

PLANNED DEVELOPMENT PERMIT AMENDMENT

FILE NO.	PDA12-013-02
LOCATION OF PROPERTY	Southwest corner of West San Carlos Street and Sunol Street (860 West San Carlos Street)
ZONING DISTRICT	A(PD) Planned Development Zoning District (File No. PDC13-004)
GENERAL PLAN DESIGNATION	Transit Residential
PROPOSED USE	Planned Development Permit Amendment to remove 21 trees (18 ordinance-size, 3 non-ordinance-size) and decrease the height of a previously approved mixed-use residential tower from 14 stories to 12 stories, increase the podium level from four stories to six stories, and allow an alternative parking arrangement (puzzle lifts) on an approximately 2.17-gross acre site. The Amendment includes two development options. Option A would allow up to 263 units residential and up to 13,000 square feet of retail space with a total building square footage of approximately 480,000 square feet. Option B would allow up to 251 residential units and up to 13,000 square feet of retail space with total building square footage of approximately 439,000 square feet.
ENVIRONMENTAL STATUS	Addendum to the Ohlone Mixed-Use Final Environmental Impact Report
APPLICANT/OWNER ADDRESS	Mike Black Swenson 777 North 1st Street, San Jose, CA 95112

FACTS AND FINDINGS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** Planned Development Permit Amendment to allow the remove of 21 trees (18 ordinance-size, 3 non-ordinance-size) decrease the height of a previously approved mixed-use residential tower from 14 stories to 12 stories, increase the podium from four stories to six stories, and allow an alternative parking arrangement (puzzle lift) on an approximately 2.17-gross acre site. The project includes two development options:
 - Option A: Up to 263 residential units (38 studio units, 165 one-bedroom units and 60 two-bedroom units) and up to 13,000 square feet of retail space. Total building square footage is approximately 480,000 square feet.
 - Option B: Up to 251 residential units (147 one-bedroom units, 93 two-bedroom units, 5 three-bedroom units, and 6 townhouses) and up to 13,000 square feet of retail space. The total building square footage is approximately 439,000 square feet.
2. **Site Description and Surrounding Uses.** The subject site is an existing 2.17-gross acre vacant lot. The site is surrounded by West San Carlos Street and commercial uses to the north, Sunol Street and a mixed-use residential building to the east, a multi-family residential building to the south, and a mix of industrial uses to the west.
3. **General Plan Conformance.** The subject site has a Transit Residential land use designation on the Envision San José 2040 General Plan Land Use/Transportation Diagram. designated Transit Residential on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. This is the primary designation for new high-density, mixed-use residential development sites that are located in close proximity to transit, jobs, amenities, and services. This designation may also be appropriate for some sites within Urban Village areas as identified through an Urban Village Planning process. This designation also supports intensive commercial employment uses, such as office, retail, hotels, hospitals and private community gathering facilities. To help contribute to “complete communities,” commercial uses should be included with new residential development in an amount consistent with achievement of the planned job growth and Urban Village Plan for the relevant Urban Village area. The Transit Residential Land Use Designation allows a residential density between 50 to 250 Dwelling Units per Acre (DU/AC). The project would result in a residential density of approximately 137 DU/AC.
 - a. Major Strategy #3 – Focus Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified “Growth Areas” (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods. While the Focused Growth strategy directs and promotes growth within identified Growth Areas, it also strictly limits new residential development through neighborhood infill outside of these Growth Areas to preserve and enhance the quality of established neighborhoods, to reduce environmental and fiscal impacts, and to strengthen the City’s Urban Growth Boundary.
 - b. Efficient Use of Residential and Mixed Use Lands Policy LU-10.2: Distribute higher residential densities throughout the City in identified growth areas and facilitate the development of residences in mixed-use development within these growth areas.

- c. Efficient Use of Residential and Mixed Use Land Use Policy LU-10.3: Develop residentially- and mixed-use-designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.
- d. Land Use and Employment Policy IE-1.3: As part of the intensification of commercial, Village, Industrial Park and Employment Center job Growth Areas, create complete, mixed-employment areas that include business support uses, public and private amenities, child-care, restaurants, and retail goods and services that serve employees of these businesses and nearby businesses
- e. Community Design Policy CD-3.5: Encourage shared and alternative parking arrangements and allow parking reductions when warranted by parking demand.

Analysis: The amendment would still allow for a high density mixed-use residential project in close proximity to a major transit center (Diridon Station). The project would allow for the construction of up to 263 housing units and 13,000 square feet of commercial space. The project would incorporate a range of open space, including private and public open space within the two buildings as well as a privately owned-publicly accessible plaza at the southwestern corner of West San Carlos Street and Sunol Street. A 20-foot-wide sidewalk and bike lane would allow for pedestrian and bicycle connections to and from the site. Bicycle parking would be provided at convenient locations throughout the development.

4. **Zoning Conformance.** The subject site is located in an A(PD) Planned Development Zoning District (File No. PDC13-004). The Planned Development Zoning District allows for residential development ranging from 680 to 800 attached residential dwelling units at a minimum density of 100 DU/AC. Pursuant to the General Development Plan of the Planned Development Zoning District, the subject site is located in “Block A”. Both Block B and C, located to the south of the subject site, have already been constructed and are occupied. A Planned Development Permit (File No. PD12-013) was previously approved for the subject site to allow the construction of 263 attached residential units and 15,247 square feet of ground floor commercial space in a 14-story tower.

Analysis: The previously approved Planned Development Permit (File No. PD12-013) allowed for the construction of 263 attached residential units. With the proposed Planned Development Permit Amendment, there would be no change in the number of residential units for Option A (263 units) and therefore, no change in the allowable residential density. The 263 proposed units would conform with the allowed number of units in the Planned Development Zoning District (File No. PDC13-004). Option B would allow for the construction of 251 units, resulting in a residential density of approximately 115.6 DU/AC, within the allowable density range. For Option B, there would be no change to the parking location, location of commercial space, or site circulation. However, the overall building square footage would be reduced to approximately 439,000 square feet and there would be minor interior modifications to the number bedrooms and square footage of units.

Height

A residential tower shall be provided, that encompasses 10-25% of the block foot print. This tower shall be between 110 and 150 feet (10-15 stories above grade). All other buildings shall be limited to 65 feet (max.), except that minor rooftop appurtenances such as stairwells,

equipment screens, elevator towers, etc. placed more than 5 feet from the streetwall may extend up to 80 feet (max.). An “FAA Determination of No Hazard” shall be obtained prior to issuance of a Building Permit.

Analysis: The proposed Amendment would allow a 12-story tower with a maximum height of 137 feet. The previously approved Planned Development Permit allowed for a 14-story tower with a maximum height of 149 feet. Therefore, the proposed reduction in height would be consistent with the allowed height of the Planned Development Zoning District.

Additionally, the podium structure at the southern portion of the site would be increased from four stories to six stories. Based on the General Development Plan of the Planned Development Zoning District, the maximum allowed height of all other structures is 65 feet. Architectural projections such as stairwells and elevator shafts may be allowed up to a maximum height of 80 feet. The maximum height of the podium structure would be 65 feet. The elevator shaft, stairwells, and parapet screen would not exceed 73 feet in height. Therefore, the podium structure would be consistent with the allowed height. No change to the General Development Plan would be required to allow the increase in height

Setbacks

- San Carlos Street Setback: 5 feet minimum (excluding minor architectural projections such as, but not limited to awnings, fin signs, and balconies). At least 75% of the frontage shall have buildings where the first floor is within 10 feet of the minimum setback line. The tower shall have a minimum/maximum setback of 20/25 feet for at least 70% of the building face oriented towards this street. There shall be a minimum 17-foot-wide sidewalk (combination of public and private) between building and face of curb. No setbacks shall apply to fully depressed parking garages.
- Sunol Street Setback: 5 feet minimum (excluding minor architectural projections such as, but not limited to awnings, fin signs, and balconies). At least 35% of the frontage shall have buildings where the first floor is within 10 feet of the minimum setback line. The tower shall have a minimum setback of 80 feet. There shall be a minimum 16-foot-wide sidewalk (combination of public and private) between building and face of curb. No setbacks shall apply to fully depressed parking garages.
- Earle Avenue Extension (New Private Street) Setback: 20 feet minimum for building (12’ for private or semi-private open space) from face of parking lane curb. The maximum building setback shall not exceed 30 feet. There shall be at least 3 linear feet of landscaping between the sidewalk and all private or semi-private open space areas. The tower shall have a minimum setback of 100 feet. There shall be a minimum 10-foot-wide sidewalk (combination of public and/or private) between building and face of curb. No setbacks shall apply to fully depressed parking garages.
- West Street (New Street) Setback: 10 feet minimum (excluding minor architectural projections such as, but not limited to awnings, fin signs, and balconies). At least 50% of the frontage shall have buildings where the first floor maintains a 15-foot maximum setback. The tower shall have a minimum/maximum setback of 20/25 feet respectively

for at least 50% of the building face oriented towards this street. There shall be a minimum 14' sidewalk (combination of public and private) between building and face of curb. No setbacks shall apply to fully depressed parking garages.

Analysis: As shown on the site plan, a minimum 5-foot setback would be provided along West San Carlos Street. An additional 12 feet would be provided to achieve a 17-foot-wide sidewalk. An approximately 17-foot-wide sidewalk would also be provided along Sunol Street. The Earle Avenue Extension, now named Van Every Way, would provide a maximum 10-foot setback between the building and face of curb. A maximum 14-foot setback between the building and face of curb would be provided on West Street, now named Swenson Drive. Therefore, the setbacks would be consistent with both the previously approved Planned Development Permit (File No. PD12-013) and the approved Planned Development Zoning District (File No. PDC13-004)

Use Restrictions

- The ground floor frontages along West San Carlos Street and Sunol Street shall be comprised of only commercial uses such as restaurants, retail, and personal services. Office uses, shall be limited to no more than 20% of the ground floor commercial frontage on West San Carlos Street, and no more than 50% of the Sunol frontage.
- Garage access shall be limited to Earle Avenue and West Street.
- The street level residential interface with Earle Avenue shall be comprised of units with direct individual access to the street including stoops and semi-private open space.
- Commercial loading spaces may be provided along the curb of public or private streets.
- A single, publicly accessible, open plaza area, with direct access to West San Carlos Street and Sunol Street shall be provided. This plaza shall be at least 5,000 square feet.
- Parking lanes along private streets shall include sidewalk pop-outs (i.e. sidewalk areas without parking that extend to the edge of the travel lane).

Analysis: As shown on the site plan, the ground floor frontage along West San Carlos Street would consist of five commercial tenant spaces. Commercial Space E would have frontage along both West San Carlos Street and Sunol Street. The community room and leasing office would have frontage along Sunol Street. Three lobby entrances would be provided along West San Carlos Street, Sunol Street, and Van Every Way. Garage access would be provided along Van Every Way and Swenson Drive, consistent with the previously approved location. A commercial loading zone would be provided along West San Carlos Street, in addition to street parking. Access to individual ground floor units would be provided for all units with frontage on Van Every Way.

Parking

Option A

Unit Type/Use	Quantity/Square Footage	Ratio	Required
Studio	38	1 per unit	38
Jr 1 Bed	19	1 per unit	19
1 Bed	146	1 per unit	146
2 Bed	60	1.35 per unit	81
Commercial Retail Space	9,733 sf of floor area	1/400 sf of floor area	24
Total Required			308 spaces
Total Provided			397

Analysis: For Development Option A, the project would provide up to 13,000 square feet of commercial space in addition to 263 residential units. Therefore, the new total number of parking spaces required would be 308. A total of 397 vehicle parking spaces would be provided on site. Additionally, the project requires a total 70 bicycle parking spaces and 78 are provided. The project requires a total of 66 motorcycle parking spaces and 72 are provided.

Option B

Unit Type/Use	Quantity/Square Footage	Ratio	Required
Jr 1 Bed	20	1 per unit	20
1 Bed	127	1 per unit	127
2 Bed	93	1.35 per unit	126
3 Bed	11	1.5 per unit	17
Commercial Retail Space	9,733 sf of floor area	1/400 sf of floor area	24
Total Required			314 spaces
Total Provided			397

Analysis: For Development Option B, the project would provide up to 13,000 square feet of commercial space in addition to 251 residential units. The total number of parking spaces required would be 314. A total of 397 vehicle parking spaces would be provided on site. Additionally, the project requires a total 66 bicycle parking spaces and 78 are provided. The project requires a total of 63 motorcycle parking spaces and 72 are provided.

Alternative Parking Arrangement

Pursuant to Section 20.90.200 of the Zoning Code, parking facilities which accommodate the required number of spaces in an alternative parking design requires the issuance of a Special Use Permit. As the project is located in a Planned Development Zoning District, a Planned Development Permit is required.

Analysis: As previously discussed, Development Option A requires 308 parking spaces and Development Option B requires 314 parking spaces. Both Development Options would provide 397 vehicle parking spaces. Both Development Options includes 55 tandem parking spaces and 67 puzzle lift parking spaces. The remaining 275 parking spaces would be single-car spaces. All of the tandem and puzzle lift spaces would be located in the attached parking garage and would be accessible to all resident, visitors, and retail customers. The puzzle lifts and tandem spaces are conditioned to be maintained for the life of the project.

Open Space

- Private Open Space – 60 square feet per unit (for at least 50% of the units). This may be adjusted to a 1 square foot to 1 square foot ratio at the PD Permit stage for an increase in size of the common open space area(s). The minimum width shall be 6 feet, however a minor reduction in that width may be consisted by the Director at the Planned Development Permit Stage if the overall size of open space is created beyond the minimum area requirements.
- Common Open Space – 100 square feet average per unit (this includes enclosed recreation space). Public plazas outside the setback area may be counted towards the common open space requirement.

Analysis: A minimum of 50% of the units would have 60 square feet of private open space. The project requires a total of 26,300 of common open space. A total of 37,735 square feet of common open space is provided.

Tree Removals

The project requires the removal 21 trees (18 ordinance-size, 3 non-ordinance-size) ordinance size trees located within the footprint of the proposed building. The removal of the 21 trees requires the planting of 78 trees on-site. The project would plant a total of 110 trees on-site, not including street trees. Therefore, the project conforms with the City's tree mitigation requirements.

5. Residential Design Guidelines.

The project was submitted on March 24, 2021, prior to the adoption of the Citywide Design Standards and Guidelines, which became effective on March 25, 2021. Therefore, the project is subject to the following provisions of the Residential Design Guidelines for Mid-Rise Development.

- General Guidelines of Mid-Rise Development

- Mid-Rise Housing is typically 50-150 feet in height (approximately 5-12 stories) with a characteristic density of 40-90 dwelling units per acre, not including common open space.

Analysis: As discussed above, the Amendment would allow a 12-story tower with a maximum height of 137 feet, in conformance with both the development standards of the Planned Development Zoning District and the Residential Design Guidelines for mid-rise development.

- Multi-story units may occur on the perimeter at street level, on podiums, or as penthouse units.
- Only street-level units might have separate entries. All other units enter from one or more lobbies serving one or more elevator-and-stair cores.

Analysis: The entire ground floor level of the building would be wrapped with residential units, or ground floor commercial space (along West San Carlos Street). The podium structure would include ground floor residential units with direct access to the street.

- All residential parking and loading is below grade or, if above grade, separated from the building perimeter by other uses like lobbies, housing, and retail.

Analysis: The parking garage would be located on the first three floors of the building and would be wrapped with retail, amenity space, lobby space or residential units. The portion of the parking garage adjacent to Swenson Drive would be screened with a decorative metal screen and cementitious siding panels similar to those used throughout the ground floor façade.

- Commercial uses on the ground floor in buildings located along busy streets are encouraged for both mid- and high-rise development. Office uses on the second and third floor are generally encouraged for high-rise buildings more than 12 stories in height.

Analysis: As discussed above, the project would include approximately 13,000 square feet of ground floor retail space with direct access to West San Carlos Street or Sunol Street.

- Building Design

- Buildings that are more than hundred and fifty (150) feet, or nine (9) stories in height, should have a discernible treatment that distinguishes the base, middle, and top on all facades.

- Avoid continuous massing longer than 100 feet that is not articulated with shadow relief, projections, and recesses. If massing extends beyond this length, it should be made permeable and visibly articulated as several smaller masses using other architectural elements.
- For all mid- and high-rise developments, building entries are strongly encouraged to be clearly identifiable by a horizontal projection (such as a canopy) visible from 100 feet along the adjacent sidewalk.

Analysis: The updated building design would have a discernible base, middle, and top. The ground floor is defined by the retail, active space, and ground floor residential units along West San Carlos, Sunol, and Van Every Way respectively. The ground floor retail incorporates clearly identifiable awnings to distinguish each retail space. The overall massing is broken up with changes in plane as well as changes in materials and color at the middle and top portions of the building. The top is defined by the rooftop screening, including decorative opaque/spandrel glass.

6. Planned Development Permit Amendment Findings. Section 20.100.940 of the San José Municipal Code establishes the required findings for issuance of a Planned Development Permit Amendment.

- a. The Planned Development Permit Amendment, as approved, furthers the policies of the General Plan land use of Transit Residential in that the proposed project will enhance the existing commercial uses on-site. The proposed project is consistent with and will further these policies of the General Plan.

Analysis: As previously discussed, the project is consistent with the General Plan Land Use Designation of Transit Residential. The Transit Residential Land Use Designation allows a residential density between 50 to 250 Dwelling Units per Acre (DU/AC). The project would result in a residential density of approximately 137 DU/AC.

- b. The Planned Development Permit conforms to the planned development zoning of the property. As described above, the proposed project is consistent with the development standards of the Planned Development Zoning District File Number PDC95-013.

Analysis: As discussed in the Zoning Conformance section above, the project meets all height, setback, and parking requirements of the Planned Development Zoning District (File No. PDC13-004). The project requires the removal 21 trees (18 ordinance-size, 3 non-ordinance-size) ordinance size trees located within the footprint of the proposed building. The removal of the 21 trees requires the planting of 78 trees on-site. The project would plant a total of 110 trees on-site, not including street trees.

- c. The Planned Development Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

Analysis: An on-site sign has been posted since April 23, 2021. The project was noticed for a 500-foot radius per the City Council Policy 6-30: Public Outreach Policy.

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

Analysis: The updated building design is compatible and aesthetically harmonious with all other uses on-site. As previously discussed, the Amendment would reduce the tower portion of the project from 14 to 12 stories and increase the podium portion of the project from four to six stories. The overall orientation, massing, and scale is similar to the previously approved project. The updated building design would have a discernible base, middle, and top. The ground floor is defined by the retail, active space, and ground floor residential units along West San Carlos, Sunol, and Van Every Way respectively. The ground floor retail incorporates clearly identifiable awnings to distinguish each retail space. The overall massing is broken up with changes in plane as well as changes in materials and color at the middle and top portions of the building.

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

Analysis: The project would include an amendment to a previously approved project to reduce the tower portion of the project from 14 to 12 stories and increase the podium portion of the project from four to six stories. All construction would be temporary and would be limited to between the hours of 7:00 am to 7:00 pm Monday through Friday. This Planned Development Permit Amendment also includes standard environmental permit conditions to reduce construction related impacts. Lastly, the project would be required to conform with the previously approved Mitigation Monitoring and Reporting Program (Resolution 75192) for the approved Planned Development Permit.

- f. Amendments may be granted at the discretion of the director, planning commission on appeal, or city council as appropriate upon a finding that the amendment does not negate any findings required by Section 20.100.940.

Analysis: As previously discussed, the project would conform with the General Plan Land Use Designation as well as the requirements of the Planned Development Zoning District (File No. PDC13-004). The project would amend the previously approved Planned Development Permit (File No. PD12-013) to allow the removal of 21 trees (18 ordinance-size, 3 non-ordinance-size), decrease the height of a previously approved mixed-use residential tower from 14 stories to 12 stories, increase the podium apartment from four stories to six stories, and allow an alternative parking arrangement (puzzle lift). The project conforms with the City Council Policy 6-30: Public Outreach. Therefore, the amendment would not negate any findings required by Section 20.100.940 of the Municipal Zoning Code.

7. **Alternative Parking Arrangement.** Section 20.90.200 of the San José Municipal code specifies the required findings for an Alternative Parking Arrangement.
 - a. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this title;
 - b. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and

- c. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

Analysis: As previously discussed, Development Option A requires 308 parking spaces and Development Option B requires 314 parking spaces. Both Development Options would provide 397 vehicle parking spaces. Both Development Options includes 55 tandem parking spaces and 67 puzzle lift parking spaces. The remaining 275 parking spaces would be single-car spaces. All of the tandem and puzzle lift spaces would be located in the attached parking garage and would be accessible to all resident, visitors, and retail customers.

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

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

Analysis: The project requires the removal 21 trees (18 ordinance-size, 3 non-ordinance-size) ordinance size trees located within the footprint of the proposed building. The removal of the 21 trees requires the planting of 78 trees on-site. The project would plant a total of 110 trees on-site, not including street trees. Therefore, the project conforms with the City's tree mitigation requirements.

9. **Environmental Review.** The environmental impacts of this project were addressed by the Final Environmental Impact Report for the Ohlone Mixed-Use Project adopted by City Council Resolution No. 75192 on December 1, 2009. The proposed project is eligible for an addendum pursuant to CEQA Guidelines §15164, which states that, "A lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines §15162 calling for preparation of a subsequent EIR have occurred.

In accordance with the findings set forth above, a Planned Development Permit Amendment for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and

- b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant 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 said Director, if within such four (4) year time period, a Building Permit has not been obtained or the use, if no 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 Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Use Authorization.** This Planned Development Permit Amendment allows the removal of 21 trees (18 ordinance-size, 3 non-ordinance-size), a decrease in the height of a previously approved mixed-use residential tower from 14 stories to 12 stories, an increase in the podium apartment from four stories to six stories, and an alternative parking arrangement (puzzle lift) on an approximately 2.17-gross acre site. The project includes two development options:
- Option A: Up to 263 residential units (38 studio units, 165 one-bedroom units and 60 two-bedroom units) and up to 13,000 SF of retail space. Total building square footage is approximately 480,000 square feet
 - Option B: Up to 251 residential units (147 one-bedroom units, 93 two-bedroom units, 5 three-bedroom units, and 6 townhouses) and up to 13,000 SF of retail space. The total building square footage is approximately 439,000 square feet.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant 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. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

6. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit Amendment File No. PDA12-013-02 plans entitled, “PD Amendment Ohlone Mixed Use – Block A” dated March 24, 2022, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
7. **Conformance with Previously Approved Zoning.** All applicable conditions of approval and required environmental mitigation measures from the previously approved Planned Development Zoning, File No. PD13-004, remain in effect.
8. **Conformance with Previously Approved Planned Development Permit.** All applicable conditions of approval and required environmental mitigation measures from the previously approved Planned Development Permit, File No. PD12-013, remain in effect.
9. **Environmental Standard Permit Conditions**
 - a. **Temporary Construction Air Quality.** The following dust control measures will be implemented by contractors during demolition of existing structures:
 - Watering to control dust generation during demolition of structures and break-up of pavement;
 - Cover all trucks hauling demolition debris from the site;
 - Use dust-proof chutes to load debris into trucks whenever feasible. Watering will be used to control dust generation during transport and handling of recycled materials; and
 - All crushing or screening equipment used on-site for the recycling of materials will be permitted by the Bay Area Air Quality Management District or the State’s Potable Equipment Statewide Registration Program, and utilize Best Available Control Technology for that type of equipment.
 - b. **Temporary Construction Air Quality.** The following construction practices will be implemented during all phases of construction to prevent visible dust emissions from leaving the site.

Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses will be kept damp at all times, or will be treated with non-toxic stabilizers or dust palliatives.

 - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
 - Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
 - Sweep daily, or more often if necessary (preferably with water sweepers), all paved access roads, parking areas and staging areas at construction sites; water sweepers will vacuum up excess water to avoid runoff-related impacts to water quality.
 - Sweep streets daily, or more often if necessary (preferably with water sweepers), if visible soil material is carried onto adjacent public streets.

- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
 - Enclose, cover, water at least twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) to prevent visible dust from leaving the site.
 - Limit traffic speed on unpaved roads to 15 mph.
 - Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - Replant vegetation in disturbed areas as quickly as possible.
 - Install wheel washers for all existing trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
 - Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas.
 - Suspend excavation and grading activities when winds instantaneous gusts exceed 25 mph.
 - Limit the area subject to excavation grading, and other construction activity at any one time.
- c. **Airspace Safety.**
- A No-Hazard Determination will be obtained from the FAA for each building; and any lighting/marketing or subsequent construction notification conditions will be incorporated into the project at the Planned Development Permit stage.
 - An aviation easement over the project site will be dedicated to the City of San José at the Planned Development Permit stage.
- d. **Wells.** If a water and/or groundwater monitoring well(s) is found during grading operations that is no longer needed, a well destruction permit will be obtained from the Santa Clara Valley Water District, and the monitoring well(s) will be destroyed in accordance with District standards.
- e. **Septic Systems.** If a septic system is found during grading operations, it will be abandoned in accordance with the required of the Santa Clara County Sewage Disposal Ordinance.
- f. **Asbestos-Containing Materials.** The structure(s) to be removed will first be surveyed for the presence of ACMs prior to the demolition permit stage. If any suspect ACMs are present, they will be sampled prior to demolition in accordance with National Emission Standards for Hazardous Air Pollutants (NESHAP) guidelines, and all potentially friable ACMs will be removed prior to building demolition and disposed off-site at a permitted facility in accordance with the NESHAP, Cal-OSHA, and BAAQMD requirements.
- g. **Lead Based Paint.** The structure(s) to be removed will first be surveyed for the presence of lead-based paint prior to the demolition permit stage. If any suspect lead-based paint is present, it will be sampled prior to demolition, and all potential lead-based paint will be removed prior to building demolition and disposed off-site at a permitted facility in accordance with EPA and OSHA requirements.

- h. **Polychlorinated Biphenyls.** If a transformer(s) is to be removed or if leaks are observed, the transformer oil shall be tested for PCBs. If PCBs are detected, a mitigation program shall be developed to the satisfaction of the Environmental Compliance Officer of the City's Environmental Services Department and implemented. The mitigation program may include such measures as soil testing, removal, and/or off-site disposal at a permitted facility.
- i. **Cultural Resources.**
 - i. In the unlikely event that evidence of unknown prehistoric cultural resources (darker than surrounding soils containing evidence of fire – ash, charcoal, fire affected rock or earth; concentrations of stone, bone or freshwater shellfish; artifacts of these materials; burials, both animal and human) is discovered during construction, work within 50 feet of the find will be stopped to allow adequate time for evaluation and mitigation, and a qualified professional archaeologist called in to make an evaluation; the material will be evaluated; and if significant, a mitigation program including collection and analysis of the materials prior to the resumption of grading, preparation of a report and curation of the materials at a recognized storage facility will be developed and implemented to the satisfaction of the Director of Planning and submitted to the City's Environmental Principal Planner.
 - ii. Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California; In the event of the discovery of human remains during construction, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner will be notified by the developer and will make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this state law, then the landowner will reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
 - iii. Any Native American human remains that are discovered and would be subject to disturbance will be removed and analyzed, a report will be prepared, and the remains will be reburied in consultation and agreement with the Native American Most Likely Descendant designated by the Native American Heritage Commission. Prior to obtaining an occupancy permit, a copy of the report will be submitted to the City's Environmental Principal Planner to the satisfaction of the Director of Planning.
- 10. **Environmental Condition of Approval.** The project will provide a minimum of 15 feet of red curb along both sides of the Swenson Drive driveway to prevent vehicles from parking along the east side of the street and affecting the project driveway operations.
- 11. **Conformance with MMRP.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for the Ohlone Mixed-use development (Resolution 75192).
- 12. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.

13. **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. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
14. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
15. **Car Lifts.** The car lifts/puzzle lifts are conditioned to be maintained and operate for the life of the project.
16. **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.
17. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
18. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
19. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
20. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
21. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
22. **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.
23. **Cleaning and Maintenance.** Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m. Special conditions to control on-and off-site litter may be required on a case-by-case basis.
24. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
25. **Generators.** 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.

26. **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.
27. **Building and Property Maintenance.** The property owner or management company shall maintain the property 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.
28. **Tree Protection Standards.** The applicant shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
29. **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.
30. **Landscaping.** Planting and irrigation shall be provided, as indicated, on the Approved Plan Set. Landscaped areas shall be maintained and watered, and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping.
31. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code for use of reclaimed water and shall include an irrigation system designed to allow for the current and future use of reclaimed water for all landscaping.
32. **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.

33. **No Extended Construction Hours.** This permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
34. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
35. **Storm Drain Protection.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet. The storm drain system flows to the Bay.
36. **Conditions of Approval for Inclusionary Housing Ordinance Requirements.** The permittee has submitted an Affordable Housing Compliance Plan Application (Plan) and Processing Fee. Approval of the Plan is required prior to the development's planning application being deemed complete and prior to Planning's first approval.
- The permittee must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any contiguous property under common ownership and control prior to earliest of: issuance of any building permits, or approval of any parcel or final map.
 - Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.
 - No building permit may issue until the Affordable Housing Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
 - No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO and Affordable Housing Agreement are met.
37. **Housing Department Conditions for Projects with Non-Residential and Commercial Uses.** For all Non-Residential development adding or constructing 5,000 square feet or more of new or additional floor area. An applicant is required to submit to the Housing Department, as part of its the application for First Approval the following: (a) Satisfaction Plan, (b) all attachments to the Satisfaction Plan and (c) the required application processing fee.
38. **Actions Required for Housing Department's Clearance for Demolition Permit(s), Building Permit(s) or Map Approval**
- Conditions for projects subjected to the Inclusionary Housing Ordinance (IHO) Prior to the first to occur of the following: (a) approval of any final map, (b) approval of any parcel map, or (c) issuance of any building permit for a rental residential development, if the subject project has been determined to be subject to the Ordinance, the Inclusionary Housing Agreement must be recorded (senior to all deeds of trust) on the land including all parcels needed to implement the project's residential uses and affordable housing obligation including contiguous property under common ownership and control.

b. Conditions for projects subjected to the Commercial Linkage Fee (CLF)

39. Actions required for Housing Department’s Clearance of Final Inspection and Issuance of Certificate of Occupancy.

a. 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 Inclusionary Housing Agreement, Inclusionary Housing Ordinance and Guidelines are met.

40. Avigation Easement. Prior to the issuance of a Building Permit for vertical, the property owner shall grant an Avigation Easement to the City of San José. Contact Ryan Sheelen, rsheelen@sjc.org (408-392-1193), of the San José Airport Department to initiate the easement dedication process.

41. FAA Clearance Required. Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration a “Determination of No Hazard to Air Navigation” for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height, specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and “No Hazard Determination” expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.

42. FAA Clearance Permit Adjustment. Prior to the issuance of any Building Permit for construction, the permittee shall apply for and obtain a Permit Adjustment to incorporate any and all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting or construction-related notifications.

43. Bureau of Fire Department Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the City.

44. Public Works Clearance for Building Permit(s) or Map Approval: The project conditions required under Planning Permit PD12-013 and PDA12-013-01 are held as true and valid with the following amendments. Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following:

<http://www.sanjoseca.gov/devresources>.

a. **Transportation:** This project does not require a CEQA transportation analysis because the project is covered under the Ohlone Mixed Use Planned Development Rezoning (PDC08-061) EIR. Upon review of the supplemental Local Transportation Analysis, prepared by Hexagon Transportation Consultants on 5/27/2021, with the inclusion of the following conditions, we conclude that the subject project will be in conformance with the City of San Jose Transportation Analysis Policy (Council Policy 5-1) and a determination for a negative declaration can be made with respect to traffic impacts.

- i. Prior to Planning approval submit the following information to the Planning Project Manager: Identify bike parking locations and design concepts in compliance with CSJ Muni Code 20.90.060, 20.90.190, and 20.90.195. Clarify which are short-term and which are long-term bike parking.
 - b. **Street Improvements:** Provide 3” conduit along West San Carlos Street frontage.
 - c. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
 - i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
 - 1) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can’t occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).
 - 2) **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
 - ii. Developer shall minimize the potential impact to vehicular and pedestrian traffic by:
 - 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
 - 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition a.ii above.
 - iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
45. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, **PDA12-013-02** shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
46. **Revocation, Suspension, Modification.** This Planned Development Permit Amendment may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, 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 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit Amendment was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **4th day of May, 2022.**

Christopher Burton, Director
Planning, Building, and Code Enforcement

Deputy
Sylvia Do