

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) (APNS: 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) SmartPass 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 stepback, 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 stepback 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

	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 SmartPass cards 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 project 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 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 José, 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 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 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 project 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 project. This alternative was considered 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 original 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. 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. Building 2 would remain the same as the 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 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. All other impacts during construction and operation would be similar to that of the 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 José.

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 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 would 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 driveway and the sidewalk on West San Carlos Street to the 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 of the project would 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 project development also includes 12,818 square feet of outdoor common open space and 9,412 square feet of indoor amenity space in the project 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 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, and 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 SmartPass cards 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 SmartPass cards 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:

- a. 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.
- b. 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.
- c. 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 project Plan to fulfill the affordable housing obligations.
- d. 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. [REDACTED]

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 property 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 Removed¹	Type of Tree to be Removed²			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 conducted 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 José 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 José 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 José 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
 - 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 José 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.

e. **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 would 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 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 used 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 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 José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula 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) 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 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 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 o.i., above.
- iii. If the vehicle 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 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 to be removed.

43. **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 project.

44. **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.

Legal Description

Real Property in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING AT A POINT IN THE DIVIDING LINE BETWEEN LOTS 1 AND 2 OF THE ZUVERS SUBDIVISION AS SHOWN UPON THAT MAP THEREOF HEREINAFTER REFERRED TO, DISTANT THEREON S. 0 DEG. 33' 22" E., 74.74 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE ORIGINAL CENTER LINE OF SAN CARLOS AVENUE, FORMERLY STEVENS CREEK ROA; SAID POINT OF BEGINNING BEING ALSO THE SOUTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM JOSEPH RILL ET UX, TO THE STATE OF CALIFORNIA, RECORDED OCTOBER 7, 1941 IN BOOK 1067 OF OFFICIAL RECORDS, PAGE 62, RECORDS OF SANTA CLARA COUNTY; THENCE FROM SAID POINT OF BEGINNING S 0 DEG. 33' 20" E., ALONG SAID DIVIDING LINE 294.32 FEET TO THE SOUTHERLY LINE OF THE SAID LOT 1; THENCE N. 98 DEG. 26' E, ALONG SAID LINE 130.028 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 1; THENCE N. 0 DEG. 30' W., ALONG EASTERLY LINE OF SAID LOT 1, 294.32 FEET TO THE SOUTHEASTERLY CORNER OF THE SAID PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA WHICH POINT IS IN THE SOUTHERLY LINE OF SAN CARLOS STREET AS WIDENED; THENCE ALONG SAID SOUTHERLY LINE S. 89 DEG. 18' 15" W., 75.11 FEET AND S. 89 DEG. 28' 15" W. 55.83 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF LOT 1 AS SHOWN UPON THE MAP OF THE ZUVERS SUBDIVISION, WHICH MAP IS ON FILE IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA IN BOOK "H" OF MAPS, AT PAGE 139.

APN: 277-28-019 (portion of said land) and 277-18-020 (portion of said land)

EXHIBIT "A"
(File No. SP20-004)

LEGAL DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

A PORTION OF LOT 2, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "ZUVER'S SUBDIVISION", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON NOVEMBER 4, 1895, IN [BOOK "H" OF MAPS, AT PAGE 139](#), AND MORE PARTICULARLY AS DESCRIBED AS FOLLOWS:
BEGINNING AT THE INTERSECTION OF THE EASTERLY LINE OF BUENA VISTA AVENUE, AS SHOWN ON THE MAP REFERRED TO, WITH THE SOUTHERLY LINE OF WEST SAN CARLOS STREET, AS ESTABLISHED BY THE DEED FROM ETTA L. SHIRLEY, ET VIR, TO THE STATE OF CALIFORNIA, DATED OCTOBER 27, 1941, RECORDED NOVEMBER 28, 1941, IN [BOOK 1071 OF OFFICIAL RECORDS, AT PAGE 191](#), SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, SOUTHERLY ALONG THE EASTERLY LINE OF SAID BUENA VISTA AVENUE, 189.49 FEET TO THE SOUTHWESTERLY CORNER OF PARCEL TWO, AS DESCRIBED IN THE DEED FROM SHANNON COPELAND, ET UX, TO RAY A. PINE, ET UX, DATED SEPTEMBER 30, 1965, RECORDED OCTOBER 1, 1965, IN [BOOK 7125 OF OFFICIAL RECORDS, AT PAGE 112](#), SANTA CLARA COUNTY RECORDS; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID PARCEL TWO, 105.55 FEET TO THE SOUTHEASTERLY CORNER THEREOF, ON THE EASTERLY LINE OF LOT 2, AS SHOWN ON THE MAP, FIRST ABOVE REFERRED TO; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT 2, 189.36 FEET TO THE POINT ON THE SOUTHERLY LINE OF SAID WEST SAN CARLOS STREET; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID WEST SAN CARLOS STREET, 105.94 FEET TO THE POINT OF BEGINNING.

APN: 277-18-018

EXHIBIT "A"
(File No. SP20-004)