



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: August 2, 2021

COUNCIL DISTRICT: 6

SUBJECT: SP20-004. SPECIAL USE PERMIT AND SITE DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF THREE EXISTING COMMERCIAL BUILDINGS, EIGHT RESIDENTIAL BUILDINGS, AND ASSOCIATED SERVICE STRUCTURES TOTALING APPROXIMATELY 14,131 SQUARE FEET, THE REMOVAL OF 15 TREES (11 ORDINANCE-SIZE, FOUR NON-ORDINANCE SIZE) FOR THE CONSTRUCTION OF TWO SEVEN-STORY RESIDENTIAL MIXED-USE BUILDINGS, INCLUDING 173 RESIDENTIAL UNITS AND 17,836 SQUARE FEET OF COMMERCIAL RETAIL SPACE WITH A 42 PERCENT PARKING REDUCTION ON AN APPROXIMATELY 1.34-GROSS ACRE SITE.

RECOMMENDATION

The Planning Commission voted 9-0-1-1 (Cantrell Abstain, Ornelas-Wise Absent) to recommend that the City Council take all of the following actions:

1. Adopt a Resolution certifying the West San Carlos Street Mixed-Use Project Environmental Impact Report, and making certain findings concerning significant impacts, mitigation measures, alternatives, and adopting a statement of overriding considerations and a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act (CEQA).
2. Adopt a Resolution approving, subject to conditions, a Special Use Permit to allow the demolition of three existing commercial buildings, eight residential buildings, and associated service structures totaling approximately 14,131 square feet, the removal of 15 trees (11 ordinance-size, four non-ordinance-size) for the construction of two seven-story residential mixed use buildings, including 173 residential units and 17,836 square feet of commercial retail space with a 42 percent parking reduction on an approximately 1.34-gross acre site.

OUTCOME

If the City Council approves all the actions listed above as recommended by the Planning Commission, the applicant will be able to demolish all existing buildings on-site, including three commercial buildings, eight residential buildings, and associated service structures totaling approximately 14,131 square feet, remove 15 trees (11 ordinance-size, four non-ordinance-size) and construct two seven-story residential mixed use buildings, including 173 residential units and 17,836 square feet of commercial retail space with a 42 percent parking reduction on an approximately 1.34-gross acre site.

BACKGROUND

On July 14, 2021, the Planning Commission held a Public Hearing to consider the resolution certifying the Draft Environmental Impact Report and Special Use Permit. The Planning Commission recommended that the City Council adopt the resolution certifying the West San Carlos Street Mixed-Use Project Environmental Impact Report and related Mitigation Monitoring and Reporting Plan and approve the subject Special Use Permit.

Staff Presentation

Prior to staff presentation, Maira Blanco, Environmental Project Manager, read into the record corrections to references to less than significant impacts in the design alternatives section of the Special Use Permit and Environmental resolutions. Ms. Blanco also noted that a revised Mitigation Monitoring and Reporting Program (Exhibit H) was attached to the staff memo. Finally, two standard environmental permit conditions (#38g and #35) were added to the Special Use Permit Resolution. The first condition would require a detailed acoustical study to reduce noise emanating from mechanical equipment. The second condition would require the applicant to pay the school impact fee.

Alec Atienza, Planning Project Manager, provided a brief oral presentation on the proposed project. Staff presentation included an overview of the project's conformance with the General Plan, West San Carlos Street Urban Village Plan, San José Municipal Zoning Code, City Council Policy 6-30: Public Outreach, and conformance with the California Environmental Quality Act.

Public Hearing

The applicant's representative and project architect, Jeffrey Current, provided a presentation covering the existing site conditions, the subject site in the context of the West San Carlos Street Urban Village Plan, the proposed project and associated paseo area, and overall architectural details.

Four members of the public spoke on the proposed project. The first speaker, a resident of the area, asked if there were any controls that would be put in place, such as scaffolding, to ensure sidewalk safety during the construction for the project. The speaker mentioned that there were

issues with previous construction projects in the area where pedestrians were forced to walk on the street in traffic to go around construction sites.

Two speakers commented on behalf of Catalyze SV. The first speaker commented in support of the project and explained that the organization was able to review the project twice. The final speaker explained that Catalyze SV evaluates and scores development projects. The speaker was also supportive of the project and explained that there are many similar projects in the area with similar height and density.

The fourth speaker commented on behalf of Local Union 270 (LIUNA) and stated that the Environmental Impact Report failed to address environmental impacts related to indoor and outdoor air quality. The speaker requested that the commission refrain from making a recommendation until the impacts were adequately addressed.

After the Public Comment, Commission legal counsel Vera Todorov noted that the Commissioners received a letter from Local Union 270 (LIUNA) at 4:01 p.m. on July 14, 2021. The letter was publicly posted after close of business and staff will respond to the letter. Ms. Todorov also noted that the updated attachments mentioned by Maira Blanco at the beginning of the staff presentation were publicly posted.

The applicant stated that the goals of the project are closely aligned with the West San Carlos Street Urban Village Plan. This includes height, density, uses, and parking. The applicant also noted that a new development team has acquired a property adjacent to the subject site to the west and has proposed a project that would allow the paseo to become publicly accessible from Willard Street.

Maira Blanco provided a response to Local Union 270 letter regarding the EIR. She noted that staff did not receive the comment letter until 5:30 pm on July 14, 2021. Ms. Blanco explained that the City prepared the EIR for the project in compliance with CEQA. The draft EIR was circulated for 45 days from January 12, 2021 through February 26, 2021. Staff did receive comments during the circulation period from Lozeau Drury LLP on behalf of LIUNA, identifying concerns with indoor air quality impacts, specifically with regards to emissions of formaldehyde and the parameters used to estimate project emissions, air quality impact from reactive organic gas (ROG) emissions, health risks from diesel particulate matter, and the project's cumulative air quality impacts. Staff responded to these comments in the First Amendment to the draft EIR, which is posted on the project webpage. City staff maintained that the BAAQMD CEQA Guidelines do not have a threshold for indoor air quality. The project would also be constructed in conformance with the most recent California Building Code regulations, which specify that composite wood products are required to meet the formaldehyde specifications under the California Air Resources Board Air Toxic Control Measures. Finally, Maira noted that it is speculative for the City to estimate the type and volume of building materials that may contain formaldehyde. A formal response to the rebuttal letter was prepared by City staff and is attached to this memorandum.

Commissioner Discussion

Commissioner Caballero asked the applicant to describe why the paseo cannot be opened to the public until the adjacent project is completed. The applicant responded that they were unable to acquire the properties needed to extend the paseo to Buena Vista Street. Therefore, the paseo would remain private open space until connected to the public street pursuant to the Urban Village Plan requirements. Commissioner Caballero asked why the paseo could not be constructed behind the building at the corner of West San Carlos and Buena Vista. The applicant noted that it would not meet the planned location of the paseo and that two additional properties would need to be acquired to extend the paseo to Buena Vista Street.

Commissioner Oliverio then spoke in support of the project and made a motion to approve.

Commissioner Lardinois asked how the Inclusionary Housing Ordinance applies to this project. Staff responded that the applicant would still be required to pay the off-site fee. The affordable housing agreement would need be finalized prior to a Certificate of Occupancy being issued for the building. Commissioner Lardinois asked the applicant why they did not choose to provide affordable housing on-site. The applicant responded that the ownership group intends to turn the units into owner-occupied condominiums.

Commissioner Torrens said that she enjoys seeing Urban Village Plans built out. Commissioner Torrens asked about the in-lieu fee for affordable housing. The applicant responded that they would be responsible for paying an off-site in-lieu affordable housing fee of \$7.23 million. The applicant also reiterated that the units would be owner-occupied.

Commissioner Cantrell asked about the legacy businesses that would be displaced. The applicant responded that the restaurant was compensated and moved to a new location on Santa Clara Street. The used car sales business moved across the street from the project site. The car rental business owner retired and closed the business.

Commissioner Montanez asked about the calculation for required open space. Staff clarified that the public, private, and common open space are calculated separately, and the only total sum provided is the common open space. Additionally, staff noted that the open space requirements are considered guidelines, not standards, and therefore subject to some discretion depending on the project and location.

Commissioner Young asked staff to clarify how pedestrians could safely walk in front of the building during construction. Joe Provenzano from the Department of Public Works noted that the conditions of approval include the submittal of a Site Utilization Plan at the construction stage. Public Works staff would evaluate construction impacts to the surrounding neighborhood as well as truck access to the construction site. He noted that based on the review of the Site Utilization Plan, Public Works may require that pedestrian tunnels be constructed. The contact information for the construction site will be available on-site.

Commissioner Lardinois seconded Commissioner Oliverio's motion to recommend that City Council approve the project.

The motion to recommend Council approval of the project was approved (9-0-1-1).
Commissioner Cantrell abstained and Commissioner Ornelas-Wise was absent.

ANALYSIS

Analysis of the proposed CEQA clearance, Special Use Permit, and Site Development Permit including conformance with the General Plan, West San Carlos Street Urban Village Plan, Zoning Ordinance, and City Council Policies are contained in the attached staff report.

CONCLUSION

The project was heard at the July 14, 2021 Planning Commission Meeting. The motion to recommend Council approval of the project passed 9-0-1-1 (Cantrell Abstain, Ornelas-Wise Absent). As discussed in the attached staff report, the project is consistent with the Envision San José 2040 General Plan, West San Carlos Street Urban Village Plan, the Zoning Code, applicable City Council Policies for Public Outreach, and the requirements of CEQA. Should the City Council adopt a resolution certifying the West San Carlos Street Mixed-Use Project Environmental Impact Report and approve the Special Permit, the project would be approved to allow the demolition of all existing buildings on-site, including three commercial buildings, eight residential buildings, and associated service structures totaling approximately 14,131 square feet, the removal of 15 trees (11 ordinance-size, four non-ordinance-size) for the construction of two seven-story residential mixed use buildings, including 173 residential units and 17,836 square feet of commercial retail space with a 42 percent parking reduction on an approximately 1.34-gross acre site. The applicant could proceed with an application for building permits.

EVALUATION AND FOLLOW-UP

Should the City Council adopt the resolution certifying the Final Environmental Impact Report and approve the Special Use Permit resolution, the applicant would be allowed to demolish all existing buildings on-site, including three commercial buildings, eight residential buildings, and associated service structures totaling approximately 14,131 square feet, remove 15 trees (11 ordinance-size, four non-ordinance-size) and construct two seven-story residential mixed use buildings, including 173 residential units and 17,836 square feet of commercial retail space with a 42 percent parking reduction on an approximately 1.34-gross acre site. The applicant could proceed with an application for Building Permits.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José mobility goals. The project would reduce Vehicle Miles Traveled (VMT), facilitate the choice of mobility choices other than single-occupancy, gas-powered vehicles, increase the density of new development (persons/jobs/acre), and facilitate job creation within City limits by providing high density mixed use residential development with commercial retail in a central location within an identified growth area (West San Carlos Street Urban Village). The project would also include a 42% parking reduction with the implementation of a Transportation Demand Management (TDM) plan to reduce vehicle trips.

PUBLIC OUTREACH

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

A formally noticed Community Meeting including the Environmental Scoping was held on January 9, 2020 to introduce the proposed project to the community. Approximately 22 members of the public attended the meeting. The questions and comments from community members included concerns related to building height, traffic, parking, lack of retail options, and sidewalk safety during construction.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office.

CEQA

The City of San José, as the lead agency for the project, prepared a Draft Environmental Impact Report (Draft EIR) (State Clearinghouse Number 2019120341), which was circulated for public review and comment for 45 days, from January 12, 2021 through February 26, 2021.

The EIR prepared for this project concluded that implementation of the proposed project would result in a significant impact to historic resources (Candidate City Landmarks). Specifically, the implementation of the project would result in impacts to candidate City Landmarks located at 1530 West San Carlos Street: One Craftsman-style house and seven Spanish Revival-style bungalows.

Significant Unavoidable Impacts

CUL-1: Implementation of the proposed project would result in the demolition of the Craftsman-style house and the seven Spanish Revival- style bungalows on-site that are eligible City Landmarks, a significant impact.

CUL(C)-1: Implementation of the proposed project would result in a cumulatively considerable contribution to a significant cultural resources impact to the remaining Craftsman-style houses and bungalow courts in the City.

The EIR determined that demolition of the residences at 1530 West San Carlos Street, eligible as candidate City Landmark structures, would be a significant and unavoidable impact. Even though mitigation measures that include documentation, relocation, and salvage would lessen the impact, the residences and the historic connection to the current location would be lost. Therefore, the impact would be significant and unavoidable.

In addition, mitigation measures were developed to lessen the following project impacts to less than significant levels: Air Quality, Biological Resources, Hazards and Hazardous Materials, and Noise.

Standard Permit Conditions are also required to ensure no significant impacts occur during construction and operation of the project. These Standard Permit Conditions include best management practices for construction-related air quality impacts, compliance with the Santa Clara Valley Habitat Plan, compliance with the California Building Code for seismic safety of the proposed building, erosion control during construction activities, protection of unknown subsurface resources, protection of construction workers from hazards related to asbestos containing materials and lead-based paint, water quality impacts during construction, and impacts to public facilities.

CEQA Alternatives

As required under CEQA, the Draft EIR identified and evaluated alternatives to the project. Three critical factors considered in the selection and evaluation of the alternatives included: (1) the significant impacts from the project that could be reduced or avoided by an alternative, (2) consistency with the project's objectives, and (3) the feasibility of the alternatives available. The environmental analysis considered three project alternatives outlined in the Special Use Permit.

These include:

1. No Project – No Development Alternative

The No Project – No Development Alternative assumes that the project site would remain as it is today, which includes the existing auto commercial, commercial (restaurant), martial arts commercial space, and residential developments on-site. Because the No Project – No Development Alternative would not result in any new development on the site, this Alternative would avoid all of the environmental impacts of the project, including the significant and unavoidable impact to potential historic resources of significance to the City of San José..

However, this Alternative would not meet any of the project objectives. The existing development is lower than the density encouraged under the General Plan designation, West San Carlos Urban Village Plan, and zoning, since the site currently contains lower commercial FAR and fewer dwelling units per acre than the minimum requirement.

2. No Project – Existing Land Use Designation Alternative

The No Project – Existing Land Use Designation Alternative is essentially the same as the proposed project. This alternative was proposed when the project still included a PD Planned Development Zoning application to rezone the site from the existing CP Commercial Pedestrian Zoning District and the R-M Multiple Residence Zoning District to a Planned Development Zoning District. This alternative maintained the existing zoning districts and would have constructed a similar project consistent with the General Plan designation and zoning districts. The originally proposed PD zoning would have afforded the project more flexibility in terms of site design and setbacks. Under Assembly Bill 3194, the Housing Accountability Act Amendment, effective January 1, 2019, the local governments' authority is limited and cannot reject or restrict housing development projects that comply with applicable objective general plan, zoning, and subdivision standards. Because rezoning is no longer required, there is no land use designation alternative. It is important to note that CEQA alternatives must feasibly attain most of the basic objectives of the project, while avoiding or substantially lessening any of the significant impacts of the project. Because this alternative does not reduce any impacts, it is not a reasonable or feasible alternative.

3. Design Alternative – Relocate and restore five of the seven bungalows

Demolition of the residential units on-site would result in a significant unavoidable impact to historic resources. The purpose of the Design Alternative is to avoid the project's significant unavoidable impact to historic resources. The Design Alternative would require the project to be redesigned in a manner that would preserve the historic resources to the extent feasible while still allowing a physically feasible development on the project site. The proposed Building 1 of the Project would be redesigned with a reduced building footprint to allow five of the historic bungalow units to be relocated and preserved on the southern portion of the site. The proposed Building 2 would remain the same as the proposed project. The five bungalow units would be situated in a horseshoe layout and facing each other to form a central court in the middle, recreating a similar court-like court as the existing unit layout. Building 1, under this alternative, would have 24 fewer residential units, 11,165 square feet less of commercial space, and 18,923 square feet less common space. Building 1 would include 79 residential units, 10,000 square feet of commercial space, and 6,000 square feet of common space, which combined with Building 2 would result in a density of 111 du/ac and 0.29 commercial FAR. Additionally, Building 1 would be set back at least 95 feet from the southern property line. Building stories and height would remain the same. Access to the site and bungalow units would be provided on the proposed driveway on West San Carlos Street. This design alternative would preserve five of the seven bungalow units and would lessen the impact to the historic resources by restoring the buildings consistent with the City's requirements for historic buildings. All other impacts during construction and operation would be similar to that of the proposed project.

Circulation and Public Comments

The Draft EIR was circulated for public review for 45 days consistent with CEQA Guidelines Section 15132, starting on January 12, 2021 and ending on February 26, 2021. Comments were received from regional and local agencies, including the County of Santa Clara, Roads and Airport Department, the Santa Clara Valley Transportation Authority (VTA), and the Santa Clara Valley Water District; and organizations, businesses, and individuals, including a letter from Lozeau Drury, LLP. and Pacific Gas & Electric Company (PG&E).

Issues raised in these comment letters include the following:

1. County of Santa Clara, Roads and Airport Department: City annexation of project pockets to address all neighborhood traffic-related issues within those pockets. Reference to the annexation clause within the 2006 Settlement Agreement between the County and the City of San José.
2. VTA: Request for the project to coordinate bus stop improvements to consolidate stop locations along West San Carlos Street and opportunity to review updated site plans to ensure the placement of driveways, landscaping and any other features do not conflict with bus operations; and comment on the proposed crossing at San Carlos Street and Willard Avenue.
3. Lozeau Drury LLP (dated February 26, 2021) on behalf of the Laborers International Union of North America (LiUNA): 1) DEIR fails to discuss indoor air quality impacts related to the project, in particular emissions of formaldehyde; 2) DEIR relies on unsubstantiated input parameters to estimate project emissions and thus fails to provide substantial evidence of the project's air quality impacts; 3) the DEIR failed to disclose a significant air quality impact from Reactive Organic Gas (ROG) emissions; 4) the DEIR fails to adequately evaluate health risks from diesel particulate matter emissions; 5) The DEIR inadequately evaluated the project's cumulative impacts.

Response to Public Comments addressed in First Amendment

In accordance with CEQA Guidelines Section 15088, a First Amendment was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the Draft EIR. As contained within the First Amendment, comments received either did not address the adequacy of the Draft EIR or the comment did not identify new or more significant impact(s), or a new feasible project alternative or mitigation measure considerably different than identified in the DRAFT EIR. For these reasons, no further CEQA analysis is required and the Draft EIR does not require recirculation. The Draft EIR taken together with the First Amendment constitutes the Final EIR. Although not necessary for CEQA, staff also prepared a formal response to Lozeau Drury LLP's rebuttal letter which reiterates the former response.

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft EIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of

the availability of the Draft EIR for public review but before certification. “Information” can include changes in the project or environmental setting as well as additional data or other information. New information added to a 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).

Statement of Overriding Considerations

Section 15091(a) of the CEQA Guidelines stipulates that no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings. If the lead agency approves a project despite it resulting in significant adverse environmental impacts that cannot be mitigated to a less than significant level, the agency must state the reasons for its action in writing. Thus, a Statement of Overriding Considerations is included in the record of project approval and it is recommended that the City Council adopt the resolution with the statement of overriding considerations, certifying the EIR, and adopting the mitigation monitoring and reporting plan.

The Draft EIR taken together with the First Amendment constitutes the Final EIR. The Draft EIR and First Amendment to the Draft SEIR are available for review on the project page on the City’s Active EIRs website at: www.sanjoseca.gov/ActiveEIRs.

/s/
CHRISTOPHER BURTON, Secretary
Planning Commission

For questions, please contact Planning Official, Robert Manford, at (408) 535-7900.

Attachments: Exhibit A – EIR Resolution (corrected)
Exhibit B – Special Use Permit Resolution (corrected)
Exhibit C – Response to Rebuttal Letter to Responses to Draft EIR Comments
Exhibit D – Planning Commission Staff Report

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING THE WEST SAN CARLOS STREET MIXED-USE PROJECT ENVIRONMENTAL IMPACT REPORT (SCH #2019120341) AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES, AND ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A RELATED MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED

WHEREAS, the proposed West San Carlos Street Mixed-Use Project (File No. SP20-004) includes a Special Use Permit to allow the demolition of the existing structures on-site including eight residential buildings that are candidate City Landmarks, three commercial buildings totaling approximately 7,600 square feet, a billboard, and the removal of fourteen on-site trees and the construction of two seven-story residential/commercial mixed-use buildings consisting of 173 residential units and 17,836 square feet of commercial retail space and a 42 percent parking reduction located at 1530-1544 West San Carlos Street on an approximately 1.32-gross acre site in the City of San José, California (collectively referred to herein as the “Project”); and

WHEREAS, approval of the Special Use Permit would constitute a Project under the provisions of the California Environmental Quality Act of 1970, together with State and local implementation, guidelines, and policies promulgated thereunder, all as amended to date (collectively “CEQA”); and

WHEREAS, the City is the lead agency for the Project and has prepared a Final Environmental Impact Report for the Project pursuant to and in accordance with CEQA, which the Final Environmental Impact Report is comprised of the Draft Environmental

Impact Report for the project (the “Draft EIR”), together with the First Amendment to the Draft EIR (collectively, all of said documents are referred to herein as the “FEIR”); and

WHEREAS, on July 14, 2021, the Planning Commission of the City of San José reviewed the FEIR prepared for the West San Carlos Street Mixed-Us Project and recommended to the City Council that it find the environmental clearance for the proposed Project was completed in accordance with the requirements of CEQA and further recommended the City Council adopted this Resolution; and

WHEREAS, CEQA requires that, in connection with approval of a project for which an environmental impact report has been prepared that identifies one or more significant environmental effects of the project, the decision-making body of a public agency make certain findings regarding those effects and adopt avoidance measures to minimize impacts consistent with City policies and requirements and a statement of overriding considerations for any impact that may not be reduced to a less than significant level.

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

1. That the above recitals are true and correct; and
2. That the City Council does hereby find and certify that the FEIR has been prepared and completed in compliance with CEQA; and
3. The City Council was presented with, and has independently reviewed and analyzed the FEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the FEIR and the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgement of the City of San José (“City”) as lead agency for the Project, and designated the Director of Planning, Building, and Code Enforcement at the Director’s Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California 95113, as the custodian of documents and record of proceedings on which the decision of the City is based; and

4. That the City Council does hereby find and recognize that the FEIR contains additions, clarifications, modifications, and other information in its response to comments on the Draft EIR or obtained by the City after the Draft EIR was issued and circulated for public review and does hereby find that such changes and additional information are not significant new information as that phrase is described under CEQA because such changes and additional information do not indicate that any of the following would result from approval and implementation of the Project: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft EIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented, or (iii) any feasible alternative considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented; and
5. That the City Council does hereby find and determine that recirculation of the FEIR for further public review and comment is not warranted or required under the provisions of CEQA; and
6. That the City Council does hereby make the following findings with respect to the significant effects of the environment of the Project, as identified in the FEIR with the understanding that all of the information in this Resolution is intended as a summary of the full administrative record supporting the FEIR; which full administrative record should be consulted for the full details supporting these findings.

WEST SAN CARLOS MIXED-USE PROJECT SIGNIFICANT ENVIRONMENTAL IMPACTS

Air Quality

- Impact:** **AQ-1.1:** Construction activities associated with the proposed project would expose the maximally exposed individuals near the project site to cancer risk and PM₁₀ exhaust in excess of BAAQMD single-source thresholds of greater than 10.0 per million and greater than 0.3 µg/m³, respectively (108.6 per million increased cancer lifetime risk and 0.87 µg/m³, respectively) without mitigation.
- Impact:** **AQ(C)-1:** The maximum cancer risk and annual PM₁₀ concentration would exceed the BAAQMD threshold for cumulative sources for cancer lifetime

risk (more than 100 per million) and PM₁₀ exhaust (more than 0.8) without mitigation

Mitigation: **MM AQ-1.1:** Prior to the issuance of any demolition, grading, and/or buildings permits (whichever occurs first), the project applicant shall submit a construction operations plan that includes specifications of the equipment to be used during construction to the Director of Planning, Building and Code Enforcement or the Director's designee. The plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets a fleet-wide average of 93 percent reduction in diesel particulate matter (DPM). Feasible methods to achieve this reduction would include the following:

1. All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 4 interim engines or equivalent.
2. Provide electric power to avoid use of diesel-powered generator sets and other portable equipment.
3. Alternatively, equipment that meets U.S. EPA Tier 3 engines standards for particulate matter that include CARB-certified Level 3 Diesel Particulate Filters or use of equipment that is electrically powered or uses non-diesel fuels would meet this requirement.

Finding: With implementation of Mitigation Measure AQ-1.1, PM₁₀ and cancer risk exposure to nearby sensitive receptors associated with the construction of the Project would be reduced to less than significant levels. Additionally, the Implementation of Mitigation Measure AQ-1.1 would reduce the Project's impact to the cumulative exposure of nearby sensitive receptors to toxic air contaminants to a less than-significant level. **(Less than Significant with Mitigation Incorporated)**

Facts in Support of the Finding: As discussed in Section 3.3 of the DEIR and the Air Quality Analysis (Appendix B of the DEIR), implementation of Mitigation Measure AQ-1.1, would reduce the maximum increased lifetime cancer risks (assuming infant exposure) and maximum increased annual PM_{2.5} emission associated with the Project construction activities to the off-site Maximally Exposed Individual (MEI) to 3.6 per million and 0.13 µg/m³, below the BAAQMD single-source thresholds of 10.0 per million and 0.3 µg/m³, respectively. Implementation of Mitigation Measure AQ-1.1 would also reduce the maximum increased cumulative lifetime cancer risks and annual

PM₁₀ concentration impacts to a less than significant level, from 131.8 per million to 26.8 per million and 1.4 to 0.66 µg/m³ which are below the BAAQMD cumulative thresholds of more than 100 per million and more than 0.8 µg/m³, respectively.

Biological Resources

Impact: **Impact BIO-1:** Project construction could impact nesting birds on or adjacent to the site, if present.

Mitigation: **MM BIO-1.1:** Avoidance: The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 30th (inclusive).

MM BIO-1.2: Nesting Bird Surveys: Demolition and construction cannot be scheduled to occur between September 1 and January 31st (Inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 30th inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

MM BIO-1.3: Buffer Zones: If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

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

Finding: Implementation of Mitigation Measures BIO-1.1 through BIO-1.4 would reduce potential impacts to nesting migratory birds to a less than significant level. **(Less than Significant with Mitigation Incorporated)**

Facts in Support of the Finding: As discussed in Section 3.4, Biological Resources of the Draft EIR, construction disturbance and project tree removal during avian breeding season could result in the incidental loss of eggs or nestlings either directly. Scheduling construction and tree removal/pruning activities outside of the nesting season would avoid disturbance to nesting birds. If construction activities cannot be scheduled to occur outside of the nesting season, conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests will ensure that raptor and migratory bird nests are not disturbed during project construction, under the Migratory Bird Treaty Act and California Fish and Game Code. The size of the buffer zones will be determined by consultation between the qualified ornithologist and the CDFW and based on scientific evidence and best management practices. Compliance with Mitigation Measures BIO-1.1-1.4 would avoid impacts to nesting birds.

Cultural Resources

Impact: **CUL-1:** Implementation of the proposed project would result in the demolition of the Craftsman-style house and the seven Spanish Revival-style bungalows on-site that are eligible City Landmarks, a significant impact.

CUL(C)-1: Implementation of the proposed project would result in a cumulatively considerable contribution to a significant cultural resources impact to the remaining Craftsman-style houses and bungalow courts in the City.

Mitigation: **MM CUL-1.1:** The project applicant shall implement the following measures prior to any demolition permits for the Craftsman-style house and seven Spanish Revival-style bungalow units on-site.

Documentation: The structures shall be documented in accordance with the guidelines established for the Historic American Building Survey (HABS) and shall consist of the following components:

1. Drawings – Prepare sketch floor plans.
2. Photographs – Digital photographic documentation of the interior, exterior, and setting of the buildings in compliance with the National Register Photo Policy Fact Sheet. Photos must have a permanency rating of approximately 75 years.

3. Written Data – HABS written documentation in short form.

This documentation shall be prepared by a professional historic resources consultant who meets the Secretary of Interior's Professional Qualifications Standards. The report shall be deposited with History San José and a copy provided to the City's Planning Division as well as filed with the Northwest Information Center, Sonoma State University.

Relocation by a Third Party: The structures shall be advertised for relocation by a third party. The project applicant shall advertise the availability of the structure for a period of no less than 30 days. The advertisements must include a newspaper of general circulation, a website, and notice on the project site and must be reviewed by the City's Historic Preservation Officer or Environmental Review Supervising Planner prior to circulation. The project applicant shall provide evidence to City staff that this condition has been met prior to the issuance of any demolition permits.

If a third party does agree to relocate one or more of the structures the following measures must be followed:

1. The City's Director of Planning, Building and Code Enforcement, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site(s) are suitable for the building(s).
2. Prior to relocation, a historic preservation architect and a structural engineer shall undertake an existing condition study. The purpose of the study shall be to establish the baseline condition of the buildings prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be reviewed and approved by the City of San José prior to the structures being moved. Documentation already completed will be used to the extent possible to avoid repetition in work.
3. To protect the buildings during relocation, the third party shall engage a building mover who has experience moving similar historic structures. A structural engineer will also be engaged to determine if the buildings need to be reinforced/stabilized before the move.
4. The project applicant shall offer financial assistance for the relocation that is equal to a reasonable cost of demolition of the structure(s).
5. Once moved, the building shall be repaired and restored, as needed, in conformance with the Secretary of the Interior's Standards for the

Treatment of Historic Properties. In particular, the character-defining features shall be restored in a manner that preserves the integrity of the features for the long-term preservation of these features.

Upon completion of the repairs, a qualified architectural historian shall document and confirm that renovations of the structure(s) were completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and that all character-defining features were preserved and submit a memo report to the Director of Planning, Building and Code Enforcement or Director's designee.

Salvage: If no third party relocates the structure(s), the structure(s) shall be made available for salvage to salvage companies facilitating the reuse of historic building materials. The time frame available for salvage shall be established by the City of San José Department of Planning, Building and Code Enforcement. The project applicant must provide evidence to the Director of Planning, Building, and Code Enforcement or Director's designee that this condition has been met prior to the issuance of demolition permits.

Finding: Even with implementation of the identified mitigation measures; demolition or salvage of the Craftsman-style single-family residence and the seven bungalow units at 1530 West San Carlos Street would remain a significant unavoidable impact because the residences would be permanently lost. Relocation of the structures, while preserving the structures in a different location, would result in a loss of connection to its current location. Specifically, the structures would no longer be recognized as a residence associated with the City's agricultural past and early 20th century residential development of West San Carlos Street, which post-war development has replaced. **(Significant and Unavoidable Impact)**

Facts in Support of the Finding: The residences at 1530 West San Carlos Street, including the Craftsman-style single-family residence and the seven identical bungalows, as discussed in Section 3.5 of the DEIR, have been determined to be candidate City Landmarks per the Historic Resources Evaluation prepared by Treanor HL on April 10, 2019 and updated July 29, 2019, because they meet the local eligibility criteria as defined in Section 13.48.110.H of the San José Municipal Code, having significance for its character, interest or value as part of the local, regional state or national history, heritage or culture; embodiment of distinguishing characteristics of an architectural type or specimen; and its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which

represents a significant architectural innovation or which is unique. The Secretary of Interior's (SOI's) standards for the Treatment of Historic Properties includes four treatments: preservation, rehabilitation, restoration and reconstruction. Preservation refers to maintain the existing form, integrity and materials of a historic property. Rehabilitation allows for compatible use for a property through repair, alterations, and additions while preserving its historical features. Restoration is the act of accurately depicting a property as it appeared at a particular period of time. Reconstruction refers to constructing a new building for the purpose of replicating a historic building's appearance as a specific period of time. The project proposes to demolish all eight residential structures on-site which are candidate City Landmark structures without preserving, restoring, rehabilitating, or reconstructing any portions of the historic buildings. While Mitigation Measure CUL-1.1 would help to retain the memory of the buildings and their association with the City's history, the loss of the buildings and their association with the project site would remain a significant and unavoidable impact.

Hazards and Hazardous Materials

Impact: **Impact HAZ-1:** Construction activities associated with the proposed project could expose construction workers and nearby land uses related to hazardous materials associated with the previous auto shop and agricultural uses during earthwork activities.

Mitigation: **MM HAZ-1.1:** Prior to the commencement of earthwork activities, the project applicant shall hire a qualified professional to develop a Site Management Plan that includes:

1. Stockpile management including dust control, sampling, stormwater pollution prevention and the installation of BMPs;
2. Proper disposal procedures of contaminated materials;
3. Monitoring, reporting, and regulatory oversight notifications;
4. A health and safety plan for each contractor working at the site that addresses the safety and health hazards of each phase of site operations with the requirements and procedures for employee protection; and
5. The health and safety plan will also outline proper soil/ and or groundwater handling procedures and health and safety requirements

to minimize worker and public exposure to contaminated soil/and or groundwater during construction.

The Site Management Plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee and the City's Municipal Environmental Compliance Officer of the Department of Environmental Services.

If any contamination is encountered above appropriate regulatory screening levels, then the applicant will notify the Santa Clara County Department of Environmental Health and enter into the County Site Cleanup Program. Removal of USTs and additional sampling/analysis will be completed under County Oversight. Evidence of County oversight shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee and the Municipal Environmental Compliance Officer.

Finding: Implementation of Mitigation Measure HAZ-1.1 would reduce exposure of construction workers and nearby residences from contaminated on-site soil to less than significant levels. **(Less than Significant Impact with Mitigation Incorporated)**

Facts in Support of the Finding: According to the analysis in Section 3.9 Hazards and Hazardous Materials of the DEIR, the western portion of the site has been used for auto commercial uses since the 1950s and contained a former underground storage tank (UST). During the Phase II investigation, signs or presence of the former UST were not identified. In addition, soil sampling was completed to evaluate the potential of carbon chain total petroleum hydrocarbons (TPH-cc), and/or volatile organic compounds (VOCs) to contaminate on-site soils. Sampling results show that levels of TPH-cc and VOCs were below the applicable environmental screening levels (ESLs). Refer to Appendix F for additional details about sampling locations, methods, and results. While presence of the UST was not discovered, Mitigation Measure HAZ-1.1 would be implemented in the event the UST or residual contamination from the UST are discovered during project earthwork activities. Preparation of a Site Management Plan for best management practices and health and safety plan to educate on-site workers, and potential testing to find out the extent of contaminated soil would ensure that impacts from contaminated soil being released into the environment during construction would be less than significant.

Noise

Impact: **Impact NOI-1:** Project construction would generate vibration levels reaching up to 1.2 in/sec PPV (within five feet south from project site), in exceedance of 0.2 in/sec PPV at buildings of normal conventional construction located within 30 feet of the project site.

Mitigation: **MM NOI-1.1: Equipment Selection.** Prior to issuance of any demolition or grading permits, the project applicant shall implement the following controls to reduce vibration impacts from construction activities:

1. Prohibit impact or vibratory pile driving. Drilled piles or mat slab foundations cause lower vibration levels where geological conditions permit their use.
2. A list of all heavy construction equipment to be used for this project known to produce high vibration levels (tracked vehicles, vibratory compaction, jackhammers, hoe rams, etc.) shall be submitted to the City by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring.
3. Place operating equipment on the construction site at least 30 feet from vibration-sensitive receptors.
4. Use the smallest equipment available to complete the task and minimize vibration levels as low as feasible.
5. Avoid using vibratory rollers and tampers near sensitive areas.
6. Select demolition methods not involving impact tools.
7. Modify/design or identify alternative construction methods to reduce vibration levels below the limits.
8. Avoid dropping heavy objects or materials.

MM NOI-1.2: Vibration monitoring plan. Prior to issuance of demolition or grading permits, the project applicant shall implement a construction vibration monitoring plan to document condition of conventional properties within 30 feet of the project site prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry accepted standard methods. The construction vibration monitoring plan shall be implemented to include the following tasks:

1. Identification of sensitivity to ground-borne vibration of the property. A vibration survey (generally described below) shall be performed.

2. Performance of a photo survey, elevation survey, and crack monitoring survey for the structures within 30 feet of the site. Surveys shall be performed prior to, in regular intervals during, and after completion of vibration generating construction activities and shall include internal and external crack monitoring in the structure, settlement, and distress and shall document the condition of the foundation, walls and other structural elements in the interior and exterior of said structure.
3. Development of a vibration monitoring and construction contingency plan to identify where monitoring shall be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction. Construction contingencies, such as alternative construction methods and equipment, or securing the structure, shall be identified for when vibration levels approach the limits.
4. If vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structure.
5. Complete a post-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs in accordance with the Secretary of the Interior's Standards where damage has occurred as a result of construction activities.
6. The results of all vibration monitoring shall be summarized and submitted in a report shortly after substantial completion of each phase identified in the project schedule. The report will include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. An explanation of all events that exceeded vibration limits will be included together with proper documentation supporting any such claims.
7. Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.

Finding: With implementation of Mitigation Measures NOI-1.1 and NOI-1.2 and standard permit conditions, vibration generated during the project's 48-month construction period would have less than significant impacts on the adjacent buildings **(Less than Significant Impact with Mitigation Incorporated)**

Facts in Support of the Finding: As discussed in Section 3.13 of the Draft EIR and supporting Noise and Vibration Assessment prepared for the Project (Appendix G of the DEIR), the project would be constructed over a 48-month construction period divided into two phases. Identifying the sensitive buildings adjacent to the project and monitoring vibration activities would ensure that activities involving vibrating equipment would not cause damage to adjacent structures within 30 feet of the project site and that any damaged caused would be repaired. Using equipment with a lower threshold for vibration impacts would also assist in ensuring that no damage would occur from construction activities using vibrating equipment.

FINDINGS CONCERNING ALTERNATIVES

In order to comply with the purposes of CEQA, it is important to identify alternatives that reduce the significant impacts that are anticipated to occur if the project is implemented and to try to meet as many of the project's objectives as possible. The CEQA Guidelines emphasize a common sense approach -- the alternatives should be reasonable, should "foster informed decision making and public participation," and should focus on alternatives that avoid or substantially lessen the significant impacts.

The alternatives analyzed in the DEIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects. The following are evaluated as alternatives to the proposed Project:

- 1) No Project – No Development Alternative
- 2) No Project – Existing Land Use Designation Alternative
- 3) Design Alternative – Relocate and restore five bungalows (historic resources)

1. No Project – No Development Alternative

- A. Description of Alternative:** The No Project – No Development Alternative would retain the existing land uses on-site as is, which includes the existing auto commercial, commercial (restaurant), and martial arts studio (commercial), and eight residential structures on-site.
- B. Comparison of Environmental Impacts:** Under the No Project – No Development Alternative, none of the impacts of the project would occur including the significant and unavoidable impact to cultural resources.

- C. **Finding:** This alternative would not meet any of the project objectives because the No Project – No Development Alternative would not result in any new development on the site. Specifically, this alternative would not allow for the density encouraged under the General Plan designation and zoning. Therefore, because this alternative would not meet any of the project objectives, this alternative is rejected.

2. No Project – Existing Land Use Designation Alternative

- A. **Description of Alternative:** The No Project – Existing Land Use Designation Alternative is essentially the same as the proposed project. This alternative was proposed when the project still included a Planned Development Rezoning application to rezone the site from the existing CP Commercial Pedestrian Zoning District and the R-M Multiple Residence Zoning District to a Planned Development Zoning District. This alternative maintained the existing zoning districts and would have constructed a similar project consistent with the General Plan designation and zoning districts. The originally proposed Planned Development Rezoning would have afforded the project more flexibility in terms of site design and setbacks. Under Assembly Bill 3194, the Housing Accountability Act Amendment, effective January 1, 2019, the local governments' authority is limited and cannot reject or restrict housing development projects that comply with applicable objective general plan, zoning, and subdivision standards. Therefore, the Planned Development rezoning application is no longer required for the project rendering this alternative essentially the same as the analyzed project.
- B. **Comparison of Environmental Impacts:** Under this alternative, the project would remain the same and result in the same impacts.
- C. **Finding:** Because rezoning is no longer required, there is no land use designation alternative. Importantly, alternatives are alternatives that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant impacts of the project. Because this alternative does not reduce any impacts, it is not a reasonable or feasible alternative. Therefore, this non-alternative is rejected.

3. Design Alternative – Relocate and Restore Five of the Seven Historic Bungalows

- A. **Description of Alternative:** The Design Alternative – Replace and Restore Five of the Seven Historic Bungalows would lessen the project's impact on the historic resources by relocating and restoring five of the seven historic Spanish Revival-style bungalows on the site. This alternative would require the project to be

redesigned in a manner that would preserve the historic resources to the extent feasible while still allowing a physically feasible development on the project site. The proposed Building 1 of the Project would be redesigned with a reduced building footprint to allow five of the historic bungalow units to be relocated and preserved on the southern portion of the site. The proposed Building 2 would remain the same as the proposed project. The five bungalow units would be situated in a horseshoe layout and facing each other to form a central court in the middle, recreating a similar court-like court as the existing unit layout. Building 1, under this alternative, would have 24 fewer residential units, 11,165 square feet less of commercial space, and 18,923 square feet less common space. Building 1 would include 79 residential units, 10,000 square feet of commercial space, and 6,000 square feet of common space, which combined with Building 2 would result in a density of 111 du/ac and 0.29 commercial floor-area ratio (FAR). Additionally, Building 1 would be set back at least 95 feet from the southern property line. Building stories and height would remain the same. Access to the site and bungalow units would be provided on the proposed driveway on West San Carlos Street. This design alternative would preserve five of the seven bungalow units and would reduce the significant impact to the historic resources but not to a less than significant level. ~~by restoring the buildings consistent with the City's and Secretary of the Interior's requirements for historic buildings.~~ All other impacts during construction and operation would be similar to that of the proposed project.

- B. Comparison of Environmental Impacts:** Under this alternative, five of the seven bungalows would be relocated and preserved. Therefore, not all of the historic resources (eligible City Landmarks) would be preserved. The design alternative would lessen the significant impact to the historic resources; however, all other impacts during construction and operation would be similar to that of the proposed project.
- C. Finding:** Under the Design Alternative, only some of the project objectives would be met or partially met. For instance, Objective 1 which is consistent with the goals of the West San Carlos Urban Village Plan would not be met because the commercial FAR would not meet the minimum 0.3 requirement of the Plan. This alternative would not meet Objectives 5 and 7 or conform with the conceptual paseo envisioned in Figure 2.2-5 of the West San Carlos Urban Village Plan because it would relocate the bungalow units to the southern portion of the site where the paseo is proposed for the project and Urban Village. This Design Alternative would meet Objective 2 to provide a minimum density of 111 du/ac. The site currently contains approximately 7,600 square feet of commercial uses. The Design Alternative would meet Objective 3 because it would include more commercial space for tax revenue compared to existing conditions. The Design Alternative would also meet Objective 4 because it would be required to replace the existing sidewalk on the project frontages consistent with the City

requirements, and it would include commercial/retail uses on the West San Carlos Street project frontage. The Design Alternative would meet Objective 6 because it would continue to be subject to the West San Carlos Urban Village Design Guidelines. This alternative would relocate, preserve, and restore five of the historic bungalows on-site. While the preservation would reduce the severity of the historic resources lost, the alternative would continue to impact historic resources as the single-family home and two other bungalows would be demolished. In consideration of the potential for preservation, the objectives this project would meet, and the balancing of this alternative against the proposed project and City's need for dense, mixed-use residential/commercial projects, this alternative is rejected.

Environmentally Superior Project

The No Project – No Development Alternative would avoid all project impacts, including the significant and unavoidable impact to potential historic resources of significance to the City of San José. However, per Section 15126.6(e)(2) of the CEQA Guidelines, when the no-project alternative is the environmentally superior alternative, another alternative shall be identified as the environmentally superior alternative. The Design Alternative – Relocation and Preservation of five bungalows would meet most of the project objectives and avoid the significant and unavoidable impact of the project. This alternative would lessen the significant impacts to the historic resources and support a dense mixed-use project near transit which aligns with the City's Envision San José 2040 General Plan and Urban Village goals. Therefore, this alternative is the environmentally superior alternative.

MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Exhibit "A" and incorporated and adopted as part of this Resolution herein is the Mitigation Monitoring and Reporting Program ("MMRP") for the Project required under Section 21081.6 of the CEQA Statute and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to the provisions of CEQA, the City Council of the City of San José hereby adopts and makes the following statement of overriding considerations regarding the significant and unavoidable impact of the Project as outlined above and the anticipated economic, social, and other benefits of the Project.

- A. **Significant Unavoidable Impacts.** With respect to the foregoing findings and in recognition of those facts which are included in the record, the City has determined the Project has significant unavoidable impacts, as set forth above, associated with demolition of eight candidate City Landmark structures.
- B. **Overriding Considerations.** The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant unavoidable impact of the Project is acceptable in light of the economic and social considerations noted below, because the benefits of the Project outweigh the significant unavoidable impact of the Project. The City Council finds that the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant unavoidable environmental impact and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan and to development in the West San Carlos Urban Village.
- C. **Benefits of the Proposed Project.** While the City recognizes that there is historic value in retaining the Craftsman-style single-family residence and the seven Spanish Revival-style bungalows as City Landmarks associated with the City's agricultural past and the advent of the automobile prior to World War II, the City has designated growth areas such as the West San Carlos Urban Village for the development of dense, mixed-use, multi-modal projects. The City Council has considered the public record of proceedings on the proposed Project and other written materials presented to the City as well as oral and written testimony at all public hearings related to the Project, and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits.
- 1) **Provision of a Mixed-Use Project in an Identified Growth Area.** Consistent with Major Strategy #3 (Focused Growth) of the General Plan, this project would provide 173 dwelling units and 17,836 square feet of commercial space within two seven-story buildings, sited within a transit priority area, primarily served by VTA Bus Routes 23 and 523 (considered major transit stops because the routes have headways of 15 minutes during the AM and PM peak commute periods, and is in close proximity to Downtown. The project would support job growth by providing neighborhood-supportive retail spaces along West San Carlos Street and provide new housing units to meet the City's increasing housing demand.

- 2) **Provision of a Paseo.** In addition to the residential/commercial mixed uses, the project would include a 30-foot walkway that wraps around the building and connects to the proposed driveway and the sidewalk on West San Carlos Street to the proposed (private) paseo which is part of the project and envisioned for the West San Carlos Urban Village.
- 3) **Development in Transit Rich Area and along a Grand Boulevard.** The project site is located along West San Carlos Street - a Grand Boulevard that is served by several bus lines. The project site is also within 1.5 miles from the Diridon Transit Depot, a station served by ACE, Caltrain, Greyhound, Amtrak, VTA bus lines, and the future BART line.
- 4) **Complete Communities.** The proposed development also includes 12,818 square feet of outdoor common open space and 9,412 square feet of indoor amenity space in the proposed buildings, and a 4,450-square foot private paseo. The development will also provide on-site parking for vehicles and bicycles, both for the residential component and the retail component of the project. The project will advance the Envision San José 2040 General Plan policies to create a complete community with a mixed-use building with an amenity-rich residential use and new commercial/retail uses placed within walking distance of neighborhoods and the commercial businesses along West San Carlos Street. Placing complementary land uses like residential and commercial/retail uses near each other will reduce the number of single-occupancy automobile trips and vehicle miles traveled compared with the equivalent amount of development in a more suburban location where uses are separated. Less trips would contribute to a decrease in project-generated greenhouse gas emissions.

Based on the above, the project would meet the strategies and goals of the Envision San José 2040 General Plan and Urban Village criteria of locating high density development on infill sites near transit corridors, activating West San Carlos Street by providing ground floor retail, and promoting bicycling by providing bicycle parking.

The City Council has weighed each of the above benefits of the proposed Project against its significant unavoidable impact identified in the EIR, and hereby determines that these benefits outweigh the adverse environmental effect of the Project and, therefore, further determines that the adverse environmental effect is acceptable and overridden.

LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at

the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, Third Floor Tower, San José, CA 95113.

ADOPTED this day of , , by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A SPECIAL USE PERMIT TO ALLOW THE DEMOLITION OF THREE COMMERCIAL BUILDINGS, EIGHT RESIDENTIAL BUILDINGS, ASSOCIATED SERVICE STRUCTURES, AND ONE BILLBOARD TOTALING 14,131 SQUARE FEET, THE REMOVAL OF 11 ORDINANCE AND 4 NON-ORDINANCE SIZE TREES, AND THE CONSTRUCTION OF TWO SEVEN-STORY RESIDENTIAL MIXED-USE BUILDINGS, INCLUDING 173 RESIDENTIAL UNITS AND 17,836 SQUARE FEET OF COMMERCIAL RETAIL SPACE WITH AN APPROXIMATELY 42 PERCENT PARKING REDUCTION ON AN APPROXIMATELY 1.34-GROSS ACRE SITE, LOCATED ON THE SOUTHEAST CORNER OF WEST SAN CARLOS STREET AND BUENA VISTA AVENUE (1530-1544 WEST SAN CARLOS STREET (APN: 277-18-018, 277-18-019, 277-18-020)

FILE NO. SP20-004

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on April 29, 2019, an application for a Special Use Permit (File No. SP20-004) was filed by the applicant, Viji Mani, on behalf of Urban Villas, LLC, with the City of San José, for a Special Use Permit to allow the demolition of three existing commercial buildings, eight residential buildings, associated service structures, and one billboard totaling 14,131 square feet, the removal of 11 ordinance-size and four non ordinance-size trees, and to allow the construction of two seven-story residential mixed use buildings, including 173 residential units and 17,836 square feet of commercial retail space with an 42 percent parking reduction on an approximately 1.34-gross acre site, on that certain real property situated in the CP Commercial Pedestrian and R-M Multiple Residence Zoning Districts located on the southeast corner of West San Carlos Street and Buena Vista Avenue (1533-1544 West San Carlos Street, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in 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 Public Hearing on said application on July 14, 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 Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a plan for the subject property entitled, "1530-1544 W. San Carlos St Mixed Use Development, SP20-004" dated received March 3rd, 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 evidence presented at the public hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject 1.34-gross acre site is located on the southeast corner of West San Carlos Street and Buena Vista Avenue. The site is currently developed with three existing commercial buildings, eight residential buildings that are candidate City Landmarks, associated service structures, and one billboard totaling approximately 14,131 square feet.

The site is bordered by West San Carlos Street and multi-family housing to the north, a commercial retail building and multi-family housing to the east, single-family and multi-family residences to the south, and a restaurant (Jack in the Box) across Buena Vista Avenue to the west. The project site is accessible from a right-in/right-out 26-foot-wide driveway on West San Carlos Street.

2. **Project Description.** The project consists of the demolition of all existing buildings on site, totaling 14,131 square feet and the removal of 15 trees (11 ordinance-size and four non-ordinance-size) to facilitate the construction of two seven-story mixed use buildings with one level of below-ground parking, including 173 residential units and 17,836 square feet of commercial retail space with an approximately 42 percent parking reduction on an approximately 1.34-gross acre site.

The project would be constructed in two phases. Phase 1 would consist of the construction of a seven-story, approximately 173,925-square foot mixed use building located on the eastern end of the subject site. Phase 1 would include 103 residential units and approximately 11,387 square feet of ground floor commercial retail space. The construction of Phase 1 is expected to take approximately 24 months. Phase 2 would consist of the construction of a seven-story, approximately 115,001-square foot

mixed use building located on the southeast corner of West San Carlos Street and Buena Vista Avenue. Phase 2 would include 70 residential units and approximately 6,449 square feet of ground floor commercial retail space. The construction of Phase 2 would also take approximately 24 months, for a total construction period of 48 months between both phases. The maximum height of both buildings would be 92 feet.

Access to the project site would utilize the right-in/right-out 26-foot-wide driveway on West San Carlos Street. Vehicle and motorcycle parking would be provided in a ground floor garage as well as a subterranean garage below both buildings. A total of 189 vehicle parking spaces would be provided, requiring an approximately 42 percent parking reduction. To achieve the required parking reduction, the project would implement a Transportation Demand Management (TDM) plan as outlined in the Municipal Code requirements below. The project would provide a total of 73 bicycle parking spaces and 49 motorcycle parking spaces.

The project includes an approximately 30-foot-wide paseo located in the rear of the site. The paseo would include paved areas, landscaping, planters, trees, a play area, dog park, and low-level bollard lighting. The paseo is planned to be connected to the public right-of-way at Buena Vista Avenue.

3. **State Law Assembly Bill 3194 (AB3194)**

The applicant originally submitted the project as a Planned Development Rezoning and a Planned Development Permit. However, the project was converted to a Special Use Permit because zoning consistency with the General Plan is not required for certain specified types of residential and mixed-use projects under State Law Assembly Bill 3194 (AB3194). AB3194, an amendment to the Housing Accountability Act Amendment, which became effective on January 1, 2019. Per AB 3194, "mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use can proceed if it complies with CEQA and "is consistent with the objective general plan standards and criteria." (Government Code sections 65589.5(h)(2)(B) and 65589.5(j)(4)). Therefore, staff analyzed the

The total square footage of the project is approximately 288,520 square feet, of which approximately 17,836 square feet would consist of commercial space. Therefore, at least two-thirds of the square footage of the mixed-use project would be dedicated to residential space. The site has a General Plan Land Use Designation of Urban Village and is located in both the CP Commercial Pedestrian and R-M Multiple Residence Zoning Districts. The project was reviewed based on the objective criteria and standards of the CP Commercial Pedestrian Zoning District, the conforming Zoning District of the Urban Village General Plan Land Use Designation. The project was determined to be complete on June 4th, 2019

4. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Urban Village. The Urban Village designation is applied within the Urban Village areas that are planned in the current Horizon (see Chapter 7 – Implementation for a description of Planning Horizons and Urban Village Planning) to accommodate higher density housing growth along with a significant amount of job growth. This designation is also applied in some cases to specific sites within Urban Village Area Boundaries that have received entitlements for Urban Village type development. This designation supports a wide variety of commercial, residential, institutional or other land uses with an emphasis on establishing an attractive urban form in keeping with the Urban Village concept. Development within the Urban Village designation should conform to land use and design standards established with an adopted Urban Village Plan, which specifies how each Urban Village will accommodate the planned housing and job growth capacity within the identified Urban Village Growth Area. The project is consistent with the Urban Village Land Use Designation as it would provide a commercial service to families that live and work in the surrounding area.

The project is consistent with the following General Plan Goals and Policies:

- Major Strategy #3 – Focus Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified “Growth Areas” (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods. While the Focused Growth strategy directs and promotes growth within identified Growth Areas, it also strictly limits new residential development through neighborhood infill outside of these Growth Areas to preserve and enhance the quality of established neighborhoods, to reduce environmental and fiscal impacts, and to strengthen the City’s Urban Growth Boundary.
- Major Strategy #5: - Urban Village: The Urban Village Major Strategy promotes the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan’s environmental goals. The General Plan establishes the Urban Villages concept to create a policy framework to direct most new job and housing growth to occur within walkable and bike friendly Urban Villages that have good access to transit and other existing infrastructure and facilities.
- High Quality Facilities and Programs Policy PR-1.9: As Urban Village areas redevelop, incorporate urban open space and parkland recreation areas through a combination of high quality, publicly accessible outdoor spaces provided as part of new development projects; privately or, in limited instances, publicly owned and

maintained pocket parks; neighborhood parks where possible; as well as through access to trails and other park and recreation amenities. Land Use and Employment Policy IE-1.3: As part of the intensification of commercial, Village, Industrial Park and Employment Center job Growth Areas, create complete, mixed-employment areas that include business support uses, public and private amenities, child care, restaurants, and retail goods and services that serve employees of these businesses and nearby businesses.

- Community Design Policy CD-3.5: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.
- Land Use Policy LU-9.1: Create a pedestrian-friendly environment by connecting new residential development with safe, convenient, accessible, and pleasant pedestrian facilities. Provide such connections between new development, its adjoining neighborhood, transit access points, schools, parks, and nearby commercial areas.

Analysis: The redevelopment of the site is consistent with the General Plan Land Use Designation of Urban Village, as the project would provide a high-intensity mix of residential and commercial uses. The project would provide housing, retail options, and recreational opportunities in a central location, within a growth area, through the development of approximately 173 residential units and 17,836 square feet of commercial retail space. Consistent with the General Plan policies for the development of Urban Villages, the project would incorporate a paseo at the rear of the site, which would be connected to the public right-of-way in the future. The project would include public improvements including the construction of 20-foot-wide sidewalks along West San Carlos Street and 12-foot-wide sidewalks along Buena Vista Avenue. The project also includes an approximately 42% parking reduction and the implementation of a TDM plan. The TDM plan would include a package of measures to reduce vehicle trips and encourage transit ridership. TDM measures include providing an online kiosk of trip-planning resources, 100 percent unbundled parking for all residential spaces, Valley Transportation Authority (VTA) SmartPasses to all residential tenants, and on-site bicycle storage. The subject site is served by existing VTA Bus Routes 23 and Rapid 523. A new bus stop would be constructed at the project frontage along West San Carlos Street. The project would also include ample bicycle parking and street/sidewalk improvements that would facilitate bicycle and pedestrian access to the site.

5. West San Carlos Urban Village Plan

The subject site has a land use designation of Urban Village and is located within the boundaries of the West San Carlos Urban Village. Within the Urban Village, the project is located within the Mixed-Use Residential Character Area. The Mixed-Use Residential Character Area is an eastern gateway into the Urban Village. The area is envisioned with higher-density mixed-use and residential development drawing energy from nearby Downtown San José and the Diridon Station. Development in the

West San Carlos Urban Village ranges between three and seven stories with residential uses typically above a mix of active ground floor retail. The allowed residential density of this land use designation may range from 55 to 250 Dwelling Units per Acre (DU/AC). The project is consistent with the following goals and policies of the approved Stevens Creek Urban Village Plan:

- Land Use Goal LU-2: Create a high-density, mixed-use, pedestrian-focused Urban Village that supports the commercial activity along West San Carlos Street and enhances the quality of life for residents in surrounding communities.
- Land Use Policy LU-2.2: Ensure that residential development along West San Carlos Street and Meridian Avenue that is developed under the Urban Village Land Use Designation and located within the Mixed-Use Residential Character Area has ground-floor commercial and/or active uses fronting those streets.
- Parks, Plazas, and Public Art Policy P-2.5: Employ green buffers/paseos when larger new development abuts existing neighborhoods or is located in such a way that allows for the continuation of a green paseo.
- Land Use Goal LU-3: Ensure that new development and area improvements increase access to public space and to alternate modes of transportation.

Analysis: The subject site is located within the West San Carlos Urban Village Plan, which was approved by City Council on May 8, 2018 (Resolution No. 78581). The project is consistent with the Urban Village land use designation, as it provides a high-intensity mix of residential and commercial retail uses. The project frontages include ground floor commercial space and active space on both West San Carlos Street and Buena Vista Avenue. The project would include the construction of two seven-story buildings with 173 residential units and approximately 17,836 square feet of commercial retail space located on the frontage along West San Carlos Street. The project would also include the construction of a 30-foot-wide full landscaped paseo in the rear of the site, which would eventually connect to the Buena Vista Avenue and Willard Avenue, should the sites to the east and west be redeveloped. The paseo would buffer the subject site from the lower density development to the south. As discussed in the General Plan section above, the project would implement a TDM plan that would encourage the use of public transportation. Bicycle parking would also be provided for residents, employees, and retail customers. The project would construct 20-foot-wide sidewalks along West San Carlos Street to improve pedestrian access to and from the site.

West San Carlos Urban Village Design

The project conforms with the following key standards and guidelines of the West San Carlos Urban Village Plan, Chapter 5 Urban Design Concept. This Chapter provides an overall urban design framework for development within the West San Carlos Urban Village.

- Urban Design Policy UD-3.2: Leverage private development to strengthen the public realm with improvements such as setbacks to accommodate space for wider sidewalks, shade-providing trees, and other pedestrian amenities. Explore the potential for “green buffer” strategies to integrate and expand local parks, open spaces, and pedestrian and bicycle pathways.
- Urban Design Policy UD-3.3: Encourage the placement of ground-floor commercial space in new development especially along the street frontages of West San Carlos Street and Bascom Avenue.
- Urban Design Policy UD-3.5: Provide proper height transitions between new, higher-density commercial and mixed-use development and adjacent single-family homes by using building setback, upper story setback, and landscaping to soften the transition near property lines.
- Urban Design Policy UD-5.7: Non-occupiable architectural features such as roof forms, chimneys, stairwells, and elevator housings may project up to ten feet above the maximum height limits, but shall not exceed the established daylight plane.
- Urban Design Policy UD-6.1: Encourage the use of underground vehicle parking where feasible.

Analysis: Both buildings would be located and oriented toward West San Carlos Street. Each building would provide clearly marked entrances and active frontages with transparent glass. As previously discussed, the project would include approximately 17,836 square feet of retail space along West San Carlos Street. The Phase 1 building is adjacent to a property designated as Residential Neighborhood. Therefore, the project provides a setback of the upper floors so as to not intercept the 45-degree daylight plane at the adjacent residential property line. Both buildings are landscaped at the rear to further soften the transition between the high intensity use along West San Carlos Street and the residential character of the neighborhood to the south. As previously discussed, the project also includes a 30-foot-wide paseo at the rear of the site that would eventually connect to Willard Avenue and Buena Vista Avenue to allow for an additional pedestrian path and recreational space for the neighborhood. The project would improve pedestrian circulation and access with the construction of 20-foot-wide sidewalks along West San Carlos Street as well as 12-foot-wide sidewalks along Buena Vista Avenue. Both sidewalks would be landscaped with street trees to the satisfaction of the Department of Transportation (DOT).

6. **Zoning Ordinance Compliance.** The subject site is located in the CP Commercial Pedestrian Zoning District and the R-M Multiple Residence Zoning District. Per AB3194, the project was evaluated for conformance with the objective standards and criteria of the CP Commercial Pedestrian Zoning District, the conforming Zoning District to the Urban Village General Plan Land Use Designation. Pursuant to Section 20.40.100 and Table 20-90 (see Note 25) of the Zoning Ordinance, mixed use residential/commercial requires a Special Use Permit in the CP Zoning District when

located in an Urban Village.

Setbacks and Height

Development Standard	Required	Phase 1	Phase 2
Front setback	None	None	None
Side, interior setback	None	None	None
Side, corner	None	None	None
Rear, interior	15 feet	30 feet	N/A
Rear, corner	15 feet	N/A	15 feet
Maximum height	95 feet	92 feet	92 feet

The project conforms with all setback and height requirements of the Zoning Code and West San Carlos Village Plan. The West San Carlos Urban Village Plan allows a maximum height of 85 feet at the subject site. Non occupiable architectural features such as roof forms, chimneys, stairwells, and elevator housing may project up to ten feet above the maximum height limits, for a total maximum height of 95 feet. As shown on the project plans the maximum height of the elevator shaft and stairwells of both buildings would be 92 feet.

Parking

SP20-004 Vehicle Parking

	Commercial	Residential					Total
		Studio	JR1 Bed	1 Bed	2 Bed	3 Bed	
Sq. Ft/Unit Count	15,160.6 sf of floor area	17	35	48	70	3	
Parking Ratio	1/200 sf	1.25	1.25	1.25	1.7	2.0	
Spaces Required	75.8	21.25	43.75	60	119	6	326
Spaces Provided	189 vehicle spaces provided (42% parking reduction)						

The project requires 328 vehicle parking spaces. Pursuant to Section 20.90.220 of the Zoning Code, a parking reduction of up to 50% of the code required parking spaces may be permitted for sites within a Growth Area and the implementation of a TDM plan. The project would provide 189 vehicle parking spaces on-site, an approximately 42% parking reduction. Up to 20% of the parking reduction would be allowed as the project is located within the West San Carlos Urban Village, a growth area. The additional 22% parking reduction would be allowed with the implementation of a TDM plan. A TDM plan, dated September 8, 2020 was prepared by Hexagon Transportation Consultants, Inc, which achieves a 22% parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures in accordance with Section 20.90.220 of the Municipal Zoning Code. The project would be required to provide an online kiosk of trip-planning resources, 100 percent unbundled parking for all residential spaces, VTA SmartPasses to all residential tenants, and on-site bicycle storage.

In addition to the approximately 42% parking reduction, the project requires a total of 47 motorcycle parking spaces and 52 bicycle parking spaces. The project would provide 49 motorcycle parking spaces and 73 bicycle parking spaces.

Noise

Pursuant to Section 20.40.600 of the Municipal Zoning Code, the maximum noise level for commercial uses adjacent to a commercial property line is 60 decibels, and adjacent to a property used or zoned for residential uses is 55 decibels. A Noise Study, titled "1530-1544 West San Carlos Street Mixed-Use Development Noise and Vibration Assessment", was prepared by Illingworth & Rodkin Inc. on March 26, 2020. The noise study evaluated noise related to the construction and operations of the project, from various noise sensitive receptors surrounding the project site. The study also measured future exterior noise resulting from the use of communal open space in the exterior of each building. Exterior noise levels were calculated from the center of each outdoor common open space area. Noise measurements were taken from across West San Carlos Street to the north, along the east side of Buena Vista Avenue to the southwest of the site, and in the center of the site where the Phase 2 building would be located. Specifically, the noise study evaluated outdoor use areas at the proposed site, including the courtyards and common open spaces on the third, fifth, and seventh floors of the buildings. The noise study found that noise related to the common open space area at the common open spaces would not exceed 55 decibels. Furthermore, the seventh-floor roof terrace would be reduced to below 55 decibels as it would be the furthest from West San Carlos street, and would be shielded by the building edge.

All construction noise would be temporary and is expected to take approximately 48 months. The Environmental Impact Report includes mitigation measures to address noise impacts related to construction. Mitigation measures require the applicant to submit a noise logistics plan as outlined in the West San Carlos Project Environmental Impact Report. As the site is located within 500 feet of a residence, the construction hours would be limited to 7:00 AM to 7:00 PM Monday through Friday.

Tree Removals

Chapter 13.32 of the Municipal Code regulates the removal of trees on private property. An ordinance-size tree is any tree that is 38 inches in circumference or greater measured from 4.5 feet above the ground. A tree survey of the site was prepared by David J. Powers and Associates, dated April 29, 2019. The tree survey identified 14 trees located within the project site boundary and one tree adjacent to the project site. Of the 15 trees, five were unable to be identified due to lack of access to the trees; therefore, these trees were conservatively estimated as ordinance-size non-native species. The other ten trees are identified as Apple (1), Southern Magnolia (1), Blue Jacaranda (1), Boxelder (1), Chinese Firethorn (2), White Willow (1), White Crepe Myrtle (1), Blue Potato Bush (1), and Australian blackwood (1). Eleven of the 15 trees are ordinance-size and four are non-ordinance size.

Based on the findings of the tree survey, all 15 trees require removal. The trees to be removed are located either within the building footprint, within the newly dedicated sidewalks, within the paseo area, or within necessary driveways. Therefore, retaining the 15 trees would prevent the project from meeting its project objectives and the goals of the urban design requirements of the Urban Village land use designation and the West San Carlos Urban Village Plan.

The removal of all 15 trees on-site requires the replacement of 26 trees (24-inch box) on site. Based on review of the approved plan set, 26 24-inch box trees would be planted on-site. The trees to be planted include a mix of Maidenhair, Littleleaf Linden, Accolade Elm, Sweet Bay, Brisbane Box, Flowering Plum, Flowering Cherry, Bronze Loquat, Dwarf Southern Magnolia, and Sawleaf Zelkova trees.

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

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

A formally noticed Community Meeting with the Environmental Scoping was held on Monday, January 9, 2020 to introduce the project to the community. Approximately 22 members of the public attended the meeting. The questions and comments from

community members included concerns related to building height, traffic, parking, lack of retail options, and sidewalk safety during construction.

8. Design Guidelines

The project was submitted on April 29th, 2019, prior to the effective date of the Citywide Design Standards and Guidelines on March 25th, 2021. The Commercial Design Guidelines were adopted in May 1990 and the Residential Design Guidelines were adopted in February 1997. Both the Commercial and Residential Design Guidelines were effective when this Special Use Permit was formally submitted to the City. Therefore, the project is required to conform with the following provisions of the City's Commercial Design Guidelines and Residential Design Guidelines, in addition to conformance with the Stevens Creek Urban Design Policies.

- Pedestrian Orientation: Mixed use projects should include direct and attractive pedestrian access to all nearby commercial areas, transit stops, and transit stations. Sidewalks and walkways should be wide, separated from conflicting activities, and bordered by attractive landscaping, most importantly by street and/or shade trees.
- Mix of Uses:
 - Retail uses should be limited to the ground floor spaces along busy street frontages.
 - Office uses may be located on the first and/or upper floors.
- Interface Between Uses: Commercial loading areas, trash facilities, and mechanical equipment should be screened from sight by all pedestrian ways and should be located away from residential entries.
- Building Orientation: Buildings should be oriented parallel to the street particularly at corners. Buildings and, in particular, entrances should be oriented towards light rails stations and bus stops.
- Structured Parking: Structured parking is preferable for vertical mixed-use projects and for horizontal mixed-use projects in more urban locations. Parking which is intended to support commercial uses should be placed in convenient proximity to such uses. The blank walls of parking floors should not be placed along streets or major pedestrian ways.

Analysis: The scale and massing of both buildings are compatible within the development as well as within the surrounding neighborhood, which is planned as an area of significant residential and employment growth. Both buildings have zero front and side setbacks at the street frontages, consistent with both the Commercial Design Guidelines, Zoning Code and West San Carlos Urban Village Plan.

Both seven-story mixed use buildings contain the three traditional portions

of a building, the base, middle, and top. Active retail and lobby space is provided on the ground floor with well-defined entrances and transparent glass. All parking would be screened from view along West San Carlos Street, with the majority of the parking structure located at the rear of the site away from the street or underground. The corner element of the Phase 2 building is defined and the project includes façade articulation and recessed windows with minimal mullions. Both buildings also include adequate provisions for trash, storage and loading/service areas located in the ground floor parking garage. All rooftop mechanical equipment would be screened from view on both buildings.

- All areas not covered by building streets, drives, or parking should be landscaped. The developer should plant street trees of an approved species and size along all public and private streets. Landscaping should be provided in all setback areas between project walls and/or fences.

Analysis: As previously discussed, the project includes the construction of a paseo at the rear of the subject site that is planned to connect to Buena Vista Avenue to the west and Willard Avenue to the east. The paseo would remain as private common open space until it is connected to the public right-of-way and offered as a privately owned, publicly accessible open space. The paseo and all common open space areas would be landscaped with trees, shrubs, grasses, and ground cover. The portion of the property adjacent to the single-family houses along the paseo would be well landscaped to screen the site and soften the transition between the project and adjacent residential uses. The project would also plant street trees along both project frontages. The species and number of street trees is to be determined at the public improvements stage by the Public Works Department.

- Residential Open Space: Private open space should be provided at a minimum of 60 square feet per unit with a minimum dimension of 6 feet. Common Open Space should be provided at a minimum of 100 square feet per unit.

Analysis: Both buildings provide adequate private and common open space. Each unit would include a minimum of 60 square feet of private open space in the form of private balconies. The project would include 173 units and a total of 26,680 square feet of common open space. Therefore, approximately 154 square feet of common open space would be provided per unit. Both buildings would include a mix of terraces and courtyards on the third, fifth, and seventh floors.

9. Environmental Review.

An Environmental Impact Report (EIR) (State Clearinghouse Number 2019120341) was prepared by the Director of Planning, Building and Code Enforcement for the

West San Carlos Street Mixed-Use Project (SP20-004)) in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The City of San Jose, as the lead agency for the project, prepared a Draft EIR for this project which was circulated for public review and comment for 45 days, from January 12, 2021 through February 26, 2021. The draft EIR concluded that implementation of the proposed project would result in a significant impact on historic resources (Candidate City Landmarks).

Identified Significant Unavoidable Impacts

- CUL-1:** Implementation of the proposed project would result in the demolition of the Craftsman-style house and the seven Spanish Revival- style bungalows on-site that are eligible City Landmarks, a significant impact.
- CUL(C)-1:** Implementation of the proposed project would result in a cumulatively considerable contribution to a significant cultural resources impact to the remaining Craftsman-style houses and bungalow courts in the City.

The EIR determined that the residences located on the project site (1530 West San Carlos Street), were eligible as candidate City Landmark structures and the proposed demolition would be a significant and unavoidable impact. Even though mitigation measures that include documentation, relocation, and salvage would lessen the impact, the residences and the historic connection to the current location would be lost. Therefore, the impact would be significant and unavoidable.

In addition, mitigation measures were developed to lessen the following project impacts to less than significant levels: exposure of sensitive receptors to toxic air contaminants, disturbance and/or destruction of migratory nesting birds, exposure of workers to residual contamination from previous industrial operations at the project site, exposure of sensitive receptors to construction noise, and damage to adjacent structures from construction vibration.

Standard Permit Conditions are also required to ensure no impacts occur during construction and operation of the project. These Standard Permit Conditions include best management practices for construction related air quality impacts, compliance with the Santa Clara Valley Habitat Plan, compliance with the California Building Code for seismic safety of the proposed building, erosion control during construction activities, protection of unknown subsurface resources, protection of construction workers from hazards related to asbestos containing materials and lead-based paint, water quality impacts during construction, and impacts to public facilities.

CEQA Alternatives

As required under CEQA, the EIR identified and evaluated alternatives to the project. Three critical factors considered in the selection and evaluation of the alternatives included: (1) the significant impacts from the project that could be reduced or avoided by an alternative, (2) consistency with the project's objectives, and (3) the feasibility of the alternatives available. The environmental analysis considered three project alternatives as briefly outlined below, further analysis is included in the EIR.

No Project – No Development Alternative

The No Project – No Development Alternative assumes that the project site would remain as it is today, which includes the existing auto commercial, commercial (restaurant), and residential development on-site. The No Project No Development Alternative would avoid all of the project's environmental impacts. The No Project – No Development Alternative would not meet any of the project objectives. In addition, the existing development is lower than the 0.3 FAR density encouraged under the West San Carlos Urban Village Plan, since the site currently contains lower commercial FAR and du/ac than the 0.3 FAR minimum requirement. Because the No Project – No Development Alternative would not result in any development on the site, this Alternative would avoid all of the environmental impacts of the project. However, this Alternative would not meet any of the project objectives.

No Project – Existing Land Use Designation Alternative

The No Project – Existing Land Use Designation Alternative is essentially the same as the proposed project. This alternative was proposed when the project still included a PD Planned Development Zoning application to rezone the site from the existing CP Commercial Pedestrian Zoning District and the R-M Multiple Residence Zoning District to a Planned Development Zoning District. This alternative maintained the existing zoning districts and would have constructed a similar project consistent with the General Plan designation and zoning districts. The originally proposed PD zoning would have afforded the project more flexibility in terms of site design and setbacks. Under Assembly Bill 3194, the Housing Accountability Act Amendment, effective January 1, 2019, the local governments' authority is limited and cannot reject or restrict housing development projects that comply with applicable objective general plan, zoning, and subdivision standards. Because rezoning is no longer required, there is no land use designation alternative. Importantly, alternatives are alternatives that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant impacts of the project. Because this alternative does not reduce any impacts, it is not a reasonable or feasible alternative.

Design Alternative

The Design Alternative – Replace and Restore Five of the Seven Historic Bungalows would lessen the project's impact on the historic resources by relocating and restoring five of the seven historic Spanish Revival-style bungalows on the site. This alternative would require the project to be redesigned in a manner that would preserve the historic

resources to the extent feasible while still allowing a physically feasible development on the project site. The proposed Building 1 of the Project would be redesigned with a reduced building footprint to allow five of the historic bungalow units to be relocated and preserved on the southern portion of the site. The proposed Building 2 would remain the same as the proposed project. The five bungalow units would be situated in a horseshoe layout and facing each other to form a central court in the middle, recreating a similar court-like court as the existing unit layout. Building 1, under this alternative, would have 24 fewer residential units, 11,165 square feet less of commercial space, and 18,923 square feet less common space. Building 1 would include 79 residential units, 10,000 square feet of commercial space, and 6,000 square feet of common space, which combined with Building 2 would result in a density of 111 du/ac and 0.29 commercial floor-area ratio (FAR). Additionally, Building 1 would be set back at least 95 feet from the southern property line. Building stories and height would remain the same. Access to the site and bungalow units would be provided on the proposed driveway on West San Carlos Street. This design alternative would preserve five of the seven bungalow units and would lessen the impact to the historic resources but not to a less than significant level even with the restoration of the buildings consistent with the Secretary of the Interior's Standards. ~~reduce the significant impact to the historic resources by restoring the buildings consistent with the City's and Secretary of the Interior's requirements for historic buildings.~~ All other impacts during construction and operation would be similar to that of the proposed project.

Circulation and Public Comments

The Draft EIR was circulated for public review for 45 days consistent with CEQA Guidelines Section 15132 starting on January 12, 2021 and ending on February 26, 2021. Comments were received from regional and local agencies, including the County of Santa Clara, Roads and Airport Department, the Santa Clara Valley Transportation Authority (VTA), and the Santa Clara Valley Water District; and organizations, businesses, and individuals, including a letter from Lozeau Drury, LLP. and Pacific Gas & Electric Company (PG&E).

Issues raised in these comment letters include the following:

County of Santa Clara, Roads and Airport Department: City annexation of project pockets to address all neighborhood traffic-related issues within those pockets. Reference to the annexation clause within the 2006 Settlement Agreement between the County and the City of San Jose.

VTA: Request for the project to coordinate bus stop improvements to consolidate stop locations along West San Carlos Street and opportunity to review updated site plans to ensure the placement of driveways, landscaping and any other features do not conflict with bus operations; and comment on the proposed crossing at San Carlos Street and Willard Avenue.

Lozeau Drury LLP (dated February 26, 2021) on behalf of the Laborers International Union of North America (LIUNA): 1) Draft EIR fails to discuss indoor air quality impacts related to the project, in particular emissions of formaldehyde; 2) Draft EIR relies on unsubstantiated input parameters to estimate project emissions and thus fails to provide substantial evidence of the project's air quality impacts; 3) the Draft EIR failed to disclose a significant air quality impact from ROG emissions; 4) the Draft EIR fails to adequately evaluate health risks from diesel particulate matter emissions; 5) The Draft EIR inadequately evaluated the project's cumulative impacts.

Response to Public Comments addressed in First Amendment

In accordance with CEQA Guidelines Section 15088, a First Amendment was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the Draft EIR. As contained within the First Amendment, comments received either did not address the adequacy of the Draft EIR or the comment did not identify new or more significant impact, or a new feasible project alternative or mitigation measure considerably different than identified in the Draft EIR. For these reasons, no further CEQA analysis is required and the Draft EIR does not require recirculation. The Draft EIR taken together with the First Amendment constitutes the Final EIR. The Draft EIR and First Amendment to the Draft EIR are available for review on the project page on the City's Active EIRs website at: www.sanjoseca.gov/ActiveEIRs.

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft EIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a 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).

Statement of Overriding Considerations

The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant and unavoidable impact of the Project is acceptable in light of the economic and social considerations noted below, because the benefits of the Project outweigh the significant and unavoidable impact of the Project. The City Council finds that the overriding considerations set forth below constitutes a separate and independent

ground for finding that the benefits of the Project outweigh its significant and unavoidable environmental impact and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan, Zoning Ordinance and the West San Carlos Urban Village:

Further Envision San José 2040 General Plan Strategies, Goals, and Policies.

Major Strategy #3 Focused Growth: The Project site is located within an identified Growth Area (Urban Village). The growth capacity for the West San Carlos Urban Village is 980 jobs and 1,245 residential units. The Plan considers one job as equal to 300 square feet of a commercial building's square footage, which translates into 294,000 square feet of capacity for new commercial development. The project proposes to construct 173 multifamily dwelling units and approximately 17,836 square feet of commercial use, generating approximately 554 residents and 60 employees, which is a net increase of 528 residents and 34 employees. The two seven-story buildings are sited within a transit priority area primarily served by VTA Bus Routes 23 and 523 (considered major transit stops because the routes have headways of 15 minutes during the AM and PM peak commute periods, and is in close proximity to Downtown. The project would support job growth by providing neighborhood-supportive retail spaces along West San Carlos Street and provide new housing units to meet the City's increasing housing demand.

Provision of a Paseo: In addition to the residential/commercial mixed uses, the project would include a 30-foot walkway that wraps around the building and connects to the proposed driveway and the sidewalk on West San Carlos Street to the proposed private paseo which is part of the project and envisioned for the West San Carlos Urban Village.

Land Use Goal LU-3 and Transportation Policy TR-4.1: The Project encourages the use of alternative transportation options through its proximity to public transit, and the inclusion of bicycle parking for its residential and commercial uses. Additionally, the project would replace and widen the existing 10-foot sidewalk to 20 feet with landscape strip on the project frontage on West San Carlos Street – a Grand Boulevard- and would also replace and widen the existing eight-foot sidewalk to 15 feet with landscape strip on the project frontage on South Buena Vista Avenue. The project site is also within 1.5 miles of the Diridon Transit Depot, a station served by ACE, Caltrain, Greyhound, Amtrak, VTA bus lines, and the future BART line.

Further the vision, and design goals of the West San Carlos Urban Village.

The area is envisioned with higher-density mixed-use and residential development drawing energy from nearby Downtown San José and the Diridon Station. Development is proposed to range between three and seven stories with

residential uses above a mix of active ground-floor retail.

Urban Design Policy UD-3.2: Leverage private development to strengthen the public realm with improvements such as setbacks to accommodate space for wider sidewalks, shade-providing trees, and other pedestrian amenities. Explore the potential for “green buffer” strategies to integrate and expand local parks, open spaces, and pedestrian and bicycle pathways. The project would include the construction of a 30-foot-wide full landscaped paseo in the rear of the site, which would eventually connect to the Buena Vista Avenue and Willard Avenue, should the sites to the east and west be redeveloped.

Development in Transit Rich Area and along a Grand Boulevard. The project site is located along West San Carlos Street - a Grand Boulevard that is served by several bus lines. The project site is also within 1.5 miles from the Diridon Transit Depot, a station served by ACE, Caltrain, Greyhound, Amtrak, VTA bus lines, and the future BART line.

Complete Communities. The proposed development also includes 12,818 square feet of outdoor common open space and 9,412 square feet of indoor amenity space in the proposed buildings, and a 4,450-square foot private paseo. The development will also provide on-site parking for vehicles and bicycles, both for the residential component and the retail component of the project. The project will advance the Envision San José 2040 General Plan policies to create a complete community with a mixed-use building with an amenity-rich residential use and new commercial/retail uses placed within walking distance of neighborhoods and the commercial businesses along West San Carlos Street. Placing complementary land uses like residential and commercial/retail uses near each other will reduce the number of single-occupancy automobile trips and vehicle miles traveled compared with the equivalent amount of development in a more suburban location where uses are separated. Less trips would contribute to a decrease in project-generated greenhouse gas emissions.

Each of the above benefits of the proposed Project were weighed against its significant unavoidable impact identified in the EIR. The City Council determined that these benefits outweigh the adverse environmental effect of the Project and, therefore, further determined that the adverse environmental effect is acceptable and overridden.

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

- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and

Analysis: As discussed above, the project is consistent with the General Plan goals and policies for focused growth, Urban Villages, land use, and employment. The project would also be consistent with the goals and policies of the West San Carlos Urban Village for land use, employment, and urban design. The project would provide a high intensity mix of residential and commercial retail uses. The project would provide jobs, retail options, and recreational opportunities in a central location with the construction of two seven-story buildings consisting of 173 residential units and 17,836 square feet of commercial retail space. The project would also provide a 30-foot-wide paseo in the rear of the phase one building, that would ultimately provide an inter-block connection from Buena Vista Avenue to Willard Avenue upon redevelopment of the sites to the east and west.

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

Analysis: As discussed in the Zoning Ordinance Compliance section above, the project is consistent with all applicable height and setback requirements of the Zoning Code and the approved West San Carlos Urban Village Plan. The project would also provide the required number of vehicle parking spaces with an approximately 42% parking reduction through the implementation of a TDM plan. The project provides all required clean air vehicle, bicycle, motorcycle parking requirements. Operational noise including indoor and outdoor areas, mechanical equipment, and would conform with the Zoning Code requirements for noise in a Commercial and Residential Zoning District. Additionally, the project includes the removal of 11 ordinance-size and four non-ordinance-size trees. The removal of all 15 trees on-site requires the replacement of those trees with 26 trees (24-inch box trees) on site. Based on the plans provided, 26 24-inch box trees would be planted on-site.

- c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project was duly noticed per Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals and on-site noticing/posting requirements. A joint Environmental Scoping and Community Meeting was held on January 9, 2020. The meeting was attended by approximately 22 members of the public.

- d. The proposed use at the location requested will not:
- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety, or general welfare; and

Analysis: As described above, the mixed-use project, including the commercial retail space, would not impact the peace, health, safety, morals or welfare of persons residing or working in the surrounding area. The residential, retail space, and common areas would be located wholly within the project site, and all activity in these spaces would not impact the area outside of the building. The project would not impair the utility or value of property or persons in the immediate area as any use in the retail portion of the project would be fully contained in the building and would not impact any adjacent property.

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

Analysis: The approximately 1.34-gross acre site would be adequate in size to accommodate the two mixed-use buildings as well as the necessary common outdoor space, landscaping, parking and loading. As described above, all parking would be located on either the ground level, behind the retail storefronts, or in a one level subterranean garage. Common outdoor space, including landscaping, would be located at the rear of both buildings, or on the upper floors where they would be accessible to residents. The paseo at the southern end of the Phase I building would be 30 feet wide and would soften the transition between the new development and the residential neighborhoods to the south.

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

Analysis: Vehicular access to the site would be from West San Carlos Street, with right-in/right-out turns only. Regional vehicular access would be provided from West San Carlos Street and Interstate 280, located approximately 2,300 feet to the south. Pedestrian access would be provided from West San Carlos Street and Buena Vista Avenue. VTA Route 23 bus stops are located directly across West San Carlos Street to the north and directly across Buena Vista Avenue to the west. The project is located in an urbanized area and is served by all required utilities and services. A Traffic Memo was prepared by the Department of Public Works, dated May 24, 2021. The Local Transportation Analysis (LTA) found that the four nearest signalized intersections, and one unsignalized intersection, and vehicle queueing for nearby left turn lanes would continue to operate acceptably with the completion of the project. The project is conditioned to install a crosswalk at the east leg of West San

Carlos Street and Buena Vista Avenue with a traffic signal modification to accommodate the reconfiguration. The project is also required to construct a new bus stop with a bus pad along the project frontage. As discussed above, the project would also implement a TDM Plan required for the approximately 42% parking reduction. With the inclusion of the conditions and implementation of the TDM plan, the project would be in conformance with the City of San José Transportation Analysis Police (Council Policy 5-1).

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

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

Analysis: See Special Use Permit Finding A 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: See Special Use Permit Finding B above.

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

Analysis: See Special Use Permit Finding C above.

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

Analysis: Both buildings would be seven stories tall and have a maximum height of 92 feet. The entrances of the buildings would be oriented towards West San Carlos Street. The parking garage would be located towards the rear of the site, away from the primary activity areas of the development, with one level located underground. The project also includes a 30-foot-wide paseo, which would provide on-site connectivity between future developments to the east and west.

- 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 subject site is surrounded by low density single-family and multifamily residences to the south, commercial uses to the east and west, and multifamily residential uses across West San Carlos Street to the north. Both buildings would be located along West San Carlos Street, with the highest portions of both buildings located away from lower density development to the south. The Phase 2 building would be stepped back from the single-family residences to the south with the incorporation of a 45-degree daylight plane. Additionally, a 30-foot-wide fully

landscaped paseo would be constructed in the rear of the site to further buffer the high-density development from the lower density residential uses to the south. The project would provide a mix of housing, retail, and recreational opportunities and would revitalize an existing underutilized commercial area within the West San Carlos Urban Village.

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

Analysis: The project development occurs in an urbanized area on a parcel that is fully developed with existing commercial buildings and surface parking lots. An Environmental Impact Report (EIR) was completed for the project and mitigation measures were identified for implementation during construction and operation to reduce potentially significant impacts; therefore, with implementation of standard conditions, best management practices and mitigation measures, there would be no significant impacts from noise, vibration, dust, drainage, erosion, stormwater runoff and odor from the project. Furthermore, the project would include a TDM plan to reduce automobile trips, consistent with parking reduction requirements. Therefore, the project would not have an unacceptable impact on adjacent properties.

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

Analysis: Both buildings include screening for all rooftop mechanical equipment as well as landscape screening for the adjacent residential area to the south. The ground floor garage is located behind the ground floor retail along West San Carlos Street. The garage screening on Buena Vista Avenue includes dark formed metal panels and composite metal panels that adequately screen the garage from view of the street, while maintaining consistency in color and materials with the larger building. All trash, storage, and utility facilities are located indoors.

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

Analysis: Vehicular access to the site would be from West San Carlos, with right-in/right-out turns only. Regional vehicular access would be provided from West San Carlos Street and Interstate 280, located approximately 2,300 feet to the south. Pedestrian access would be provided from West San Carlos Street and Buena Vista Avenue. VTA Route 23 bus stops are located directly across West San Carlos Street to the north and directly across Buena Vista Avenue to the west. Additionally, the project would include the relocation and construction of a new bus stop at the front of the project site. The project is located in an urbanized area and is served by all required utilities and services. The project provides the required number of vehicle parking spaces in a conveniently located parking garage with a 42% parking

reduction through the implementation of a TDM plan. The project provides all required bicycle, motorcycle, clean air, and EV parking as required by the Zoning Code.

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

- a. The structure or use is located within two thousand (2,000) feet of a proposed or an existing rail station or bus rapid transit station, or an area designated as a Neighborhood Business District, or as an Urban Village, or as an area subject to an area development policy in the City's General Plan or the use is listed in Section 20.90.220G; and
- b. The structure or use provides bicycle parking spaces in conformance with the requirements of Table 20-90.
- c. For any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a Transportation Demand Management (TDM) program that contains but is not limited to one of the following measures:
 - i. Implement a carpool/vanpool or car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations at the ratio set forth in the development permit or development exception considering type of use; or
 - ii. Develop a transit use incentive program for employees and tenants, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA SmartPass system will satisfy this requirement).
- d. In addition to the requirements of Section 20.90.220 A, for any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a TDM program that contains but is not limited to at least two of the following measures in Section 20.90.200 A.1.d.

Analysis: The project requires 328 vehicle parking spaces. Pursuant to Section 20.90.220 of the Zoning Code, a parking reduction of up to 50% of the code required parking spaces may be permitted for sites within a Growth Area with the implementation of a TDM Plan. A total of 189 vehicle parking spaces would be provided with the implementation of a TDM Plan to allow for an approximately 42% parking reduction. A TDM Plan, dated September 8, 2020 was prepared by Hexagon Transportation Consultants, Inc, which reviewed the possibility of an approximately 42% parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement

additional TDM measures in accordance with Section 20.90.220 of the Municipal Zoning Code. The project would be required to provide an online kiosk of trip-planning resources, 100 percent unbundled parking for all residential spaces, VTA SmartPasses to all residential tenants, and on-site bicycle storage.

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

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

Analysis: The project includes the removal of 15 trees (11 ordinance-sized and four non-ordinance-sized). The trees to be removed are located either within the project building footprint, within the newly dedicated sidewalks, within the paseo area, or within necessary driveways. Fourteen of the trees are located within the project boundary; one tree is adjacent to the boundary. Based on findings from the tree survey prepared for the site by David J. Powers and Associates dated April 29, 2019, and on the project objectives, the trees could not be preserved because they restrict the economic development of the site pursuant to urban design requirements of the Urban Village land use designation and the West San Carlos Urban Village Plan. The removal of all 15 trees on-site requires the replacement of 26 trees (24-in box) on site. Based on the approved development plan, 26 24-inch box trees would be planted on-site. The trees to be planted include a mix of Maidenhair, Littleleaf Linden, Accolade Elm, Sweet Bay, Brisbane Box, Flowering Plum, Flowering Cherry, Bronze Loquat, Dwarf Southern Magnolia, and Sawleaf Zelkova trees.

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

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

replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: The project includes the demolition of three existing commercial buildings, eight residential buildings, associated service structures, and one billboard totaling approximately 14,131 square feet. The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition. The failure to approve the permit would not jeopardize public health, safety or welfare. The demolition permit would facilitate a project that is compatible with the surrounding neighborhood. As previously discussed, the project is consistent with all applicable General Plan and West San Carlos Urban Village Plan goals and policies, zoning code requirements, applicable city council policies, and design guidelines. The demolition of the existing commercial buildings would facilitate the construction of two mixed-use buildings with 173 residential units and 17,836 square feet of commercial retail space. Given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible. Based on the Historic Resources Evaluation report, prepared by Treanor HL in July 2019, demolition of the residences at 1530 West San Carlos Street, eligible as candidate City Landmark structures, would be a significant and unavoidable impact. Even though mitigation measures that include documentation, relocation, and salvage would lessen the impact, the residences and the historic connection to the current location would be lost. Therefore, the impact would be significant and unavoidable. The City Council has considered the impacts resulting from demolition of the potential historic resources and, issuing a statement of overriding considerations, finds that the public benefits from the project outweigh the impacts. The demolition of any existing buildings on-site would not be approved until the issuance of a grading or building permit, whichever comes first, as conditioned in this Special Use Permit for the subject site.

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

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

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

- a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provisions of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this permit.
 3. **Lot Line Adjustment Required.** Prior to the issuance of a building permit the Permittee shall secure approval of Lot Line Adjustment merging three lots into one lot and shall provide proof of recordation of the approved Lot Line Adjustment to the City Planning Division.
 4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
 5. **Use Authorization.** Subject to all conditions herein, this Permit allows the demolition of three existing commercial buildings, eight residential buildings, associated service structures, and one billboard totaling 14,131 square feet, the removal of 15 trees (11 ordinance-size, four non ordinance-size) and to allow the construction of two seven-story residential mixed use buildings, including 173 residential units and 17,836 square feet of commercial retail space with an approximately 42 percent parking reduction with the implementation of a Transportation Demand Management (TDM) plan on an approximately 1.34-gross acre site.
 6. **Implementation of a Transportation Demand Management (TDM) Plan.** The project is required to implement the TDM Measures included in the TDM Plan prepared by Hexagon Transportation Consultants, Inc., dated September 8, 2020, as amended, for the life of the project. TDM Measures include:
 - a. Online kiosk of trip-planning resources

- b. 100 percent unbundled parking for all residential spaces
 - c. VTA SmartPasses to all residential tenants
 - d. On-site bicycle storage
7. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by permittee shall constitute acknowledgement of receipt of notice by permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
8. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Special Use Permit Plans, “1530-1544 W. San Carlos St Mixed Use Development, SP20-004” dated received March 3rd, 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the “approved plans” or the “Approved Plan Set”.
9. **Tree Protection Standards.** The permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be

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

10. **Permit Posting.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the permittee shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following:
 - a. The copy of the Permit shall be a minimum size of 8.5 inches by 11.0 inches; shall be posted at each public street frontage within two feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the Permit is readable from the public sidewalk or right-of-way; or
 - b. If the site does not have a public street frontage, a copy of the Permit shall be posted at a location where the Permit is readable from a common access driveway or roadway.
11. **Presentation of Permit.** During removal of any ordinance-size tree pursuant to this Permit, the permittee shall maintain the validated Permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.
12. **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.
13. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
14. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
15. **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 changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement.
16. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
17. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
18. **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.

19. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
20. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
21. **Mechanical Equipment.** The location and type of mechanical equipment shall be shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
22. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
23. **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.
24. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
25. **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.
26. **Outdoor Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property
27. **Landscaping.** Planting and irrigation shall be provided, as indicated, on the Approved Plan Set. Landscaped areas shall be maintained and watered, and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping.
28. **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.
29. **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.

- 30. 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.
- 31. Building and Property Maintenance.** The permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the building such as paint, roof, paving, signs, lighting and landscaping.
- 32. Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
- 33. Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
- 34. Affordable Housing Requirements.** The project is subject to the City's Inclusionary Housing Ordinance (IHO) and each of the conditions below:
- The permittee must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any contiguous property under common ownership and control prior to earliest of: issuance of any public permits, or approval of any parcel or final map.
 - Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.
 - No building permit may be issued until the Affordable Housing Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
 - No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO and Affordable Housing Agreement are met.
- 35. Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the permittee's intent to fully comply with said conditions.

36. Timing for Demolition. Buildings and structures that are being removed to accommodate the new development shall not be removed until the related Public Works grading permit has been issued.

37. 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. _____

38. Standard Environmental Conditions

a. Air Quality

- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
- ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations).
- x. Provide clear signage for construction workers at all access points.
- xi. 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.
- xii. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

- b. Biological Resources:** The trees removed by the project would be replaced according to tree replacement ratios required by the City, as provided in Table 3.4-1 below.

- i. The project is subject to applicable Santa Clara Valley Habitat Plan (SCVHP) conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit a SCVHP Coverage Screening Form or Nitrogen Deposition Only Application Form (if no land cover fees apply) to the Director of Planning, Building and Code Enforcement or the Director's designee for review and shall complete subsequent forms, reports, and/or studies as needed. The Habitat Plan supporting materials can be viewed at www.scv-habitatagency.org.

Table 3.4-1: Tree Replacement Ratios				
Circumference of Tree to be Removed ¹	Type of Tree to be Removed ²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more ³	5:1	4:1	3:1	15-gallon container
19 – 38 inches	3:1	2:1	None	15-gallon container
Less than 19 inches	1:1	1:1	None	15-gallon container
¹ As measured 4.5 feet above ground level ² x:x = tree replacement to tree loss ratio ³ Ordinance-sized tree Notes: Trees greater than or equal to 38 inches in 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 Tree Removal Permit is required for removal of trees of any size. A 38-inch tree is 12.1 inches in diameter. One 24-inch box tree = two 15-gallon trees.				

- c. **Cultural Resources:** The following Standard Permit Condition is required to avoid impacts to yet unknown subsurface cultural resources.

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

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

- i. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
 - a) 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;
 - b) The MLD identified fails to make a recommendation; or
 - c) The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.
- d. **Geology and Soils:** The following Standard Permit Condition is required to avoid seismic and seismic-related impacts.
 - i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

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

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

- a) If vertebrate fossils are discovered during construction, all work on the site shall stop immediately 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 fossils so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for 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 Director's designee.
- e. **Hazards and Hazardous Materials:** The project shall implement the following measures to reduce impacts related to lead-based paint and asbestos:
 - i. In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be constructed prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials and/or lead-based paint.
 - ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with California Division of Occupational Safety and Health (Cal/OSHA) Lead in Title 8, CCR, Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.

- iii. All potentially friable asbestos-containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
 - a) Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
 - b) During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring, and dust control.
 - c) Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.
- f. **Hydrology and Water Quality:** Best Management Practices to prevent stormwater pollution and minimize potential sedimentation shall be applied to project construction, including but not limited to the following:
 - i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
 - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
 - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
 - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
 - v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.

- vi. All paved access roads, parking areas, staging areas, and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
 - viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - ix. The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
 - g. **Noise:** Prior to the issuance of any building permits, a detailed acoustical study shall be prepared during building design to evaluate the potential noise generated by building mechanical equipment and to identify the necessary noise controls that are included in the design to meet the City's 55 dBA DNL noise limit at the shared property line. The study shall evaluate the noise from the equipment and predict noise levels at noise-sensitive locations. Noise control features, such as sound attenuators, baffles, and barriers, shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise sensitive locations, such as residences. The study shall be submitted to the City of San Jose for review and approval prior to issuance of any building permits." With implementation of the above standard permit condition, the project would result in a less than significant mechanical equipment noise impact.
39. **FAA Clearance Required.** Prior to issuance of any Building Permit for construction, 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.
40. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the city.
41. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This Permit file number, SP20-004 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 permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
42. **Public Works Clearance.** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building Permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building Permits. Standard review timelines and submittal instructions for Public Works Permits may be found at: <http://www.sanjoseca.gov/devresources>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation (see separate Traffic Memo dates 5/24/2021):** With the inclusion of the following conditions, 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. Install a crosswalk across the east leg of the San Carlos Street and Buena Vista Avenue intersection with a traffic signal modification as needed to accommodate the reconfiguration.
 - ii. Construct a bus stop with bus pad along the project frontage.
 - iii. Prior to Planning approval, implement and submit a Transportation Demand Management (TDM) plan to the Planning Project Manager for the additional 22% parking reduction on top of the 20% reduction allowed in accordance with the Urban Village Plan.
 - c. **Urban Village Plan:** This project is located in a designated Urban Village per the Envision San Jose 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit

users of all ages and to promote job growth.

- i. The paseo in the rear of the site will be required to be built to a design as approved by the City. The City will require an Irrevocable Offer of Dedication for Public Accessibility to be recorded against the property encompassing the paseo. In the interim, while the paseo is landlocked from the public right-of-way, it will remain private.
- d. **Grand Boulevard:** This project fronts San Carlos Street/Stevens Creek Boulevard which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- e. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
 - iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
- f. **Shoring:**
 - i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
 - ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the permittee and must provide security, in the form of a CD or Letter of Credit,

in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12" within the public right-of-way (i.e. soldier beams).

- iii. If tie-backs are proposed for use along the adjacent properties (277-18-14/15/16/17/21/24/25/26) 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.
- g. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iii. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at the following:
<https://www.sanjoseca.gov/home/showdocument?id=27405>.
- h. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post- Construction Hydromodification Management Policy (Council Policy 8-14).
- i. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- j. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- k. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
- l. **Undergrounding:**

- i. The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Buena Vista Avenue prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2021 base fee is \$532 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
- ii. The Director of Public Works may, at his discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project adjacent to Buena Vista Avenue. Permittee shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
- m. **Reimbursement:** The permittee will be required to reimburse the City for costs advanced for the construction of street improvements along West San Carlos Street in accordance with City Ordinance #19663.
- n. **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.
 - i. **West San Carlos Street frontage:**
 - a) Provide 20-foot wide attached sidewalk with tree wells at the back of curb.
 - b) Construct a bus stop with bus pad.
 - c) Proposed driveway width to be 26 feet.
 - ii. **Buena Vista Avenue frontage:** Provide 12-foot wide attached sidewalk with tree wells at the back of curb.
 - iii. **West San Carlos Street and Buena Vista Avenue intersection:** Install a crosswalk across the east leg of the intersection with a traffic signal modification as needed to accommodate the reconfiguration.
 - iv. 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.
 - v. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
 - vi. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any

necessary pavement restoration will be included as part of the final street improvement plans

- o. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
 - i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
 - a) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).
 - b) **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
 - ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:
 - a) Implementing the closures at the time the onsite activities dictate the need for the closure.
 - b) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition a.ii above.
 - iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, permittee shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.

p. **Strong Neighborhoods Initiative (SNI):** This project is located within the Burbank/Del Monte SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.

q. **Electrical:**

- i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
- iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10 feet in commercial areas and 5 feet in residential areas.
- iv. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10 feet from high voltage lines; 3 feet from secondary voltage lines; and 1 foot from communication lines.

r. **Street Trees:**

- i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 or developmentproject@sanjoseca.gov for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects." Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - a) West San Carlos Frontage: The recommended street trees are Ulmus 'Morton' planted 35 feet on center.
 - b) Buena Vista Avenue Frontage: The recommended street trees are Zelkova serrata 'Schmidtlow' planted 35 feet on center.
- ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

35. **School Impact Fee.** In accordance with California Government Code Section 65996, the developer shall pay a school impact fee to the School District, to offset the increased demands on school facilities caused by the proposed project.

36. **Revocation, Suspension, Modification.** This Special Use Permit and Site Development Permit may be revoked, suspended or modified by the City Council at

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

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

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

APPROVED this ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

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

RESPONSE TO REBUTTAL LETTER TO RESPONSES TO DRAFT EIR COMMENTS

A. Lozeau Drury LLP to Planning Commission (dated July 14, 2021)

Comment A.1: This comment letter is submitted on behalf of Laborers International Union of North America, Local Union No. 270 and its members living and working in and around Union City (collectively “LIUNA”) regarding the Draft Environmental Impact Report (“DEIR”) and Final Environmental Impact Report (“FEIR”) prepared for the 1530-1536 West San Carlos Mixed-Use Project (File No. SP20-004; SCH No. 2019120341) (“Project”) in the City of San Jose (“City”) to be heard as Agenda Item 5a at the Planning Commission’s July 14, 2021 meeting.

Response A.1: The City acknowledges that this comment letter was submitted on behalf of members of Local Union No. 270 and its members living and working in and around Union City.

Comment A.2: This comment supplements LIUNA’s comment letter regarding the DEIR submitted on February 26, 2021, incorporated by reference herein (“LIUNA’s DEIR Comment”). LIUNA’s DEIR Comment raised concerns as to the DEIR’s analysis and conclusion related to indoor and outdoor air quality, cancer risks from emissions of formaldehyde and diesel particulate matter, and cumulative impacts.

Although the FEIR contained responses to LIUNA’s DEIR Comment, LIUNA maintains that the EIR fails to comply with the California Environmental Quality Act (“CEQA”) and fails to adequately analyze and mitigate the Project’s significant environmental impacts.

Therefore, LIUNA requests that the Planning Commission refrain from recommending approval of the Project and FEIR to the City Council. Instead, LIUNA requests the Commission direct staff to address the shortcomings described below and in our previous comments in a revised draft environmental impact report (“RDEIR”) subject to public review and comment prior to the City’s approval of the Project.

I. PROJECT BACKGROUND

The Project would develop two seven-story buildings with six levels of residential units over two-levels of parking (one below-grade and one at-grade) on a 1.34-acre project site comprised of three contiguous parcels located at 1530, 1536, and 1544 West San Carlos Street in the City of San Jose (APNs: 277-18-018, 277-18-019, and 277-18-020). Building 1 (on the east side of the site) would include up to 103 residential units and 11,387 square feet of commercial space on the ground level and second floor. Building 2 would include up to 70 residential units and 6,449 square feet of commercial space on the ground level and second floor. The project would have a density of approximately 129 du/ac and a FAR of 0.30. The maximum height of the buildings would be 82 feet to the roofline and 92 feet to the highest point of architectural element (stairs).

The project site is currently developed with three commercial buildings (totaling approximately 7,600 square feet), currently used for automotive businesses, a martial arts studio, and a restaurant, and associated ancillary structures and surface parking. Behind the restaurant building, and separated by a metal rolling gate, are eight single-family residences and three ancillary parking garages in the

southern portion of the site. All existing structures are to be demolished. There are 14 trees on-site and one off-site street tree, all of which would be removed as part of the proposed development. Vehicular access to the site would be provided via a 26-foot wide, two-way driveway on West San Carlos Street connecting to the entrance of the parking garages for the two proposed buildings. The driveway would be located between the two buildings. The project proposes a total of 189 vehicle parking spaces in the parking garages.

II. LEGAL STANDARD

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”), except in certain limited circumstances. (*e.g.*, Pub. Res. Code § 21100.) The EIR is the very heart of CEQA. (*Dunn- Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env’t. v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109.)

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 CCR 15002(a)(1).) “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (*Berkeley Jets*); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.)

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. (14 CCR § 15002(a)(2), (3); *see also, Berkeley Jets, supra*, 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley, supra*, 52 Cal.3d at 564.) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” (14 CCR 15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” (PRC § 21081; 14 CCR 15092(b)(2)(A), (B).) The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.)

The EIR is the very heart of CEQA “and the integrity of the process is dependent on the adequacy of the EIR.” (*Berkeley Jets, supra*, 91 Cal.App.4th at 1355.) CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. (PRC § 21100(b)(1); 14 CCR 15126(a); *Berkeley Jets, supra*, 91 Cal.App.4th at 1354.) The EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.) The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and

concrete substantial evidence justifying the finding. (*Kings County Farm Bureau, supra*, 221 Cal.App.3d at 732.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env't., supra*, 103 Cal.App.4th at 109.)

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Jets, supra*, 91 Cal.App.4th at 1355 [quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, 409 n. 12].) A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado Cnty. Water Agency* (1999) 76 Cal. App. 4th 931, 946.)

The lead agency must evaluate comments on the draft EIR and prepare written responses in the final EIR. (Pub. Res. Code § 21091(d).) The FEIR must include a “detailed” written response to all “significant environmental issues” raised by commenters. As the court stated in *City of Long Beach v. LA USD* (2009) 176 Cal.App.4th 889, 904,

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.

The FEIR’s responses to comments must be detailed and must provide a reasoned, good faith analysis. (CEQA Guidelines § 15088(c).) Failure to provide a substantive response to comment render the EIR legally inadequate. (*Rural Land Owners Assoc. v. City Council* (1983) 143 Cal.App.3d 1013, 1020.)

The responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. “Conclusory statements unsupported by factual information” are not an adequate response. (CEQA Guidelines §§ 15088(b), (c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348.) The need for a substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. (*Berkeley Keep Jets*, 91 Cal.App.4th at 1367; *People v. County of Kern* (1976) 62 Cal.App.3d 761.) A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. (*Calif. Oak Found. v. Santa Clarita* (2005) 133 Cal.App.4th 1219.)

Response A.2: The City of San José prepared a First Amendment to the Draft EIR for the referenced project, which combined with the Draft EIR constitutes the Final EIR, in compliance with the requirements of CEQA and the CEQA Guidelines. As discussed in the previous responses and in responses to specific comments below, the comments raised by Lozeau Drury, LLP do not identify a new or more significant

impact, or a new feasible project alternative or mitigation measure considerably different than identified in the Draft EIR.

Comment A.3: III. DISCUSSION

A. The DEIR Fails to Discuss Indoor Air Quality Impacts Related to the Project.

As stated in LIUNA's DEIR Comment, the DEIR fails to discuss, disclose, analyze, and mitigate the significant health risks posed by the Project from formaldehyde, a toxic air contaminant ("TAC"). Certified Industrial Hygienist, Francis Offermann, PE, CIH, conducted a review of the Project, the DEIR, and relevant documents regarding the Project's indoor air emissions. Mr. Offermann is one of the world's leading experts on indoor air quality, in particular emissions of formaldehyde, and has published extensively on the topic. As set forth in Mr. Offermann's comments, the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents at the Project's apartments. Mr. Offermann's expert opinion demonstrated the Project's significant health risk impacts, which the City has a duty to investigate, disclose, and mitigate in an EIR. Mr. Offermann's DEIR comment and curriculum vitae are attached as Exhibit A to LIUNA's DEIR Comment

LIUNA's DEIR Comment explained that formaldehyde is a known human carcinogen and listed by the State as a TAC. (LIUNA DEIR Comment, p. 4.) Mr. Offermann explained that many composite wood products typically used in home and apartment building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He stated, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential, office, and retail building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." (LIUNA DEIR Comment, Ex. A, pp. 2-3.)

Mr. Offermann found that future residents of the Project's residential units will be exposed to a cancer risk from formaldehyde of approximately 120 per million, ***even assuming that*** all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (LIUNA DEIR Comment, Ex. A, pp. 4-5.) This is more than 12 times BAAQMD's CEQA significance threshold of 10 per million. (*Id.*)

Mr. Offermann found that future employees of the Project's commercial spaces will be exposed to a cancer risk from formaldehyde of approximately 17.7 per million, ***even assuming that*** all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (LIUNA DEIR Comment, Ex. A, p. 4.) This exceeds BAAQMD's CEQA significance thresholds 10 per million. (*Id.*)

In the FEIR, the City provided a number of responses to Mr. Offermann's comments, none of which are sufficient. Mr. Offermann has reviewed the responses to his comments and prepared a reply ("Offermann Reply"). The Offermann Reply is attached hereto as Exhibit A.

Response A.3: Refer to Responses A.4 to A.8 and A.13 to A.16, below.

Comment A.4: First, the City criticized Mr. Offermann's mistaken reference to the CEQA threshold set by the South Coast Air Quality management [sic] District ("SCAQMD"). Mr. Offermann

concedes that this was a typo, that he meant to reference the Bay Area Air Quality Management District (“BAAQMD”), and that the typo did not alter his analysis or conclusions. (Offermann Reply, pp. 1-2.)

Response A.4: The commenter states that the City criticized their expert by notating his reference to the South Coast Air Quality Management District. The referenced response is Response D.24, page 30 of the First Amendment, this response identifies the original reference was incorrect and not applicable to the project.

Comment A.5: Second, the City claimed that there are no CEQA thresholds of significance for formaldehyde and that the Project would comply with CalGreen building standards, which incorporate the formaldehyde requirements of the California Air Resources Board (“CARB”). The City [sic] further claimed that any risk from formaldehyde emissions was merely speculative.

Response A.5: The commenter suggests that “The City further claimed that any risk from formaldehyde emissions was merely speculative.” This is not an accurate statement with regard to the City’s response. In Response D.3 ,page 13, and Response D.25,page 37, of the First Amendment, the City specifically stated:

“Lastly, even with the regulations in place, if materials containing formaldehyde were to be used, *it would be speculative for the City to estimate the type and volume of building materials that may contain formaldehyde* (emphasis added). Per Section 15145 of the CEQA guidelines, speculative analysis is not acceptable. Because there would be no way to quantify the off-gassing of materials, and because no thresholds exist, no additional analysis or mitigation measures related to formaldehyde would be required.”

Comment A.6: Mr. Offermann has replied, “the Bay Area Air Quality Management District (BAAQMD) does have an adopted CEQA threshold for formaldehyde and this includes the impacts from all aspects of a project including the impacts from the building construction materials on the indoor environment.” (Offermann Reply, p. 2.) Furthermore, Mr. Offermann reiterated that his analysis demonstrated that the Project presents a serious cancer risk *even if* the Project complies with CalGreen/CARB standards. (*Id.*) This is precisely why mitigation is needed beyond bare compliance with CalGreen/CARB standards. Also, Mr. Offermann stressed that the impact is not speculative but rather requires that the City take the extra step of requiring no-formaldehyde-added or ultra-low-formaldehyde building materials. (*Id.*)

Response A.6: The commenter contends that the proposed project would exceed the Bay Area Air Quality Management District (BAAQMD) CEQA significance threshold of 10 cancer cases per million for interior formaldehyde exposure to future residents and employees. As was stated in the First Amendment to the Draft EIR (Response D.3 ,pages 12-13), BAAQMD does not have an adopted CEQA threshold for indoor formaldehyde and does not regulate indoor air quality. While the commenter continues to assert that BAAQMD does have an indoor formaldehyde threshold, they have provided no documentation or reference to show that the City is incorrect in their understanding of the BAAQMD CEQA Guidelines.

The commenter asserts that formaldehyde is a toxic air contaminant (TAC). It can be presumed that the commenter is applying the BAAQMD exterior source TAC threshold of 10 cancer cases per million to indoor formaldehyde emissions. While BAAQMD does also identify formaldehyde as a TAC, the BAAQMD CEQA Guidelines only identify mobile source formaldehyde emissions as TACs. This is different than the indoor source emissions cited by the commenter. As such, and because BAAQMD does not regulate indoor air quality, the TAC threshold cited by the commenter is not applicable. The City maintains, BAAQMD does not have an indoor formaldehyde emissions threshold.

Furthermore, there is no way to reasonably estimate the quantity of materials that may off-gas or what the total interior emissions would be per residential unit or retail space as the building interiors have not been designed or materials chosen. For all these reasons, the City cannot quantify with reasonable certainty the emission levels as there is no adopted threshold by which to identify an impact.

Comment A.7: Third, the City makes a legal argument that it was not required to analyze the impact of the Project’s formaldehyde emissions on the Project’s workers because such impacts do not need to be considered under CEQA. This argument is contrary to the California Supreme Court’s decision in *California Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 (“*CBIA*”). In that case, the Supreme Court expressly holds that potential adverse impacts to future users and residents from pollution generated by a proposed project ***must be addressed*** under CEQA. At issue in *CBIA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment’s effects on a project. (*CBIA*, 62 Cal.4th at 800-01.) However, to the extent a project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. (*Id.* at 801.) In so holding, the Court expressly held that CEQA’s statutory language required lead agencies to disclose and analyze “impacts on a project’s users or residents that arise from the project’s effects on the environment.” (*Id.* at 800 [emphasis added].)

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. People will be residing in and using the Project once it is built and begins emitting formaldehyde. Once built, the Project will begin to emit formaldehyde at levels that pose significant direct and cumulative health risks. The Supreme Court in *CBIA* expressly finds that this type of air emission and health impact by the project on the environment and a “project’s users and residents” must be addressed in the CEQA process. The existing TAC sources near the Project site would have to be considered in evaluating the cumulative effect on future residents of both the Project’s TAC emissions as well as those existing off-site emissions.

Response A.7: The commenter notes above that “to the extent a project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. (*Id.* at 801.) In so holding, the Court expressly held that CEQA’s statutory language required lead agencies to disclose and analyze ‘impacts on a project’s users or residents that arise from the project’s effects on the environment.’” (*Id.* at 800 [emphasis added].)” Then further states that “The

carcinogenic formaldehyde emissions identified by Mr. Offerman are not an existing environmental condition.”

The commenter is correct that the CBIA decision states that CEQA does apply to certain airport, school, and housing construction projects. The decision states “The environmental review must take into account – and a negative declaration or exemption cannot issue without considering – how existing environmental risks such as noise, hazardous waste, or wildland fire hazard will impact future residents or users of a project.” Throughout the decision the Court was clear that the circumstances by which CEQA should assess the environments impact on a project are the result of the project exacerbating an existing condition. Because there is no existing formaldehyde condition as confirmed by the commenter, the City is correct in stating that there is no requirement to analyze the impact of the project’s formaldehyde emissions on future site workers because such impacts do not need to be considered under CEQA. The potential effects of existing cumulative exterior TAC emissions on future site users were addressed in the Draft EIR in Section 3.3.3 ,page 46.

Comment A.8: The Supreme Court’s reasoning is well-grounded in CEQA’s statutory language. CEQA expressly includes a project’s effects on human beings as an effect on the environment that must be addressed in an environmental review. “Section 21083(b)(3)’s express language, for example, requires a finding of a ‘significant effect on the environment’ (§ 21083(b)) whenever the ‘environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.’” (*CBIA*, 62 Cal.4th at 800 [emphasis in original].) Likewise, “the Legislature has made clear—in declarations accompanying CEQA’s enactment—that public health and safety are of great importance in the statutory scheme.” (*Id.*, citing e.g., PRC §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d).) It goes without saying that the thousands of future residents at the Project are human beings and the health and safety of those residents must be subjected to CEQA’s safeguards.

The City has a duty to investigate issues relating to a project’s potential environmental impacts. (*See County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597–98. [“[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.”].) The proposed Project will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose future workers to cancer risks potentially in excess of BAAQMD’s threshold of significance for cancer health risks of 10 in a million. The City must analyze the health risks posed by the Project’s formaldehyde emissions in a revised EIR in order to properly disclose and mitigate this impact.

Response A.8: See Responses A.6 and A.7 above.

Comment A.9: B. The EIR’s Analysis of Annual Operational Emissions Remains Incorrect
LIUNA’s DEIR Comment included the expert analysis of Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., of the Soil/Water/Air Protection Enterprise (“SWAPE”). SWAPE has reviewed the FEIR’s response to their comment and prepared a reply (“SWAPE Reply”). SWAPE’s Reply found that find the [sic] DEIR and FEIR remain inadequate and that the conclusions regarding the Project’s air quality impacts are unsubstantiated. SWAPE’s Reply is attached hereto as Exhibit B.

SWAPE's DEIR Comment noted that the DEIR's CalEEMod annual output files provide annual average emissions estimates in tons per year ("tons/year"), while the CalEEMod winter and summer output files provide daily maximum emissions estimates in pounds per day ("lbs/day"). (SWAPE Reply, p. 2.) In contrast, the BAAQMD significance thresholds evaluate average daily emissions and maximum annual emissions. (*Id.*)

As such, the DEIR and FEIR should have converted the Project's daily maximum emissions estimates, provided in the summer and winter CalEEMod output files, from lbs/day to tons/year in order to evaluate the Project's annual maximum operational emissions based on the corresponding BAAQMD significance thresholds. (SWAPE Reply, p. 2.) Thus, the EIR is inconsistent with BAAQMD guidance and underestimates the Project's maximum annual operational emissions. (*Id.*) As a result, the EIR's conclusions as to the significance of the Project's air quality impacts, cannot be relied upon. (*Id.*)

Response A.9: As explained in Response D.27, page 40 of the First Amendment, BAAQMD interprets the "maximum annual emissions" to be calculated by computing the average daily emissions then converting it to annual emissions. The approach used by the commenter is misleading as it overestimates the project emissions by taking the maximum daily emission and applying that for the whole year to get the annual emissions. This is not realistic as the maximum daily emissions would not occur every day of the year. This is why the BAAQMD guidance is to use the average daily emissions which is a more realistic estimate to calculate the annual emissions.

Comment A.10: C. The EIR Relies on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Fails to Provide Substantial Evidence of the Project's Air Quality Impacts. SWAPE's DEIR Comment identified numerous shortcomings in the DEIR's air quality model due to artificial reductions in the Project's construction and operational emissions. (SWAPE Reply, p. 2.) After reviewing the FEIR, SWAPE still concludes that several input parameters used to calculate the Project's air quality impacts [sic]

SWAPE's DEIR Comment found that the DEIR's air model increased the default value for the grading phase length from a default value of 8 days to 24 days for Phase 1 and from a default value of 6 days to 24 days for Phase 2. (LIUNA DEIR Comment, Ex. B, pp. 7-8.) However, the DEIR claimed that the Project's construction schedule would be based on CalEEMod default information and did not make any specific mention of the length of the grading phase for construction. (*Id.* Ex. B, pp. 8-9; DEIR, p. 39.) This unsubstantiated increase in grading phase is important because an improper increase in phase length improperly spreads out estimated construction emissions over a longer period of time, resulting in an underestimation of the Project's emissions. (*Id.* Ex. B, p. 9.)

In the FEIR's Responses to Comments, the City claimed that "[u]sing the default CalEEMod assumptions would have underestimated the construction emissions associated with grading, which would have led to underestimates for total emissions." (SWAPE Reply, p. 3.) However, SWAPE notes that this reasoning is faulty because "utilizing a longer period of time for the grading phase length ***spreads out*** construction emissions over more days, thus resulting in ***underestimated*** emissions estimates per each day of construction." (*Id.*) As such, the FEIR's Response to Comments

is inadequate and SWAPE maintains that the EIR's air model cannot be relied upon to determine the significance of the Project's air quality impacts.

Response A.10: Response D.9, page 17, of the First Amendment stated:

“The Air Quality Analysis for the Draft EIR used a longer grading period than the default value to account for the project's excavation of up to 14 feet in depth. Using the default CalEEMod assumptions would have underestimated the construction emissions associated with grading, which would have led to underestimates for total emissions that are used to compute daily emissions and the overall dosage of toxic air contaminants (TACs) used in the health risk assessment and the amount of PM_{2.5} emitted to compute the annual concentration of PM_{2.5}. Since grading is the most intensive phase, an underestimate of the grading period would lead to an underestimate of average daily emissions. Therefore, the conclusions of the Draft EIR with the extended grading period accounted for are correct and no revisions to or recirculation of the DEIR are required.”

To put it another way, the total excavation required for the project could not be reasonably completed within the default values of eight days and six days. As such, the inputs had to be modified to accurately account for the time needed to reasonably excavate up to 14 feet in depth and grade the entire site. If the defaults had been used, they could not have accounted for the entirety of the earthwork required for the project and would have underestimated the emissions.

Comment A.11: Similarly, the FEIR's response to SWAPE's concerns about operational vehicle trip rates is inadequate. SWAPE's DEIR Comment found that the DEIR's air model underestimated the number of daily vehicle trip rates during operation of the Project. (LIUNA DEIR Comment, Ex. B, p. 9.) According to the DEIR, the Project's proposed land uses are expected to generate approximately 1,289 average daily vehicle trips (DEIR, p. 179.) However, the air model underestimated the weekday, Saturday, and Sunday trips by approximately 137, 189, and 450 trips, respectively. (LIUNA DEIR Comment, Ex. B, p. 9.) SWAPE also found that the air model overestimated the existing vehicle trip rate. By underestimating operational vehicle trip rates and overestimating existing vehicle trip rates, the DEIR underestimated the net change in mobile-source operational emissions. (*Id.*, Ex. B, pp. 9-10.)

In the FEIR's Responses to Comments, the City claimed that “[t]he number of weekday trips used is consistent with the project Transportation Analysis which determined the net project trips would be 1,130.” (SWAPE Reply, p. 3.) However, SWAPE's review of the Project's Transportation Analysis (“TA”), provided as Appendix H to the DEIR, found that the TA fails to specify that the trip generation rates are associated with weekdays. (*Id.* at p. 4.) Therefore, the EIR “should have utilized the same number of Saturday and Sunday vehicle trips as weekday vehicle trips, and the FEIR's claims are unsubstantiated.” (*Id.*) As such, the FEIR's Response to Comments is inadequate and SWAPE maintains that the EIR's air model cannot be relied upon to determine the significance of the Project's air quality impacts.

Response A.11: As explained on page 13 of Appendix H of the Draft EIR, the local transportation assessment (LTA) includes an evaluation of weekday AM and PM peak hour operations. Traffic conditions at the study intersections were analyzed for both the weekday AM and PM peak hours. The trip generation estimates correlate to this analysis and are based on weekday trip rates consistent with standard traffic methodologies. As discussed in Response D.10, page 18 and D.33, page 48 of the First Amendment, the Air Quality Analysis for the Draft EIR used the correct trip generation rates for the proposed project. The number of weekday trips used is consistent with the project Transportation Analysis which determined the net project trips would be 1,130. As described in the Air Quality Analysis, the weekday rates were adjusted for Saturday and Sundays per the ratios assigned by CalEEMod, as the traffic analysis does not provide estimates for weekends or holidays. The commenter uses the wrong square footages when combining existing commercial and residential uses on-site. Their calculation for existing uses ignores the existing eight residential units on-site that contribute to the existing square footages used to generate the existing land use trips used in the Transportation Analysis and Air Quality Analysis for the Draft EIR. The Air Quality Analysis and Transportation Analysis for the Draft EIR used the correct trip generation rates for both existing and proposed land uses. The correct square footages for existing uses were also used. Therefore, the conclusions of the Draft EIR are correct, and no revisions are required.

Comment A.12: IV. CONCLUSION

For the foregoing reasons, LIUNA respectfully requests that the Planning Commission refrain from recommending approval of the Project and certification of the FEIR to the City Council until the concerns discussed above are address [sic] in a revised EIR.

Response A.12: The City notes that this comment letter was provided to the Planning Commission on the day of the Planning Commission hearing for the referenced project and was not directly provided to the City Planning staff by the commenter. Planning staff and the City Attorney's Office were provided a copy of the letter by the Planning Commission and, while not required under CEQA, staff provided oral responses to the main points of the letter at the hearing. This written response has been provided as a courtesy and is also not required under CEQA. Planning Commission had no questions pertaining to the contents of this letter and voted to recommend approval of the project to the City Council.

EXHIBIT A – MEMO FROM INDOOR ENVIRONMENTAL ENGINEERING

Comment A.13: The following are my rebuttal comments to the responses in the 1st Amendment to the Draft DEIR [sic], July, 2021 to the comments contained in my February 8, 2021 Indoor Air Quality Letter for 1530-1536 West San Carlos Mixed Use Project, San Jose, CA (attached here in Appendix A).

Response D.24. The South Coast Air Quality Management District has no jurisdiction in Santa Clara County. The South Coast Air Quality Management District covers Los Angeles, Orange, San Bernardino, and Riverside counties. Santa Clara County is under the jurisdiction of the Bay Area Air

Quality Management District (BAAQMD), which does not have an adopted CEQA threshold for formaldehyde from indoor building sources. Additionally, refer to Response D.3 and D.25.

Rebuttal to Response D.24. In my February 8, 2021 Indoor Air Quality Letter, I stated on page 2 the following. “Therefore, the cancer risk of a resident living in a California home with the median indoor formaldehyde concentration of 36 µg/m³, is 180 per million as a result of formaldehyde alone. The CEQA significance threshold for airborne cancer risk is 10 per million, as established by the South Coast Air Quality Management District (BAAQMD, 2017).” Yes, it is true that the South Coast Air Quality Management District has no jurisdiction in Santa Clara County where the West San Carlos Mixed Use Project is located. This was a typo. The following text in this comment, “as established by the South Coast Air Quality Management District (BAAQMD, 2017)” should have stated “as established by the Bay Area Air Quality Management District (BAAQMD, 2017)”.

In addition, Response D.24 is incorrect, the Bay Area Air Quality Management District (BAAQMD) does have an adopted CEQA threshold for formaldehyde and this includes the impacts from all aspects of a project including the impacts from the building construction materials on the indoor environment.

Response A.13: See Response A.6, above.

Comment A.14: *Response D.25:* BAAQMD does not have thresholds for indoor formaldehyde exposure. While BAAQMD recognizes formaldehyde as an outdoor TAC from automobile and truck exhaust, the BAAQMD CEQA guidelines do not define a specific threshold for formaldehyde or regulate indoor air quality. The California Supreme Court in a December 2015 opinion (California Building Industry Association v. Bay Area Air Quality Management District) confirmed that CEQA, with several specific exceptions, is concerned with the impacts of a project on the environment, not the effects the existing environment may have on a project. The proposed project would be built in accordance with the most recent California Green Building Code (CALGreen), which specifies that composite wood products (such as hardwood plywood and particleboard) meet the requirements for formaldehyde as specified in the California Air Resources Board’s (CARBs) Air Toxic Control Measures. In addition, the project would be required to comply with the City’s Green Building Ordinance (Policy 6-32) and would be designed to achieve minimum LEED certification. LEED certification will require measures to improve indoor air quality. Furthermore, the commenter is speculating in the assertion that composite wood materials would be used in the interior of the building. Indoor building materials will not be known until the building permit stage and, as stated above, these materials will be required to comply with CARB, the 2019 CalGreen building code, and LEED certification requirements. Lastly, even with the regulations in place, if materials containing formaldehyde were to be used, it would be speculative for the City to estimate the type and volume of building materials that may contain formaldehyde. Per Section 15145 of the CEQA guidelines, speculative analysis is not acceptable. Because there would be no way to quantify the off-gassing of materials, and because no thresholds exist, no additional analysis or mitigation measures related to formaldehyde would be required. This comment does not raise any issues that would require recirculation of the DEIR or inclusion of additional mitigation measures.

Rebuttal to Response D.25: It is correct that CEQA is concerned with the impacts of a project on the environment, and that is exactly what my comment addresses. If this project is constructed with composite wood products that contain resins such as urea-formaldehyde resins or other resins that

emit formaldehyde, then the project creates an impact on the environment, in this case the indoor environment.

Response A.14: As stated in the CEQA Guidelines Section 15360, “Environment” means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The “environment” includes both natural and man-made conditions. Therefore, CEQA does not define the environment as the indoor environment of a proposed project. Furthermore, a project cannot impact itself or by extension its own occupants. The environment, as defined by CEQA and outlined above, is the *existing* natural and man-made physical environment.

Comment A.15: With respect to the response that the project will use materials that will comply with CARB ATCM and the 2019 CalGreen building code, as I illustrated in Appendix A “Indoor Formaldehyde Concentrations and the CARB Formaldehyde ATCM” of my February 8, 2021 Indoor Air Quality Letter, use of composite wood products that comply with the CARB ATCM and the 2019 CalGreen building code which references the CARB ATCM, does not ensure that the resulting indoor formaldehyde concentrations will not exceed the CEQA cancer risk of 10 per million. Even composite wood products manufactured with CARB certified ultra low emitting formaldehyde (ULEF) resins do not ensure that the indoor air will have concentrations of formaldehyde that meet the OEHHA cancer risks that substantially exceed 10 per million.

Further, we are not asking that the builder “speculate” on what type and how much composite materials be used, but rather to commit to the following. At the design stage select composite wood materials based on the formaldehyde emission rates that manufacturers routinely conduct using the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers,” (CDPH, 2017), and use the Pre- Construction Building Material/Furnishing Formaldehyde Emissions Assessment (contained in Appendix A of my February 8, 2021 Indoor Air Quality Letter) to ensure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.

Response A.15: Refer to Response A.6, above.

Response A.15: The materials the builder chooses to utilize at the design stage cannot be dictated through mitigation as there is no nexus for the City as the Lead Agency to do so. This comment does not raise any specific issues about the adequacy of the Draft EIR or notate specific concerns with regard to the analysis.

Comment A.16: With respect to the response that the project “would be designed to achieve minimum LEED certification”, this certification does not ensure that the resulting indoor formaldehyde concentrations will not exceed the CEQA cancer risk of 10 per million. The LEED EQ Credit Low-Emitting Materials requires that composite wood products meet the CARB ATCM requirements for ULEF or NAF materials. As indicated above, ULEF composite wood products

(which have formaldehyde emission rates that are only 11-15% lower than the CARB Phase 2 emission rates) do not ensure that the CEQA cancer risk of 10 per million is met. Only use of all NAF composite wood products can ensure that the CEQA cancer risk of 10 per million is met.

The LEED EQ Credit Indoor Air Quality Assessment requires that the indoor formaldehyde concentration not exceed 27 ppb (i.e., 33 µg/m³), which does not ensure that the CEQA cancer risk of 10 per million is met. As shown in my February 8, 2021 Indoor Air Quality Letter, for a residential formaldehyde exposure to 24.1 µg/m³ the cancer risk is 120 per million, which is more than 12 times the CEQA cancer risk of 10 per million. So for a residential exposure with the LEED maximum allowable formaldehyde concentration of 33 µg/m³, the cancer risk is 134 per million, which is more than 13 times the CEQA cancer risk of 10 per million.

Alternatively, and perhaps a simpler approach, is to only use composite wood products (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins such as resins made from soy, polyvinyl acetate, or methylene diisocyanate.

Note that this Rebuttal to Response D.25 also applies to the Response D.3.

Response A.16: Refer to Response A.15, above.

EXHIBIT B – MEMO FROM SWAPE

Comment A.17: We have reviewed the Final Environmental Impact Report (“FEIR”) for the 1530-1544 West San Carlos Mixed-Use Project (“Project”) located in the City of San Jose (“City”). After our review of the FEIR, we find that the FEIR is insufficient in addressing our concerns regarding the Project’s air quality impacts. As we asserted in our February 16th comment letter, an updated EIR should be prepared to adequately evaluate the Project’s potential impacts.

Air Quality Incorrect Analysis of Annual Operational Emissions

In our February 16th comment letter, we identified the DEIR’s incorrect analysis of the Project’s annual operational emissions. Review of the FEIR demonstrates that the Project again fails to justify or correct this error. As discussed below, we find the DEIR and FEIR to be inadequate and maintain that the air quality impact significance determination is unsubstantiated. Regarding the incorrect analysis of annual operational emissions, the FEIR states: “The commenter uses an incorrect method and includes emission sources that would not be part of the project such as fireplaces to inflate the maximum daily emissions that were then used to compute annual emissions. The commenter’s computation of using maximum daily emissions with fireplaces that are not allowed to calculate their theoretical maximum annual emissions is not realistic and does not follow the intended threshold” (p. 20).

After review of the FEIR, we agree that the Project would not include wood-burning fireplaces. However, the FEIR’s computation of the Project’s annual maximum emissions remains incorrect. As previously stated in our February 16th comment letter, the CalEEMod annual output files provide annual average emissions estimates in tons per year (“tons/year”), while the CalEEMod winter and summer output files provide daily maximum emissions estimates in pounds per day (“lbs/day”). In

contrast, the BAAQMD significance thresholds evaluate average daily emissions and maximum annual emissions (see excerpt below).

Table 2-1 Air Quality CEQA Thresholds of Significance*			
Pollutant	Construction-Related	Operational-Related	
Project-Level			
Criteria Air Pollutants and Precursors (Regional)	Average Daily Emissions (lb/day)	Average Daily Emissions (lb/day)	Maximum Annual Emissions (tpy)
ROG	54	54	10
NOx	54	54	10
PM10	82 (exhaust)	82	15
PM2.5	54 (exhaust)	54	10

Thus, the DEIR and FEIR should have converted the Project's daily maximum emissions estimates, provided in the summer and winter CalEEMod output files, from lbs/day to tons/year in order to evaluate the Project's annual maximum operational emissions based on the corresponding BAAQMD significance thresholds. However, as discussed in our February 16th comment letter, the DEIR is inconsistent with BAAQMD guidance and underestimates the Project's maximum annual operational emissions. As a result, we reiterate our February 16th comment that the DEIR's air quality analysis should not be relied upon to determine Project significance.

Response A.17: Refer to Response A.9, above.

Comment A.18: Unsubstantiated Input Parameters Used to Estimate Project Emissions

In our February 16th comment letter, we identified several issues with the DEIR's air model (California Emissions Estimator Model, "CalEEMod") that artificially reduced the Project's construction and operational emissions. After review of the FEIR, we found that the FEIR fails to address all our concerns and maintain that the DEIR's CalEEMod model is flawed and fails to accurately estimate the Project's criteria air pollutant emissions. As such, we find the DEIR and FEIR to be inadequate and maintain that an updated FEIR should be prepared to adequately evaluate the Project's local and regional air quality impacts. Until a proper air quality analysis is conducted, the Project should not be approved.

Response A.18: This comment does not raise any specific issues about the adequacy of the Draft EIR or notate specific concerns with regard to the analysis.

Comment A.19: Overestimated Existing Land Use Sizes

As discussed in our February 16th comment letter, the "19-066 1530-1536 W. San Carlos (Existing Land Use)" CalEEMod model included overestimated land use sizes associated with the existing site. Review of the FEIR demonstrates that this comment was entirely unaddressed, and the Project fails to justify or correct this modeling error. As such, we find the DEIR and FEIR to be inadequate and maintain that the air quality impact significance determination is unsubstantiated.

Response A.19: The comment was addressed in Response D.29, page 42, of the First Amendment. Specifically, the response states:

“The commenter is misrepresenting the information provided in the Draft EIR. As stated on page 3 of the Draft EIR:

“The project site is currently developed with three commercial buildings (totaling approximately 7,600 square feet), currently used for automotive businesses, a martial arts studio, and a restaurant, and associated ancillary structures and surface parking. Behind the restaurant building, and separated by a metal rolling gate, are eight single-family residences and three ancillary parking garages in the southern portion of the site.”

The commenter fails to acknowledge the eight residential units and square footage on-site. As shown in the excerpted table above, the table lists the square footages for a high turnover sit down restaurant, single-family housing, and automobile care center. The total square footage for all commercial space as shown in the table is 7,597 and the total residential square footage is 5,500, for a total of 13,097 square feet. The commenter appears to have added the “single family housing” square footage in the table for the residential units to the commercial square footage calculation to say the existing building surface area was “overestimated by 5,497 square feet.” The square footages shown in the table correctly represent the existing land uses onsite. Therefore, the modeling is correct. The comment does not identify a new or more significant impact, or a new feasible project alternative or mitigation measure considerably different than identified in the Draft EIR. For these reasons, the Draft EIR does not require recirculation.”

Comment A.20: Unsubstantiated Change to Individual Construction Phase Length

As discussed in our February 16th comment letter, the DEIR’s “19-066 W. San Carlos (Phase 1) Construction AQ,” “19-066 W. San Carlos (Phase 1) Construction TAC,” and “19-066 W. San Carlos (Phase 2) Construction AQ” CalEEMod models included an unsubstantiated change to the default grading phase length. Review of the FEIR demonstrates that the Project again fails to justify or correct this modeling error. As discussed below, we find the DEIR and FEIR to be inadequate and maintain that the air quality impact significance determination is unsubstantiated. Specifically, regarding the change to the default grading phase length, the FEIR states: “Using the default CalEEMod assumptions would have underestimated the construction emissions associated with grading, which would have led to underestimates for total emissions that are used to compute daily emissions and the overall dosage of toxic air contaminants (TACs) used in the health risk assessment and the amount of PM_{2.5} emitted to compute the annual concentration of PM_{2.5}. Since grading is the most intensive phase, an underestimate of the grading period would lead to an underestimate of average daily emissions. Therefore, the conclusions of the Draft EIR with the extended grading period accounted for are correct and no revisions to or recirculation of the DEIR are required” (p. 17). As demonstrated above, the FEIR claims that utilizing a longer grading phase length results in an overestimation of emissions. However, this is incorrect, as utilizing a longer period of time for the grading phase length spreads out construction emissions over more days, thus resulting in underestimated emissions estimates per each day of construction. As such, the FEIR’s response is

inadequate, and we reiterate our February 16th comment that the DEIR's CalEEMod model should not be relied upon to determine Project significance.

Response A.20: See Response A.10, above.

Comment A.21: Use of Incorrect Operational Vehicle Trip Rates

As discussed in our February 16th comment letter, the DEIR's "19-066 1530-1536-1544 W. San Carlos Operational & GHG" and "19-066 1530-1536-1544 W. San Carlos Operational & GHG 2030" CalEEMod models included incorrect operational vehicle trip rates. Review of the FEIR demonstrates that the Project again fails to justify or correct this modeling error. As discussed below, we find the DEIR and FEIR to be inadequate and maintain that the air quality impact significance determination is unsubstantiated.

Specifically, regarding the incorrect operational vehicle trip rates, the FEIR states:

"The number of weekday trips used is consistent with the project Transportation Analysis which determined the net project trips would be 1,130. As described in the Air Quality Analysis, the 4 weekday rates were adjusted for Saturday and Sundays per the ratios assigned by CalEEMod, as the traffic analysis does not provide estimates for weekends or holidays" (p. 18).

However, review of the 1530-1544 W. San Carlos Street Mixed-Use Development Transportation Analysis ("TA"), provided as Appendix H to the DEIR, demonstrates that the TA fails to specify that the trip generation rates are associated with weekdays. Specifically, the TA states:

"After applying the ITE trip rates, appropriate trip reductions, and existing site trip credits, it is estimated that the project would generate an additional 1,130 daily vehicle trips, with 64 trips (22 inbound and 42 outbound) occurring during the AM peak hour and 93 trips (53 inbound and 41 outbound) occurring during the PM peak hour" (p. 30).

As demonstrated above, the TA fails to indicate that the Project trip generation estimates apply only to weekdays, as claimed in the FEIR. Thus, the DEIR and FEIR should have utilized the same number of Saturday and Sunday vehicle trips as weekday vehicle trips, and the FEIR's claims are unsubstantiated. As such, the FEIR's response is inadequate, and we reiterate our February 16th comment that the DEIR's CalEEMod model should not be relied upon to determine Project significance.

Response A.21: Refer to Response A.11, above.

Comment A.22: Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to

information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Response A.22: This comment does not address the adequacy of the Draft EIR or responses to comments.



Memorandum

TO: PLANNING COMMISSION
SUBJECT: File No. SP20-004

FROM: Christopher Burton
DATE: July 14, 2021

COUNCIL DISTRICT: 6

Type of Permit	Special Use Permit
Proposed Land Use	Mixed Use Residential and Commercial Retail
New Square Footage	288,926 square feet
No. of Residential Units	173 units
Demolition	Three existing commercial buildings, eight residential buildings, associated service structures, and one billboard
Tree Removals	15 trees (11 ordinance-size, 4 non-ordinance-size)
Project Planner	Alec Atienza
CEQA Clearance	West San Carlos Street Mixed-Use Project Environmental Impact Report
CEQA Planner	Maira Blanco

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council take all of the following actions:

1. Adopt a Resolution certifying the West San Carlos Street Mixed-Use Project Environmental Impact Report, and making certain findings concerning significant impacts, mitigation measures, alternatives, and adopting a statement of overriding considerations and a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act (CEQA).
2. Adopt a Resolution approving, subject to conditions, a Special Use Permit and Site Development Permit to allow the demolition of three existing commercial buildings, eight residential buildings, and associated service structures totaling approximately 14,131 square feet, the removal of 15 trees (11 ordinance-size, four non-ordinance-size) for the construction of two seven-story residential mixed use buildings, including 173 residential units and 17,836 square feet of commercial retail space with a 42 percent parking reduction on an approximately 1.34-gross acre site.

PROPERTY INFORMATION

Location	Southeast corner of West San Carlos Street and Buena Vista Avenue (1530-1544 West San Carlos Street)
Assessor Parcel No.	277-18-018, 277-18-019, 277-18-020
General Plan	Urban Village
Growth Area	West San Carlos Urban Village
Zoning	CP Commercial Pedestrian and R-M Multiple Residence
Historic Resources	Eight residential structures located at 1530 West San Carlos Street are eligible City Landmarks
Annexation Date	February 5, 1960 (Sunol No. 12)
Council District	6
Acreage	1.34 gross acres
Proposed Density	129 Dwelling Units/Acre
Allowed Density	250 Dwelling Units/Acre

PROJECT SETTING AND BACKGROUND

As shown on the attached Aerial Map (Figure 1), the subject site is comprised of three contiguous lots located on the southeast corner of West San Carlos Street and Buena Vista Avenue. The site is bordered by West San Carlos Street and multifamily housing to the north, a commercial retail building and multifamily housing to the east, single-family and multifamily residences to the south, and a restaurant to the west.

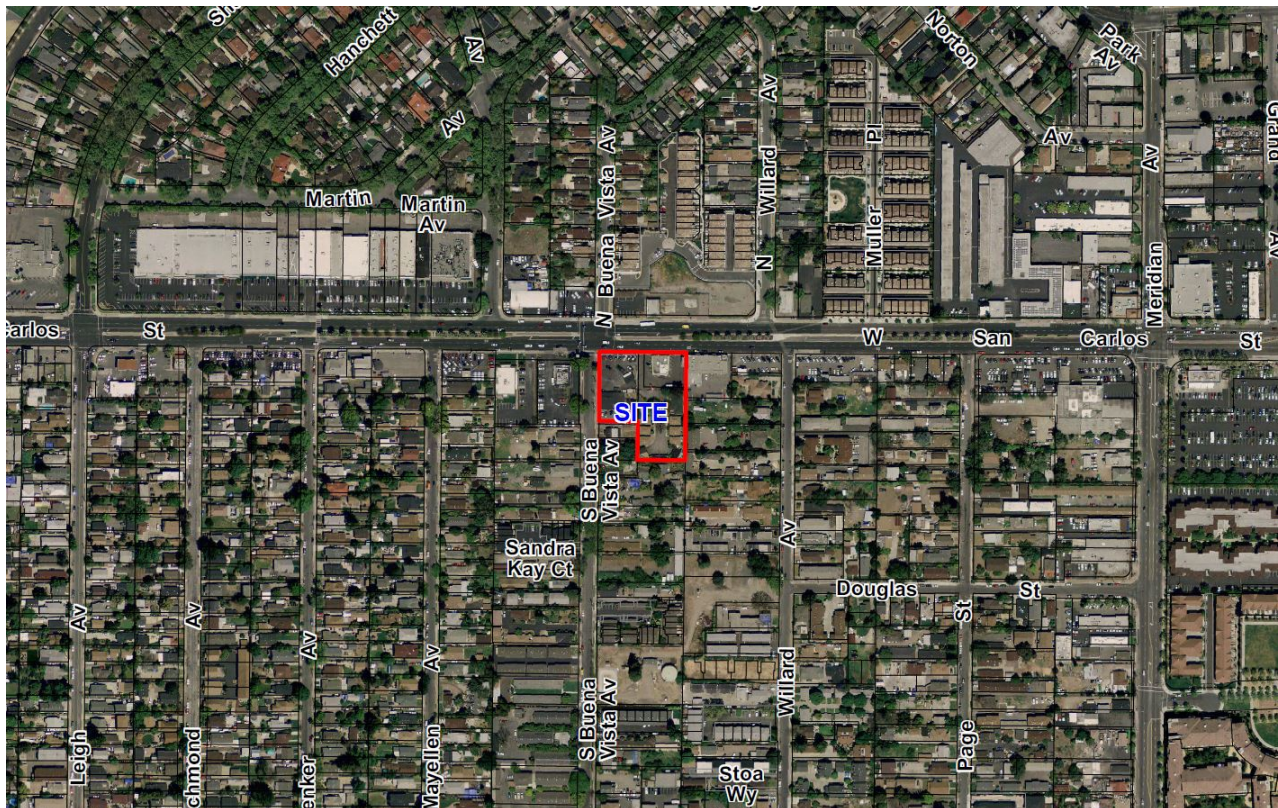


Figure 1 Aerial Map

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Urban Village	A (PD) Planned Development Zoning District (File No. PDC02-012)	Multifamily residential
South	Urban Village & Mixed Use Neighborhood	R-M Multiple Residence	Single-family & Multifamily residential
East	Urban Village	CN Commercial Neighborhood & R-M Multiple Residence	Commercial Retail Building, Single-family & Multifamily residential
West	Urban Village	CP Commercial Pedestrian	Restaurant

On April 29, 2019, the applicant, Viji Mani, submitted a Special Use Permit to allow the demolition of three existing commercial buildings, eight unoccupied residential buildings, associated service structures, and one billboard totaling 14,131 square feet, the removal of 15 trees (11 ordinance-size, four non-ordinance-size) and to allow the construction of two seven-story mixed use buildings with one level of below-ground parking, including 173 residential units and 17,836 square feet of commercial retail space with an approximately 42 percent parking reduction on an approximately 1.34-gross acre site.

The applicant originally submitted the project as a Planned Development Rezoning and a Planned Development Permit. However, the project was converted to a Special Use Permit because zoning consistency with the General Plan is not required for certain specified types of residential and mixed-use projects under State Law Assembly Bill 3194, an amendment to the Housing Accountability Act Amendment, which became effective on January 1, 2019. Per AB 3194, “mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use can proceed if it complies with CEQA and “is consistent with the objective general plan standards and criteria.” (Government Code sections 65589.5(h)(2)(B) and 65589.5(j)(4)). The total square footage of the project is approximately 288,520 square feet, of which approximately 17,836 square feet would consist of commercial space. Therefore at least two-thirds of the square footage of the mixed-use project would be dedicated to residential space. The site has a General Plan Land Use Designation of Urban Village and is located in both the CP Commercial Pedestrian and R-M Multiple Residence Zoning Districts. The project was reviewed based on the objective criteria and standards of the CP Commercial Pedestrian Zoning District, the conforming Zoning District of the Urban Village General Plan Land Use Designation.

The project is proposed to be constructed in two phases. Phase one would consist of the construction of a seven-story, approximately 173,925-square foot mixed use building located on the eastern end of the subject site. Phase one would include 103 residential units and approximately 11,387 square feet of ground floor commercial retail space. The construction of Phase one is expected to take approximately 24

months. Phase two would consist of the construction of a seven-story, approximately 115,001-square foot mixed use building located on the southeast corner of West San Carlos Street and Buena Vista Avenue. Phase two would include 70 residential units and approximately 6,449 square feet of ground floor commercial retail space. The construction of Phase 2 is also expected to take 24 months, for a total construction period of 48 months. The maximum height of both buildings would be 92 feet.

The project site is accessible from a right-in/right-out 26-foot-wide driveway on West San Carlos Street. Vehicle and motorcycle parking would be provided in a ground floor garage as well as a subterranean garage below both buildings. A total of 189 vehicle parking spaces would be provided, requiring an approximately 42 percent parking reduction. To achieve the required parking reduction, the project would implement a Transportation Demand Management (TDM) plan as outlined in the Municipal Code Conformance analysis below. The project would provide a total of 73 bicycle parking spaces and 49 motorcycle parking spaces.

The project includes an approximately 30-foot-wide paseo located in the rear of the site. The paseo would include paved areas, landscaping, planters, trees, a play area, dog park, and low-level bollard lighting. The paseo is planned to be connected to the public right-of-way at Buena Vista Avenue to the west and Willard Avenue with the construction of a proposed development to the east.

The City of San José, as the lead agency for the project, prepared a Draft Environmental Impact Report (Draft EIR), which was circulated for public review and comment for 45 days, from January 12, 2021 through February 26, 2021. The EIR prepared for this project concluded that implementation of the proposed project would result in a significant impact to a historic resource. Specifically, the implementation of the project would result in impacts to candidate City Landmarks located at 1530 West San Carlos Street: One Craftsman-style house and seven Spanish Revival-style bungalows. The EIR determined that demolition of the residences at 1530 West San Carlos Street, eligible as candidate City Landmark structures, would be a significant and unavoidable impact. Even though mitigation measures that include documentation, relocation, and salvage would lessen the impact, the residences and the historic connection to the current location would be lost. Therefore, the impact would be significant and unavoidable. Thus, a Statement of Overriding Considerations is included in the record of project approval.

ANALYSIS

The proposed Conditional Use Permit is analyzed with respect to conformance with:

1. AB 3194
2. Envision San José 2040 General Plan
3. West San Carlos Urban Village Plan
4. San José Municipal Code
5. Residential and Commercial Design Guidelines
6. Permit Findings
7. California Environmental Quality Act (CEQA)
8. City Council Policies

State Law Assembly Bill 3194 (AB 3194)

The applicant originally submitted the project as a Planned Development Rezoning and a Planned Development Permit. However, the project was converted to a Special Use Permit because zoning consistency with the General Plan is not required for certain specified types of residential and mixed-use projects under State Law Assembly Bill 3194 (AB3194). AB3194, an amendment to the Housing Accountability Act Amendment, which became effective on January 1, 2019. Per AB 3194, "mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use can proceed if it complies with CEQA and "is consistent with the objective general plan standards and criteria." (Government Code sections 65589.5(h)(2)(B) and 65589.5(j)(4)). Therefore, staff analyzed the

The total square footage of the project is approximately 288,520 square feet, of which approximately 17,836 square feet would consist of commercial space. Therefore, at least two-thirds of the square footage of the mixed-use project would be dedicated to residential space. The site has a General Plan Land Use Designation of Urban Village and is located in both the CP Commercial Pedestrian and R-M Multiple Residence Zoning Districts. The project was reviewed based on the objective criteria and standards of the CP Commercial Pedestrian Zoning District, the conforming Zoning District of the Urban Village General Plan Land Use Designation. The project was determined to be complete on June 4th, 2019.

Envision San José 2040 General Plan Conformance

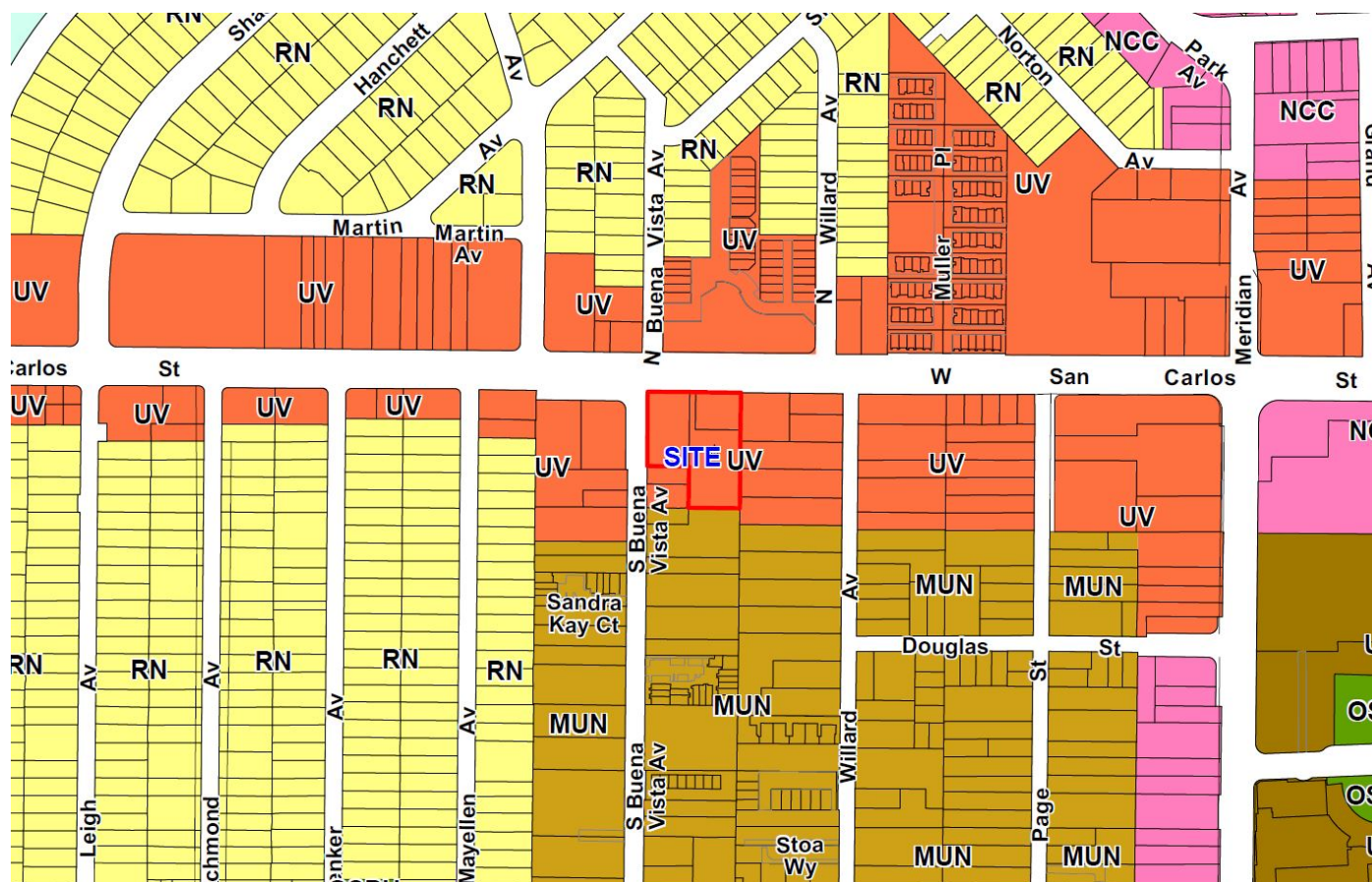


Figure 2 General Plan Land Use Map

Land Use Designation

As shown in the attached General Plan Map (Figure 2), the project site has an [Envision San José 2040 General Plan](#) Land Use/Transportation Diagram designation of Urban Village. The Urban Village designation is applied within the Urban Village areas that are planned in the current Horizon (see Chapter 7 – Implementation for a description of Planning Horizons and Urban Village Planning) to accommodate higher density housing growth along with a significant amount of job growth. This designation is also applied in some cases to specific sites within Urban Village Area Boundaries that have received entitlements for Urban Village type development. This designation supports a wide variety of commercial, residential, institutional or other land uses with an emphasis on establishing an attractive urban form in keeping with the Urban Village concept. Development within the Urban Village designation should conform to land use and design standards established with an adopted Urban Village Plan, which specifies how each Urban Village will accommodate the planned housing and job growth capacity within the identified Urban Village Growth Area. The project is consistent with the Urban Village Land Use Designation as it would provide a higher density housing with ground floor commercial service for residents that live and work in the surrounding area. Additional analysis for conformance with the adopted West San Carlos Urban Village plan is below. The project is consistent with the following General Plan Policies:

General Plan Goal and Policies

1. Major Strategy #3 – Focus Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified “Growth Areas” (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods. While the Focused Growth strategy directs and promotes growth within identified Growth Areas, it also strictly limits new residential development through neighborhood infill outside of these Growth Areas to preserve and enhance the quality of established neighborhoods, to reduce environmental and fiscal impacts, and to strengthen the City’s Urban Growth Boundary.
2. Major Strategy #5: - Urban Village: The Urban Village Major Strategy promotes the development of Urban Villages to provide active, walkable, bicycle-friendly, transit-oriented, mixed-use urban settings for new housing and job growth attractive to an innovative workforce and consistent with the Plan’s environmental goals. The General Plan establishes the Urban Villages concept to create a policy framework to direct most new job and housing growth to occur within walkable and bike friendly Urban Villages that have good access to transit and other existing infrastructure and facilities.
3. High Quality Facilities and Programs Policy PR-1.9: As Urban Village areas redevelop, incorporate urban open space and parkland recreation areas through a combination of high quality, publicly accessible outdoor spaces provided as part of new development projects; privately or, in limited instances, publicly owned and maintained pocket parks; neighborhood parks where possible; as well as through access to trails and other park and recreation amenities.
4. Land Use and Employment Policy IE-1.3: As part of the intensification of commercial, Village, Industrial Park and Employment Center job Growth Areas, create complete, mixed-employment areas that include business support uses, public and private amenities, child care, restaurants, and retail goods and services that serve employees of these businesses and nearby businesses.
5. Community Design Policy CD-3.5: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.
6. Land Use Policy LU-9.1: Create a pedestrian-friendly environment by connecting new residential development with safe, convenient, accessible, and pleasant pedestrian facilities. Provide such connections between new development, its adjoining neighborhood, transit access points, schools, parks, and nearby commercial areas.

Analysis: The redevelopment of the site is consistent with the General Plan Land Use Designation of Urban Village, as the project would provide a high-intensity mix of residential and commercial uses. The project would provide housing, retail options, and recreational opportunities in a central location, within a growth area, through the development of approximately 173 residential units and 17,836 square feet of commercial retail space. Consistent with the General Plan policies for the development of Urban Villages, the project would incorporate a paseo at the rear of the site, which would be connected to the public right-of-way in the future. The project would include public improvements including the construction of 20-foot-wide sidewalks along West San Carlos Street and 12-foot-wide sidewalks along Buena Vista Avenue. The project also includes an approximately 42% parking reduction and the

implementation of a TDM plan. The TDM plan would include a package of measures to reduce vehicle trips and encourage transit ridership. TDM measures include providing an online kiosk of trip-planning resources, 100 percent unbundled parking for all residential spaces, VTA SmartPasses to all residential tenants, and on-site bicycle storage (See Exhibit F). The subject site is served by existing Valley Transportation Authority (VTA) Bus Routes 23 and Rapid 523. A new bus stop would be constructed at the project frontage along West San Carlos Street. The project would also include ample bicycle parking and street/sidewalk improvements that would facilitate bicycle and pedestrian access to the site.

West San Carlos Urban Village Plan

Land Use Designation

The subject is located within the boundaries of the approved [West San Carlos Urban Village](#). The West San Carlos Urban Village Plan was approved by City Council on May 8, 2018 (Resolution 78581). Within the Urban Village, the project is located within the **Mixed-Use Residential Character Area**. The Mixed-Use Residential Character Area is an eastern gateway into the Urban Village. The area is envisioned with higher-density mixed-use and residential development drawing energy from nearby Downtown San José and the Diridon Station. Development is proposed to range between three and seven stories with residential uses above a mix of active ground floor retail. The allowed residential density of this land use designation may range from 55 to 250 Dwelling Units per Acre (DU/AC). The project is consistent with the following goals and policies of the approved Stevens Creek Urban Village Plan:

Urban Village Goals and Policies

1. Land Use Goal LU-2: Create a high-density, mixed-use, pedestrian-focused Urban Village that supports the commercial activity along West San Carlos Street and enhances the quality of life for residents in surrounding communities.
2. Land Use Policy LU-2.2: Ensure that residential development along West San Carlos Street and Meridian Avenue that is developed under the Urban Village Land Use Designation and located within the Mixed-Use Residential Character Area has ground-floor commercial and/or active uses fronting those streets.
3. Parks, Plazas, and Public Art Policy P-2.5: Employ green buffers/paseos when larger new development abuts existing neighborhoods or is located in such a way that allows for the continuation of a green paseo.
4. Land Use Goal LU-3: Ensure that new development and area improvements increase access to public space and to alternate modes of transportation.

Analysis: The subject site is located within the West San Carlos Urban Village Plan, which was approved by City Council on May 8, 2018 (Resolution No. 78581). The project is consistent with the Urban Village land use designation, as it provides a high-intensity mix of residential and commercial retail uses. The project frontages include ground floor commercial space and active space on both West San Carlos Street and Buena Vista Avenue. The project would include the construction of two seven-story buildings with 173 residential units and approximately 17,836 square feet of commercial retail space located on the frontage along West San Carlos Street. The project would also include the construction of a 30-foot-wide full landscaped paseo in the rear of the site, which would eventually connect to the Buena Vista Avenue and Willard Avenue, should the sites to the east and west be redeveloped. The paseo would

buffer the subject site from the lower density development to the south. As discussed in the General Plan section above, the project would implement a TDM plan that would encourage the use of public transportation. Adequate bicycle parking would also be provided for residents, employees, and retail customers. Furthermore, the project would construct 20-foot-wide sidewalks along West San Carlos Street to improve pedestrian access to and from the site.

West San Carlos Urban Village Design

The project conforms with the following key standards and guidelines of the West San Carlos Urban Village Plan, Chapter 5 Urban Design Concept. This Chapter provides an overall urban design framework for development within the West San Carlos Urban Village.

1. Urban Design Policy UD-3.2: Leverage private development to strengthen the public realm with improvements such as setbacks to accommodate space for wider sidewalks, shade-providing trees, and other pedestrian amenities. Explore the potential for “green buffer” strategies to integrate and expand local parks, open spaces, and pedestrian and bicycle pathways.
2. Urban Design Policy UD-3.3: Encourage the placement of ground-floor commercial space in new development especially along the street frontages of West San Carlos Street and Bascom Avenue.
3. Urban Design Policy UD-3.5: Provide proper height transitions between new, higher-density commercial and mixed-use development and adjacent single-family homes by using building setback, upper story stepback, and landscaping to soften the transition near property lines.
4. Urban Design Policy UD-5.7: Non-occupiable architectural features such as roof forms, chimneys, stairwells, and elevator housings may project up to ten feet above the maximum height limits, but shall not exceed the established daylight plane.
5. Urban Design Policy UD-6.1: Encourage the use of underground vehicle parking where feasible.

Analysis: Both buildings would be located and oriented toward West San Carlos Street. Each building would provide clearly marked entrances and active frontages with transparent glass. As previously discussed, the project would include approximately 17,836 square feet of retail space along West San Carlos Street. The Phase 1 building is adjacent to a property designated as Residential Neighborhood. Therefore, the project provides a stepback of the upper floors as to not intercept the 45-degree daylight plane at the adjacent residential property line. Both buildings are landscaped at the rear to further soften the transition between the high intensity use along West San Carlos Street and the residential character of the neighborhood to the south. As previously discussed, the project also includes a 30-foot-wide paseo at the rear of the site that would eventually connect to Willard Avenue and Buena Vista Avenue to allow for an additional pedestrian path and recreational space for the neighborhood. The project would improve pedestrian circulation and access with the construction of 20-foot-wide sidewalks along West San Carlos Street as well as 12-foot-wide sidewalks along Buena Vista Avenue. Both sidewalks would be landscaped with street trees to the satisfaction of the Department of Transportation (DOT).

Municipal Code Conformance

Land Use

As shown in the attached Zoning Map (Figure 4), this site is located in the CP Commercial Pedestrian Zoning District and the R-M Multiple Residence Zoning District. Per AB3194, the project was evaluated for

conformance with the objective standards and criteria of the CP Commercial Pedestrian Zoning District, the conforming Zoning District to the Urban Village General Plan Land Use Designation. Pursuant to [Section 20.40.100](#) and [Table 20-90](#) (see Note 25) of the Zoning Ordinance, mixed use residential/commercial requires a Special Use Permit in the CP Zoning District when located in an Urban Village.

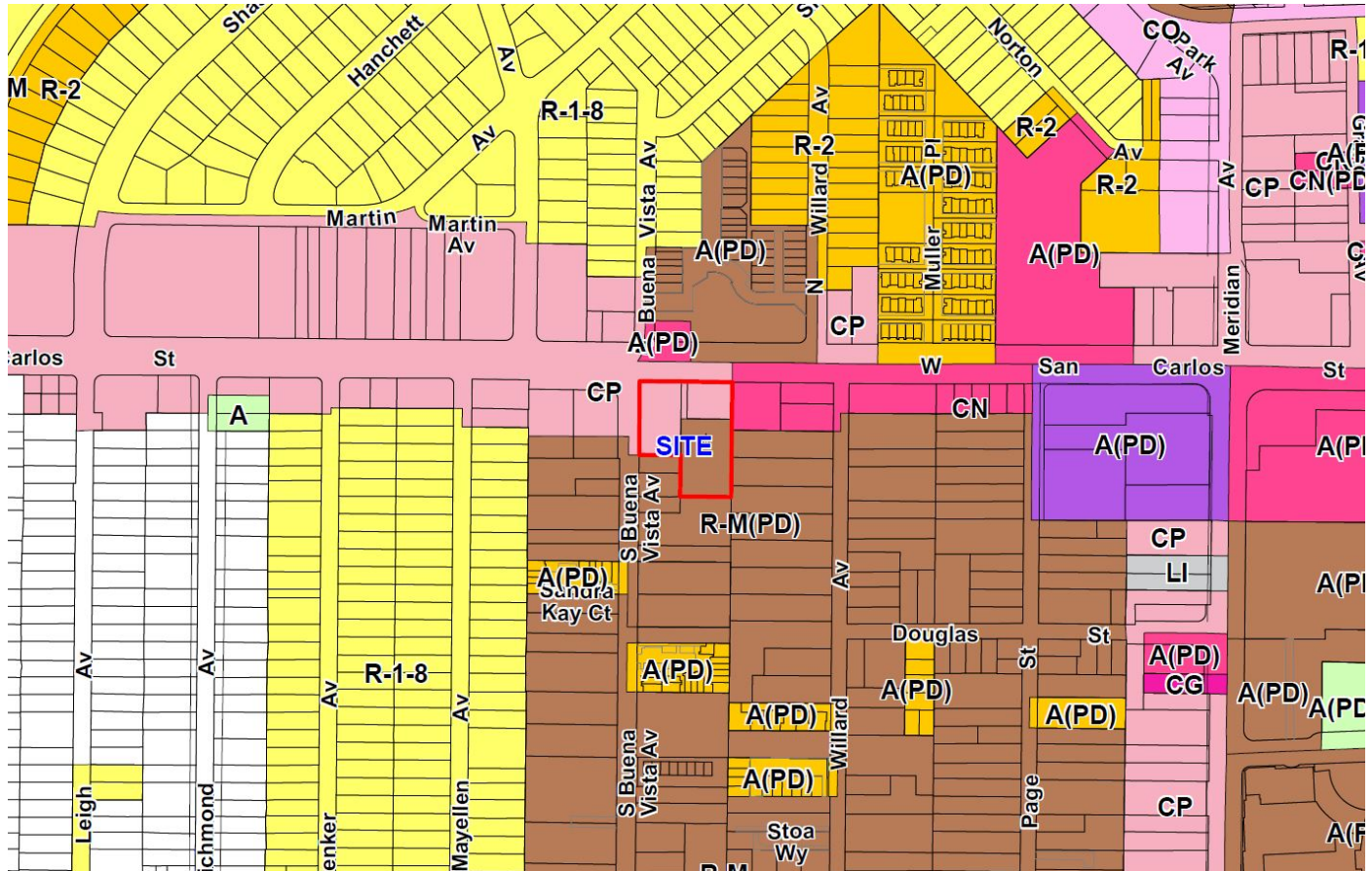


Figure 3 Zoning Map

Development Standards

Setbacks and Height

Development Standard	Required	Phase 1	Phase 2
Front setback	None	None	None
Side, interior setback	None	None	None
Side, corner	None	None	None
Rear, interior	15 feet	30 feet	N/A
Rear, corner	15 feet	N/A	15
Maximum height	95 feet	92 feet	92 feet

The project conforms with all objective setback and height requirements of the CP Commercial Pedestrian Zoning District and West San Carlos Village Plan. The West San Carlos Urban Village Plan allows a maximum height of 85 feet at the subject site. Non-occupiable architectural features such as roof forms, chimneys, stairwells, and elevator housing may project up to ten feet above the maximum height limits, for a total maximum height of 95 feet. As shown on the project plans the maximum height of the elevator shaft and stairwells of both buildings would be 92 feet.

Parking

	Commercial	Residential					Total
		Studio	JR1 Bed	1 Bed	2 Bed	3 Bed	
Sq. Ft/Unit Count	15,160.6 sf of floor area	17	35	48	70	3	
Parking Ratio	1/200 sf	1.25	1.25	1.25	1.7	2.0	
Spaces Required	75.8	21.25	43.75	60	119	6	326
Spaces Provided	189 vehicle spaces provided (42% parking reduction)						

The Zoning Ordinance requires 328 vehicle parking spaces, but [Section 20.90.220](#) of the Zoning Code authorizes a parking reduction of up to 50% of the required parking spaces for sites within a Growth Area and the implementation of a TDM Plan. The project would provide 189 vehicle parking spaces on-site, an approximately 42% parking reduction. Up to 20% of the parking reduction would be allowed as the project is located within the West San Carlos Urban Village, a growth area. The additional 22% parking reduction would be allowed with the implementation of a TDM plan. A TDM plan, dated September 8, 2020 was prepared by Hexagon Transportation Consultants, Inc, which achieves a 22% parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures in accordance with [Section 20.90.220](#) of the Municipal Zoning Code. The project would be required to provide an online kiosk of trip-planning resources, 100 percent unbundled parking for all residential spaces, VTA SmartPasses to all residential tenants, and on-site bicycle storage.

In addition to the approximately 42% parking reduction, the project requires a total of 47 motorcycle parking spaces and 52 bicycle parking spaces. The project would provide 49 motorcycle parking spaces and 73 bicycle parking spaces.

Noise

Pursuant to Section [20.40.600](#) of the Municipal Code, the maximum noise level for commercial uses adjacent to a commercial property line is 60 decibels, and adjacent to a property used or zoned for residential uses is 55 decibels. A Noise Study, titled "1530-1544 West San Carlos Street Mixed-Use

Development Noise and Vibration Assessment”, was prepared by Illingworth & Rodkin Inc. on March 26, 2020. The noise study evaluated noise related to the construction and operations of the project, from various noise sensitive receptors surrounding the project site. The study also measured future exterior noise resulting from the use of communal open space in the exterior of each building. Exterior noise levels were calculated from the center of each outdoor common open space area. Noise measurements were taken from across West San Carlos Street to the north, along the east side of Buena Vista Avenue to the southwest of the site, and in the center of the site where the Phase 2 building would be located. Specifically, the noise study evaluated outdoor use areas at the proposed site, including the courtyards and common open spaces on the third, fifth, and seventh floors of the buildings. The noise study found that noise related to the common open space area at the common open spaces would not exceed 55 decibels. Furthermore, the seventh-floor roof terrace would be reduced to below 55 decibels as it would be the furthest from West San Carlos Street and would be shielded by the building edge.

All construction noise would be temporary and is expected to take approximately 48 months. The Environmental Impact Report includes mitigation measures to address noise impacts related to construction. Mitigation measures require the applicant to submit a noise logistics plan as outlined in the West San Carlos Project Environmental Impact Report. As the site is located within 500 feet of a residence, the construction hours would be limited to 7:00 AM to 7:00 PM Monday through Friday.

Tree Removals

The project includes the removal of 15 trees (11 ordinance-sized and four non-ordinance-sized). The trees proposed to be removed are located either within the proposed building footprint, within the newly dedicated sidewalks, within the paseo area, or within necessary driveways. . The trees to be removed include Apple (1), Southern Magnolia (1), Blue Jacaranda (1), Boxelder (1), Chinese Firethorn (2), White Willow (1), White Crepe Myrtle (1), Blue Potato Bush (1), and Australian blackwood (1). Based on the Tree Survey prepared for the project, by David J. Powers and Associated, dated April 29, 2019, five of the tree species on-site were unable to be identified. Therefore, these trees were conservatively estimated as ordinance-size non-native species of trees. The removal of all 15 trees on-site requires the replacement of 26 trees (24-in box) on site. Based on the plans provided, 26 24-inch box trees would be planted on-site. The trees to be planted include a mix of Maidenhair, Littleleaf Linden, Accolade Elm, Sweet Bay, Brisbane Box, Flowering Plum, Flowering Cherry, Bronze Loquat, Dwarf Southern Magnolia, and Sawleaf Zelkova trees.

Design Guidelines

The project was submitted on April 29th, 2019, prior to the effective date of the Citywide Design Standards and Guidelines on March 25th, 2021. The Commercial Design Guidelines were adopted in May 1990 and the Residential Design Guidelines were adopted in February 1997. Both the Commercial and Residential Design Guidelines were effective when this Special Use Permit was formally submitted to the City. Therefore, the project is required to conform with the following provisions of the City’s [Commercial Design Guidelines](#) and [Residential Design Guidelines](#), in addition to conformance with the Stevens Creek Urban Design Policies..

- Pedestrian Orientation: Mixed use project should include direct and attractive pedestrian access to all nearby commercial areas, transit stops, and transit stations. Sidewalks and walkways should be wide, separated from conflicting activities, and bordered by attractive landscaping, most importantly by street and/or shade trees.
- Mix of Uses:
 - Retail uses should be limited to the ground floor spaces along busy street frontages
 - Office uses may be located on the first and/or upper floors
- Interface Between Uses: Commercial loading areas, trash facilities, and mechanical equipment should be screened from sight by all pedestrian ways and should be located away from residential entries.
- Building Orientation: Buildings should be oriented parallel to the street particularly at corners. Buildings and, in particular, entrances should be oriented towards light rails stations and bus stops.
- Structured Parking: Structured parking is preferable for vertical mixed use projects and for horizontal mixed use projects in more urban locations. Parking which is intended to support commercial uses should be placed in convenient proximity to such uses. The blank walls of parking floors should not be placed along streets or major pedestrian ways.

Analysis: The scale and massing of both buildings are compatible within the development as well as within the surrounding neighborhood, which is planned as an area of significant residential and employment growth. Both buildings have zero front and side setbacks at the street frontages, consistent with both the Commercial Design Guidelines, Zoning Code and West San Carlos Urban Village Plan.

Both seven-story mixed use buildings contain the three traditional portions of a building, the base, middle, and top. Active retail and lobby space is provided on the ground floor with well-defined entrances and transparent glass. All parking would be screened from view along West San Carlos Street, with the majority of the parking structure located at the rear of the site away from the street or underground. The corner element of the phase two building is defined and the project includes façade articulation and recessed windows with minimal mullions. Both buildings also include adequate provisions for trash, storage and loading/service areas located in the ground floor parking garage. All rooftop equipment mechanical equipment would be screened from view on both buildings.

- All areas not covered by building streets, drives, or parking should be landscaped. The developer should plan street trees of an approved species and size along all public and private streets. Landscaping should be provided in all setback areas between project walls and/or fences.

Analysis: As previously discussed, the project includes the construction of a paseo at the rear of the subject site that is planned to connect to Buena Vista Avenue to the west and Willard Avenue to the East. The paseo would remain as private common open space until it is connected to the public right-of-way and offered as a privately owned, publicly accessible open space. The paseo and all common open space areas would be landscaped with trees, shrubs, grasses, and ground cover. The portion of the property adjacent to the single-family houses along the paseo would be well landscaped to screen the site and soften the transition between the project and adjacent residential uses. The project would also plant street trees along both project frontages. The species and number of street trees is to be determined at the public improvements stage as conditioned by the Public Works Department.

- Residential Open Space: Private open space should be provided at a minimum of 60 square feet per unit with a minimum dimension of 6 feet. Common Open Space should be provided at a minimum of 100 square feet per unit.

Analysis: Both buildings provide adequate private and common open space. Each unit would include a minimum of 60 square feet of private open space. The project would include 173 units and a total of 26,680 square feet of common open space. Therefore, approximately 154 square feet of common open space would be provided per unit. Both buildings would include a mix of terraces and courtyards on the third, fifth, and seventh floors. The top of the phase two building is defined by the active rooftop common area.

Permit Findings

In order for this application to be approved, the City Council must be able to make all required findings for a Special Use Development Permit, Site Development Permit, Reduction in Required Vehicle Parking Spaces, Tree Removal Permit, and Demolition Permit.

Special Use Permit Findings

Pursuant to San José Municipal Code [Section 20.100.820](#), staff recommends the Planning Commission, make the following findings:

1. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and

Analysis: As discussed above, the project is consistent with the General Plan goals and policies for focused growth, Urban Villages, land use, and employment. The project would also be consistent with the goals and policies of the West San Carlos Urban Village for land use, employment, and urban design. The project would provide a high intensity mix of residential and commercial retail uses. The project would provide jobs, retail options, and recreational opportunities in a central location with the construction of two seven-story buildings consisting of 173 residential units and 17,836 square feet of commercial retail space. The project would also provide a 30-foot-wide paseo in the rear of the phase one building, that would ultimately provide an inter-block connection from Buena Vista Avenue to Willard Avenue upon redevelopment of the sites to the east and west.

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

Analysis: As discussed in the Municipal Code Conformance section above, the project is consistent with all applicable objective criteria of the CP Commercial Pedestrian Zoning District and the approved West San Carlos Urban Village Plan. The project would also provide the required number of vehicle parking spaces with an approximately 42 percent parking reduction through the implementation of a Transportation Demand Management (TDM) program. The project provides all required clean air vehicle, bicycle, motorcycle parking requirements. Operational noise including indoor and outdoor areas, mechanical equipment, and would conform with the Zoning Code requirements for noise in a Commercial and Residential Zoning District. Additionally, the project includes the removal of six ordinance-size and three non-ordinance-size trees. The removal of all nine trees on-site requires the replacement of 14 trees (24-inch box trees) on site. Based on the plans provided, 26 24-inch box trees would be planted on-site.

3. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The project was duly noticed per Council Policy 6-30: Public Outreach Policy for Pending Land Use and Development Proposals and on-site noticing/posting requirements. A joint Environmental Scoping and Community Meeting was held on January 9, 2020. The meeting was attended by approximately 22 members of the public.

4. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety, or general welfare; and

Analysis: As described above, the mixed-use project, including the commercial retail space, would not impact the peace, health, safety, morals or welfare of persons residing or working in the surrounding area. The residential, retail space, and common areas would be located wholly within the project site, and all activity in these spaces would not impact the area outside of the building. The project would not impair the utility or value of property or persons in the immediate area as any use in the retail portion of the project would be fully contained in the building and would not impact any adjacent property.

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

Analysis: The approximately 1.34-gross acre site would be adequate in size to accommodate the two mixed-use buildings as well as the necessary common outdoor space, landscaping, parking and loading. All parking would be located on either the ground level, behind the retail storefronts, or in a one level subterranean garage. Common outdoor space, including landscaping, would be located at the rear of both buildings, or on the upper floors where they would be accessible to residents. The paseo at the southern end of the Phase I building would be 30 feet wide and would soften the transition between the new development and the residential neighborhoods to the south.

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

Analysis: Vehicular access to the site would be from West San Carlos Street, with right-in/right-out turns only. Regional vehicular access would be provided from West San Carlos Street and Interstate 280, located approximately 2,300 feet to the south. Pedestrian access would be provided from West San Carlos Street and Buena Vista Avenue. VTA Route 23 bus stops are located directly across West San Carlos Street to the north and directly across Buena Vista Avenue to the west. The project is located in an urbanized area and is served by all required utilities and services. A Traffic Memo was

prepared by Public Works, dated May 24, 2021. The Local Transportation Analysis (LTA) found that the four nearest signalized intersection, and one unsignalized intersection, and vehicle queueing for nearby left turn lanes would continue to operate acceptably with the completion of the project. The project is conditioned to install a crosswalk at the east leg of West San Carlos Street and Buena Vista Avenue with a traffic signal modification to accommodate the reconfiguration. The project is also required to construct a new bust stop with a bus pad along the project frontage. As discussed above, the project would also implement a Transportation Demand Management (TDM) Plan to allow the approximately 42 percent parking reduction. With the inclusion of the conditions and implementation of the TDM plan, the project would be in conformance with the City of San José Transportation Analysis Police (Council Policy 5-1).

Site Development Permit Findings

To make the Site Development Permit findings pursuant to San José Municipal Code [Section 20.100.630](#), and recommend approval to the City Council, the Planning Commission must determine that:

1. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans and area development policies; and
Analysis: See Special Use Permit Finding 1 above.
2. 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; and
Analysis: See Special Use Permit Finding 2 above.
3. The Site Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and
Analysis See Special Use Permit Finding 3 above.
4. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.
Analysis: Both buildings would be seven stories and have a maximum height of 92 feet. The entrances of the buildings would also be oriented towards West San Carlos Street. The parking garage would be located towards the rear of the site, away from the primary activity areas of the development, with one level located underground. The project also includes a 30-foot-wide paseo, which would provide on-site connectivity between future developments to the east and west.
5. 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 subject site is surrounded by low density single-family and multifamily residences to the south, commercial uses to the east and west, and multifamily residential uses across West San Carlos Street to the north. Both buildings would be located along West San Carlos Street, with the highest portions of both buildings located away from lower density development to the south. Additionally, a 30-foot-wide fully landscaped paseo would be constructed in the rear of the site to further buffer the high-density development from the lower density residential uses to the south. The project would provide a mix of housing, retail, and recreational opportunities and would revitalize an existing

underutilized commercial area within the West San Carlos Urban Village.

6. 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 effect on adjacent property or properties.

Analysis: The project development occurs in an urbanized area on a parcel that is fully developed with existing commercial and residential buildings and surface parking lots. An Environmental Impact Report (EIR) was completed for the project and mitigation measures were identified for implementation during construction and operation to reduce potentially significant impacts; therefore, there would be no significant impacts from noise, vibration, dust, drainage, erosion, stormwater runoff and odor with the implementation of this project. The project was evaluated per adopted stormwater requirements in the City's Post-Construction Urban Runoff Management Policy (Policy 6-29), and the Stormwater Control Plan has been and has been found in compliance. Additionally, the proposed residential and commercial uses are not anticipated to create odor or unusual noise as the majority of the development's activity occurs indoors. Furthermore, the project would include a Transportation Demand Management (TDM) plan to reduce automobile trips, consistent with parking reduction requirements. Construction activities will result in temporary noise and air quality impacts. These temporary impacts will be temporary and will be minimized through standard construction mitigation measures, as listed in the project conditions of approval. Therefore, the project would not have an unacceptable impact on adjacent properties. See further discussion below related to CEQA.

7. 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: Both buildings include screening for all rooftop mechanical equipment as well as landscape screening for the adjacent residential area to the south. The ground floor garage is located behind the ground floor retail along West San Carlos Street. The garage screening on Buena Vista Avenue includes dark formed metal panels and composite metal panels that adequately screen the garage from view of the street, while maintaining consistency in color and materials with the larger building. All trash, storage, and utility facilities are located indoors.

8. Traffic access, pedestrian access and parking are adequate.

Analysis: Vehicular access to the site would be from West San Carlos, with right-in/right-out turns only. Regional vehicular access would be provided from West San Carlos Street and Interstate 280, located approximately 2,300 feet to the south. Pedestrian access would be provided from West San Carlos Street and Buena Vista Avenue. VTA Route 23 bus stops are located directly across West San Carlos Street to the north and directly across Buena Vista Avenue to the west. The project is located in an urbanized area and is served by all required utilities and services. The project provides the required number of vehicle parking spaces in a conveniently located parking garage with a 42% parking reduction through the implementation of a TDM program. The project provides all required bicycle, motorcycle, clean air, and EV parking as required by the Zoning Code.

Parking Reduction Findings

To make the findings for a Reduction in the Required Off-Street Parking Spaces pursuant to San José Municipal Code [Section 20.90.220](#), and recommend approval to the City Council, the Planning Commission must determine that:

1. The structure or use is located within two thousand (2,000) feet of a proposed or an existing rail station or bus rapid transit station, or an area designated as a Neighborhood Business District, or as an Urban Village, or as an area subject to an area development policy in the City's General Plan or the use is listed in Section 20.90.220G; and
2. The structure or use provides bicycle parking spaces in conformance with the requirements of Table 20-90.
3. For any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a Transportation Demand Management (TDM) program that contains but is not limited to one of the following measures:
 - a. Implement a carpool/vanpool or car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations at the ratio set forth in the development permit or development exception considering type of use; or
 - b. Develop a transit use incentive program for employees and tenants, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA SmartPass system will satisfy this requirement).
4. In addition to the requirements of [Section 20.90.220](#), for any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a TDM program that contains but is not limited to at least two of the following measures in Section 20.90.200 A.1.d.

Analysis: The project requires 328 vehicle parking spaces. Pursuant to Section 20.90.220 of the Zoning Code, a parking reduction of up to 50% of the code required parking spaces may be permitted for sites within a Growth Area with the implementation of a Transportation Demand Management (TDM) Plan. 189 vehicle parking spaces would be provided with the implementation of a TDM Plan (See Exhibit F) to allow for an approximately 42% parking reduction. A TDM Plan, dated September 8, 2020 was prepared by Hexagon Transportation Consultants, Inc, which reviewed the possibility of an approximately 42% parking reduction. In addition to providing the required bicycle parking spaces, showers, and lockers, the project would also implement additional TDM measures in accordance with Section 20.90.220 of the Municipal Zoning Code. The project would be required to provide an online kiosk of trip-planning resources, 100 percent unbundled parking for all residential spaces, VTA SmartPasses to all residential tenants, and on-site bicycle storage.

Tree Removal Permit Findings

In order to make the Tree Removal findings pursuant to [Section 13.32.100](#) of the San José Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

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

Analysis: The project includes the removal of 15 trees (11 ordinance-sized and four non-ordinance-sized). The trees proposed to be removed are located either within the proposed building footprint, within the newly dedicated sidewalks, within the paseo area, or within necessary driveways. The trees to be removed include Apple (1), Southern Magnolia (1), Blue Jacaranda (1), Boxelder (1), Chinese Firethorn (2), White Willow (1), White Crepe Myrtle (1), Blue Potato Bush (1), and Australian blackwood (1). Based on the Tree Survey prepared for the project, by David J. Powers and Associated, dated April 29, 2019, five of the tree species on-site were unable to be identified. Therefore, these trees were conservatively estimated as ordinance-size non-native species of trees. The removal of all 15 trees on-site requires the replacement of 26 trees (24-in box) on site. Based on the plans provided, 26 24-inch box trees would be planted on-site. The trees to be planted include a mix of Maidenhair, Littleleaf Linden, Accolade Elm, Sweet Bay, Brisbane Box, Flowering Plum, Flowering Cherry, Bronze Loquat, Dwarf Southern Magnolia, and Sawleaf Zelkova trees.

Demolition Permit Findings

[Chapter 20.80](#) of the Municipal Code establishes evaluation criteria for the issuance of a permit to allow for demolition. These criteria are made for the project based on the above stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the Resolution.

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

Analysis: The project includes the demolition of three existing commercial buildings, eight residential buildings, associated service structures, and one billboard totaling approximately 14,131 square feet. The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition. The failure to approve the permit would not jeopardize public health, safety or welfare. The demolition permit would facilitate a project that is compatible with the surrounding neighborhood. As previously discussed, the project is consistent with all applicable General

Plan and West San Carlos Urban Village Plan goals and policies, zoning code requirements, applicable city council policies, and design guidelines. The demolition of the existing commercial buildings would facilitate the construction of two mixed-use buildings with 173 residential units and 17,836 square feet of commercial retail space. Given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible. Based on the Historic Resources Evaluation report (see Exhibit G), prepared by Treanor HL in July 2019, the EIR determined that demolition of the residences at 1530 West San Carlos Street, eligible as candidate City Landmark structures, would be a significant and unavoidable impact. Even though mitigation measures that include documentation, relocation, and salvage would lessen the impact, the residences and the historic connection to the current location would be lost. Therefore, the impact would be significant and unavoidable. While the demolition is not preserving the historic structures and Criterion 5 cannot be met, the project is satisfying other goals and policies of the General Plan explained in detail herein. The demolition of any existing buildings on-site would not be approved until the issuance of a grading or building permit, whichever comes first, as conditioned in this Special Use Permit for the subject site.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of San José, as the lead agency for the project, prepared a Draft Environmental Impact Report (Draft EIR) (State Clearinghouse Number 2019120341), which was circulated for public review and comment for 45 days, from January 12, 2021 through February 26, 2021.

The EIR prepared for this project concluded that implementation of the proposed project would result in a significant impact to historic resources (Candidate City Landmarks). Specifically, the implementation of the project would result in impacts to candidate City Landmarks located at 1530 West San Carlos Street: One Craftsman-style house and seven Spanish Revival-style bungalows.

Significant Unavoidable Impacts

CUL-1: Implementation of the proposed project would result in the demolition of the Craftsman-style house and the seven Spanish Revival-style bungalows on-site that are eligible City Landmarks, a significant impact.

CUL(C)-1: Implementation of the proposed project would result in a cumulatively considerable contribution to a significant cultural resources impact to the remaining Craftsman-style houses and bungalow courts in the City.

The EIR determined that demolition of the residences at 1530 West San Carlos Street, eligible as candidate City Landmark structures, would be a significant and unavoidable impact. Even though mitigation measures that include documentation, relocation, and salvage would lessen the impact, the residences and the historic connection to the current location would be lost. Therefore, the impact would be significant and unavoidable.

In addition, mitigation measures were developed to lessen the following project impacts to less than significant levels: exposure of sensitive receptors to toxic air contaminants, disturbance and/or destruction of migratory nesting birds, exposure of workers to residual contamination from previous industrial operations at the project site, exposure of sensitive receptors to construction noise, and damage to adjacent structures from construction vibration.

Standard Permit Conditions are also required to ensure no impacts occur during construction and operation of the project. These Standard Permit Conditions include best management practices for construction related air quality impacts, compliance with the Santa Clara Valley Habitat Plan, compliance with the California Building Code for seismic safety of the proposed building, erosion control during construction activities, protection of unknown subsurface resources, protection of construction workers from hazards related to asbestos containing materials and lead-based paint, water quality impacts during construction, and impacts to public facilities.

CEQA Alternatives

As required under CEQA, the Draft EIR identified and evaluated alternatives to the project. Three critical factors considered in the selection and evaluation of the alternatives included: (1) the significant impacts from the project that could be reduced or avoided by an alternative, (2) consistency with the project's objectives, and (3) the feasibility of the alternatives available. The environmental analysis considered three project alternatives outlined in the Special Use Permit. These include:

1. No Project – No Development Alternative

The No Project – No Development Alternative assumes that the project site would remain as it is today, which includes the existing auto commercial, commercial (restaurant), and martial arts commercial space, and residential developments on-site. The No Project No Development Alternative would avoid all of the project's environmental impacts, including the significant and unavoidable impact to potential historic resources of significance to the City of San José. The No Project – No Development Alternative would not meet any of the project objectives. In addition, the existing development is lower than the density encouraged under the General Plan designation, West San Carlos Urban Village Plan and zoning, since the site currently contains lower commercial FAR and dwelling units per acre than the minimum requirement. Because the No Project – No Development Alternative would not result in any new development on the site, this Alternative would avoid all of the environmental impacts of the project. However, this Alternative would not meet any of the project objectives.

2. No Project – Existing Land Use Designation Alternative

The No Project – Existing Land Use Designation Alternative is essentially the same as the proposed project. This alternative was proposed when the project still included a PD Planned Development Zoning application to rezone the site from the existing CP Commercial Pedestrian Zoning District and the R-M Multiple Residence Zoning District to a Planned Development Zoning District. This alternative maintained the existing zoning districts and would have constructed a similar project consistent with the General Plan designation and zoning districts. The originally proposed PD zoning would have afforded the project more flexibility in terms of site design and setbacks. Under Assembly Bill 3194, the Housing Accountability Act Amendment, effective January 1, 2019, the local governments' authority is limited and cannot reject or restrict housing development projects that comply with applicable objective general plan, zoning, and subdivision standards. Because rezoning is no longer required, there is no land use designation alternative. Importantly, alternatives are alternatives that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant impacts of the project. Because this alternative does not reduce any impacts, it is not a reasonable or feasible alternative.

3. Design Alternative – Relocate and restore five of the seven bungalows

Demolition of the residential units on-site would result in a significant unavoidable impact to historic resources. The purpose of the Design Alternative is to avoid the project's significant unavoidable impact to historic resources. The Design Alternative would require the project to be redesigned in a manner that would preserve the historic resources to the extent feasible while still allowing a physically feasible development on the project site. The proposed Building 1 of the Project would be redesigned with a reduced building footprint to allow five of the historic bungalow units to be relocated and preserved on the southern portion of the site. The proposed Building 2 would remain the same as the proposed project. The five bungalow units would be situated in a horseshoe layout and facing each other to form a central court in the middle, recreating a similar court-like court as the existing unit layout. Building 1, under this alternative, would have 24 fewer residential units, 11,165 square feet less of commercial space, and 18,923 square feet less common space. Building 1 would include 79 residential units, 10,000 square feet of commercial space, and 6,000 square feet of common space, which combined with Building 2 would result in a density of 111 du/ac and 0.29 commercial FAR. Additionally, Building 1 would be set back at least 95 feet from the southern property line. Building stories and height would remain the same. Access to the site and bungalow units would be provided on the proposed driveway on West San Carlos Street. This design alternative would preserve five of the seven bungalow units and would lessen the significant impact to the historic resources by restoring the buildings consistent with the City's requirements for historic buildings. All other impacts during construction and operation would be similar to that of the proposed project.

Circulation and Public Comments

The Draft EIR was circulated for public review for 45 days consistent with CEQA Guidelines Section 15132, starting on January 12, 2021 and ending on February 26, 2021. Comments were received from regional and local agencies, including the County of Santa Clara, Roads and Airport Department, the Santa Clara Valley Transportation Authority (VTA), and the Santa Clara Valley Water District; and organizations, businesses, and individuals, including a letter from Lozeau Drury, LLP. and Pacific Gas & Electric Company (PG&E).

Issues raised in these comment letters include the following:

4. County of Santa Clara, Roads and Airport Department: City annexation of project pockets to address all neighborhood traffic-related issues within those pockets. Reference to the annexation clause within the 2006 Settlement Agreement between the County and the City of San Jose.
5. VTA: Request for the project to coordinate bus stop improvements to consolidate stop locations along West San Carlos Street and opportunity to review updated site plans to ensure the placement of driveways, landscaping and any other features do not conflict with bus operations; and comment on the proposed crossing at San Carlos Street and Willard Avenue.
6. Lozeau Drury LLP (dated February 26, 2021) on behalf of the Laborers International Union of North America (LIUNA): 1) DEIR fails to discuss indoor air quality impacts related to the project, in particular emissions of formaldehyde; 2) DEIR relies on unsubstantiated input parameters to estimate project emissions and thus fails to provide substantial evidence of the project's air quality impacts; 3) the DEIR failed to disclose a significant air quality impact from Reactive Organic Gas (ROG) emissions; 4) the DEIR fails to adequately evaluate health risks from diesel particulate matter emissions; 5) The DEIR inadequately evaluated the project's cumulative impacts.

Response to Public Comments addressed in First Amendment

In accordance with CEQA Guidelines Section 15088, a First Amendment was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the Draft EIR. As contained within the First Amendment, comments received either did not address the adequacy of the Draft EIR or the comment did not identify new or more significant impact(s), or a new feasible project alternative or mitigation measure considerably different than identified in the DRAFT EIR. For these reasons, no further CEQA analysis is required and the Draft EIR does not require recirculation. The Draft EIR taken together with the First Amendment constitutes the Final EIR.

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft EIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a 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).

Statement of Overriding Considerations

Section 15091(a) of the CEQA Guidelines stipulates that no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings. If the lead agency approves a project despite it resulting in significant adverse environmental impacts that cannot be mitigated to a less than significant level, the agency must state the reasons for its action in writing. Thus, a Statement of Overriding Considerations is included in the record of project approval.

The Draft EIR taken together with the First Amendment constitutes the Final EIR. The Draft EIR and First Amendment to the Draft SEIR are available for review on the project page on the City's Active EIRs website at: www.sanjoseca.gov/ActiveEIRs.

PUBLIC OUTREACH

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

A formally noticed Community Meeting with the Environmental Scoping was held on Monday, January 9th, 2020 to introduce the proposed project to the community. Approximately 22 members of the public attended the meeting. The questions and comments from community members included concerns related to building height, traffic, parking, lack of retail options, and sidewalk safety during construction.

Project Manager: Alec Atienza

Approved by: /s/ , Deputy Director for Christopher Burton, Planning Director

ATTACHMENTS:	
Exhibit A:	Draft EIR Resolution
Exhibit B:	Draft Special Use Permit Resolution and Legal Description
Exhibit C:	Special Use Permit Plan Set
Exhibit D:	Transportation Analysis
Exhibit E:	Noise Study
Exhibit F:	TDM Plan
Exhibit G:	1530-1536 West San Carlos Historic Resources Evaluation
Exhibit H:	Signed MMRP
Exhibit I:	Public Comments

Owner:	Applicant:
Urban Villas, LLC 22561 Poppy Drive Cupertino, CA 95014	Viji Mani 22561 Poppy Drive Cupertino, CA 95014

SP20-004 Links to Attachments

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[Correspondence Received After July 7, 2021](#)