

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SITE DEVELOPMENT PERMIT TO ALLOW THE CONSTRUCTION OF TWO 20-STORY OFFICE TOWERS WITH A TOTAL OF APPROXIMATELY 1.85 MILLION SQUARE FEET, INCLUDING 10,107 GROSS SQUARE FEET OF GROUND FLOOR RETAIL SPACE AND 1,226,600 GROSS SQUARE FEET OF COMMERCIAL OFFICE SPACE WITH FOUR LEVELS OF BELOW-GRADE GARAGE PARKING AND FOUR LEVELS OF ABOVE GRADE GARAGE PARKING, TO ALLOW THE DEMOLITION OR RELOCATION OF 16 SINGLE-FAMILY RESIDENCES AND 5 DETACHED GARAGES, AND THE REMOVAL OF 30 ORDINANCE-SIZED TREES AND 21 NON-ORDINANCE-SIZED TREES ON A 2.93-GROSS ACRE SITE LOCATED AT THE SOUTHWEST CORNER OF SOUTH ALMADEN BOULEVARD AND WOZ WAY (APNS: 264-31-037 TO 041, 043 & 044, 067, 092, 107 & 108)**

**FILE NO. H20-004**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on April 10, 2020 an application (File No. H20-004) was filed by Mark Tersini of KT Urban for a Site Development Permit to allow the construction of two 20-story office towers with a total of approximately 1.85 million square feet, including 10,107 gross square feet of ground floor retail space and 1,226,600 gross square feet of commercial office space with four levels of below-grade garage parking and four levels of above-grade garage parking, and to allow the demolition of 16 single-family residences and 5 detached garages and the removal of 30 ordinance-sized trees and 21 non-ordinance-sized trees on a 2.93-gross acre site, on that certain real property situated in the DC Downtown Primary Commercial Zoning District and located at the southwest corner of South Almaden Boulevard and Woz Way (APNS: 264-31-037 to 041, 043 & 044, 067, 092, 107 & 108, and Locust Street, 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," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on June 9, 2021, notice of which was duly given; and

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

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

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

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

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

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Woz Way, 280 Woz Way, San Jose, Office

Development” dated revised on May 24, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

**1. Site Description and Surrounding Uses.** The Project Site is located at the southwest corner of Woz Way and South Almaden Boulevard. The approximately 2.93-gross acre site consists of 17 residential parcels and Locust Street (west boundary of the site), and is currently developed with 16 single-family residences. Locust Street is a public street and will be vacated to be part of the project area. Six structures (515, 527, 533, 541, 547 and 553 Vine Street) along South Almaden Boulevard (facing South Almaden Boulevard just north of I-280) are contributors to a Candidate of City Landmark District. The 17 residential parcels within the development boundary includes five of the above six structures and exclude the structure on 541 Vine Street.

The site is surrounded by commercial and single-family residential uses to the east across South Almaden Street, a parking lot to the north across Woz Way (planned for development with a 16-story, approximately 2.1-million square foot office tower, File No. SP20-005), the Guadalupe River and Trail to the west and Interstate 280 to the south.

**2. Project Description.** The project would demolish 11 single-family residences and five detached garages, demolish or relocate five single-family residences that are contributors to a Candidate City Landmark District, and remove 30 ordinance-sized

trees and 21 non-ordinance-sized trees on site for the construction of two 20-story office towers with a total of approximately 1.85 million square feet on the project site. The proposed two office towers would be oriented east and west facing a proposed paseo and internal street, to provide pedestrian and vehicular circulation from South Almaden Boulevard to Woz Way and the Guadalupe River trail. The office towers would include approximately 1,226,600 gross square feet of office space and approximately 10,107 gross square feet of ground floor retail space at the corner of South Almaden Boulevard and Woz Way and along the paseo with above and below-grade parking. The project would have a maximum height of 297 feet and a FAR of 10.8. Locust Street, which is located along the western boundary of the site, will be vacated to become part of the project area.

- 3. General Plan Conformance.** The project site has an Envision San José 2040 General Plan land use designation of Downtown. This designation supports uses such as office, retail, service, residential, medical office, hospital, and entertainment uses. All development within this designation is intended to enhance the “complete community” in Downtown, support pedestrian and bicycle circulation, and increase transit ridership. The Downtown land use designation allows a density of up to 800 dwelling units per acre (DU/AC) and a floor-area ratio (FAR) of up to 30.0.

The project site is located within the Downtown growth boundary. The General Plan’s Focused Growth and Destination Downtown Major Strategy creates a policy framework to direct most new job and housing growth to occur within walkable and bike friendly areas that have good access to transit and other existing infrastructure and facilities. The Downtown Growth Area is planned for high density mix of job and housing growth with greater emphasis on employment.

The proposed high-rise office towers with ground floor retail spaces foster a “complete community” in Downtown by increasing jobs, providing active ground floor store fronts uses along streets and open space frontage, and a paseo. The project also includes a Transportation Demand Management plan that promotes transit ridership and other alternative modes of transportation. Additionally, the project would have a FAR of 10.8, making it consistent with the proposed General Plan land use designation of Downtown.

The proposed Site Development Permit is consistent with the following General Plan policies:

- a. Downtown Policy LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the General Plan.

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

*Analysis:* The development's architecture and site plan layout are designed to complement and further enliven the surrounding Downtown area. The ground floor would provide retail space and office lobbies along with a paseo, which adds to the Downtown amenities for residents, workers, and visitors. The project's design, massing, and on- and off-site improvements would create a focal point in Downtown by improving pedestrian and bicycle circulation, providing active ground floor uses and an intensive employment use in Downtown.

The ground floor and the site layout are designed to support and maximize social interactions. The project's street frontage and paseo would be mostly lined with active uses including lobbies and retail spaces. The project frontage is designed with high transparency to enhance safety and visibility between the public realm and private development.

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

*Analysis:* The project site is in close proximity to several transit options. There are several bus lines within 1/3 mile of the project site; Diridon Station is within a mile of the project site; the Convention Center Light Rail Station and Children's Discovery Museum Light Rail Station are within 2,000 feet from the project site. The project includes a Transportation Demand Management Plan that promotes transit ridership by incorporating a transit use incentive program that provides VTA SmartPasses to employees. The additional ground floor retail space would provide residents and workers in the Downtown area with more amenities which would help expand and further connect the pedestrian network and reduce automobile use.

The proximity of the proposed intensive office development to a variety of public transportation options encourages transit use and helps enable workers to have a car-free commute. Furthermore, it is envisioned that employees in the development would be able to walk, bicycle, or use public transportation to access many dining and entertainment amenities close to or on the project site. Finally, the development's commercial/retail spaces would provide the surrounding Downtown neighborhood with more nearby retail businesses.

- d. Downtown Urban Design Policy CD-6.1: Recognize Downtown as the most vibrant urban area of San Jose and maximize development potential and overall density within the Downtown.

- e. Downtown Urban Design Policy CD-6.2: Design new development with a scale, quality, and character to strengthen Downtown's status as a major urban center.
- f. Downtown Urban Design Policy CD-6.6: Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings taller than 75 feet, to create distinctive silhouettes for the Downtown Skyline.

*Analysis (Policy CD-6.1 to 6.3): The proposed project has a FAR of 10.8 with a maximum height of approximately 297 feet, making this a dense commercial project. The significant proposed density would contribute to Downtown's growth as a vibrant urban area, and help the City realize its vision for the Downtown core. At a gateway site to the Downtown, the project has undergone extensive design review to ensure its scale, quality, and character strengthen Downtown's status as an urban center, as discussed in the Design Guidelines conformance section. The building roofline is comprised of a curvilinear sloping parapet wall that varies at each façade, which gives the building a distinct appearance along the skyline.*

- g. Environmental Resources Policy ER-2.1: Ensure that new public and private development adjacent to riparian corridor in San José are consistent with the provisions of the City's Riparian Corridor Policy Study and any adopted Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP).

*Analysis: Guadalupe River is a Category 1 stream as defined in the Santa Clara Valley Habitat Conservation Plan (SCVHP). The project site is adjacent to Guadalupe River to the west. This reach of the Guadalupe River is generally degraded due to a flood-control project and other human-mediated impacts. The riparian corridor adjacent to the project is extremely limited in its habitat value and influence. While the SCVHP requires a 100-foot setback to Category 1 stream, the SCVHP provides a framework for allowable exceptions to required setbacks. The City submitted an exception request to the Habitat Agency to reduce the setback to a minimum of 35 feet. The Habitat Agency recommended to grant this exception, given that the project meets all the exception criteria outlined in the SCVHP for considering such reduced setback. See SEIR Appendix C-1 & C-2 for details. The project is also consistent with the City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design as further discussed in the report.*

#### **4. Zoning Conformance.**

##### Land Use

The site is currently zoned DC Downtown Primary Commercial. The proposed office and retail are permitted uses within this Zoning District.

##### Height and Setbacks:

Section 20.70.210 of the Municipal Code does not establish minimum setback requirements for developments in the DC Downtown Primary Commercial Zoning District. The height of development in the Zoning District is limited only to that necessary for the safe operation of the San José International Airport and the requirements of FAA Part 77 as discussed in Section 20.70.200 of the Municipal Code. The project would be 297 feet in height. Per the Airport Memo dated August 12, 2020, Airport Department concurs that a maximum building height of 297 feet above grade would be compatible with the City's elevation limit with the condition (Condition No. 22) to secure the required FAA and aviation clearances for the building's height prior to construction.

### Parking

Per Table 20-140 under Zoning Code Section 20.70.020, commercial offices require 2.5 vehicle spaces per 1,000 square feet of net floor area and one bicycle space per 4,000 square feet of net floor area. Commercial retail uses have no minimum vehicle parking requirement but require three bicycle parking spaces including two short-term spaces and one long-term spaces per Zoning Code Section 20.70.485.

Based on the net office floor area of 107,610 square feet (85% of the 1,226,600 gross floor area), the project requires 2,607 vehicle parking spaces and 264 bicycle parking spaces (261 for office and 3 for retail). The project meets the bicycle parking requirement by providing a total of 274 bicycle parking spaces on site.

Per Zoning Code Section 20.90.220.A.1.a, a 20% reduction in automobile parking is allowed if the project site is within 2,000 feet of an existing light rail station. The site is within 1,400 feet to the Convention Center Light Rail Station and 1,200 feet to the Children's Discovery Museum Light Rail Station. A parking reduction of up to 50% may be authorized if the project implements at least three transportation demand management (TDM) measures as specified in Section 20.90.220.A.1. Additionally, per Section 20.70.330.A, for projects within the Downtown Zoning District, a further 15% parking reduction may be granted if 1) it is determined a TDM plan program will reduce parking demand and identifies the percentage of parking demand that will be reduced through the program; and 2) the TDM will be maintained for the life of the project and it is reasonably certain the parking provided will be maintained to meet the required parking during the life of the building or use.

If applying the maximum parking reduction, the project would require 1,108 parking spaces. The proposed project provides 1,259 vehicle parking spaces, which requires a 51.7% parking reduction. The project will be implementing a TDM plan. The TDM plan dated May 18, 2021 prepared by Kimley Horn Associates conforms with Section 20.90.220 and Section 20.70.330. This TDM plan provides evidence that the TDM program will reduce parking demand and identifies the percentage of parking demand that will be reduced through the TDM plan. The TDM measures include participating in the VTA SmartPass program to provide transit passes for all its retail and office

employees, providing charging stations for parking spaces located near the building entry points or elevators, establishing a telecommute or flexible work schedule to encourage alternative transportation, designating an on-site TDM manager and developing a strong marketing campaign to improve tenant awareness, participation, and monitoring in alternative transportation measure options, and providing on-site shower facilities with lockers to compliment the on-site bicycle parking and encourage alternative transportation for all employees. In addition, the resolution contains a condition (Condition No. 7) that requires the TDM plan to be implemented for the life and use of the building. Project Condition No. 12 also requires Planning review if any future parking reduction is proposed. Therefore, with these project conditions, the project meets the parking requirement.

#### Off-Street Loading

Per Zoning Code Section 20.70.420, offices with 100,000 to 175,000 square feet of gross floor area shall provide one loading space. One additional loading space shall be provided for each 100,000 square feet of gross floor area in excess of 175,000 square feet. Given the 1,226,600 gross square feet of the office area, 12 loading spaces are required. Zoning Code Section 20.70.430.A requires one loading space for retail and commercial use between 10,000 and 30,000 gross square feet of floor area. One loading space is required for retail given the 10,107 square feet square feet of the retail space. The project would require a total of 13 loading spaces, and provides 13 off-street loading spaces.

### **5. Council Policy Conformance.**

City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design is for the protection, preservation and restoration of riparian habitat. The policy provides general guidelines for riparian corridor protection and requires a minimum 100-foot setback from a riparian corridor's top of bank or a vegetative edge, whichever is closest, to minimize intrusion into the riparian corridor, and allows consideration of reduced setbacks under limited circumstances. A riparian project is a project that requires approval of a development permit, that is within 300 feet of a riparian corridor's top of bank or vegetative edge, whichever is greater.

The subject site is adjacent to Guadalupe River to the west and about 60 % of the site is within the 300-foot riparian setback area and about 11% of the site is within the 100-foot setback area. As discussed previously, the reach of the Guadalupe River adjacent to the project site is generally degraded due to a flood-control project and other human-mediated impacts. The riparian corridor adjacent to the project is extremely limited in its habitat value and influence. The proposed project would have a 35-foot setback to the riparian corridor at the western edge of the South Tower. Therefore, the project is subject and complies to this riparian policy.

Section A of the policy provides design guidance for riparian projects. Section A.2 includes circumstances under which the City may consider a setback reduction. The



circumstances applicable to the project include:

- a. Developments located within the boundaries of the Downtown area, as those boundaries are defined in the General Plan.

*Analysis: The site is within the Downtown growth area defined in the General Plan.*

- b. The existence of legal uses within the minimum setback.

*Analysis: A portion of Locust Street and approximately half of the two existing single-family residential lots at 529 and 533 Locust Street are located within the 100-foot setback area.*

- c. The extent to which meeting the required setback would result in demonstrable hardship (i.e. denies an owner any economically viable use of the land or adversely affects recognized real property interest).

*Analysis: The developable area outside the 100-foot setback (at the narrowest portion) would be approximately 280 feet wide which would not provide adequate area to develop a project consistent with the project's objectives, including those to develop large office space in Downtown and provide office space that needs of high-tech or biomedical tenants (which frequently require larger floor plates). Observing a 100-foot setback would be economically infeasible given the site orientation and trends in commercial space toward larger floor plates for attracting the desired tenants and would impact site circulation. Due to these reasons, adherence to the 100-foot setback would make the project infeasible.*

To qualify for the reduced setback, the project may illustrate the existence of some or all of the conditions under Section A.3 of the Riparian Policy by a qualified biologist. A Biological Technical Report including the evaluation of the stream setback was prepared by Live Oak Associates, Inc. dated November 2020. The report concludes that the project is qualified for a setback reduction due to the following circumstances under Section A.3:

- a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.

*Analysis: Section 8.0 in the SEIR analyzes a 100-foot setback alternative and concludes that this alternative would be physically and economically infeasible because smaller floor plan sizes for either office tower, as required by the reduced developable area, would result in the inability to meet end-user needs. To keep a 100-foot setback from the riparian corridor, this alternative would propose two office towers of the same height and uses but would have a reduced size (i.e., smaller floor plates resulting in less office space and less retail space). In addition, the access from Woz Way would be shifted to the east and become closer to the Woz Way/South Almaden Boulevard intersection, which would result in potentially unsafe circulation conditions when considering the nearby intersection and the*

*Woz Way access driveway to the proposed Almaden Office project immediately north of the Project site. The planned office tower floor plan would be further reduced.*

- b. The reduced setback will not significantly reduce or adversely impact the riparian corridor.

*Analysis: Per the biological technical report (see Appendix C-1 of the SEIR), the banks of the river channel adjacent to the site are predominantly hardscaped, and the channel flows under busy roadways, including highways and a complex freeway interchange immediately adjacent to the channel. The riparian corridor adjacent to the project is extremely limited in its habitat value and influence. Surrounding land uses are highly developed and there currently exists development within 100-feet of the bank of the river within the development site and, to a significant degree, throughout the downtown portion of San Jose. Therefore, the existing developed site does not benefit, in terms of habitat values, from its proximity to the adjacent reach of the Guadalupe River to the degree that a natural reach of the Guadalupe River might affect adjacent lands. In addition, the site, which is an urban residential neighborhood, does not contribute in a significant way to the habitat values of the highly impacted and degraded reach of the Guadalupe River. Therefore, development of the project up to 35 feet from the riparian edge of the Guadalupe River, while implementing the mitigation measures included in the MMRP, would neither reduce nor directly impact the riparian corridor.*

- c. The proposed uses are not fundamentally incompatible with riparian habitats.

*Analysis: Section 1B of the City's Riparian Corridor Policy Study defines land uses that are incompatible with riparian systems to include uses which typically generate littering and/or dumping, off-road vehicle use, removal of native vegetation, uses that create noxious odors or use, store, or create toxic materials, and uses that generate high volumes of vehicular traffic. A portion of the proposed internal driveway and the western edge of the office tower are within the 100-foot setback area. There are no off-road vehicle uses and outdoor activities proposed within this area. The project would not result in any of these uses defined to be fundamentally incompatible with riparian habitats and the project's land use does not typically result in any of the described incompatible land use categories. Therefore, the project is not fundamentally incompatible with the riparian habitat.*

- d. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area.

*Analysis: The adjacent reach of the Guadalupe River is highly engineered, in part for flood protection, such that stream banks are hardscaped and soil erosion is highly unlikely. In addition, the proposed project would not discharge storm water*

*to the river but treat the stormwater locally first and then discharge to the storm drain system along South Almaden Boulevard and Woz Way.*

- e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

*Analysis: The project as designed and with successful implementation of the mitigation measures specified in the MMRP will not adversely impact the Guadalupe River; therefore, there would be no impacts downstream of the adjacent reach. The buildings would cast morning shade in the reach adjacent to the site and in a reach of riparian habitat downstream from the site, across from Woz Way. Shade in the downstream reach would be lesser than shade in the adjacent reach, and it would not be appreciably different than if the Project maintained a 100-foot setback. Also, the potential effects of shading by the project has been analyzed in the SEIR (see Section 3.1 of the SEIR) and found to be less-than-significant.*

*In addition, the project is required to comply with City's Stormwater Policies to avoid soil erosion and minimize runoff. Stormwater will be treated locally then discharged to the existing storm drain systems along South Almaden Boulevard and Woz Way. Therefore, the project would not be detrimental or injurious to adjacent and/or downstream properties.*

*Section A.4.b of the Riparian Policy requires that lighting should not be directed into riparian corridors. The project would include shielded lighting fixtures to direct light downwards. The nearest outdoor lighting is approximately 43 feet from the riparian corridor. In addition, this Resolution includes a project condition (Condition No.8) to require a photometric plan to be submitted for review prior to building permit issuance to ensure zero or minimum light spillage to the riparian corridor to the satisfaction of the Planning Director. Therefore, the exterior lighting would be consistent with Section A.4.b of the Riparian Policy.*

Based on the above analysis, the project is consistent with the City's Riparian Corridor Policy.

## **6. Downtown Design Guidelines and Standards.**

Section 20.70.500 of the Zoning Ordinance requires that any project in the DC Downtown Primary Commercial Zoning District be subject to the design guidelines adopted by the City Council; therefore, this project has been reviewed for its consistency with the San José Downtown Design Guidelines and Standards.

Chapter 2 of the Downtown Design Guidelines and Standards (Design Guidelines) outlines the framework and design settings. The applicable framework and design settings for the project include:

- The site is a Gateway Site with an Image-Defining Frontage on the western edge.

- The site has Secondary Addressing Streets on the north (Woz Way) and east (South Almaden Boulevard) and an Open Space Frontage (Guadalupe River) on the west.
- The site qualifies for Historic Adjacency because the project site is adjacent to a building (541 Vine Street) that is listed on the Historic Resources Inventory (HRI). Project design should refer to Standard 4.2.4.

Consistency with applicable Design Guidelines are analyzed below:

- a. Chapter 3.2 Site Context: This chapter's sections and standards promote human-scale blocks and the placement of buildings along the block's edges to frame the public space.

*Analysis: To create connection and accessibility, the Design Guidelines set standards to keep urban blocks short in length to promote pedestrian-scale building widths, convenient walking distances, and provide multiple transportation routes for pedestrian, bicycle, and vehicles. The standards regulate the maximum block size per the site's geographic location. The project site occupies almost the entire block with a block area of approximately three acres and block lengths of 330 feet along Woz Way and 360 feet along South Almaden Boulevard, which is consistent with Standard 3.2.1.a which limits the block size to four acres or 500 feet on each side at the subject site area.*

*The project is also consistent with the 70% ground level building placement requirement along Woz Way and South Almaden Boulevard. The building would be located within 10 feet or less of these streets facing property lines to continue the existing pattern of buildings lining the edges of streets in Downtown. Placing building closer to the street will help create an attractive urban space by defining the space of the street and also create a safer urban area by a close connection between the buildings and the public space such as sidewalks to encourage pedestrian activities/circulation.*

- b. Chapter 3.3 Site Organization: This chapter aims to enhance the vitality of Downtown, to support a vibrant public realm, emphasize transit, and create safe and inviting pedestrian walkways to enhance the Downtown circulation network.

In order to implement this goal, the design guideline requires certain percentage of active use along the required street frontage and open space frontage, which is specified in Chapter 5.3.

*Analysis: Consistent with the Design Guidelines, the North Tower includes ground floor active uses along Woz Way and South Almaden Boulevard through a combination of retail and office lobbies. Both towers have ground floor active uses facing the proposed paseo. The South Tower has a narrow street frontage along South Almaden Boulevard and cannot functionally accommodate active uses such as retail and office. Overall, however, the project exceeds Standard 5.3.1.a which*

*requires at least 80% active frontage along Secondary Addressing Streets and Open Space Frontages.*

*The project features a paseo between two towers and provides pedestrian connection from South Almaden Boulevard to Guadalupe Trail and Woz Way. The paseo would include public arts, bicycle parking spaces, landscaping, enhanced paving and lighting to provide pedestrian access and attractive spaces for outdoor activities.*

*The towers include multiple entrances located on the ground level for easy and welcoming access. Bicycle storages are near entrances and easy to find.*

- c. Chapter 3.4 Site Element Locations. This chapter includes provisions for the location of privately-owned public open spaces (POPOS), vehicle parking and access, loading/services, pedestrian entrances, and bicycle entrances.

*Analysis: POPOS are privately-owned outdoor spaces that function as a public space, but may have limited hours of availability. Consistent with the Design Guidelines, the project includes a POPOS (i.e. the paseo) between two towers. The paseo would provide outdoor activity space and a pedestrian connection from South Almaden Boulevard to the Guadalupe Trail and Woz Way. The paseo has been designed to complement the future retail/commercial uses on the ground floor of the development and to support outdoor seating.*

*Consistent with the Vehicle and Bicycle Parking Location standards, the bicycle rooms would be located adjacent to the lobbies and easily accessible and identifiable from the building entrances. There are outdoor bicycle parking spaces located on the paseo near the retail space.*

- d. Chapter 3.5 Site Access Locations. This chapter regulates pedestrian, bicycle, and vehicle entries to the site. Easy-to-find entries that minimize conflicts between different modes of transportation and link the development to its immediate neighborhood are encouraged within this Chapter.

*Analysis: Consistent with the Design Guidelines, the overall architecture of the development is designed to have pedestrian access along each street entrance and the paseo. Proposed retail space is located at the corner of South Almaden Boulevard and Woz Way and have direct entrances from these two streets and the paseo. Service entrances are accessed from the internal street. The project has two parking entries. One is from the internal street and the other is from South Almaden Boulevard. Both entries are away from the primary pedestrian entries.*

- e. Chapter 4.2 Building Context. This chapter requires clear and linked building architecture, transitions between high-rises and lower scale residential and historic development, and consideration of how development would respond to historic context buildings.

*Analysis: There is one single family house within the block along South Almaden Boulevard that is outside of the project area. This building is listed on the History Resources Inventory and is a contributor to a Candidate Historic Landmark District.*

*Consistent with the Design Guidelines, the project incorporates a strong harmonious architectural concept and organizing idea throughout the development. There are vertical elements to link the skyline level, podium level and pedestrian level. The ground floor of the North Tower incorporates canopies to create a pedestrian scale for the base of the building. The paseo provides a buffer between the North Tower and the adjacent house. The south tower garage podium steps down towards northeast corner and at the rear property line of the house, and applies metal paneling to visually break the massing to provide the height and width transitions to the adjacent historic single-family house.*

- f. Chapter 4.3 Building Massing. This chapter promotes high quality architecture to creates a compelling skyline, supports a human-scale streetscape, and use the street wall (building façade along the public street) to define the public realm. This chapter encourages designs which reduce potential shadow and wind impacts.

*Analysis: Consistent with the Design Guidelines, the building massing incorporates chamfered insets at two locations along each long façade of both towers. Podium level massing is articulated with recessed areas, columns and canopies. The building roofline includes a curvilinear sloping parapet wall that varies at each façade, which gives the building a distinct appearance within the city skyline.*

- g. Chapter 4.4 Building Elements. This chapter promotes high quality architecture and materials, centralized heating and cooling systems to eliminate individual units along windows, bird-safe building design, and a reduction of blank walls. The sections and standards encourage prominent stairways to create a pleasant experience for users, promote the minimization of parking garages and visible mechanical equipment, and include guidelines for building lighting and signage.

*Analysis: Consistent with the Design Guidelines, the towers include distinguished tops and incorporate varying glass curtain wall systems to provide visual interest. The building façade would employ bird safe windows as described on the plan set and bird-safe design measures are included consistent with the Downtown Design Guidelines. The pedestrian level façade would incorporate grey granite, brushed metal columns, steel framed canopies, “wood” printed aluminum soffits, and vision glass at the storefronts. The colors and materials are harmonious.*

*The project locates the stairs in the southeast corner of the parking garage podium at the South Tower, which serves as an extension of the tower elements down to the street level and is visible from north and south directions along Almaden Blvd to activate the corner of the site. The office towers do not locate stairs at the perimeter in order to provide valuable occupiable space on the tower levels.*

*The parking podium design incorporates perforated metal panels that have an appearance similar to the tower.*

- h. Chapter 5.3 Ground Floor Treatments and Uses. This chapter's sections and standards requirements include the maximization of active frontages, treatment of blank walls, screening for services and utilities, ground floor design standards to promote flexibility for future use needs, and pedestrian lighting and signage standards. This chapter emphasizes active frontages, which are defined as a pedestrian level building frontage which allows visual and physical access to the active use within the building via windows, doors, or both. The standards require a minimum of 80% active frontages length in feet along Primary Addressing Streets, Urban Park/Plaza frontages, and Secondary Addressing Streets (every project frontage for this site). Section 5.3.1 categorizes active frontages into three active frontage types:

- Type 1 counts triple the frontage width and includes retail/restaurants/offices under 5,000 square feet, hotel lobbies, fitness centers open to the public, and other public lobbies such as museums, libraries, etc.
- Type 2 counts double the frontage width and includes commercial office windows, office lobbies, daycares, etc.
- Type 3 only counts the frontage width and includes building entrances and exits with transparent glass and windows within 5 square feet of transparent glass
- Structured parking, driveways, service entries, fire exits and utilities do not count towards active frontages

*Analysis: Woz Way and South Almaden Boulevard, and open space frontages are required to have 80% Active Frontage. Both Woz Way and South Almaden Boulevard would be counted to have 100% active frontage because retail and office are proposed at both frontages. Guadalupe River open space frontage would also have 100% active frontage because the ground level facing Guadalupe River is completely for office use.*

*Utility and mechanical or other service spaces are located within the interior part of the building or face the internal street. The retail space accommodates several entry door locations, and all entries have direct access to public space. Lighting for the storefront zone will be provided in the canopies at the exterior. Pedestrian-scale lighting are proposed within the paseo. All outdoor lighting is directed downwards.*

- i. Chapter 5.5 Entrances. This chapter establishes design requirements to create clearly identifiable entries for pedestrians and bicyclists and ensure a separation between vehicles and pedestrians and bicyclists. Common entries for pedestrians and bicyclists should be emphasized through the project design, including the use

of horizontal projections such as a canopy.

*Analysis: Consistent with the Design Guidelines, lobbies and retail space entries are emphasized by extra framings, recessed entry bays and entry canopies. These pedestrian entries are scattered throughout the site for the ground floor retail and office spaces. Bicycle rooms are located adjacent to the lobbies and are easy to access. The service areas of both towers are accessed by an internal driveway.*

- j. Chapter 5.6 & 5.7 Paseo Design and Privately-Owned Public Open Space (POPOS) Design. This chapter establishes design requirements to create connections and accessibility to provide interesting and active building frontages along paseos to maintain and promote pedestrian activity and safety, and create POPOS that are interesting, useful, flexible, active, safe, and durable common spaces for Downtown.

*Analysis: The paseo is a POPOS. Consistent with the Design Guidelines, the paseo has a width of approximately 40 feet with a pedestrian through zone of approximately 13 feet, which exceeds the minimum 5 feet requirement per Standard 5.6.c. Sufficient lighting is proposed within the paseo and meets the requirement of Standard 5.3.4. The paseo is lined by retail space and office lobby. Outdoor seating would be proposed outside of the retail space per the project rendering. The paseo would include landscaping, public arts, enhanced paving and lighting.*

- 7. Environmental Review.** The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation (NOP) was circulated from June 8, 2020 and was extended until August 12, 2020. The Draft SEIR itself was circulated for public review and comment from March 1, 2021 through April 15, 2021.

The City received six written comment letters during the public circulation period. Comments were submitted by three agencies, which were the Santa Clara Valley Transportation Authority (VTA), Caltrans, and Valley Water. VTA applauded the proposed design for the Woz Way intersections, signaling the driveway access at Almaden Boulevard, and requested to be involved in the design and planning of treatments of the San Carlos Avenue and Almaden Boulevard intersection. VTA also supports the increase in bicycle parking but encourages the City to require more bicycle parking. Caltrans commended the project applicant in preparing and implementing a TDM program and noted measures should be documented with annual monitoring reports to demonstrate effectiveness. They also note that traffic impacts that affect ramp operations shall be mitigated or allocate a fair share fee for the mitigation and that fair share allocation could go towards improvements to bicycle and pedestrian mobility. The project would also be subject to transportation and encroachment permits with Caltrans. Valley Water provided comments related to the biological analysis, increasing the



riparian setback for the building, and dewater concerns.

The two organizations and one private citizen that commented on the SEIR were Preservation Action Council San Jose (PAC SJ) and the San Jose Downtown Association (SJDA), and Katja Irvin, respectively. PAC SJ encouraged a mitigation strategy to explore the relocation of some, or all of the impacted historical resources; noted that the relocation alternatives in the SEIR were likely not feasible or viable; suggested that a relocation analysis be required in any future EIR; questioned the use of the term infill; and strongly concurred with the findings that the project would further contribute to significant and unavoidable cumulative impacts to historic resources in Downtown San Jose. The SJDA provided comments concerning the land use and zoning, location and height, parking, and traffic circulation, but noted that they do not have any strong concerns regarding the biological, historic resources, and noise and vibration analysis of the SEIR. Katja Irvin noted that the SEIR did not discuss possible temperature impacts on the Guadalupe River from dewatering.

None of the comments received address an issue of sufficiency of the SEIR and no new mitigation measures are required. SEIR text revisions were included in the First Amendment to address dewatering, revisions to reports, and other suggested texts from agencies.

Additionally, the City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The First Amendment, taken together with the Draft SEIR, and the MMRP constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR (FSEIR) are available for review on the project page on the City's Active EIR website at: [www.sanjoseca.gov/Planning](http://www.sanjoseca.gov/Planning) Department. A copy of the signed MMRP is attached to the CEQA resolution.

#### *EIR Recirculation Unnecessary*

The comments received do not identify substantive inadequacies in the Draft SEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an 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 SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the

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

## 8. FINDINGS

### 1) Site Development Permit Findings

- 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 Land Use/Transportation Diagram designation of Downtown, as the Downtown land use designation supports a mix of commercial office and retail at high densities. The project is also consistent with the General Plan policies listed above.*

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

*Analysis: As discussed above, the project is consistent with the height, setbacks, and parking requirements of the DC Downtown Primary Commercial Zoning District. The DC Zoning District does not require any minimum setbacks. The project is subject only to the height limit necessary for the safe operation of the San Jose International Airport; and conditions of approval are included requiring a No Hazard Determination to be obtained from the FAA prior to issuance of Building Permits. The project requires 264 bicycle parking spaces and the project proposes 274 bicycle parking spaces. With maximum parking reduction by implementing a TDM plan, the project would require 1,108 parking spaces. The project would provide 1,259 parking spaces by implementing the TDM measures included in the TDM plan prepared by Kimley Horn Associates, dated May 19, 2021. The project applicant is required to implement the TDM plan for the life and use of the building.*

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

*Analysis: The project is consistent with City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design as discussed in the Riparian Corridor Policy Section above. Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A sign describing the project was posted on the project site on December 3, 2019. A joint community and environmental scoping meeting was held on June 29, 2020 to inform the surrounding community of the proposed project. Both the community meeting*

*notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website.*

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

*Analysis: Two high-rise towers are proposed within the development boundary. The towers are oriented east-west to create a paseo and an internal street in between for pedestrian connection and vehicular circulation from South Almaden Boulevard to the Guadalupe River Trail and Woz Way. This internal street provides access to garage and service area. It also allows active uses along Woz Way and South Almaden Boulevard, which is consistent with the Downtown Design Guidelines as discussed above. The paseo is lined by the ground floor retail and office lobby under the North Tower, and includes space for outdoor seating, activities, and public art. The South Tower Podium design is harmonious with the tower design in that the colors and dimensions of the metal panels are similar to the tower's glass curtain wall. The two towers and the podium together are mutually compatible and aesthetically harmonious. The two towers apply consistent design concepts, such as massing articulation and façade treatment on the same skyline level, podium level and pedestrian level treatment, and apply same colors and materials.*

- 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 is compatible with adjacent development. An 18-story office tower is located at the north corner of South Almaden Boulevard and Woz Way. Two 16-story office towers are planned on the parking lot to the north across Woz Way with a height of approximately 283 feet and a total building area of approximately 2.1 million square feet. Both office developments have a contemporary architectural style. The proposed office towers would be compatible with this existing and planned office development in terms of use, project scale, massing, and the architectural style.*

*To the east of the site across South Almaden Boulevard is a planned eight-story, 87-unit affordable housing building at the street corner, a one-story commercial building, and a few single-family residential buildings backing on South Almaden Boulevard. The project would not conflict with those buildings and uses due to the separation by South Almaden Boulevard, a wide four-lane street with a median, the orientation of the existing single-family houses, and the context the neighborhood's transition from higher intensity downtown development to lower density urban development.*

*As discussed above, there is one single family house within the block that is outside of the project area. The South Tower podium steps down to the northeast corner and applies metal panel to visually break the massing to provide the height and width transitions to this single-family house. The ground floor of the North Tower incorporates canopies to create a pedestrian scale for the base of the building. The paseo provides a buffer between the North Tower and the adjacent house.*

- 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 area bounded by streets, highway ramp, a storage yard, and the Guadalupe River. There are existing and planned high-rise office buildings, a multi-story affordable housing building, a commercial building and a small amount of residential development across the streets from the project site. A Supplemental Environmental Impact Report (SEIR) was prepared for the project. The temporary construction of the proposed project will not have an unacceptable negative effect on an adjacent property or properties because of limited construction hours and the required mitigation measures and permit conditions. The operation of the project is primarily commercial office and therefore would not be a generating source for excessive noise or odor. The project has been evaluated for compliance with the City's stormwater treatment requirements.*

- 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 landscaping, all walls and fences, are sufficient to conceal exterior heating, ventilating, plumbing, utility, and trash facilities and are sufficient to maintain and upgrade the appearance of the neighborhood. All mechanical equipment is screened on the roof and not visible from the street or surrounding buildings.*

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

*Analysis: As described above, the project contains parking consistent with the Zoning Ordinance with TDM measures, and has adequate pedestrian, bicycle, and vehicular access into the site. Pedestrians can easily access the building from the lobby or retail spaces off street frontages. The project was reviewed by the Department of Public Works, Department of Transportation and Fire Department and was found to be consistent with regulations and standards for vehicle, emergency vehicle, and pedestrian access.*

- 2) Demolition.** Chapter 20.80.460 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. The following shall be considered to determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation:
- a) The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
  - b) The failure to approve the permit would jeopardize public health, safety or welfare;
  - c) The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
  - d) The approval of the permit should maintain the supply of existing housing stock in the City of San Jose;
  - 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: Implementation of the project will demolish the existing 11 single-family residences and five detached garages, demolish or relocate the five single-family residences that are contributors of a Candidate City Landmark District. The demolition of these 11 or 16 dwelling units would facilitate the development which is compatible with the surrounding area as discussed above. Re-use or rehabilitation of the buildings would not be feasible given the project objective to construct high-rise office towers on the site. The demolition of the 11 or 16 dwelling units would not significantly reduce the City's housing stock, as the housing stock has continued on an overall increasing trend over the past several years, with over 4,900 of new units currently under construction.*

*As discussed above, five existing single-family residences on site are contributors to a Candidate City Landmark Historic District and hence are considered historical resources under CEQA. The removal of these five structures would result in a significant and unavoidable impact to the historical resource and a significant contribution to a cumulative cultural impact. As analyzed in the SEIR, there are no other alternatives that can preserve the historic buildings on site while keeping the project viable.*

*To reduce the impact, the project would be required to implement Mitigation Measure CUL-1, described in the MMRP. The mitigation measures include documenting these historic structures in accordance with the guidelines*

*established for the Level III Historic American Building Survey (HABS) consistent with the Secretary of the Interior's Standards for Architectural and Engineering Documentation, advertising the availability of the structures for relocation for a period of no less than 60 days prior to issuance of any demolition permits, making available for salvage to salvage companies facilitating the reuse of historic building materials if the project applicant and/or no third party agrees to relocate the structures, and commemorating the historic structures and associated features on the project site within the Candidate City Landmark District. An action plan of how the Candidate City Landmark District will be commemorated is required to be submitted to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. Following completion of the action, the project applicant shall submit a memo report documenting the commemoration.*

- 3) Tree Removal.** Chapter 13.32.100 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees.
- a) That the trees affected are of a size, type and condition, and is in such a location in such surroundings, that their removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
  - b) That the location of the trees with respect to proposed improvements unreasonably restricts the economic development of the parcel in question;
  - c) That the condition of the trees with respect to disease, danger of falling, proximity to an existing or proposed structures, and/or interference with utility services, is such that preservation of the public health or safety requires their removal.

*Analysis: 30 ordinance-sized trees and 21 non-ordinance-sized trees would be removed to facilitate the development. These trees to be removed are located within the proposed building footprint. Moreover, the entire site requires extensive excavation for the below grade parking and soil preparation activities, and cannot be feasibly retained with this work. According to the City's Tree Replacement ratios, the project would require 93 15-gallon replacement trees to be planted on site. The applicant is required to either plant the required replacement trees on site or pay the in-lieu fees to satisfy this off-site tree replacement requirement, as described in project Condition No. 18 in the Resolution.*

In accordance with the findings set forth above, a 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.

## CONDITIONS

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Site Development Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Site Development 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 provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand

to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development plans entitled, "Woz Way, 280 Woz Way, San Jose, Office Development" dated May 24, 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set".
6. **Scope of the Site Development Permit.** Subject to all conditions herein, the Site Development Permit allow the construction of two 20-story office towers with a total of approximately 1.85 million square feet, including 10,107 gross square feet of ground floor retail space and 1,226,600 gross square feet of commercial office space with four levels of below-grade garage parking and four levels of above grade garage parking, and to allow the demolition of 11 single-family residences and 5 detached garages, the demolition or relocation of five single-family residences that are contributors of a Candidate City Landmark District, and the removal of 30 ordinance-sized trees and 21 non-ordinance-sized trees on the 2.93 gross acre site.
7. **Implement Transportation Demand Management (TDM) Plan.** The Permittee shall implement the following TDM measures included in the TDM plan prepared by Kimley-Horn, dated May 19, 2021 for the life and use of the building.
  - a. Participate in the VTA SmartPass program to provide transit passes for all its retail and office employees.
  - b. Provide charging stations for parking spaces located near the building entry points or elevators.
  - c. Establish a telecommute or flexible work schedule to encourage alternative transportation.
  - d. Designate an on-site TDM manager and develop a strong marketing campaign to improve tenant awareness, participation, and monitoring in alternative transportation measure options.



- e. Include on-site shower facilities with lockers to compliment the on-site bicycle parking and encourage alternative transportation for all employees.
8. **Photometric Plan.** Prior to the issuance of any Building Permit, a photometric plan shall be submitted to the satisfaction of the Director of Planning, Building and Code Enforcement to ensure zero or minimum light spillage to the riparian corridor through a Permit Adjustment.
9. **Parcel Map Required.** Prior to the issuance of any Building Permit, the Permittee shall secure approval and provide proof of recordation of a Parcel Map to merge all lots to one lot.
10. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
11. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
12. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. Any future parking reductions proposed by the project in accordance with any changes to the Municipal Code regulating minimum required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment.
13. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Changes in building colors and materials shall require a Permit Adjustment.
14. **Window Glazing.** Unless otherwise indicated on the Approved Plans, all windows shall consist of a transparent glass.
15. **Demolition Permit.** A demolition permit may be issued for all the existing structures, except the single-family houses located at 515, 527, 533, 541, 547 and 553 Vine Street, only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
16. **Demolition Permit for Structures at 515, 527, 533, 541, 547 and 553 Vine Street.** Demolition or relocation of the single-family houses at 515, 527, 533, 541, 547 and 553 Vine Street shall follow the Mitigation Measure CUL-1 in the MMRP.
17. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.

18. **Tree Replacement.** The removal of 30 ordinance-sized trees and 21 non-ordinance-sized trees on site requires 93 15-gallon replacement trees to be planted on site. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
- a. The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
  - b. Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
19. **Commercial Linkage Fee.** In accordance with City Council Resolution No. 79705, as may be amended, prior to the issuance of any building permit or other approvals, the permittee shall pay the required commercial linkage fee.
20. **Downtown Financing Plans.** The San José City Council (“City”) approved the (i) Envision San José General Plan 2040 (“General Plan”) in 2011, (ii) Diridon Station Area Plan (“Diridon Plan”) in 2014, and (iii) Downtown Strategy 2040 (“Downtown Strategy”) in 2018. The Diridon Plan and Downtown Strategy, in conjunction with the General Plan, provides the framework for development located in Downtown San José.

The City is in the process of developing additional financing plans for the Diridon Plan and the entire Downtown to fund public improvements, affordable housing, and other amenities and services. The City Council has adopted a Commercial Linkage Fee Ordinance and future 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) and/or (vi) other financing mechanisms or combination or amendments thereof.

The City is in the process of updating the Diridon Basic Infrastructure Impact Fee. Updates to the Diridon Basic Infrastructure Impact Fee may include expanding the impact fee to other areas of Downtown. Further, the City is developing a Downtown Transportation Plan that may require funding to construct the public improvements identified in the Downtown Transportation Plan. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for public improvements, affordable housing, and other amenities and services in the Downtown.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee

further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans applicable to Downtown, as may be amended, which may include one or more of the financing mechanisms identified above.

21. **Green Building Requirements for Tier 2 Non-Residential Development** (≥25,000 square feet). This development shall be subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009 for the construction of buildings approved through the scope of this Permit, the permittee shall pay a Green Building Refundable Deposit applicable to the gross square footage of said buildings which are approved through this Permit. The project shall achieve the minimum green building certification of LEED Silver. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within one 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.
22. **FAA Clearance.** Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for each building high point. The permittee shall initiate the regulatory FAA review by filing a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for each roof-top corner and any additional highest point(s) of the proposed structure. The data on the forms should be prepared by a licensed civil engineer or surveyor at a "1-A" accuracy standard using NAD83 latitude/longitude coordinates out to hundredths of seconds, and NAVD88 elevations rounded off to next highest whole foot.
23. **FAA Clearance Permit Adjustment.** Prior to issuance of any Building Permit for construction, the permittee shall apply for and obtain a Permit Adjustment to incorporate any and all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting or construction-related notifications.
24. **Subsequent Permit Adjustments/Amendments.** Any Permit Adjustment/Amendment application filed by the permittee that proposes to increase the maximum structure elevations or change the location of the structure's highest point(s), will be referred by the Planning, Building, and Code Enforcement Department to the Airport Department for review prior to approval.
25. **Avigation Easement.** Prior to the issuance of a Building Permit for vertical construction, the property owner shall grant an Avigation Easement to the City of San

José. Contact the San José Airport Department (408-392-1193) to initiate the easement dedication process.

26. **Construction Cranes.** Prior to issuance of a Building Permit for vertical construction, and prior to the required filing with the FAA for airspace obstruction review of temporary construction cranes for vertical construction, the permittee shall coordinate with the San Jose Airport Department to formulate an agreement on crane elevation and operational parameters. Compliance with an Airport-approved construction crane agreement shall become a condition of Building Permit issuance for vertical construction. Contact the San José Airport Department (408-392-1193) to initiate the construction crane agreement coordination.
27. **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.
28. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
29. **Street Cleaning and Dust Control.** During construction, permittee shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, permittee shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
30. **Landscaping.** Landscaping to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
31. **Landscaping Maintenance.** The permittee shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.
32. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050, certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

33. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
34. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
35. **Mechanical Equipment.** The location and type of mechanical equipment shall be as 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.
36. **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.
37. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
38. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground, unless otherwise shown on Approved Plans.
39. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
40. **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.
41. **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.
42. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
43. **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.
44. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping. The Permittee may request an exception/variance per Section 15.10.380, as amended, if needed in the future.

45. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. **Construction Plans.** This permit file number, H20-004, shall be printed on all construction plans submitted to the Building Division.
  - b. **Americans with Disabilities Act.** The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. **Emergency Address Card.** The project permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - d. **Construction Plan Conformance.** A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - e. **Project Addressing Plan.** Prior to issuance of any Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
  - f. **Other.** Such other state or city adopted requirements as may be specified by the Chief Building Official.
46. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the project must comply with the California Fire Code.
47. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Permittee will be required to have satisfied all of the following Public Works conditions. The Permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at <http://www.sanjoseca.gov/devresources>.
- 1) **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.

- 2) **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. In addition, the preliminary title report provided by the applicant indicates that the City of San Jose owns the subject street in fee. As a result, the property will be subject to a sale and disposition process, which may involve public auction. This process would not guarantee that the property would be sold exclusively to the Developer. Any sale of City property will be based on fair market value.
- 3) **Transportation (see separate Traffic memo dated 5/3/2021):**
  - a. This project does not require a detailed CEQA transportation analysis because the project is located in the expanded Downtown Core and is covered under the San Jose Downtown Strategy 2040 EIR.
  - b. With the inclusion of the following conditions, we conclude that the subject project will be in conformance with the City of San Jose Transportation Analysis Policy (Council Policy 5-1) and a determination for less than significant impacts can be made with respect to transportation impacts.
    - i. Submit a TDM plan prior to Planning approval for the proposed reduction in required off-street parking and freeway adverse effects.
    - ii. The Woz Way/Locust Street/Almaden Boulevard Off-Site Development Improvements (as known as Woz Way Planline Improvement) prepared by the Department of Transportation dated May 2020 on file includes a brand new signal at Woz Way and Locust Street, curb extensions that would reduce the pedestrian crossing distance across Woz Way from 60 feet to approximately 45 feet, installation of a bike lane adjacent to the existing crosswalk across the west leg of the intersection, installation of bike lane protected landscaping/median island along both sides of Woz Way, and the installation of a new north-south crosswalk across the east leg of the intersection.
      - a) If the Woz Way Planline work has not been commenced by the 2833 South Almaden (Boston Properties) development prior to building permit issuance for the permittee's Project, permittee shall construct all required public improvements for the Woz Way Planline work at its sole cost subject to the conditions below.
        - i. Permittee shall receive reimbursement for a portion of the total cost of the Woz Way Planline improvements from the owner of the Boston Properties development.

- ii. Permittee shall enter into a private agreement with the owner of the Boston Properties development project addressing the terms and conditions of the payment.
  - iii. Permittee's failure to receive reimbursement from the owner of the Boston Properties development project shall not relieve Permittee from its obligation to perform the identified Woz Way Planline improvement work.
- b) Per the queuing analysis, the northbound left-turn pocket at Almaden Boulevard/Balbach Street-Woz Way intersection must be extended for a total vehicle storage capacity of 200 feet. The extension of the northbound left-turn pocket is needed for both the Permittee's Project as well as the Boston Properties development.
- c) If the extension of the northbound left-turn pocket improvement has not commenced by the Boston Properties development prior to building permit issuance for the Permittee's Project, Permittee shall extend the northbound left-turn pocket at its sole cost subject to the conditions below.
- i. Permittee shall receive reimbursement for a portion of the total cost of the northbound left-turn pocket extension from the owner of the Boston Properties development.
  - ii. Permittee shall enter into a private agreement with the owner of the Boston Properties development project addressing the terms and conditions of the payment.
  - iii. Permittee's failure to receive reimbursement from the owner of the Boston Properties development project shall not relieve Permittee from its obligation to extend the northbound left-turn pocket.

## 2. Grading/Geology:

- a. A grading permit is required prior to the issuance of a Public Works Clearance.
- b. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal



Code Section 24.04.100 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.

- c. If the Permittee hauls more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- d. Because this project involves a land disturbance of one or more acres, the 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.
- e. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

**3. Shoring:**

- a. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- b. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Permittee or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12" within the public right-of-way (i.e. soldier beams).
- c. If tie-backs are proposed for use along the adjacent property(ies) (264-31-042, 264-31-068, 264-31-106) agreements between the Permittee and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

**4. Stormwater Runoff Pollution Control Measures:** This Permittee 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.
- a. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
  - b. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
5. **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).
6. **Flood Zone X:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.
7. **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.
8. **Undergrounding:**
- a. The In-Lieu Undergrounding Fee shall be paid to the City for all frontage(s) adjacent to Woz Way prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2021 base fee is \$532 per linear foot of frontage and is subject to change every January 31<sup>st</sup> based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
  - b. 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 Woz Way. Permittee shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
9. **Street Improvements:** All street improvements shall be to the satisfaction of the Director of Public Works. Any new, or modification to an existing, traffic signal is required to go through a traffic signal "kick-off" preliminary review 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 review with a scaled conceptual traffic signal plan showing right-of-way, intersection geometrics, and signal layout.

a. **Woz Way frontage:** Construct a 15-foot attached sidewalk with tree wells at the back of curb and 6-foot raised bike lane with 1-foot tactile strip for a total back of walk to face of curb width of 22 feet.

b. **Almaden Blvd frontage:**

(2) Construct a 15-foot attached sidewalk with tree wells at the back of curb and 6-foot raised bike lane with 1-foot tactile strip for a total back of walk to face of curb width of 22 feet.

(3) Provide a raised crosswalk and bikeway at the I-280 North on-ramp.

c. **Locust Street and Woz Way intersection:** Construct or provide a fair-share contribution to the implementation of a new signal at Locust Street/Woz Way.

d. **Woz Way and Almaden Blvd intersection:**

(2) Remove the existing curb, gutter, and sidewalk and construct new curb, gutter and sidewalk with a “bulb-out” configuration. Reconstruct the storm drain curb inlets on Almaden Blvd and Woz Way.

(3) Extend the northbound left-turn pocket to provide a total vehicle storage capacity of 200 feet.

e. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.

f. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.

g. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.

10. **Downtown Construction:** This project is located within the General Plan Downtown Growth Area or the Diridon Station Area Plan and will be required to comply with the Downtown Construction Guidelines (DCG). The DCG is for all work in the Public Right-of-Way to support the safe and orderly movement of people and goods by providing standards. The DCG serves as a guideline related to permits, coordination, and traffic control devices to entities performing work in downtown streets. A copy of the DCG can be found at: <https://www.sanjoseca.gov/home/showdocument?id=56303>.

11. **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.

- a. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
  - (2) **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).
  - (3) **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.
- b. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:
  - (2) Implementing the closures at the time the onsite activities dictate the need for the closure.
  - (3) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition a.ii) above.
- c. 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/?navid=1629>. Permittee shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.

12. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans and the San Jose Complete Streets Design Standards & Guidelines. The City of San José recognizes that the Complete Streets Design Standards & Guidelines, in their current form, may have inconsistencies with some other City documents because in some cases this document proposes substantial changes to the process of designing and retrofitting City streets. This in turn necessitates updates to other City policies, procedures, and codes so that they can be brought in line with the vision and goals provided in these Complete Streets Design Standards & Guidelines. Work has been done or is underway to update the San Jose Downtown Streetscape Master Plan to be in conformance with these standards and guidelines.
13. **Electrical:**
  - a. 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.
  - b. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
  - c. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.
  - d. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10 feet from high voltage lines; 3 feet from secondary voltage lines; and 1 foot from communication lines.
14. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects." Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
  - a. Woz Way frontage: The recommended street trees are Gingko biloba 'Autumn Gold' planted 30 feet on center.
  - b. Almaden Blvd frontage: The recommended street trees are Quercus shumardii planted 30 feet on center.

48. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. [REDACTED].
49. **Conformance to Downtown Strategy 2040 Mitigation Measures.** This project shall conform to all applicable mitigation measures in the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 78942).
50. **Standard Environmental Permit Conditions**
- a. Air Quality. The Permittee shall implement the following measures during all phases of construction to control dust and exhaust at the project site:
- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
  - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
  - iii. Remove visible mud or dirt track-out onto adjacent public roads by using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
  - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
  - vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
  - vii. Replant vegetation in disturbed areas as quickly as possible.
  - viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
  - ix. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
  - x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of "running in proper condition" prior to operation.
  - xi. Post a publicly visible sign with the telephone number and person at the lead agency to contact regarding dust complaints.

- b. Santa Clara Valley Habitat Plan. The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Permittee would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at [www.scv-habitatplan.org](http://www.scv-habitatplan.org).
- c. Tree Replacement. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table below, as amended.

<b>Tree Replacement Ratios</b>				
<b>Circumference of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio  
 Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.  
 A 38-inch tree equals 12.1 inches in diameter.  
 A 24-inch box tree = two 15-gallon trees  
 Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.

- Since 51 trees would be removed, 51 trees would be replaced at a minimum 1:1 ratio. Specifically, two (2) native trees greater than 38 inches in diameter would be replaced at a 5:1 ratio, and two (2) native trees with a diameter between 19 and 38 inches would be replaced at a 3:1 ratio. Three (3) non-native trees with a diameter greater than 38 inches would be replaced at a 4:1 ratio. Eleven (11) non-native trees with a diameter between 19 and 38 inches would be replaced at a 2:1 ratio. The remaining 34 trees would be replaced at a 1:1 ratio. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.
- In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be

implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement through a Permit Adjustment:

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
  - Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- d. Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- e. Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Permittee shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:



- i. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
  - ii. The MLD identified fails to make a recommendation; or
  - iii. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- f. Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The Permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.
- g. Asbestos and Lead-Based Paint. The Permittee shall implement the following conditions:
  - i. Conduct a visual inspection/pre-demolition survey, and possible sampling in conformance with State and local laws, to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP) prior to the demolition of on-site building(s).
  - ii. Remove all building materials containing lead-based paint during demolition activities, in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Dispose any debris or soil containing lead-based paint or coatings at landfills that meet acceptance criteria for the type of lead being disposed.
  - iii. Remove all potentially friable asbestos containing materials (ACMs) in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. Undertake all demolition activities in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
  - iv. Retain a registered asbestos abatement contractor to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.

- v. Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Remove materials containing more than one-percent asbestos in accordance with BAAQMD requirements and notifications.
- vi. Implement the following conditions in accordance with Cal/OSHA rules and regulations, to limit impacts to construction workers.
  - a) Prior to commencement of demolition activities, complete a building survey, including sampling and testing, to identify and quantify building materials containing lead-based paint.
  - b) During demolition activities, remove all building materials containing lead-based paint in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
  - c) Dispose any debris or soil containing lead-based paint or coatings at landfills that meet acceptance criteria for the type of waste being disposed
- h. FAA Clearance Required. The permittee shall obtain from the Federal Aviation Administration a “Determination of No Hazard to Air Navigation” for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and “No Hazard Determination” expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot. Therefore, no new or more significant impacts than those analyzed in the Downtown Strategy 2040 FEIR would occur and no new or additional mitigation is required.
- i. Geology. To avoid or minimize potential damage from seismic shaking, the Project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the Project site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The Project shall be designed to withstand soil hazards identified on the Project site and the Project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

- i. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
  - ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
  - iii. Ditched shall be installed to divert runoff around excavation and graded area if necessary.
- j. Hydrology and Water Quality. Construction-related water quality. The Permittee shall implement the following conditions:
- i. Install burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains.
  - ii. Suspend earthmoving or other dust-producing activities during periods of high winds.
  - iii. Water all exposed or disturbed soil surfaces at least twice daily to control dust as necessary.
  - iv. Water or cover stockpiles of soil or other materials that can be blown by the wind.
  - v. Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks.
  - vi. Sweep all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites daily (with water sweepers).
  - vii. Replant vegetation in disturbed areas as quickly as possible.
  - viii. Fill with rock all unpaved entrances to the site to remove mud from tires prior to entering City streets. Install a tire wash system if requested by the City.
  - ix. Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- k. Construction-Related Noise. The Permittee shall implement noise minimization measures that include, but are not limited to, the following:
- i. Pile-driving shall be prohibited.
  - ii. Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.

- iii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- iv. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- v. Prohibit unnecessary idling of internal combustion engines.
- vi. 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.
- vii. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- viii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- ix. 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.
- x. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- xi. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.
- xii. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

**51. Privately Owned, Publicly Accessible Open Space.** The project’s plaza located between the two office towers on the property (as referenced on the approved Plan

Set) will be a privately owned, publicly accessible ground level open space. The plaza shall be an area designated for use by the general public while owned and maintained by a private owner, as described by the following:

- a. Permittee (including property owners and successors in interest of Permittee or property owner) providing this publicly accessible open space shall, to the fullest extent permitted by law, hold harmless and indemnify the City of San José, its officers, agents and employees, from any and all damage or injury caused in any manner by the design, construction, use, or maintenance of the open space.
- b. Permittee (including property owners and successors in interest of Permittee or property owner) shall be solely liable for any and all damage or loss occasioned by any act or negligence in respect to the design, construction, use, or maintenance of the open space.
- c. Liability Insurance satisfactory to the City's Risk Manager and the City Attorney, naming the City of San José and its officers and employees as additional insureds, shall be provided for all such spaces. The property owner shall record with the County Recorder and provide a copy to the City prior to the issuance of building permits a special restriction on the property satisfactory in substance to the Department and sufficient to give notice to subsequent owners, lien holders, mortgagors, tenants, and others having any economic interests in the property of the open space requirement and the means by which the requirement has been, and must continue to be, satisfied.
- d. Maintenance - Open spaces shall be maintained at no public expense. Permittee (including property owners and successors in interest of Permittee or property owner) for the property on which the open space is located, shall maintain the open space by keeping the area clean and free of litter and keeping in a healthy state any plant material that is provided for the life of the publicly accessible open space and subject project.
- e. Plaza Hours of Operation –The privately owned, publicly accessible open space shall remain open and unobstructed to public pedestrians ~~24 hours a day, 7 days a week, from 7 a.m. to 10 p.m.~~ Use and access to the open space may be subject to reasonable conditions of use and access imposed by the Permittee (including property owners and successors in interest of Permittee or property owner), subject to City review and approval.

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

**52. Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the City Council at any time regardless of who is

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

- a. A violation of any conditions of the 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**.

ADOPTED 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.*