

(b) Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A TENTATIVE MAP TO SUBDIVIDE ONE PARCEL INTO 70 RESIDENTIAL CONDOMINIUM UNITS, NINE COMMERCIAL CONDOMINIUM UNITS, AND ONE COMMON AREA ON THE APPROXIMATELY 0.93-GROSS ACRE PROJECT SITE FOR THE DEVELOPMENT OF A MIXED-USE PROJECT INCLUDING ONE SIX-STORY MIXED USE BUILDING WITH 70 RESIDENTIAL UNITS AND 20,410 SQUARE FEET OF COMMERCIAL SPACE LOCATED ON THE WEST SIDE OF SOUTH WINCHESTER BOULEVARD, APPROXIMATELY 460 FEET SOUTHERLY OF WILLIAMS ROAD (1065 SOUTH WINCHESTER BOULEVARD)

FILE NO. T21-012

WHEREAS, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on March 18, 2021, a concurrent application (File No. T21-012) was filed by the owner and applicant, Adam Askari of A&Z Development, LLC, with the City of San José for a Tentative Map to subdivide one parcel into 70 residential condominium units, nine commercial condominium units, and one common area on the approximately 0.93-gross acre project site and for the development of a mixed-use project including one six-story building with 70 residential units and 20,410 square feet of commercial space, on that certain real property situated in the CP Commercial Pedestrian Zoning District and located west 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 “Plat Map,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a 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 recommendations of the Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled "Tentative Map Winchester 1065" dated June 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested, and is attached hereto and made a part hereof by this reference as if fully set forth herein; and

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

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 and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the west 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 subject site is approximately 0.93 acre and is currently developed with one single-family residence (1,575 square feet), barn, and accessory buildings. The existing buildings and structures were constructed in 1900 and are eligible for listing as a Candidate City Landmark in the City of San José Historic Resources Inventory. The property is an example of the agricultural/fruit drying heritage of the City of San José. Therefore, the demolition of the existing buildings and structures at 1065 South Winchester Boulevard would constitute a cumulatively considerable impact to the finite historic properties associated with agricultural/fruit drying heritage in San José.

2. **Project Description.** A Tentative Map to subdivide one parcel into 70 residential condominium units, nine commercial condominium units, and one common area on the approximately 0.93-gross acre project site. A concurrent Special Use Permit for the demolition of 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 units and 20,410 square feet of commercial space with one podium parking level and one underground parking level and associated landscaping and amenities.

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.

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 0.93 acres. The mixed-use project is consistent with the land use, FAR, and density requirements of the land use designation.

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

- a. 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.
- b. 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.
- c. 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 has 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 nine commercial condominiums ranging from 750 square feet to 4,570 square feet. A condition of approval is incorporated into this resolution 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).

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
TOTAL	70	-	107

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 provided 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. 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 considered to be 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 in order 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.

6. 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 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 considered to be 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

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 (TDM) 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 José 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.

7. Permit Findings.

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, the 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).

Subdivision Map Act Findings. In accordance with San José Municipal Code (SJMC) Sections 19.12.130 and 19.12.220 and California Government Code Section 66474, the City Council of the City of San José, in consideration of the subdivision shown on the Tentative Map with the imposed conditions, shall deny approval of a Tentative Map, if the City Council makes any of the following findings:

- a. That the proposed map is not consistent with applicable General and Specific Plans as specified in Section 65451.
- b. That the design or improvement of the proposed subdivision is not consistent with applicable General and Specific Plans.
- c. That the site is not physically suitable for the type of development.
- d. That the site is not physically suitable for the proposed density of development.
- e. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- f. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- g. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Analysis: Based on review of the Tentative Map to subdivide one parcel into 70 residential condominium units, nine commercial condominium units, and one common area on the approximately 0.93-gross acre project site, the Director of Planning, Building, and Code Enforcement of the City of San José does not make any such findings to deny the subject subdivision. The project is consistent with the General Plan goals, policies, and land use designation as discussed above. The project complies with the goals and policies of the General Plan such as Major Strategy #3, Community Design policies, and Growth Area policies. The General Plan land use designation of Mixed-Use Commercial allows for higher-intensity projects. The project site is physically suitable for the project and proposed intensity because all project components are designed within the project site.

Additionally, the site is not located within a designated Federal Emergency Management Agency (FEMA) 100-year flood plain. The project site, as well as the surrounding area, are currently developed with a single-family residence and accessory structures within an urbanized area, and there are no significant impacts to fish or wildlife per the Environmental Impact Report with implementation of mitigation measures included in the project's Mitigation Monitoring and Reporting Program (MMRP). The proposed subdivision and subsequent improvements are not likely to cause serious public health problems. The project will be required to provide a 20-foot wide sidewalk along South Winchester Boulevard to include

street trees within the public right-of-way and pay a monetary contribution toward the installation of a bike lane.

Subdivision Ordinance Findings. In accordance with San José Municipal Code (SJMC) Section 19.12.130, the City Council may approve the Tentative Map if the Council cannot make any of the findings for denial in Government Code section 66474 and the Council has reviewed and considered the information relating to compliance of the project with the California Environmental Quality Act and determines the environmental review to be adequate. Additionally, the Council may approve the project if the Council does not make any of the findings for denial as specified in San José Municipal Code Section 19.12.220.

Section 19.12.130 incorporates the findings for denial in Section 66474 of the Government Code specified in Findings Section 1 herein.

Analysis: Based on review of the proposed subdivision and as described above, the Director of Planning, Building and Code Enforcement of the City of San José does not make any such findings to deny the subject subdivision.

In accordance with the findings set forth above, a Tentative Map 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 and determination 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.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Tentative Map.** Per Section 19.12.230, should the Subdivider fail to file a timely and valid appeal of this Tentative Map within the applicable appeal period, such inaction by the Subdivider shall be deemed to constitute all of the following on behalf of the Subdivider:
 - a. Acceptance of the Tentative Map by the Subdivider; and
 - b. Agreement by the Subdivider to be bound by, to comply with, and to do all things required of or by the Subdivider pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 19 applicable to such Tentative Map.
2. **Expiration of Tentative Map.** This Tentative Map shall automatically expire 30 months from and after the date of issuance hereof by the City Council of the City of San José, if within such time period, a Final Map has not been obtained, pursuant to and in accordance with the provisions of this Tentative Map. The date of issuance is the date this Tentative Map is approved by the City Council. However, the Director of Planning,

Building, and Code Enforcement may approve a Tentative Map Extension to extend the validity of this Tentative Map in accordance with Title 19.

3. **Conformance to Plans.** The development of the site shall conform to the approved plans entitled, "Tentative Map Winchester 1065" dated June 2021, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Tentative Map Plan Set."
4. **Compliance with Subdivision Ordinance.** The final map shall comply with all of the requirements for final maps in Chapter 19.16 of the San José Municipal Code and shall show and contain all of the data required by San José Municipal Code Section 19.16.110.
5. **Conformance with Other Permits.** The subject Tentative Map conforms to and complies in all respects with the Special Use Permit File No. SP21-006 on which such Tentative Map is based. Approval of said Tentative Map shall automatically expire with respect to any portion of the lands covered by such Tentative Map on which a Final Map or Tract Map has not yet been recorded if, prior to recordation of a Final Map or Tract Map thereon, the Special Use Permit for such lands automatically expires or for any reason ceases to be operative.
6. **Improvements.** Pursuant to the Subdivision Agreement (hereinafter referred to as "Agreement"), the Subdivider shall, before approval and recording of the Final Map, improve or agree to improve all land within the subdivision and all land outside, but appurtenant to, the Subdivision shown on the Tentative Map for public or private streets, alleys, pedestrian ways and easements to the satisfaction of the Director of Public Works.
7. **Improvement Contract.** In the event the Subdivider has not completed the improvements required for the proposed subdivision at the time the final map is presented for approval, Subdivider shall enter into an improvement contract pursuant to Agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code and shall provide the bonds and insurance mentioned therein.
8. **Public Use Easements.** The Subdivider shall dedicate on the final map for public use easements for public utilities, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems and slope easements in and upon all areas within the subdivision shown on the Tentative Map for the subdivision to be devoted to such purposes.
9. **Distribution Facilities.** The Subdivider shall, at no cost to the City, cause all new or replacement electricity distribution facilities (up to 40KV), telephone, community cable, and other distribution facilities located on the subject property to be placed underground.
10. **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 Subdivider 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.

11. **Conveyance of Easements.** Prior to recordation of the Final Map, the Subdivider shall offer to the City of San José a Covenant of Easement for joint use and emergency access purposes, in accordance with Part 1 of Chapter 20.110 of Title 20 of the San José Municipal Code, across subject lots as shown on the Approved Plan Set. Said easements shall be binding upon, and all benefits shall inure to, all successors in interest to the affected real property.
12. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Tentative Map by Subdivider shall constitute acknowledgement of receipt of notice by Subdivider 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.
13. **Housing Conditions of Approval.** The Subdivider 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 Subdivider 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. Subdivider 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 Subdivider 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 Subdivider has retained a relocation consultant acceptable to the City. As part of it's the application for First Approval the Subdivider has agreed to the following:
 - i. The Project will replace all protected units listed in the RUD restricted accordingly as affordable units and the Subdivider 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 replace 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 Subdivider must comply with every provision in the approved Relocation Plan;
 - v. Prior to issuance of any building permits (including demolition permits), the Subdivider must execute and record the implementing covenant;
 - vi. Prior to issuance of any building permits (including demolition permits), the Subdivider 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 Subdivider 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.
 - d. 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 Subdivider 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.
14. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
15. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
16. **Conformance to Mitigation Monitoring and Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. [REDACTED].
17. **Project-Specific Environmental Conditions.**
- a. Water-Saving Measures: The Subdivider shall 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 Subdivider 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 Subdivider 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.

18. 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" 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.

Table Error! No text of specified style in document.-1: Tree Replacement Requirements				
Diameter of Tree to be Removed¹	Type of Tree to be Removed²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
12.1 inches or more ³	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
¹ As measured 4.5 feet above ground level ² x:x = tree replacement to tree loss ratio ³ 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 Subdivider 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 (PBCE) 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**

- iii. 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.
- iv. 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 Subdivider 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.
- v. 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 Subdivider 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 Subdivider 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.

19. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the subdivider will be required to have satisfied all of

the following Public Works conditions as described in the Special Use Permit (SP21-006).

20. Revocation, Suspension, Modification. This Tentative Map is subject to revocation, suspension or modification for violation of any of its provisions or condition.

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

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 & sewer lines, all appurtenances to the above, under, upon, above 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. Easton Deputy

ACKNOWLEDGEMENT

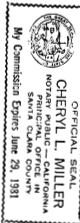
STATE OF CALIFORNIA } S.S.
COUNTY OF SANTA CLARA }

On this 28th 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 at the request of Antone Leo Ban.

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. 11847

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. Easton Deputy

RECORDER'S CERTIFICATE

File No. 3966832 Fee \$ 5.00 Paid
Filed this 28th 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 the land included within this map.

All distances and dimensions are shown in feet and decimals thereof.

- Indicates 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 of Page 48, Santa Clara County Records, was used as the basis of bearings for this map.

PARCEL MAP

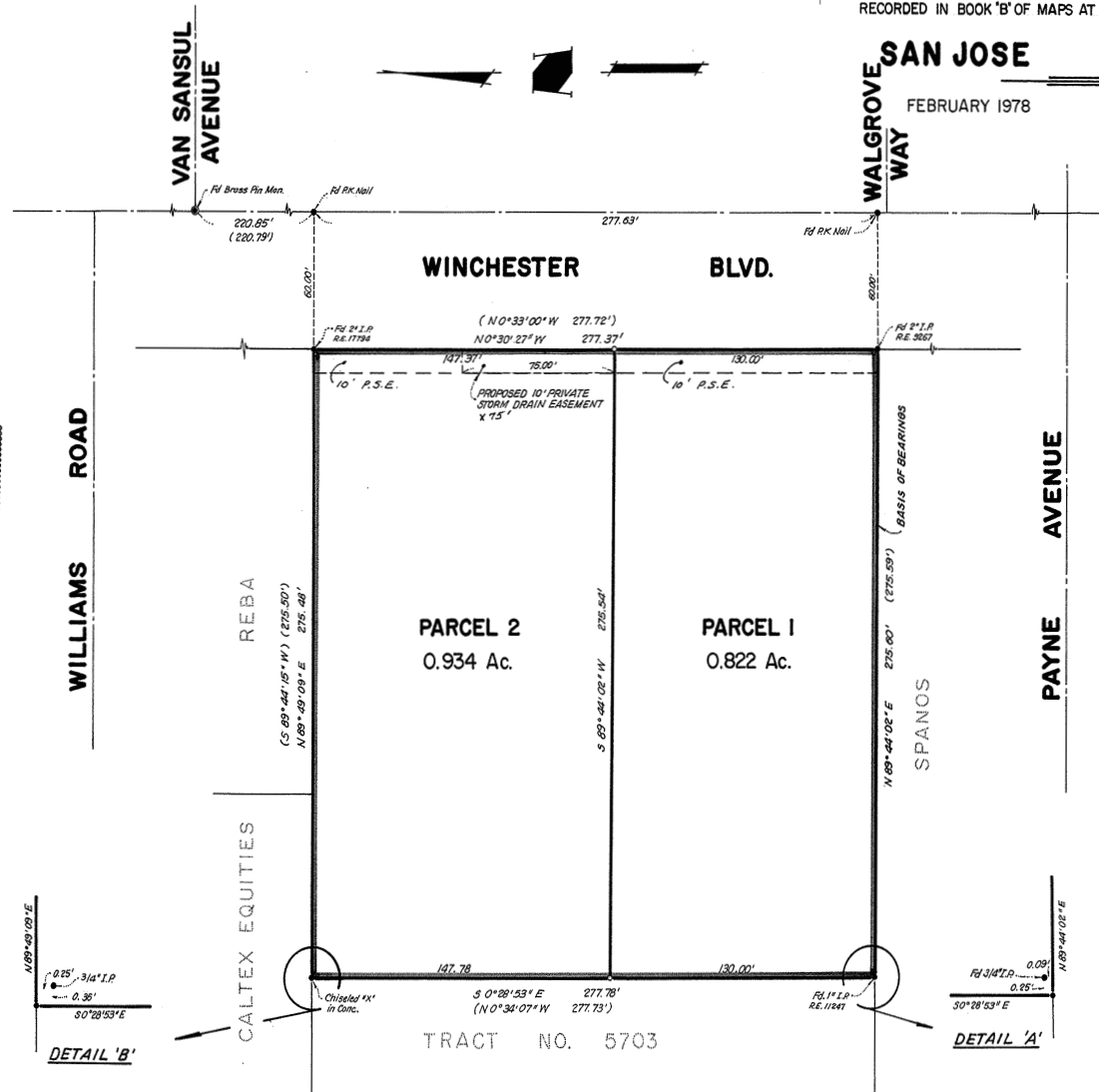
CONSISTING OF ONE SHEET

A PORTION OF LOT 1, 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'



H.M.H. INCORPORATED
Consulting Civil Engineers
1410 KOLL CIRCLE SUITE 107, SAN JOSE, CA. 95128