of other buildings and physical features, neighborhood input or other relevant criteria.

Analysis: The health club would not be located within 300 feet of a residential property line. The nearest residential property is located approximately 480 feet to the east. All parking would be located in a parking garage that would serve both the health club and adjacent office building.

- c. Outdoor Activities. Outdoor activities may be limited for 24-hour operations except in the Downtown Core Area. Due to the unique combination of uses in the Downtown Core Area, 24-hour outdoor activities will be evaluated on a case-by-case basis. Services and sales should be conducted entirely within interior spaces between the hours of 12:00 midnight and 6:00 a.m., except for specific development types identified under Policy 2. More restrictive hours and days of operation may be imposed in order to implement policy requirements. Other late night outdoor activities on the site such as truck deliveries, maintenance and garbage collection should be reviewed and may be conditioned to minimize noise impacts.

Analysis: Based on the Operations Plan provided, no outdoor activities would

occur between the hours of 12:00 midnight and 6:00 a.m. All late-night uses would be restricted to indoor activities only. The café would operate not later than 11pm and the poolside rooftop bistro would operate not later than 9pm at the latest. All truck deliveries, maintenance and garbage collection would occur during the daytime.

- d. Police Issues. Crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses. The Chief of Police should provide a written memorandum with this analysis, including a recommendation with or without conditions, for each Conditional Use Permit application for a 24-hour use. Conditions may be imposed to monitor 24-hour uses and minimize nuisance activities. These conditions may include such requirements as interior or exterior security guards, video cameras, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement. The likelihood of impacts caused by the disorderly conduct of late-night patrons on the surrounding neighborhood should be considered in the review process, especially as it relates to proximity of residential uses.

Analysis: Based on the Police Department Memo dated December 28, 2020, the Police Department is neutral to the health club with hours of operation from 4am to 12am. The subject site is located in Police Beat N2. The reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index. The Operations Plan includes measures to reduce trash, litter, graffiti, maintenance, and loitering. Security personnel would be provided in the common plaza area and parking garage. The facility will also be fully staffed with approximately 250 to 300 full and part time employees. All staff would be trained to check membership cards upon entrance to the facility. All café and bistro staff would be trained to check IDs when serving alcohol to members. Security cameras would also be strategically placed throughout the interior and exterior of the facility.

- e. Restroom Facilities. Restroom facilities required by other codes or policies shall remain open and be available during late night business hours. Customer access to restrooms is not required for drive-through facilities when there is no customer access permitted to interior areas. Restrooms that have exterior access will be analyzed from a safety and surveillance aspect and will remain open on a case-by-case basis.

Analysis: Restrooms would be available to all members during hours of operation. Restrooms would be available to all members of the public when utilizing the café and publicly accessible retail areas during hours of operation.

- f. Noise. Use of sound attenuation walls and landscaping may be required at property lines in order to minimize noise emanating from the site. Special attention should be paid to the possibility of noise at late night hours such as car stereos,

cars starting and conversations which may not be quantifiable, but can reasonably be expected to occur. No amplified sound is permitted between 10:00 p.m. and 7:00 a.m., except low-volume drive-through speakers specifically approved in conjunction with 24-hour drive-through use.

Analysis: As previously stated, the rooftop bistro would operate until not later than 9pm. The café would operate not later than 11pm. Furthermore, the café would be located on the publicly accessible plaza at the furthest point from any residential uses to the southeast of the site. All late-night activity would occur indoors between the hours of 4am to 12am.

- g. Lighting. Light fixtures shall be designed and installed to minimize impacts on adjacent properties, while providing adequate lighting levels to assure security and discourage loitering in parking areas. Typically, light levels of 1.5 or greater footcandles average illumination at ground surface are encouraged. Twenty-four-hour uses may be required to install additional parking lot lighting in the "Designated Parking Area" and such lighting may be other than low pressure sodium. Higher lighting levels may be required for 24-hour uses in the Downtown Core Area on a case-by-case basis.

Analysis: Based on the Operations Plan provided, the project is located in a well-lit area and will contain the code minimum parking and exterior lighting. All lighting issues would be addressed promptly by Life Time's Facility Operations team and/or the landlord.

- h. Cleaning and Maintenance. Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m. Special conditions to control on-and off-site litter may be required on a case-by-case basis.

Analysis: As previously discussed, the Operations Plan includes mitigation measures for maintaining the physical condition of the property, including all common areas and outdoor uses. The Operations Plan includes measures for graffiti prevention and removal, trash and litter, overall site maintenance, loitering and panhandling, and conformance with all local noise performance standards as required by the Municipal Code. The Life Time Facility Operations Team would be responsible for any on-site maintenance and repairs.

- i. Site Improvements. As a function of the review process for 24-hour uses, the physical condition of the site should be considered. Aesthetic improvements and maintenance conditions may be required to prevent blight.

Analysis: As previously discussed, the Operations Plan includes mitigation measures for maintaining the physical condition of the property, including all common areas and outdoor uses. The Operations Plan includes measures for graffiti prevention and removal, trash and litter, overall site maintenance, and loitering and panhandling. The Life Time Facility Operations Team would be

responsible for any on-site maintenance and repairs.

- j. Mitigation Management Plan. A mitigation management plan should be required for all mitigated 24-hour uses to ensure compliance with conditions of approval. The plan should be realistic, practical and enforceable. The plan should include detailed provisions for response to neighborhood complaints; control of noise, litter, graffiti, etc., and provide a protocol for interface with police to resolve potential problems with gangs, drugs, loitering, and other criminal activities.

Analysis: As previously discussed, the Operations Plan includes mitigation measures for maintaining the physical conditions of the property, including all common areas and outdoor uses. The Operations Plan includes mitigation measures for graffiti prevention and removal, trash and litter, overall site maintenance, and loitering and panhandling. The Life Time Facility Operations Team would be responsible for any on-site maintenance and repairs. All café and bistro staff that serve alcohol would be trained to check IDs. The Operations Plan also includes for on-site security.

7. 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 proposed 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.

8. Commercial Design Guidelines

In addition to the Stevens Creek Urban Design Policies, the project is also consistent with the City's Commercial Design Guidelines. The scale and massing of both buildings are compatible within the development as well as within the surrounding neighborhood, which is planned as an area of significant residential and employment growth. Both buildings have zero front and side setbacks at the street frontages, consistent with both the Commercial Design Guidelines and Stevens Creek Urban Village Plan.

The 12-story office building and four-story health club contain the three traditional portions of a building, the base, middle, and top. Active retail, restaurant, and lobby space is provided on the ground floor with well-defined entrances and transparent

glass. The middle portion of the office building includes three levels of the parking garage. Parking would be screened from view along Stevens Creek Boulevard, with the majority of the parking structure located at the rear of the site away from the street. The middle portion of the health club is well defined and includes façade articulation and recessed windows with minimal mullions. The top of the health club is defined by the active rooftop pool, lounge, and bistro area which is partially screened by the rooftop parapet.

Both the office building and health club provide clearly defined entrances along the publicly accessible plaza located at the southeast corner of Stevens Creek Boulevard and Saratoga Avenue. Both the plaza, interior of the site, and perimeter of the site are landscaped with a mix of trees, shrubs, and groundcover. The plaza area includes outdoor dining space, seating areas, and a lawn area. Both buildings also include adequate provisions for trash, storage and loading/service areas at the side and rear of the site. All rooftop equipment mechanical equipment would be screened from view on both buildings.

9. 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 will 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 was 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 approved a related Mitigation Monitoring and Reporting Program (MMRP) for the project. The following mitigation measures apply to the 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 project 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 reduced 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 a 45-day public review 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.

10. Site Development Permit Findings. Section 20.100.630 of the San José Municipal Code specifies the required findings for the approval of a Site Development Permit.

- 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 above, the project is consistent with the General Plan goals and policies for focused growth, Urban Villages, land use, and employment. The project would also be consistent with the goals and policies of the Stevens Creek Urban Village Plan for land use, employment, urban design, and private. 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 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 also 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.

- 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 the Zoning Conformance section above, the project is consistent with all applicable height and setback requirements of the Zoning Code and the approved Stevens Creek Urban Village Plan. The project would also provide the required number of vehicle parking spaces with an approximately 39% parking reduction through the implementation of a Transportation Demand Management (TDM) program. The project provides all required clean air vehicle, bicycle, motorcycle parking requirements. Operational noise including indoor and outdoor areas, mechanical equipment, and truck loading/unloading would conform with the Zoning Code requirements for noise in a Commercial Zoning District. Additionally, the project includes the removal of 41 ordinance-size and 24 non-ordinance-size trees. The removal of all 65 trees requires the replacement of 112 trees (24-inch box trees) on site. Based on the plans provided, 97 24-inch box trees would be planted on-site. As not all required replacement trees would be planted on site, an in-lieu fee of \$11,325 is due prior to the issuance of grading permits.

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

Analysis: The project was duly noticed per Council Policy 6-30: Public Outreach

Policy for Pending Land Use and Development Proposals and on-site noticing/posting requirements. A joint Environmental Scoping and Community Meeting was held on January 6th, 2020. The meeting was attended by approximately 8 members of the public.

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

Analysis: While both buildings would have differing height, massing, and materials, they would still function as a single connected development. Both the office building and health club would have active frontages along Stevens Creek Boulevard and Saratoga Avenue respectively. The entrances of the buildings would also be oriented towards the publicly accessible plaza, which acts as a centerpiece for the development. The parking garage would be located towards the rear of the site, away from the primary activity areas of the development. The project also includes a 20-foot-wide paseo, which would provide on-site connectivity between the office building, health club, plaza, and parking garage, as well as a connection to any future development to the south.

- 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 project would be the first large scale mixed use commercial development to be constructed in the approved Stevens Creek Urban Village. Both buildings would be located along Stevens Creek Boulevard and Saratoga Avenue respectively, with the highest portions of both buildings located away from lower density development to the south and west. The project would provide a mix of employment, retail, restaurant, and recreational opportunities and would revitalize an existing underutilized commercial area at a major intersection within the heart of the Stevens Creek Urban Village area.

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

Analysis: The project development occurs in an urbanized area on a parcel that is currently fully developed with existing commercial buildings and surface parking lots. An Environmental Impact Report (EIR) was completed for the project and mitigation measures were identified for implementation during construction and operation to reduce potentially significant impacts; therefore, there would be no significant impacts from noise, vibration, dust, drainage, erosion, stormwater runoff and odor with implementation of the project. Furthermore, the project, the project would include a TDM plan to reduce automobile trips, consistent with parking reduction

requirements. Construction activities will result in temporary noise and air quality impacts. These temporary impacts will be temporary, and will be minimized through standard construction mitigation measures, as listed in the project conditions of approval. Therefore, the project would therefore not have an unacceptable impact on adjacent properties.

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

Analysis: *The office building includes screening for all rooftop mechanical equipment as well as screening for the parking garage and outdoor utility area. The garage screening includes a mix of formed metal panels and composite metal panels that adequately screen the garage from view of the street, while maintaining consistency in color and materials with the office building. The southern portion of the site, adjacent to the garage and utility area is also screened with trees and shrubs. All trash facilities are located indoors. On trash pick-up days, dumpsters would be rolled out to designated loading areas for pick-up on-site. The roof of the health club is designed as an active lounge, pool, and bistro/bar area. The mechanical equipment located on the rooftop of the health club would be screened from view of adjacent properties by the parapet.*

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

Analysis: *Vehicular access to the site would be from Saratoga Avenue, with right-in/right-out turns only and Northlake Drive Regional vehicular access would be provided from San Tomas Expressway, approximately 1,200 feet to the east, and Interstate 280, located approximately 1,500 feet to the southwest. Pedestrian access would be provided from Saratoga Avenue, Stevens Creek Boulevard, Northlake Drive, and a newly constructed pedestrian paseo that would connect the plaza area to any future development to the south. A VTA Route 23 bus stop is located directly in front of the office building. A VTA Route 57 bus stop is also located approximately 1,000 feet to the south along Saratoga Avenue. The project is located in an urbanized area and is served by all required utilities and services. The project provides the required number of vehicle parking spaces in a conveniently located parking garage with a 39% parking reduction through the implementation of a TDM program. The project provides all required bicycle, motorcycle, clean air, and EV parking as required by the Zoning Code.*

11. Conditional Use Permit Findings: Section 20.100.720 of the San José Municipal Code specifies the required findings for the approval of a Conditional Use Permit.

- a. The Conditional Use Permit, as approved, is consistent with and will further the policies of the general plan, applicable specific plans and area development policies; and

Analysis: *See Site Development Permit Finding 10a.*

- b. The Conditional 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: See Site Development Permit Finding 10b.

- c. The Conditional Use Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As previously discussed in the City Council Policy section above, the project has been analyzed for conformance with the City Council Policy 6-27 Evaluation of 24-hour Uses. Based on the Police Department memo provided, dated December 28, 2021, the Police Department is neutral to late night use for a health club use at the subject site. The project site is located at the intersection of two major streets in a well-lit commercial area. Based on the Operations Plan provided, all late-night activities would occur indoors. The Operations Plan also provides mitigation measures for trash and litter clean up, graffiti prevention and removal, on-site maintenance, security, and employee training. The project was duly noticed per Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals and on-site noticing/posting requirements. A joint Environmental Scoping and Community Meeting was held on January 6, 2020. The meeting was attended by approximately eight members of the public.

- d. The proposed use at the location requested will not:

- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area;
- ii. or Impair the utility or value of property of other persons located in the vicinity of the site; or
- iii. Be detrimental to public health, safety or general welfare; and

Analysis: The project would provide jobs, retail and restaurant space, and recreational opportunities to a part of that is planned for significant growth. The site is located in the Stevens Creek Urban Village at the intersection of two major commercial corridors and would add to the range of commercial uses consistent with the Urban Village land use designation, Stevens Creek Urban Village Plan, and Commercial Pedestrian Zoning District. As described above, the project is in conformance with the applicable General Plan noise policies and regulations.

- 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 said use with the uses in the surrounding area; and

Analysis: The total area of the subject site is approximately 274,339 square feet. The plaza and paseo areas would include a mix of hardscape, landscape, trees, shrubs, groundcover, and seating areas. The perimeter of the site would also be

landscaped with a mix of trees, shrubs, and groundcover. The health club would include an indoor trash area and loading area located at the rear of the building which would be accessible from the driveway along Saratoga Avenue. A separate interior trash enclosure and loading area would be provided for the office building along Northlake Drive. On-site pedestrian loading and unloading would occur in a designated area located at the southern portion of the site between the health club and parking garage. All vehicular and motorcycle parking would occur in the associated on-site parking garage. Short-term and long-term bicycle parking would be provided in convenient locations throughout the site. All portions of the building are within 150-feet of a fire department access road and meet the City's Fire Department Requirements.

- f. The proposed site is adequately served:
 - i. 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
 - ii. By other public or private service facilities as are required.

Analysis: Vehicular access to the site would be from Saratoga Avenue, with right-in/right-out turns only and Northlake Drive. Regional vehicular access would be provided from San Tomas Expressway to the east and Interstate 280 to the southwest. Pedestrian access would be provided from Saratoga Avenue, Stevens Creek Boulevard, Northlake Drive, and a newly constructed pedestrian paseo that would connect the plaza area to any future development to the south. A VTA Route 23 bus stop is located directly in front of the office building. A VTA Route 57 bus stop is also located approximately 1,000 feet to the south along Saratoga Avenue. The project is located in an urbanized area and is served by all required utilities and services.

- 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: See Site Development Permit Finding 10f.

12. 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.

13. Tree Removal Permit Findings. Section 13.32.100 of the San José Municipal Code specifies the required findings for live tree removals.

- a. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or

Analysis: The project includes the removal of 41 ordinance-size and 24 non-ordinance-size trees. The trees to be removed are located either within the building footprint, within the newly dedicated sidewalks, within the plaza or paseo area, or within necessary driveways. The trees to be removed could not be preserved because the project must satisfy the urban design requirements of the Urban Village land use designation and the Stevens Creek Urban Village Plan. The trees to be removed include Magnolia (18), Liquidambar (17), Coast Redwood (14), Evergreen Pear (1), Tree of Heaven (1), Queen Palm (4), Lemon Tree (1), Coast Live Oak (1), Black Walnut (1), Ash (2), Birch (2) and Japanese Maple (3). The removal of all 65 trees requires the replacement of 112 trees (24-inch box trees) on site. Based on the plans provided, 97 24-inch box trees would be planted on-site. As not all required replacement trees would be planted on site, an in-lieu fee of \$11,325 is due prior to the issuance of grading permits.

14. Demolition Permit Findings. Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for the issuance of a permit to allow demolition.

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

Analysis: The project includes the demolition of four commercial buildings totaling 47,631 square feet. The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition. The failure to approve the permit would not jeopardize public health, safety or welfare. The demolition permit would facilitate a project that is compatible with the

surrounding neighborhood. As previously discussed, the project is consistent with all applicable General Plan and Stevens Creek Boulevard Urban Village Plan goals and policies, zoning code requirements, applicable city council policies, and design guidelines. The demolition of the existing commercial buildings would facilitate the construction of a mixed-use office building with retail and restaurant space and a Life Time Fitness health club that would offer recreational opportunities. Given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible. 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 demolition of any existing buildings on-site would not be approved until the issuance of a grading permit as conditioned in the Conditional Use Permit for the subject site.

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

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Conditional Use Permit and Site Development 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 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (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 provisions 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 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. **Use Authorization.** Subject to all conditions herein, this Permit allows the demolition of all existing commercial buildings on site, totaling approximately 47,631 square feet, the removal of 65 trees (41 ordinance-size, 24 non-ordinance-size) and the construction of an approximately 791,000-square foot commercial mixed-use office building and an approximately 122,700-square foot health club with late-night use (4am to 12am) on an approximately 4.84-gross acre site.
5. **Hours of Operation.** The hours of operation for the health club and café are those specified in the Operations Plan, titled "Life Time Stevens Creek – San José, CA General Facility Description", date received December 28, 2020.
6. **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. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees 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, 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 related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

7. **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.
8. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Conditional Use Permit plans entitled, "3896 Stevens Creek Boulevard" dated December 28, 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".
9. **Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
10. **Off-Site Tree Replacement Fee.** Prior to the issuance of a Public Works Grading Permit(s), the permittee shall pay Off-Site Tree Replacement Fee(s) in accordance with the City Council approved Fee Resolution for the outstanding replacement trees

not replaced on-site. The landscape plan indicates 15 trees would be required to be replaced with the off-site tree replacement fee. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

11. **Permit Posting.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the permittee shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following:
 - a. The copy of the Permit shall be a minimum size of 8.5 inches by 11.0 inches; shall be posted at each public street frontage within two feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the Permit is readable from the public sidewalk or right-of-way; or
 - b. If the site does not have a public street frontage, a copy of the Permit shall be posted at a location where the Permit is readable from a common access driveway or roadway.
12. **Presentation of Permit.** During removal of any ordinance-size tree pursuant to this Permit, the permittee shall maintain the validated Permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.
13. **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.
14. **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.
15. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
16. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
17. **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 Chapter 20.100 of the San José Municipal Code.
18. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
19. **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.

20. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
21. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
22. **Mechanical Equipment.** The location and type of mechanical equipment shall be shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
23. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
24. **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.
25. **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.
26. **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.
27. **Outdoor Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property
28. **Landscaping.** Planting and irrigation shall be provided, as indicated, on the Approved Plan Set. Landscaped areas shall be maintained and watered, and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping.
29. **Conformance with ABC Requirements.** The project is required to conform with all applicable requirements for the obtainment and operation of a valid Type 47 license from the California Department of Alcoholic Beverage Control (ABC).
30. **Privately Owned, Publicly Accessible Open Space.** The project's plaza located on the property between the commercial building and multifamily residential building (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; and
- 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. Security – The Permittee (including property owners and successors in interest of Permittee or property owner) shall put in place and maintain appropriate security and safety measures including, but not limited to, adequate lighting for nighttime visibility, textured or minimal slip paving, and access to a public “blue light” emergency phone or similar device situated within the plaza.
- g. 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.

31. **No Generators Approved.** 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.
32. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
33. **Building and Property Maintenance.** The permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the building such as paint, roof, paving, signs, lighting and landscaping.
34. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
35. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
36. **Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the permittee's intent to fully comply with said conditions.
37. **Timing for Demolition.** Buildings and structures that are being removed to accommodate the new development shall not be removed until the related Public Works grading permit has been issued.
38. **FAA Clearance Required.** Prior to the issuance of a Building Permit for the office building and fitness building, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for the structure high point. The permittee shall comply with any condition set forth in an FAA Determination of No Hazard (such as structure marking/lighting, construction-related notifications, and expiration date of determinations).
39. **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. _____

40. Standard Environmental Conditions

a. Air Quality

- i. **MM AIR-1.1:** Prior to the issuance of any demolition, grading and/or building permits, the permittee 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:
 1. 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.
 2. 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.
 3. If any of these alternative measures are proposed, the permittee 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 permittee 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's 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 permittee 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 31st (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/building permits by the City, a Site Management Plan shall be developed for the site by a qualified environmental professional. At a minimum, the SMP shall include the following:
 - 1. Stockpile management including dust control, sampling, stormwater pollution prevention and the installation of BMPs .
 - 2. Proper disposal procedures of contaminated materials Monitoring, reporting, and regulatory oversight notifications.
 - 3. 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.
 - 4. 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.
 - 5. 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 permittee 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:
 1. 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.
 2. 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).
 3. 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.
 4. 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.
 5. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
 6. Utilize "quiet" air compressors and other stationary noise sources where technology exists.
 7. 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.

8. 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.
 9. 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.
 10. Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors.
 11. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
 12. The permittee 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.
 13. 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.
 14. 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.
 15. 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 project permittee 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:

1. The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration monitoring locations.
2. 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 or Director's designee of the City of San José Department of Planning, Building, and Code Enforcement by the contractor. 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.
3. Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 20 feet of any adjacent building.
4. 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.
5. 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.

6. At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.
7. If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.
8. 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.
9. 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

1. **MM TRA-1.1:** The project 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.
41. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the city.
42. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit file number, CP19-031 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 permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
43. **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 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/devresources>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation (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 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 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 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.

- i. The following improvements may be required as part of the bus stop improvements per VTA:
 1. Install a new 10-foot by 55-foot PCC bus pad per VTA standards.
 2. Provide at a minimum 8-foot by 40-foot 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 prior to Public Works Clearance. The preliminary title report indicates the permittee owns the street in fee. Upon vacation no further action by the City is 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 permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - 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-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification 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 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.
- 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 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 Saratoga Avenue. Permittee 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. Permittee 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, 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:
 - 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. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:
 - 1. Implementing the closures at the time the onsite activities dictate the need for the closure.
 - 2. Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition m.i.1., 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 DOT. These applications may be obtained at: <http://www.sanjoseca.gov/index.aspx?NID=3713>. Permittee 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.
35. **Revocation, Suspension, Modification.** This Conditional Use Permit and Site Development Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right

to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

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

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

EFFECTIVE DATE

The effective date of this Permit (File No. CP19-031) shall be the effective date of the Conforming Rezoning Ordinance for File No. C19-020, approved for publication on _____, 2021 (the "Conforming Rezoning Ordinance") and shall be no earlier than the effective date of said Conforming 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.

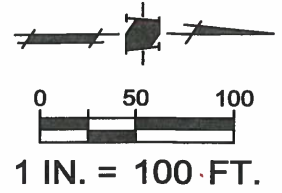
For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

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 (408) 487-2200
San Jose, CA 95131 HMHca.com

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

SAN JOSE

CALIFORNIA

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