

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 AN EXISTING SINGLE-FAMILY RESIDENCE, BARN, AND ACCESSORY BUILDINGS, THE REMOVAL OF 30 ORDINANCE-SIZE AND 19 NON-ORDINANCE TREES, AND CONSTRUCTION OF A SIX-STORY, MIXED-USE BUILDING CONSISTING OF 70 RESIDENTIAL CONDOMINIUM UNITS AND NINE COMMERCIAL CONDOMINIUMS INCLUDING APPROXIMATELY 20,410 SQUARE FEET OF COMMERCIAL SPACE WITH ONE PODIUM PARKING LEVEL AND ONE UNDERGROUND PARKING LEVEL, A 50 PERCENT PARKING SPACE REDUCTION, AND ASSOCIATED LANDSCAPING AND AMENITIES ON AN APPROXIMATELY 0.93-GROSS ACRE SITE, LOCATED ON THE WEST SIDE OF SOUTH WINCHESTER BOULEVARD, APPROXIMATELY 460 FEET SOUTHERLY OF WILLIAMS ROAD (1065 SOUTH WINCHESTER BOULEVARD)**

**FILE NO. SP21-006**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 18, 2021, an application (File No. SP21-006) was filed by the owner and applicant, Adam Askari of A&Z Development, LLC with the City of San José for a Special Use Permit to allow the demolition of an existing single-family residence, barn and accessory buildings, the removal of 30 ordinance-size and 19 non-ordinance trees, and construction of a six-story, mixed-use building consisting of 70 residential condominium units and nine commercial condominiums including approximately 20,410 square feet of commercial space with one podium parking level and one underground parking level, a 50 percent parking space reduction, and associated landscaping and amenities on an approximately 0.93-gross acre site, on that certain real property situated in the CP Commercial Pedestrian Zoning District and located on the west side of South Winchester Boulevard, approximately 460 feet southerly of Williams Road

(1065 South Winchester Boulevard, San José, which real property is sometimes referred to herein as the “subject property”); and

**WHEREAS**, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” and depicted in Exhibit “B,” entitled “Parcel Map,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said concurrent applications on September 14, 2022, notice of which was duly given; and

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

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

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

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

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

**WHEREAS**, at said hearing, this City Council received in evidence a development plan for the subject property entitled, “Winchester Mixed-Use Project” dated June 14, 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 this City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

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

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

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

1. **Site Description and Surrounding Uses.** The project site is located on the west side of South Winchester Boulevard, approximately 460 feet southerly of Williams Road (1065 South Winchester Boulevard). The project site is adjacent to a restaurant to the north, commercial office use to the south, multifamily residential use to the east, and single-family residential use to the west.

The approximately 0.93-gross acre site is currently developed with an Italianate Victorian style cottage (1,575 square feet), California style barn, and related agricultural accessory buildings including a tank house/shed and a fruit drying shed with drying tables and remnant orchard trees. The existing buildings and structures were constructed sometime between 1887 and 1900. The property is an example of the agricultural/fruit drying heritage of the City of San José and is eligible for listing as a Candidate City Landmark in the City of San José Historic Resources Inventory and in the California Register of Historical Resources. Therefore, the demolition of the existing buildings and structures at 1065 South Winchester Boulevard would constitute a significant, unavoidable impact to a historical resource under the California Environmental Quality Act (CEQA) and a cumulatively considerable impact to the finite historic properties associated with agricultural/fruit drying heritage in San

José. The project therefore requires a Statement of Overriding Consideration for significant unavoidable impacts to Cultural Resources. The environmental impacts to Cultural Resources are addressed in the project's Environmental Impact Report (EIR).

2. **Project Description.** The project is for a Special Use Permit to allow the demolition of the existing structures as described above, the removal of 30 ordinance-size and 19 non-ordinance trees, and construction of a six-story, mixed-use building consisting of 70 residential condominium units and nine commercial condominiums including approximately 20,410 square feet of commercial space with one podium parking level and one underground parking level, a 50 percent parking space reduction, and associated landscaping and amenities. The project provides 104 vehicle parking spaces, 25 of which would be provided on the ground floor and 79 parking spaces provided in the underground parking level.

Vehicular access to the site is provided via a driveway located near the middle of the site along South Winchester Road. The project site is surrounded by single-family residential uses to the west and multifamily residential uses to the east, and by commercial uses to the north and south, including a restaurant to the north and office uses to the south.

The project is associated with a Tentative Map to allow a subdivision with up to 70 residential condominium units, nine commercial condominium units, and one common area on the approximately 0.93-gross acre project site.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan land use designation of Mixed-Use Commercial and is located within the Winchester Boulevard Urban Village Plan. This designation supports commercial and residential uses, where residential uses are allowed in a secondary role to commercial uses. The Mixed-Use Commercial designation requires a minimum commercial floor-area ratio (FAR) of 0.5 for mixed use projects and allows a density of up to 75 dwelling units per acre (75 DU/AC) for sites larger than 0.7 acre.

*Analysis: The project includes a commercial gross square footage of 20,410 square feet, which results in 0.5 FAR, and a residential density of 75 du/ac with 70 units on an approximately 0.93-gross acre site. The mixed-use project is consistent with the land use, FAR, and density requirements of the land use designation.*

The project is consistent with the following key General Plan policies:

- a. **Major Strategy #3 - Focused Growth:** Strategically focus new growth into areas of San José that will enable the achievement of City goals for economic growth, fiscal sustainability and environmental stewardship and support the development of new, attractive urban neighborhoods. The Plan focuses significant growth, particularly to increase employment capacity, in areas surrounding the City's regional Employment Center, achieve fiscal sustainability, and to maximize the use of transit systems within the region.

*Analysis: As stated above, the project is located within the Winchester Boulevard Urban Village. In the Envision San José 2040 General Plan, urban villages are areas identified for housing and job growth in a mixed-use setting. The project includes a mixed-use development with residential and commercial office space, where the commercial use is provided on the ground-floor (first and second floor) along South Winchester Boulevard. This development would increase commercial office square footage on-site and thus would increase employment opportunities. Additionally, the project would add 70 new residential units on-site, to further the mixed-use setting supported by the General Plan. The project would enhance the Plan area's urban neighborhoods by constructing an updated building with a mix of uses. Additionally, the project is consistent with the Winchester Boulevard Urban Village Plan framework and development standards which support and create a safe environment for all modes of travel and a thriving commercial corridor, in a mixed-use setting*

- b. Community Design Policy CD-1.17: Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm.

*Analysis: The development includes an underground parking garage to shield most of the parking from view of the surrounding neighborhood, consistent with the Attractive City Policy (General Plan Goal CD-1). The pedestrian entrances and walkways are identified on South Winchester Boulevard with an expanded 20-foot wide sidewalk, attractive planters, pedestrian-scaled entrances separated from the main driveway entrances, and the building's façade is also articulated with projecting balconies for visual interest.*

- c. Growth Area Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified "Growth Areas" in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.
- d. Commercial Lands Policy LU-4.3: Concentrate new commercial development in identified growth areas and other sites designated for commercial uses on the Land Use/Transportation Diagram. Allow new and expansion of existing commercial development within established neighborhoods when such development is appropriately located and designed.

*Analysis for Policy LU-2.1 and Policy LU-4.3: The project includes a mixed-use building with ground-floor and second-story commercial office space which encourages various employment opportunities within the Winchester Boulevard Urban Village growth area. The additional square footage on-site and updated*

*building would enhance the City's building floor area capacity and help to achieve the City's job growth goals. Furthermore, the mixed-use setting and urban village location promote the viability of new commercial spaces in that they can be accessed easily via multiple modes of transportation and are integrated into the neighborhood and overall urban village plan area.*

**Urban Village Conformance.** The Winchester Boulevard Urban Village is located in western San José and is a 1.5-mile corridor parallel to Interstate 880 and California State Route 17 to the east and San Tomas Expressway to the west. This Urban Village provides a range of commercial services, retail, restaurant and residential uses, and is a connection to several regional destinations. The Winchester Boulevard Urban Village Plan was adopted by City Council on August 8, 2017.

The project is consistent with the following Urban Village Plan goals, standards and policies:

- a. Land Use Policy. Policy 3-8: When a new development replaces an existing development that includes small businesses, it is encouraged to dedicate new/flexible space for small businesses within the new development.

*Analysis: The existing site includes a small fruit drying agricultural business, no longer in operation. The 20,410 square feet of commercial space is divided into nine commercial condominium spaces. The project's commercial space could accommodate three office condominium spaces on the ground-floor with square footages ranging from 750 square feet to 4,570 square feet and six office spaces on the second floor with square footages ranging from 715 square feet to 3,190 square feet. The range in commercial square footages would serve a variety of small businesses within the new development.*

- b. Complete Streets Policy. Policy 6-50: All future development projects shall provide 20-foot minimum sidewalk width along Winchester Boulevard. Where the sidewalk in front of a development project falls short, the project must make up the difference so that the entire 20 feet is publicly accessible and functions as a sidewalk.

*Analysis: The project includes the construction of a 20-foot attached sidewalk street trees along South Winchester Boulevard. Therefore, the project is consistent with Policy 6-50.*

- c. Urban Design Standard. Standard DS-21: Bicycle parking for visitors shall be located as close to the primary entrance as possible and shall be readily accessible and visible from the street level.

*Analysis: The project would include four short-term bicycle parking spaces along Winchester Boulevard which is the where the building frontage and primary project entrances are located. Therefore, the project is consistent with Standard DS-21.*

- d. Vibrant Commercial Corridor Goal. Goal LU-2. The combined commercial FAR of all parcels within the Urban Village boundary should not drop below 0.4 to meet the job capacity identified in this Urban Village.

*Analysis: As described above, the project includes a mixed-use development consisting of commercial space meeting the 0.5 FAR minimum requirement and would increase the on-site commercial square footage. The 0.5 FAR would support the overall Winchester Boulevard Urban Village goal of meeting the job capacity envisioned for the area as well as contribute to the combined commercial FAR of all parcels in the Urban Village boundary.*

- e. Urban Design Standard. Standard DS-5: The minimum floor-to-ceiling height of the ground floor commercial space shall be a minimum of 15 feet and preferably 18 to 20 feet.

*Analysis: The project would have a floor-to-ceiling height of 15 feet for the ground-floor commercial space. Therefore, the project is consistent with Standard DS-5.*

- f. Urban Design Standard. Standard DS-6: The depth of ground floor commercial space shall be 50 feet minimum and preferably 60 feet.

*Analysis: The project would provide ground-floor commercial space ranging in depth from 55 feet to 110 feet. Therefore, the project is consistent with Standard DS-6.*

- g. Building Height Standards DS-10 thru DS-12. The intensity of new commercial development is limited by the maximum height limits established in the Winchester Boulevard Urban Village Plan and as illustrated on the Height Diagram (Figure 5-2 in the Urban Village Plan). Pursuant to the Building Height Diagram, the project has a 65-foot height limit (5-6 stories typical) with a ten-foot height allowance for non-occupiable architectural features such as roof forms, chimneys, stairwells and towers.

- h. Height Transition Standard. This standard is applied to sites adjacent to residential uses. As discussed above, there are residential uses located to the west (rear) of the project site. Buildings that are 65 feet or less in height are required to use a 20-foot rear setback and the 45-daylight plane when located adjacent to a property with a Residential Neighborhood Land Use designation.

- i. Front and Side Setbacks. New development with a non-residential ground floor use is required to provide a zero to ten-foot front setback and zero to ten-foot street side setback.

*Analysis: The mixed-use building would have a height of 63 feet from grade to parapet. The building includes an 11-foot tall overrun for the elevator shaft, equipment room, and safety railing for a maximum height of 74 feet. In accordance with the height transition standard, the building would have a 21.9-foot rear*

*setback (west) and step back from the property line at 35 feet in height, so that floors four through six are gradually tapered at a 45-degree angle.*

*The project would provide a 20-foot wide sidewalk along the frontage of South Winchester Boulevard, including a 10-foot wide setback to the front property line. The building would be set back 8.5 feet from the north property line and zero feet to the emergency access easement on the south consistent with the requirements and development standards in the Plan.*

4. **Zoning Ordinance Consistency.** The subject site is currently located within the CP Commercial Pedestrian Zoning District. The CP Commercial Pedestrian District is intended to support pedestrian-oriented retail activity at a scale compatible with surrounding residential neighborhoods. The CP Commercial Pedestrian District encourages mixed residential/commercial development where appropriate and is designed to support the commercial goals and policies of the general plan in relation to Urban Villages. This district is also intended to support intensive pedestrian-oriented commercial activity and development consistent with general plan urban design policies.

The project is consistent with the land use and development standards of the zoning district as follows:

- a. Use. Mixed-use residential/commercial is a permitted use with a Special Use Permit in the CP Commercial Pedestrian Zoning District. Additionally, commercial condominiums require a Special Use Permit pursuant to Section 20.175.040 of the San José Municipal Code.
- b. Minimum Non-Residential Condominium Size. Section 20.175.042.c of the San José Municipal Code requires a minimum 750-square foot commercial condominium.

*Analysis: The project includes 20,410 square feet of commercial space, which is divided into commercial condominium spaces ranging from 750 square feet to 4,570 square feet. A condition of approval is incorporated into the Tentative Map approval requiring a minimum of 750 square feet per commercial condominium.*

- c. Vehicular Parking. Parking shall be provided pursuant to Chapter 20.90 (Parking and Loading) of the San José Municipal Code for each respective use (residential, office).

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Residential parking required:

Unit Size	Number of Units	Parking Ratio	Required Parking
1 Bedroom	36	1.25 space/unit	45
2 Bedrooms	21	1.7 space/unit	36
3 Bedrooms or more	13	2.0 space/unit	26
<b>TOTAL</b>	<b>70</b>	<b>-</b>	<b>107</b>

Office parking required:

One parking space is required for every 250 net square feet of office space. The gross commercial square footage of the project would be 17,349 square feet (85 percent of the 20,410 gross square feet of commercial floor area) and accordingly 69 parking spaces would be required. In combination with the residential spaces, 176 vehicle parking spaces would be required.

Vehicular parking reduction:

Pursuant to Section 20.90.220(d) of the San José Municipal Code, a project is eligible for up to a 50 percent reduction in required vehicle parking if the project is located in an Urban Village and provides the minimum required bicycle parking, and the project applicant implements Transportation Demand Management (TDM) measures. The project includes a TDM plan that outlines three measures for a parking reduction of 41.2 percent, consistent with the requirements in the Code. The TDM Plan includes the following measures:

1. Maintaining an online kiosk of trip-planning resources
2. Providing 100 percent unbundled parking for all residential spaces
3. Providing VTA Smart Passes to residential and commercial tenants.

Therefore, since the project is located within an Urban Village and provides more than the minimum number of bicycle parking spaces as analyzed below, the vehicle parking requirement is reduced to 104 total vehicle parking spaces.

*Analysis: The project provides 104 vehicle parking spaces, 25 of which would be provided on the ground floor and 79 parking spaces in the underground parking level. The project is consistent with the vehicular parking requirement with the allowed reduction applied.*

d. Bicycle parking:

Residential: One parking space is required per four living units. Accordingly, 18 bicycle spaces are required. Bicycle parking spaces for residential use shall consist of at least sixty percent long-term. This results in at least eleven long-term spaces required.

Office: One parking space is required per 4,000 square feet. Accordingly, five bicycle spaces are required. When the bicycle parking required for a land use is based solely on square footage, at least eighty percent of the bicycle parking spaces shall be provided in short-term bicycle parking facilities. This results in at least four short-term spaces.

In total, 23 bicycle parking spaces are required for the project, including at least eleven long-term spaces and at least four short-term spaces. The remaining eight spaces can be either long-term or short-term.

*Analysis: The project provides 59 bicycle parking spaces, with 51 long-term spaces and eight short-term spaces, and is consistent with the bicycle parking requirement.*

e. Motorcycle parking:

Residential: One parking space is required per four living units. Accordingly, 18 motorcycle spaces are required.

Office: One parking space is required per 20 parking spaces. Accordingly, six motorcycle spaces are required.

In total, 24 motorcycle parking spaces are required.

*Analysis: The project provides 24 motorcycle spaces and is consistent with the motorcycle parking requirements.*

f. Noise. Pursuant to Section 20.40.600 of the Municipal Code, the sound pressure level generated by any use or combination of uses on a property shall not exceed 55 decibels at the property line adjacent to a property used or zoned for residential purposes or 60 decibels at the property line adjacent to a property used or zoned for a non-residential use.

*Analysis: As described in the Noise Assessment prepared by WJV Acoustics dated July 13, 2021, anticipated sources of operational noise from the project include parking lot vehicle movements, outdoor human activity, and mechanical/HVAC rooftop systems. Because the project includes two common-use outdoor seating areas on the second floor, the Noise Assessment also considered this outdoor activity in the analysis and concluded that exterior noise levels at the second floor would be approximately 45 to 50 dB LdN, below the City noise standard. The project does not include loading docks or trash compactors and none of the commercial spaces would be 24-hour uses. Noise*

*due to traffic in parking lots is typically limited by low speeds and increase the noise level above the City noise standard. Therefore, the project is consistent with the noise requirements.*

*The project would also be required to implement standard permit conditions during construction to reduce temporary construction noise impacts on the surrounding neighborhood. Project construction would last approximately 20 months and therefore, the project applicant is required to prepare a Construction Noise Logistics Plan pursuant to General Plan Policy EC-1.7. Policy EC-1.7 requires a Logistics Plan for construction continuing for more than 12 months.*

## **5. San José Residential Guidelines Consistency**

The project was analyzed for consistency with applicable Residential Design Guidelines (1999). Per Senate Bill 330, effective January 1, 2020, only objective standards and guidelines can be applied to certain affordable housing projects. Objective standards per SB 330 must be measurable and quantifiable.

The updated Citywide Guidelines were adopted on February 23, 2021 and effective March 25, 2021. These updated guidelines include objective standards in response to the requirements of SB 330. The subject project, submitted on March 18, 2021, was submitted prior to the effective date of the new guidelines and therefore subject to the 1999 Residential Design Guidelines.

The project complies with the following key guidelines from the 1999 Residential Design Guidelines below:

Chapter 10.A. Private and Common Open Space. A minimum of 100 square feet of Common Open Space and 60 square feet of Private Open Space, with a minimum 6 feet of width, is required per each unit.

*Analysis: Under this section, the project is required to provide a minimum of 7,000 square feet of common open space and 4,200 square feet of private open space. The project includes 7,112 square feet of common open space and 8,855 square feet of private open space, which exceeds the requirement. Additionally, the widths of the balconies vary from 6 feet to 13 feet in width, and the open space provided is consistent with the guideline.*

Chapter 11.A Façade Articulation. All building facades containing 3 or more attached dwellings in a row should incorporate at least one of the following:

1. At least one architectural projection per unit. Such a projection must project no less than 2 feet 6 inches from the major wall plane, must be between 4 feet 6 inches and 15 feet wide, or
2. A change in wall plane of at least 3 feet for at least 12 feet or every 2 units.

*Analysis: The balconies and architectural projections shown in the project design plans is consistent with the façade articulation guidelines. There is at least one*

*projection, change in wall plane, or architectural feature that meets this guideline on all facades of the project.*

Chapter 11.E. Changes in Materials. The exterior materials and architectural details of a single building should relate to each other in ways that are traditional and/or logical. Material changes not accompanied by changes in plane also frequently give material an insubstantial or applied. There are, however, exceptions to this principle such as the articulation of the base of a building by a change in color, texture or material.

*Analysis: As shown in the development plans, the project includes multiple changes in plane, materials, and color throughout the exterior facades of the project. The project is intended to closely relate to the previously approved project next door to the south at 1073 South Winchester Boulevard (Planning File No. SP20-002) and incorporates materials and colors that relate to that approved project. The architectural design of the two structures is compatible and complimentary to each other. The project is therefore consistent with this guideline.*

## **6. City Council Policy Consistency**

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

Under City Council Policy 6-30, the project is a large development. Large development projects are required to provide Early Notification by website, email, postcard mailed to property owners and tenants within a 1,000-foot radius, and by on-site signage. Following City Council Policy 6-30, the required on-site sign has been posted at the site since May 1, 2020, to inform the neighborhood of the project. A community meeting was held to discuss the project on, October 13, 2020 via Zoom webinar. Approximately 27 members of the public were in attendance for the meeting. Concerns raised during the meeting included concerns about the rear setback and concerns about tree replacements. Staff also received emails from community members with concerns regarding construction noise levels and concerns about the project casting shade over the adjacent residential uses to the rear of the project site. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

### *Preservation of Historic Landmarks City Council Policy*

The approximately 0.93-gross acre site is currently developed with an Italianate Victorian style cottage (1,575 square feet), California style barn, and related agricultural accessory buildings including a tank house/shed and a fruit drying shed with drying tables and remnant orchard trees. The existing buildings and structures were constructed sometime between 1887 and 1900. The property is an example of

the agricultural/fruit drying heritage of the City of San José and is eligible for listing as a Candidate City Landmark in the City of San José Historic Resources Inventory and in the California Register of Historical Resources.

The project was heard at the Historic Landmarks Commission (HLC) on September 1, 2021 per the Early Referral requirement of the Preservation of Historic Landmarks City Council Policy. Although the structures are not currently on the Historic Resources Inventory, the Commissioners noted that the site is a rare remaining property that represents the important agricultural history of the Santa Clara Valley and rural vernacular architecture, and recommended that the buildings be preserved on site, rather than relocated or demolished. The HLC noted the importance of maintaining the physical relationship between the buildings to tell the agricultural story of San José. The HLC also provided comments on the Draft EIR at the HLC meeting on March 2, 2022 and submitted a formal comment letter on the impacts to cultural resources. Commissioners supported Preservation Alternative 2 which proposes to retain the Italianate style cottage and barn in their existing locations, as well as the trees on the eastern half of the site, and to demolish the tank house and fruit drying area and shed, and to remove the trees behind the structures. The project would then be redesigned on the western one-third of the project site behind the house and barn. The HLC also supported Preservation Alternative 3 which proposes to retain the Italianate style cottage, tank house, and fruit drying area and shed, and to move the barn to the southeastern corner of the project site. The proposed project would be redesigned on the western half of site behind the existing structures. This alternative would retain the existing trees in the vicinity of the structures but would remove the trees on the western half of the site.

## 7. California Environmental Quality Act.

The City of San José, as the lead agency for the project, prepared a Draft Environmental Impact Report (DEIR), which was circulated for public review and comment from February 17, 2022 to April 4, 2022. A First Amendment to the DEIR was prepared that provided responses to public comments submitted during the public circulation period and revisions to the text of the DEIR. A Mitigation Monitoring and Reporting Program was also adopted to reduce impacts related to air quality, biological resources, cultural and tribal resources, noise, and traffic to a less than significant level.

Specifically, the project would result in a cumulative and project-level adverse change to historic resources due to the project's demolition of the historic resources at 1065 South Winchester Boulevard (Candidates for the City of San José Historic Resources Inventory and the California Register of Historical Resources).

The analysis showed that even with implementation of Mitigation Measure CUL-3.1-a and CUL-3.1-b which would require documentation of the historic structures and the

advertisement of the structures' availability for relocation off-site, the impact would still be significant and unavoidable.

Mitigation measures were also developed to lessen the following impacts to less than significant levels: exposure of sensitive receptors to toxic air contaminants during construction, disturbance and/or destruction of nesting migratory birds and roosting special-status bats during construction, potential impacts to unrecorded subsurface archaeological resources and tribal cultural resources, exposure of sensitive receptors to construction noise, and office employee VMT.

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, protection of nesting migratory birds, compliance with the Santa Clara Valley Habitat Plan, protection of unknown subsurface cultural resources and human remains, compliance with the California Building Code for seismic safety of the proposed building, erosion control during construction activities, conformance with state and local laws for appropriate handling of any asbestos-containing materials (ACMs) and/or lead-based paint (LBP) materials during construction, and water quality impacts during construction.

#### *Alternatives to the Proposed Project*

The EIR identified the following three alternatives to the proposed project that could reduce or eliminate these impacts:

#### Alternative 1 No Project – No Development Alternative

The CEQA Guidelines [§15126(d)4] require that an EIR specifically discuss a “No Project” alternative, which shall address both “the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved, based on current plans and consistent with available infrastructure and community services.” This Alternative would retain the existing land uses on-site as is. If allowed to remain as is, and no changes are made, the residence, barn, and accessory structures would remain. If the project site were to remain as is, no environmental impacts would occur; however, none of the project objectives would be achieved.

#### Alternative 2 Retain Existing Structures in Place and Redesign Proposed Project

This alternative would retain the Italianate style cottage and barn in their existing locations and the trees on the eastern half of the site but would demolish the tank house and fruit drying area and shed and remove the trees behind the structures. The project would then be redesigned on the western one-third of the project site behind the house and barn. According to the applicant, this alternative would require a reduction of about 70 percent of the residential units and commercial square footage, resulting in 21 residential units (instead of 70) and about 6,123 square feet of commercial (instead of 20,410). Additional units would require increasing the height

beyond the City's height limit of 65 feet. This alternative could retain the property's eligibility for inclusion in the California Register of Historical Resources and in the City of San José Historic Resources Inventory as a Candidate City Landmark. While this alternative would result in a smaller project, the construction impacts would be comparable to the existing project due to construction timeframe and specifications and an analysis would be required to determine if the construction vibration would have an adverse effect on the existing, historic structures. This project would achieve some but not all of the project objectives.

#### Alternative 3 Onsite Relocation of Barn and Redesign Project

This alternative includes would retain the Italianate style cottage, tank house, and fruit drying area and shed, and would move the barn to the southeastern corner of the project site. The proposed project would be redesigned on the western half of the project site behind the existing structures. This alternative would retain the existing trees in the vicinity of the structures but remove the trees on the western half. According to the applicant, this alternative would require a reduction of about 60 percent of the residential units and commercial square footage, resulting in about 36 residential units (instead of 70) and about 8,164 square feet of commercial (instead of 20,410). Additional units would require increasing the height beyond the City's height limit of 65 feet. This alternative would retain the property's eligibility for inclusion in the California Register of Historical Resources and in the City of San José Historic Resources Inventory as a Candidate City Landmark. While this alternative would result in a smaller project, the construction impacts would be comparable to the existing project due to construction timeframe and specifications. However, an analysis would be required to determine if the construction vibration would have an adverse effect on the existing, historic structures. This project would achieve some but not all of the project objectives.

#### Environmentally Superior Alternative

Alternative 1 would avoid all project impacts, including the significant and unavoidable impact to historical resources and therefore, is environmentally superior. Pursuant to CEQA Guidelines Section 15126.6(e)(2), when the No Project Alternative is the environmentally superior alternative, the EIR shall identify another environmentally superior alternative. Therefore, the next environmentally superior alternative would be Alternative 3. The alternative would retain all of the existing structures in place, as well as many of the on-site fruit trees, and include a project reduced by about 70 percent. The property would remain eligible for inclusion in the California Register of Historical Resources and in the City of San José Historic Resources Inventory as a Candidate City Landmark.

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### *DEIR Recirculation Unnecessary*

As stated above, the DEIR was circulated for public review for 45 days consistent with CEQA Guidelines Section 15132 starting on February 17, 2022 and ending on April 4, 2022.

A First Amendment to the DEIR was prepared that provided responses to public comments submitted during the public circulation period and revisions to the text of the DEIR.

A total of five comment letters were received which included concerns regarding salvage of historic building materials, water supply, historic resources and Candidate City Landmarks, and utility services.

Responses to the comments were presented in the First Amendment and none of the comments raised represents new significant information that would warrant recirculation of the DEIR pursuant to CEQA Guidelines Section 15088.5(a). 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 DEIR 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 DEIR is not "significant" unless the DEIR 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).

### *Final EIR*

The First Amendment was posted on the City's website on August 18, 2022 and all commenters were notified via email of the document's availability. The Draft Environmental Impact Report (DEIR) and First Amendment are available for public review on the City's website: <https://www.sanjoseca.gov/active-eirs>. The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project.

### *Statement of Overriding Considerations*

The City Council adopted a Statement of Overriding Considerations to address the significant and unavoidable historic resources impact related to demolishing of the existing residence, barn, and accessory structures identified in the DEIR, and determined the following project benefits outweigh the impact:

- Addition of Housing and Commercial uses within and consistent with the South Winchester Boulevard Urban Village Plan. The project will include 70 housing units which would contribute to the City's need to provide housing units at all AMI levels. The project will also include 20,410 square feet of job-producing commercial space which would contribute to the South Winchester Boulevard Urban Village Plan commercial goals. This mixed-used development would support General Plan

Major Strategy #3, Growth Area Policy LU-2.1, and Commercial Lands Policy LU-4.3, as described above.

- Multi-modal and Public Improvements:
  - The improved Winchester Boulevard frontage will include a dedication of 10-feet of right-of-way and the improvement of the public streets including the reconstruction of the half street along South Winchester Boulevard project frontage including curb, gutter, sidewalk, and pavement sections.
  - The project's frontage along Winchester Boulevard will be improved to be consistent with the planned streetscape design features of Grand Boulevards and the Winchester Boulevard Urban Village Plan. The frontage will include a 20-foot wide sidewalk along Winchester Boulevard, will be designed to accommodate the planned Winchester Boulevard Complete Street improvements including protected bicycle lanes, wider sidewalks, and other pedestrian safety features.
  - The project site is adjacent to bus stops and bicycle lanes on Winchester Boulevard and the project's Transportation Demand Management Plan will encourage the use of these transit options.
  - The project will pay a voluntary monetary contribution of \$121 per linear feet along the Winchester Boulevard project frontage for Class IV protected bikeways per San Jose Better Bike Plan 2025.
  - The project will provide a fair-share contribution of \$40,000 towards the future pedestrian crossing with improvements at Walgrove Drive as part of the Winchester Boulevard Complete Streets Improvements.
- Support Tribal Cultural Awareness. The project requires the Project applicant to install a commemorative plaque to educate the public about the local Tamien Tribe accessible for viewing by the public.

The overriding considerations set forth above constitute a separate and independent ground for finding that the benefits of the Project which outweigh its significant unavoidable environmental impacts. 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 Downtown Design Guidelines.

The City Council weighed each of the above benefits of the proposed project against its unavoidable environmental risks and adverse environmental effects identified in the EIR and determined that those benefits outweighed the risks and adverse environmental effects of the Project and, therefore, further determined that those risks and adverse environmental effects were acceptable and overridden.

## 8. Permit Findings.

**Special Use Permit Findings.** To make the Special Use Permit findings pursuant to San José Municipal Code Section 20.100.820, the City Council must determine that:

- 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: The project is consistent with the site's Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Mixed-Use Commercial which allows mixed-use residential/commercial projects. The project would further the Winchester Urban Village goals to enhance the mixed-use setting and promote dense growth and multi-modal opportunities by developing a mixed-use building consisting of nine commercial condominiums with approximately 20,410 square feet of ground-floor and second floor office spaces, 70 residential condominium units, providing short-term bicycle parking along the project frontage, and providing a 20-foot-wide sidewalk along Winchester Boulevard.*

- 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 above, the project is consistent with and conforms to the Zoning Ordinance and all other provisions of the San José Municipal Code, including development standards, parking standards, and performance standards. With the allowed parking reduction applied per the Zoning Code, the project is required to provide 104 vehicular parking spaces, 23 bicycle parking spaces, and 24 motorcycle parking spaces, and provides 104 vehicular parking spaces, 59 bicycle parking spaces, and 24 motorcycle parking spaces. The project is therefore consistent with the parking requirements with the allowed reduction applied and exceeds the bicycle parking requirements.*

- c) The special use permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: As discussed above, the project is consistent with City Council Policy 6-30 (Public Outreach Policy for Pending Land Use Development Proposals). On September 13, 2021, the City hosted a virtual community meeting. The hearing and community meeting notices were sent to all owners and tenants within 1,000 feet of the project site. Staff contact information was published on the posted Notice of Development sign located on the project frontage and on the mailing notices. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.*

*The project is also consistent with the Preservation of Historic Landmarks City Council Policy. As discussed above, the project was heard at the Historic Landmarks Commission (HLC) on September 1, 2021 per the Early Referral*

*requirement of the Preservation of Historic Landmarks City Council Policy. The HLC also provided comments on the Draft EIR at the HLC meeting on March 2, 2022 and submitted a formal comment letter on the impacts to cultural resources. Commissioners supported Preservation Alternative 2 which proposes to retain the Italianate style cottage and barn in their existing locations, as well as the trees on the eastern half of the site, and to demolish the tank house and fruit drying area and shed, and to remove the trees behind the structures. The project would then be redesigned on the western one-third of the project site behind the house and barn. The HLC also supported Preservation Alternative 3 which proposes to retain the Italianate style cottage, tank house, and fruit drying area and shed, and to move the barn to the southeastern corner of the project site. The proposed project would be redesigned on the western half of site behind the existing structures. This alternative would retain the existing trees in the vicinity of the structures but would remove the trees on the western half of the site.*

- 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 discussed above, the project is located within an urbanized area and does not exceed the established noise performance standard during operations. The project includes standard environmental permit conditions for dust control, best management practices during construction, and construction noise and vibration reduction. The Public Works and Environmental Services Departments reviewed the project to ensure compliance with the City's stormwater runoff policies. Finally, the project would allow a mixed-use building site consistent with the Urban Village Plan and its surrounding uses. Neither the commercial nor the residential uses would impair the utility or value of adjacent properties or those in the surrounding area. In addition to the standard permit conditions, the applicant would also adhere to the MMRP which has more specific actions to reduce the environmental effects related to Air Quality, Biological Resources, Cultural Resources, Noise, and Transportation. Therefore, the project would not be detrimental to public health, safety, or general welfare.*

- 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 to integrate the use with existing and planned uses in the surrounding area; and

*Analysis: The project site is approximately 0.93-gross acre in size and is adequate in size and shape to accommodate walls, fences, parking, and loading*

*facilities. As discussed above, vehicle parking would be accommodated in a covered parking garage which includes one level of below-grade parking. The project would also provide an on-site loading space on the ground-floor within the enclosed garage. The project would be required to replace the 30 ordinance-size and 19 non-ordinance trees proposed for removal and would also be required to integrate low impact development (LID) stormwater treatment measures to minimize stormwater pollutant discharges, as shown on Sheets 030-L, 031-L, and 050-C of the Project Plans.*

- f) The proposed site is adequately served:
- i. By highways or streets of sufficient width and improve 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: The project is served by major highways and roadways, including State Route 17, Interstate 280, Interstate 880 and the San Tomas Expressway. Winchester Boulevard is identified in the Envision San José 2040 General Plan as a “Grand Boulevard.” Grand Boulevards serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles. VTA bus routes near the site include Route 60 along South Winchester, which travels south to Campbell and north to the Milpitas BART Station, and Route 25 along Williams Road, half a block to the north, which travels west to Cupertino and east to the Alum Rock Transit Center. The project is in an urbanized area and is serviced by existing public utilities.*

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

*Analysis: Demolition of the existing structures and the construction of the six-story, mixed-use project would not have an unacceptable negative affect on adjacent property or properties as it complies with the General Plan, Zoning Ordinance, and Urban Village use, standards, and policies. The project was also evaluated per adopted stormwater requirements and has been found in compliance by providing several stormwater treatment measures on the project site. Additionally, the mixed-use development would not create odor or unusual noise as the majority of the activity occurs indoors and residential and office uses are not significant odor producing uses. Noise and ground vibration related to construction and demolition would be temporary (20 months), and would be required to implement mitigation measures, standard permit conditions, and Best*

*Management Practices to reduce the noise and vibration impact on the neighborhood.*

**Site Development Permit Findings.** To make the Site Development Permit findings pursuant to San José Municipal Code Section 20.100.630, the City Council must determine that:

- 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: The project is consistent with this finding, as analyzed for Special Use Permit finding a).*

- 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: The project is consistent with this finding, as analyzed for Special Use Permit finding b).*

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

*Analysis: The project is consistent with this finding, as analyzed for Special Use Permit finding c).*

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

*Analysis: As described above, the subject project includes the construction of one building, a six-story mixed-use building with nine commercial condominium units with approximately 20,410 square feet of commercial space and 70 residential condominium units. The project design includes modern contemporary architecture with concrete, glass, and metal materials with variations on color, materials, projections, and recessions, which contribute to an interesting and varied design. The orientation and location of the building is well designed and compatible on the site, with the building being designed to be compatible with the recently approved project to the south (SP20-022) and sited close to the public right-of-way to achieve an urban aesthetic.*

- 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: As described above, the project fronts South Winchester Boulevard, a General Plan-designated Grand Boulevard which serves as a north-south connector. The existing neighborhood is a mix of residential and commercial uses. The architecture and material of the buildings are modern contemporary in style,*

*and the variation in colors and materials provides an articulated design and helps break up the façade massing. The adjacent single-family homes to the rear of the site would be separated from the development via the 20-foot setback and a short wall. The rear setback includes trees and landscaping which also buffer the project from neighboring uses.*

- 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 is consistent with this finding, as analyzed for Special Use Permit finding g).*

- 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: As described above, the landscaping, irrigation systems, all walls and fences, utility, and trash facilities would improve the project site and enhance the appearance of the neighborhood. The mechanical equipment would be placed behind screening on the rooftop. Additionally, the transparent glazing at the pedestrian level would enhance the public street by providing activity and adding a vibrant feeling to the neighborhood.*

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

*Analysis: The project area is regionally and locally accessible. The project site is accessible to vehicles, bicyclists, and pedestrians by a driveway off South Winchester Boulevard. There is an additional ground floor entry for pedestrians and bicyclists at the north side of the project site for the commercial office uses and at the south side of the site for the residential uses. The project is required to provide 104 vehicular parking spaces, 23 bicycle parking spaces, and 24 motorcycle parking spaces, and provides 104 vehicular parking spaces, 59 bicycle parking spaces, and 24 motorcycle parking spaces. The project is therefore consistent with the parking requirements and exceeds the bicycle parking requirements. The project is required to widen the public sidewalks to twenty feet wide along South Winchester Boulevard to include street trees within the public right-of-way and pay a monetary contribution toward the installation of a protected bike lane.*

### **Evaluation Criteria for Demolition**

Section 20.80.460 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in

this Permit.

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

*Analysis: The project is currently developed with an Italianate Victorian style cottage (1,575 square feet), California style barn, and related agricultural accessory buildings including a tank house/shed and a fruit drying shed with drying tables and remnant orchard trees. The existing buildings and structures were constructed sometime between 1887 and 1900 and were owned by generations of the Ban family for nearly 100 years. The property is a good example of the agricultural/fruit drying heritage of the City of San José and is eligible for listing as a Candidate City Landmark in the City of San José Historic Resources Inventory under significance criteria 1, 4, and 6 and it is also eligible for listing in the California Register of Historical Resources under significance criteria 1 and 3. Therefore, the demolition of the existing buildings and structures at 1065 South Winchester Boulevard would constitute a significant, unavoidable impact to a historical resource under the California Environmental Quality Act (CEQA) and a cumulatively considerable impact to the finite historic properties associated with agricultural/fruit drying heritage in San José. The project therefore requires adoption of a Statement of Overriding Consideration for significant unavoidable impacts to Cultural Resources.*

*The project includes architectural design that is compatible with the character of the surrounding neighborhood, which includes single-family residential uses to the west and multifamily residential uses to the east, and by commercial uses to the north and south, including a restaurant to the north and office uses to the south. The project would not have an adverse impact on the adjacent properties. The demolition would facilitate the construction of a six-story mixed-use building with nine commercial condominium units with approximately 20,410 square feet of commercial space and 70 residential condominium units. Re-use of the buildings on-site would not be feasible to implement the goals of the project; however, the historic resources on-site would be required to be*

*made available for relocation, salvage or reuse, prior to demolition, consistent with the mitigation measures identified in the EIR. The existing supply of housing would be maintained and exceeded through the provision of the 70 housing units.*

**Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes required findings that must be made for issuance of a Live Tree Removal Permit for ordinance-size trees. The ordinance-size tree removals meet the following required finding:

1. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

*Analysis: As identified above, the project includes the removal of 30 ordinance-size trees and 19 non-ordinance trees. To construct the project, the trees would need to be removed and replaced at the City-required ratio. The trees to be removed cannot be preserved, since they are distributed within the developable areas of the site in a manner and density that preclude a viable floor plan.*

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
<p>x:x = tree replacement to tree loss ratio</p> <p>Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.</p> <p>A 38-inch tree equals 12.1 inches in diameter.</p> <p>A 24-inch box tree = two 15-gallon trees</p>				

*Per the Arborist Report prepared by Nicholas Wages, Certified Arborist with Cord Associates dated March 1, 2021, of the 30 ordinance-size trees to be removed, 26 are orchard trees (citrus and cherry) and 4 are of non-native species, including privet (*Ligustrum lucidum*), sycamore (*Platanus racemosa*) and loquat (*Eriobotrya japonica*). The orchard trees are required to be replaced at a ratio of 3:1 and the non-native trees are required to be replaced at a ratio of 4:1, resulting in 94 required replacement trees.*

*Of the 19 non-ordinance trees, 11 are sized between 19 and 38 inches in circumference, and eight are sized less than 19 inches. Of the 11 trees sized between*

*19 and 38 inches, seven are orchard trees (citrus and cherry) and four are non-native trees such as hackberry (Celtis occidentalis), privet (Ligustrum lucidum), and spruce (Picea spp). The orchard trees are not required to be replaced, and the non-native trees are required to be replaced at a ratio of 2:1, resulting in eight required replacement trees.*

*Of the remaining eight trees less than 19 inches in circumference, one is a native coast live oak (Quercus agrifolia), four are orchard trees (citrus and cherry), and three are non-native trees including privet (Ligustrum lucidum) and buckeye (Aesculus californica). The orchard trees are not required to be replaced, and both the native and non-native trees must be replaced at a 1:1 ratio, resulting in four required replacement trees.*

*Therefore, per the table above, the total number of replacement trees for the removal of 30 ordinance-size trees and 19 non-ordinance trees is 106 trees at 15-gallon size or 53 trees at 24" box size. Pursuant to the project landscaping plan, the development would plant a total of 86 replacement trees at 24-inch box size, which exceeds the City's Tree Replacement ratios. Therefore, the project is consistent with this requirement.*

### **Commercial Common Interest Condominium Findings**

In accordance with San José Municipal Code (SJMC) Section 20.175.050, no special use permit may be issued for a commercial common interest condominium development unless and until all of the following additional findings are first made:

1. The proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development, or in the city as a whole;

*Analysis: As stated above, there is a restaurant use adjacent to the north and commercial office uses to the south. With nine commercial condominiums totaling approximately 20,410 square feet in size, they will not significantly or adversely impact the economic viability of the surrounding commercial uses. There are no adjacent industrial uses, and the project does not include any industrial use in the development.*

2. The proposed common interest development includes sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to ensure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development; and

*Analysis: Prior to the issuance of a final map, the project applicant must provide sufficient details on the plan for the creation of a Maintenance District for the maintenance and safety of the common area (see Condition No. 30).*

3. The proposed common interest development includes sufficient provisions for the retention of such common areas for the use of all owners of separate interests therein.

*Analysis: Prior to the issuance of a final map, the project applicant must provide details on how the Maintenance District for the maintenance and safety of the common area would be maintained for all owners of separate interest (see Condition No. 30).*

In accordance with the findings set forth above, a Special Use 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 **approved**. 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 permitted hereby.

## **CONDITIONS OF APPROVAL**

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the Permittee fail to file a timely and valid appeal of this Special Use Permit and Site Development Permit (collectively referred to herein as “Permit”) within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, the use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as

required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Special Use Permit plans entitled, "Winchester Mixed-Use Project" dated June 14, 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."
6. **Use Authorization.** Subject to all conditions herein, this Permit allows the construction and operation of one six-story, mixed-use building consisting of 70 residential condominium units and nine commercial condominiums including approximately 20,410 square feet of commercial space with one podium parking level and one underground parking level and associated landscaping and amenities, in accordance with the Approved Plan Set.
7. **Commercial Common Interest Condominium Conditions of Approval.** No special use permit for a commercial or industrial common interest development shall be issued unless all of the following conditions have been met and the permittee has agreed in writing to comply with all of these conditions:
  - a. The permittee, at its sole cost, shall prepare, submit for prior review and approval by the city, and record concurrently with the applicable parcel or final map, governing documents for the common interest development that include sufficient

- provisions for governance, funding and capitalization, and enforcement mechanisms, including enforcement by the city, to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development and that such common area shall be retained for the use of all owners within the development. Prior to approval of the parcel or final map by the City, the permittee shall submit the proposed governing documents to the Planning, Building and Code Enforcement Department for review for compliance with the requirements of this chapter.
- b. The permittee shall, at its sole cost, prepare grant deeds for all mutual or reciprocal easement rights, which shall be reviewed by the city for compliance with the terms of this chapter and the requirements of Title 19 of this Code, and shall upon city approval be recorded concurrently with the approved parcel or final map.
  - c. Any other condition imposed by the Director of Planning, Building and Code Enforcement, the Planning Commission or City Council to accomplish the purposes of this chapter or for the preservation of public health, safety or welfare.
8. **Demolition Permit.** A demolition permit may be issued for the single-family residence and associated accessory structures only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction, subject to the Mitigation Monitoring and Reporting Program measures for Cultural Resources.
9. **Agricultural and Architectural Interpretation/Commemoration:** In consultation with a qualified architectural historian and design professional, and under the direction of the Historic Preservation Officer, the Permittee shall develop an interpretive and/or commemorative placard presenting information regarding the agricultural and architectural history of the site, and that it be displayed on the site in a manner where it is visible to the public. The placard shall be placed at, or as near as possible to, the location where the buildings were historically located. The conceptual interpretive placard shall be reviewed and approved by the Historic Preservation Officer prior to the issuance of demolition permit(s) for 1065 South Winchester Boulevard and shall be fully installed before the issuance of any certificate of occupancy or temporary certificate of occupancy for the mixed-use project.
10. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.
11. **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, Building and Code Enforcement. 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.

12. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
13. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
14. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. This Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
15. **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.
16. **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.
17. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
18. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
19. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
20. **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.
21. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual

only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.

22. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
23. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
24. **Required Vehicular and Bicycle Parking.** This project shall conform to the vehicular and bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required vehicular or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement.
25. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building and Code Enforcement.
26. **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.
27. **Housing Requirements.** The permittee has submitted an Affordable Housing Compliance Plan Application (“Plan”) and processing/application fees. Residential and mixed-use developments are subject to the Inclusionary Housing Ordinance (“IHO”) and if there are existing residential dwelling units on the property, they also are subject to Senate Bill 330 requirements and Ellis Act Ordinance requirements. Non-residential Developments are subject to the Commercial Linkage Fee and if there are existing residential dwelling units on the property, they may be subject to Ellis Act Ordinance requirements. Please contact the Housing Department at 408-535-3858 for further information on the City’s Ellis Act Ordinance.
  - a. Conditions of approval for Inclusionary Housing Ordinance Requirements for Residential Developments and Mixed-Use Developments
    - i. Prior to earliest of approval of any parcel or final map or issuance of any building permits, the permittee must execute and record their Affordable Housing Agreement memorializing the IHO obligations against the property, any other property required for the satisfaction of the compliance option selected in the Plan, and record the Affordable Housing Agreement or a City covenant against contiguous property under common ownership and control. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.

- ii. 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 or its guidelines and submit any additional or updated documents requested by the Housing Department in connection with the satisfaction of the compliance option selected in the Plan.
- iii. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO, its guidelines and the Affordable Housing Agreement are met.
- b. Conditions of Approval for Senate Bill 330. The permittee has submitted a fully completed and executed Replacement Unit Determination (RUD) Application with all attachments, paid the processing fee and if there are any occupied units, the permittee has retained a relocation consultant acceptable to the City. As part of its the application for First Approval the permittee has agreed to the following:
  - i. The Project will include replacement of all protected units listed in the RUD restricted accordingly as affordable units and the permittee record a covenant on the Property implementing all applicable requirements of Senate Bill 330;
  - ii. If there are any occupied units, a relocation plan (consistent with the requirements of Senate Bill 330) for approval by the decision-making body for the Project;
  - iii. The Project will include replacement of all dwelling units that exist or existed in the last five years with units that are the same size or larger, except as may be allowed by Senate Bill 330;
  - iv. The permittee must comply with every provision in the approved Relocation Plan;
  - v. Prior to issuance of any building permits (including demolition permits), the permittee must execute and record the implementing covenant;
  - vi. Prior to issuance of any building permits (including demolition permits), the permittee must provide evidence that all occupants received the benefits under the Relocation Plan and all requirements of Senate Bill 330 were complied with.
- c. Conditions for Projects with Non-Residential Uses Adding at least 5,000 Square Feet. For all Non-Residential development adding or constructing 5,000 square feet or more of new or additional floor area. A permittee is required to submit to the Housing Department, as part of its the application for First Approval the following: (a) a fully completed, executed Satisfaction Plan, (b) all attachments to the Satisfaction Plan, (c) the required application processing fee and (d) complete an addendum to the Satisfaction Plan if the Project is requesting a secured deferred payment option or Affordable Housing Credits.

- i. For Projects deemed complete before May 12, 2022 No Final Inspection Approval, Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units will be issued until all requirements of the Commercial Linkage Fee Ordinance and Guidelines are met.
  - ii. For Projects deemed complete on or after May 12, 2022, no scheduling of the final building inspection will occur until all requirements of the Commercial Linkage Fee Ordinance and Guidelines are met.
  - iii. For Office or R/D Projects adding more than 100,000 square feet that are deemed complete on or after May 12, 2022 and have selected the secured deferred payment option the following applies: Prior to issuance of any building permits, the permittee must execute an agreement regarding deferred payment specifying the security to be provided and pay 20% of the fee, Prior to the scheduling of final building inspection, those projects must pay another 20% of the fee and submit the letter of credit or payment bond securing the outstanding amount for approval.
- 28. Construction Hours.** Within 500 feet of residences, construction shall be limited from 7:00 AM to 7:00 PM on weekdays. Any construction activities occurring outside of these hours is prohibited.
- 29. Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
- 30. Stormwater Stenciling.** All storm drain inlets and catch basins shall be stenciled with the "NO DUMPING - FLOWS TO BAY," applied to the top and/or face of the curb next to the storm drain inlet. The development maintenance entity and/or property owner shall ensure that all storm drain inlet markings located on privately maintained streets within the property are present and maintained.
- 31. Homeowner's Association and Maintenance District.** A Homeowner's Association for the residential condominiums and a Maintenance District for the commercial condominiums shall be established for maintenance of all common areas, including but not limited to, private streets, pedestrian walkways, easements, landscaping, and landscaping in the public right-of-way that is not already in a maintenance district. The Permittee shall provide to the Homeowners Association a copy of the Tentative Map Permit, the accompanying Plan Set, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans within 30 days of completion of each construction phase.
- 32. Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
- 33. Irrigation Standards.** 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, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.

34. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
35. **Replacement Landscaping.** All landscaping removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
36. **Salvage of Historic Materials.** Surplus historic bricks and other architectural features shall be re-used where feasible in other areas of the project and for repairs within the building.
37. **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.
38. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <https://www.sanjoseca.gov/your-government/departments/public-works/development-services>.
  - a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately

engineered plans, insurance, surety deposit, and engineering and inspection fees.

**b. Transportation:**

- i. This project is subject to the City's I-280/Winchester Boulevard Transportation Development Policy (TDP). The I-280/Winchester Boulevard TDP requires new residential and commercial developments that generate PM peak hour trips projected to use the I-280 Winchester Blvd. northbound off-ramp to pay a Traffic Impact Fee (TIF). The 2021 TIF is \$28,878 for each project PM peak hour trip that is projected to use the I-280/Winchester Boulevard northbound offramp. This fee is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco.
- ii. A Transportation Analysis (TA) has been performed for this project to evaluate the project's effect on transportation, access and related safety elements in the proximate area of the project. See separate Local Transportation Analysis Memo dated 12/7/21 for additional information. The following conditions shall be implemented:
  - 1) Provide a TDM plan prior to Planning Permit approval for the employment vehicles miles traveled (VMT) impact mitigation and a 21% parking reduction. Include annual monitoring requirement establishing an average daily trip (ADT) cap of 42 AM peak-hour trips and 46 PM peak-hour trips. The annual monitoring report must demonstrate the project is within 10% of the ADT trip cap and must be prepared by a traffic engineer. If the project is not in conformance with the trip cap, the project may add additional TDM measure to meet the trip cap. A follow up report will be required within six months. If the project is still out of conformance, penalties will be assessed. See Council Policy 5-1. The following TDM measures are proposed:
    - (1) Telecommuting and Alternative Work Schedules with an expected participation rate of 50% of employees **or** a proposed alternative schedule of a 4-day/40-hour work week.
    - (2) Operate a Free Direct Shuttle with an expected participation rate of 15% of employees **or** provide Ride-Sharing Programs with an expected participation rate of 15% of employees **or**
    - (3) Car Sharing Program eligible to 100% of employees **and** Commute Trip Reduction Marketing/Education for 100% of employees **and** Employee Parking "Cash-Out" with 70% expected participation **and** On-site TDM Coordinator.
  - 2) Provide one (1) 26-foot wide, right-in/right-out only driveway along Winchester Boulevard.

- 3) Pay the I-280/Winchester Boulevard Interchange Area TDP traffic impact fee for the three project PM peak hour trips that would traverse the interchange. The 2021 TIF is \$28,878 for each project PM peak hour trip that is projected to use the I-280/Winchester Boulevard northbound offramp. The fee is subject to an annual escalation on January 1st in line with the ENR CCI.
  - 4) Provide the City minimum of 15 feet clearance for the ground level parking garage to provide adequate truck clearance to the on-site loading space.
  - 5) Install physical devices, such as convex mirrors, at the end of the garage ramp near the loading space to aid circulation and reduce vehicular conflicts.
  - 6) Pay a voluntary monetary contribution of \$121 per linear feet along the Winchester Boulevard project frontage for Class IV protected bikeways per San Jose Better Bike Plan 2025.
  - 7) Provide a fair-share contribution of \$40,000 towards the future pedestrian crossing with a Rectangular Rapid-Flashing Beacon (RRFB) improvements at Walgrove Drive as part of the Winchester Boulevard Complete Streets Improvements.
- c. **Urban Village Plan:** This project is located in the Winchester Boulevard Urban Village per the Envision San Jose 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
- d. **Grand Boulevard:** This project fronts Winchester Boulevard which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- e. **Grading/Geology:**
- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California

Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.

- iii. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to foundation, earthwork, utility trenching, retaining and drainage recommendations.

f. **Shoring:**

- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12 inches within the public right-of-way (i.e., soldier beams).
- iii. If tie-backs are proposed for use along the adjacent properties 299-25-011, 299-25-014, 299-25-027, 299-25-038, 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 additional information is required per the Actions/Revisions Section.
- ii. Maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- iii. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.

- h. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydrmodification Management area and is not required to comply with the City's Post-Construction Hydrmodification Management Policy (Council Policy 8-14).
- i. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- j. **Sewage Fees:** In accordance with 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 Public Works clearance.
- k. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
- l. **Street Improvements:**
  - i. Construct curb, gutter, and a 20-foot wide City Standard attached sidewalk with 4-foot by 5-foot tree wells behind back of curb along Winchester Boulevard project frontage. Provide approximately 10-foot wide sidewalk easement dedication to accommodate the new sidewalk width.
  - ii. Construct 26-foot wide City Standard right in/right out driveway along Winchester Boulevard project frontage.
  - iii. Close unused driveway cut(s).
  - iv. Provide 3-inch diameter innerduct conduit along Winchester Boulevard project frontage.
  - v. Pay a voluntary monetary contribution of \$121 per linear feet along the Winchester Boulevard project frontage for Class IV protected bikeways per San Jose Better Bike Plan 2025.
  - vi. Provide in-lieu monetary contribution for the implementation of the future Winchester Boulevard Urban Village planline.
  - vii. Provide a fair share contribution of \$40,000 towards the future pedestrian crossing with RRFB improvements at Walgrove Drive.
  - viii. 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.

- ix. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - x. Reconstruct half street along South Winchester Boulevard project frontage including curb, gutter, sidewalk, and pavement sections.
  - xi. 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.
  - m. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
  - n. **Street Trees:**
    - i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
    - ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.
39. **Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, SP20-012, shall be printed on all construction plans submitted to the Building Division.
  - b. *San José's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit [www.sjenvironment.org/reachcode](http://www.sjenvironment.org/reachcode).
  - c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - d. *Emergency Address Card.* The Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project

conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

- f. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
- g. *Other.* Such other requirements as may be specified by the Chief Building Official.

**40. Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the project must comply with the 2019 California Fire Code, or as amended and adopted by the City of San José.

**41. Conformance to MMRP.** 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].

**42. Applicant Volunteered Condition:** The permittee shall create a commemorative plaque to educate the public about the local Tamien Tribe accessible for viewing by the public. The permittee shall submit documentation of coordination with Tamien Nation on the design and information of the plaque and the plaque shall be installed prior to the issuance of the final occupancy permit.

**43. Project-Specific Environmental Conditions.**

- a. **Water-Saving Measures:** The project would implement the following water-saving measures as part of the proposed project:
  - i. Hot water recirculation systems;
  - ii. Pool and spa covers;
  - iii. Require dedicated landscape meters where applicable;
  - iv. Require installation of separate submeters to each unit in the multi-family development and individual spaces within commercial buildings to encourage efficient water use; and
  - v. Weather- or soil-based irrigation controllers.
- b. **Noise.** The permittee shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The permittee shall

conform with any special building construction techniques requested by the City's Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

**44. Standard Environmental Conditions.** The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

**a. Air Quality**

- i. 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.
- ii. Remove visible mud or dirt track-out onto adjacent public roads by using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iii. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- iv. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- v. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vi. Replant vegetation in disturbed areas as quickly as possible.
- vii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- viii. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- ix. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of "running in proper condition" prior to operation.
- x. Post a publicly visible sign with the telephone number and person at the lead agency to contact regarding dust complaints.

**b. Biological Resources**

- i. The trees removed by the project would be replaced according to tree replacement ratios required by the City as provided in Table Error! No text of specified style in document.-1 below. Of the 49 trees on-site that would be removed, four trees are required to be replaced at a ratio 4:1 ratio, 26 are required to be replaced at a 3:1 ratio, four trees are required to be replaced at

a 2:1 ratio, and four trees are required to be replaced at a 1:1 ratio. The total number of replacement trees required to be planted would be 106 trees at 15-gallon size or 53 trees at 24-inch box size. The project would plant a total of 86 replacement trees at 24-inch box size, which exceeds the City’s Tree Replacement ratios.

<b>Table Error! No text of specified style in document.-1: Tree Replacement Requirements</b>				
<b>Diameter of Tree to be Removed<sup>1</sup></b>	<b>Type of Tree to be Removed<sup>2</sup></b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
12.1 inches or more <sup>3</sup>	5:1	4:1	3:1	15-gallon container
6.1 – 12.1 inches	3:1	2:1	None	15-gallon container
Less than 6.1 inches	1:1	1:1	None	15-gallon container

<sup>1</sup> As measured 4.5 feet above ground level  
<sup>2</sup> x:x = tree replacement to tree loss ratio  
<sup>3</sup> Ordinance-sized trees

Notes: Trees greater than or equal to 12.1 inches in diameter 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.

If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
  - Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- ii. **Santa Clara Valley Habitat Plan.** The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Permittee shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv->

habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=) to the Director of Planning, Building and Code Enforcement (or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

**c. Cultural Resources**

- i. 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 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.
- ii. Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Permittee shall immediately notify the Director of Planning, Building and Code Enforcement 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:

- 1) 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.
  - 2) The MLD identified fails to make a recommendation; or
  - 3) The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- iii. Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning Building and Code Enforcement or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The Permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.
- d. **Geology and Soils**. 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 soils investigation. The soils investigation report must be submitted to and accepted by the Public Works Project Engineer in Development Services prior to the issuance of a grading permit. Foundation, earthwork, utility trenching, retaining and drainage recommendations should be included in the report. The report must be signed and stamped by a Registered Geotechnical/Civil Engineer. 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.
- i. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
  - ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
  - iii. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
  - iv. 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 would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

**e. Hazards and Hazardous Materials.**

- 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 (ACMs) and/or lead-based paint (LBP).
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (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 Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

**f. Hydrology and Water Quality**

The project would be required to implement the following 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 Permittee 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.

**45. Revocation, Suspension, Modification.** This 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 Permit was not abated, corrected or rectified within the time specified on the notice of violation;
- 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**.

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ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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:

PARCEL 2 OF THAT CERTAIN PARCEL MAP BEING A PORTION OF LOT 1, AS SHOWN ON THE MAP OF ARCHIBALD FARRINGTON'S SUBDIVISION RECORDED IN [BOOK "B" OF MAPS AT PAGE 50](#); WHICH PARCEL MAP WAS RECORDED MARCH 29, 1978 IN [BOOK 415 OF MAPS, AT PAGE 47](#).

APN: 299-25-037

**EXHIBIT "A"**  
**(File Nos. SP21-006; T21-012)**

**OWNER'S CERTIFICATE**

We hereby certify that we are the owners of or have some right, title or interest in and to the real property included within the subdivision shown upon this map, and that we are the only persons whose consent is necessary to pass a clear title to said property, and we consent to the preparation and recording of said map and subdivision as shown within the blue border line, we hereby dedicate for public use easements for any and all public service facilities including wires, conduits, gas, water & heat mains & all appurtenances to the above, under, upon or over those strips of land designated as "P.S.E." (Public Service Easement).

ANTONE LEO BAN as Owner

*Antone Leo Ban*

JOHN STEVE BAN as Owner

*John Steve Ban*

**Certificate of Acceptance**

I hereby accept for the City of San Jose the dedication to public use ALL EASEMENTS not previously existing as shown on this map.

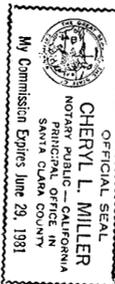
Date: March 28, 1978  
 A.R. Turturici, R.C.E. 10081  
 City Engineer  
 by *J. E. Eastus* DEPUTY

**ACKNOWLEDGEMENT**

STATE OF CALIFORNIA } S.S.  
 COUNTY OF SANTA CLARA }  
 On this 28<sup>th</sup> day of MARCH, 1978, before me the undersigned, a Notary Public in and for said County and State personally appeared ANTONE LEO BAN and JOHN STEVE BAN known to me to be the persons who executed the within instrument as owners.

Witness my hand and official seal the day and year first herein above written.  
 My Commission expires:  
June 29, 1981

*Cheryl L. Miller*  
 NOTARY PUBLIC IN AND FOR THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA



**ENGINEER'S CERTIFICATE**

This map was prepared by me or under my direction and is based upon a field survey in conformance with the requirements of the Subdivision Map Act of the State of California and local ordinance.

I hereby state that the parcel map procedures of the local agency have been complied with and that this parcel map conforms to the approved tentative map and the conditions of approval thereof which were required to be fulfilled prior to the filing of the parcel map.

*Kenneth H. Hankins*  
 KENNETH H. HANKINS R.C.E. No. 11247

**CITY ENGINEER'S CERTIFICATE**

This map conforms with the requirements of the Subdivision Map Act of the State of California and local ordinance.

A.R. TURTURICI, R.C.E. No. 10081  
 Dated 3-10-78  
 by *J. E. Eastus* Deputy

**RECORDER'S CERTIFICATE**

File No. 5966832 Fee \$ 5.00 Paid  
 Filed this 29<sup>th</sup> day of MARCH, 1978, at 2:10 P.M.  
 in Book 415 of Maps at page 47 at the request of  
 H.M.H. Incorporated.

GEORGE A. MANN, County Recorder

by *Sharon L. Thiele*  
 Deputy

**NOTES & LEGEND**

The blue border line indicates the boundary of land included within this map.  
 All distances and dimensions are shown in feet and decimals thereof.

- Indicates 3/4" iron pipe found, unless noted otherwise
- Indicates 1/4" iron pipe to be set w/ plug and tag
- Indicates Standard City Monument found
- P.S.E. Indicates Public Service Easement

**BASIS OF BEARINGS**

The bearing (N 89°44'02"E) of the extension of the South sideline as shown on "Tract No. 5703" and recorded in Book 359 of Maps at Page 48, Santa Clara County Records, was used as the basis of bearings for this map.

**PARCEL MAP**

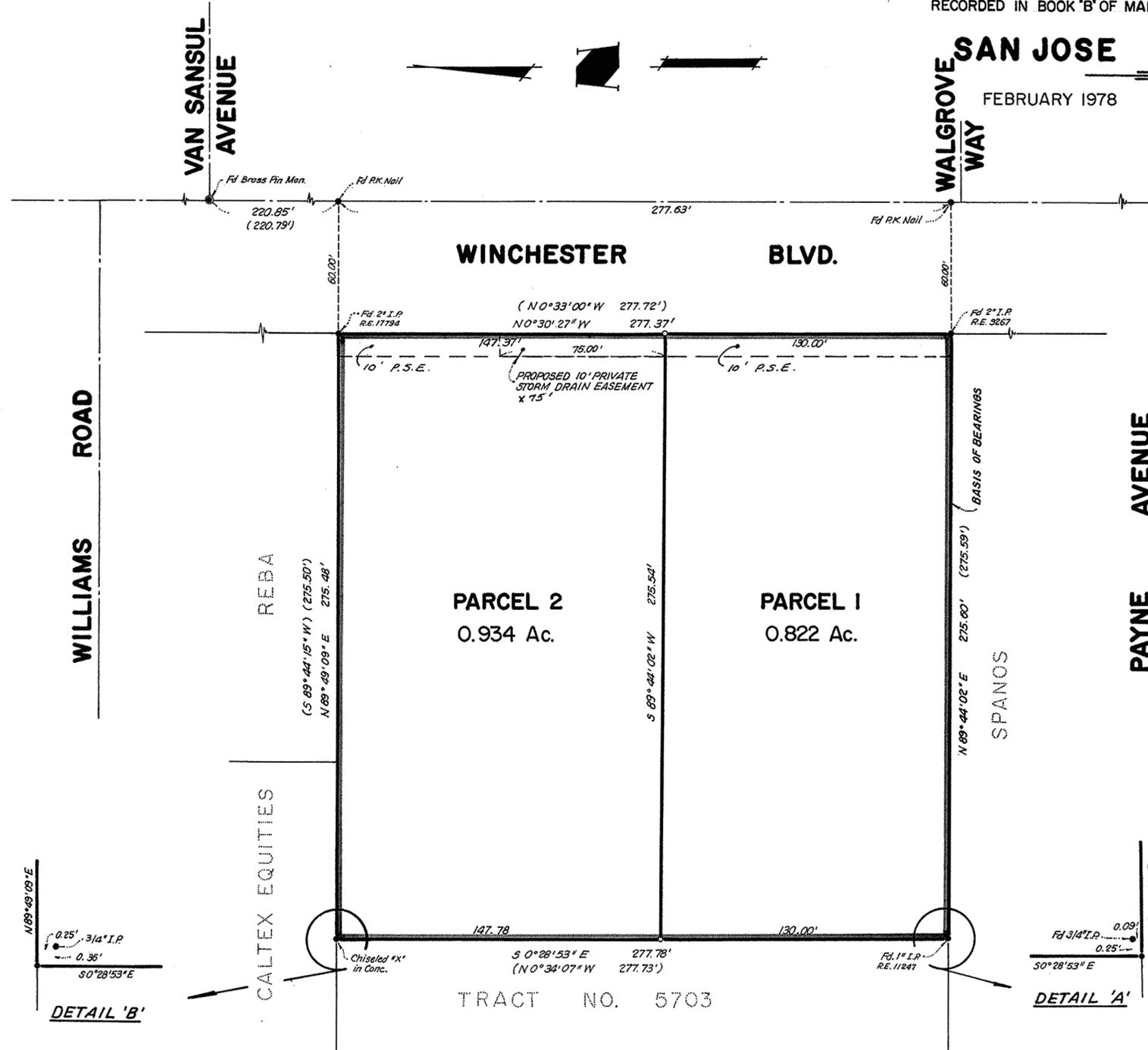
CONSISTING OF ONE SHEET

A PORTION OF LOT I, AS SHOWN ON THE MAP OF ARCHIBALD FARRINGTON'S SUBDIVISION RECORDED IN BOOK "B" OF MAPS AT PAGE 50, SANTA CLARA COUNTY RECORDS.

**SAN JOSE CALIFORNIA**

FEBRUARY 1978

SCALE 1" = 40'



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415/47

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