

## SITE DEVELOPMENT PERMIT

<b>FILE NO.</b>	<b>H21-015</b>
<b>LOCATION OF PROPERTY</b>	<b>West Corner (905 North Capitol Avenue) and South Corner of North Capitol Avenue and Penitencia Creek Road</b>
<b>ASSESSOR'S PARCEL NUMBER</b>	<b>254-29-028 and 254-29-026</b>
<b>ZONING DISTRICT</b>	<b>R-M Multiple Residence District</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>TR Transit Residential</b>
<b>PROPOSED USE</b>	<b>A Site Development Permit to allow the demolition of an existing single-family residential building and two accessory structures, the removal of 10 ordinance-sized trees and 24 non-ordinance-sized trees, and the construction of a 7-story mixed-use building consisting of 345 apartment units and approximately 3,000 square feet of office space with one level of underground parking and a parking reduction on a 2.12-acre site (APN 254-29-028), and to allow the removal of 6 ordinance-sized trees and 2 non-ordinance-sized trees, and the construction of four three-story, 8-unit townhouse buildings on a 1.35-acre site (APN 254-29-026).</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Initial Study/Mitigated Negative Declaration for 905 North Capitol Avenue Residential Development</b>
<b>OWNER ADDRESS</b>	<b>The Yoneda Enterprises L.P. 1029 Eastwood Drive Los Altos, CA 94024</b>
<b>APPLICANT ADDRESS</b>	<b>Scott Youdall Hanover Company 156 Diablo Road, STE 220 Danville, CA 94526</b>

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

1. **Project Description.** This is a Site Development Permit to allow the demolition of an existing single-family residential building and two accessory structures, the removal of 10 ordinance-sized trees and 24 non-ordinance-sized trees, and the construction of a 7-story mixed-use building consisting of 345 apartment units and approximately 3,000 square feet of office space with one level of underground parking on a 2.12-acre site (Parcel 1, APN 254-29-028), and to allow the removal of 6 ordinance-sized trees and 2 non-ordinance-sized trees,

and the construction of four three-story, 8-unit townhouse buildings on a 1.35-acre site (Parcel 2, APN 254-29-026).

The proposed 7-story mixed use building on Parcel 1 includes approximately 3,000-square foot office space on the ground floor facing North Capitol Avenue, residential amenity space and lobby on the ground floor along North Capitol Avenue and northeast portion of Penitencia Creek Road, one level of underground parking and ground floor parking, and 345 apartment units from level 2 to level 7. The proposed common outdoor areas for the apartment units consist of two podium-level courtyards located at the center of the project site and at the southwest end of the building. The primary access to this building would be from a driveway along Penitencia Creek Road. This building would provide 364 vehicle parking spaces. The proposed parking reduction is 26.6%.

Parcel 2 is proposed to be subdivided into 4 lots for residential condominium purpose under a Vesting Tentative Map, File No. T21-016. There will be one three-story, 8-unit townhome building on each proposed lot. Each townhome unit would contain a two-car garage. Access to the two-car garages would be provided from two separate alleys via Penitencia Creek Road. Two surface parking spaces are provided on a small surface parking lot accessed from Kestral Way and three surface parking spaces are provided at the end of the two alleys.

2. **Site Description and Surrounding Uses.** The project site consists of two non-contiguous lots that are 2.12-acres (Parcel 1, APN 254-29-028) and 1.35-acres (Parcel 2, APN 254-29-026) in size, for a total of approximately 3.5 gross acres. The 2.12-acre lot located on the west corner of Penitencia Creek Road and North Capitol Avenue is developed with a single-family residential building and two accessory structures, while the 1.35-acre lot located on the south corner of Penitencia Creek Road and North Capitol Avenue is currently vacant.

The project site is surrounded by duplexes and Penitencia Creek Trail and open space to the northeast across North Capitol Avenue, a single-family residence and multifamily residential to the northwest, multifamily residential to the southwest, Penitencia Creek Trail and open space to the southeast. The site is within 500 feet of the existing Penitencia Creek Light Rail Station.

3. **General Plan.** The subject site has an Envision San Jose 2040 General Plan land use designation of **Transit Residential (TR)**. This is the primary designation for new high-density, mixed-use residential development sites in close proximity to transit, jobs, amenities, and services, and supports development with a density between 50-250 dwelling units per acre (DU/AC) and a floor-area ratio (FAR) from 2.0 to 12.0.

*The project would develop a total of 345 apartment units on Parcel 1 with a density of 162.7 DU/AC and 32 townhome units on Parcel 2 with a density of 23.7 DU/AC. This would result in a combined density of approximately 107.7 DU/AC and would be consistent with the density of the TR General Plan land use designation.*

The project is located along North Capitol Avenue which is a General Plan-designated **Grand Boulevard**. Grand Boulevards require extra attention and improvement, including special measures within the public right-of-way, such as enhanced landscaping, additional attractive lighting, and wider and comfortable sidewalks for adjoining land uses, special design standards support cohesive and interesting urban development related to the character of the Grand Boulevard.

*The existing 8-foot-wide sidewalk along the project's North Capitol Avenue frontage would be widened to a 15-foot attached sidewalk with 5-foot by 5-foot tree wells. Active space such as ground floor office, residential amenity space/lobby, and townhome*

*porches is proposed along this Grand Boulevard to encourage pedestrian activities and enhance the view of this corridor. The canopies above office entrances and apartment entrance and the trellis on top of townhome front porches provides pedestrian scale architecture features. The project meets the Grand Boulevard design intent.*

The proposed project is also consistent with the following General Plan policies:

- **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.

*Analysis: The project site is within 500 feet of an existing light rail station and the project is a mixed use project with a combined density of 107.7 DU/AC. Therefore, the project is consistent with LU-10.3.*

- **GP Policy CD-4.6** Support cohesive and architecturally distinctive urban development along Grand Boulevards and include such design elements as enhanced landscaping; attractive lighting; wide, comfortable sidewalks; area identification banners; and harmonious building scale features.

*Analysis: As discussed above, North Capitol Avenue sidewalk would be widened to 15-foot wide with tree wells to provide comfortable sidewalks. The proposed building includes active space on the ground floor facing this street to encourage pedestrian activities, and the architectural design promotes pedestrian friendly design by providing pedestrian-scale features such as canopies and trellis above building entrances and include transparent façade on the ground floor.*

- **Transportation Policy TR-8.6** Allow reduced parking requirements for mixed-use developments and for developments providing shared parking or a comprehensive TDM program, or developments located near major transit hubs or within Urban Villages and other Growth Areas.

*Analysis: The project would implement a TDM plan to support a 26.6% parking reduction for the proposed mixed use building on a site within 500 feet of an existing light rail station. Therefore, the project is consistent with TR-8.6.*

4. **Zoning Regulations.** Although the subject site is within the R-M Multiple Residence zoning district, the TR Transit Residential zoning district regulations apply pursuant to the State Assembly Bill AB-3194. Under AB-3194, if a housing project, regardless affordability, is proposed on a site where the project is consistent with the objective standards and criteria of the General Plan, the local agency cannot require the property to be rezoned to accommodate the project, even if the zoning of the site is not consistent with the General Plan. However, the jurisdiction would need to evaluate the project using the closest zoning district that is consistent with the General Plan land use designation of the site. The zoning standards and criteria must be applied to facilitate and accommodate development at the density allowed on the site by the General Plan and proposed by the project. The R-M zoning district requires a minimum rear setback of 25 feet and the TR district requires a minimum rear setback of 10 feet. Compared with the R-M zoning district, with the reduced setback the TR zoning district would allow the project to be feasibly developed with higher density which is in line with the goal of the TR Transit Residential General Plan land use designation. TR zoning district is the closest zoning district that is consistent with the Transit Residential General Plan land use designation. Per AB-3194, mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential

use are considered as housing projects. The residential component of this project exceeds the two-third requirement. Hence the project is a housing project under AB-3194. Therefore, the project is allowed to apply TR zoning district regulations without a conforming rezoning.

- a. **Use:** Per Table 20-138 of Zoning Code Section 20.55.203, residential and office are permitted uses within TR district.
- b. **Density:** TR zoning district requires a density from 50 to 250 DU/AC. The proposed combined density is 107.7 DU/AC, within the range allowed by the Zoning Code.
- c. **Setbacks and Height:**

**Mixed Use Building on Parcel 1:** Per Zoning Code Section lot definition, the street property lines are front property lines. The southwestern property line is the rear property line and the northwestern property line is the side property line.

Pursuant to Zoning Code Chapter 20.55, the setback and height standards are as follows:

Development Standard	Required	Provided (Mixed Use Building on Parcel 1)
Front Setback	Maximum 10 feet	10 feet
Side Setback	Maximum 10 feet	6 feet
Rear Setback	Minimum 10 feet	15.9 feet
Maximum Height	120 feet per Zoning Code Section 20.85.020.D	88.5 feet

*Analysis: The proposed mixed use building is consistent with the setback and height standards of the TR Zone.*

**Townhome Buildings on Parcel 2:** Parcel 2 is proposed to be subdivided into 4 lots for residential condominium purpose under a Vesting Tentative Map, File No. T21-016.. For the proposed four lots, the front lot lines are the property lines along Penitencia Creek Road. The southeastern property lines are rear lot lines, and the rest of the lot lines are side lot lines.

Development Standard	Required	Provided (Townhouse Buildings on the proposed 4 lots on Parcel 2)
Front Setback	Maximum 10 feet	10 feet
Side Setback	Maximum 10 feet	10 feet from street sides; For interior sides, 12 feet to 19 feet. See discussion below. *
Rear Setback	Minimum 10 feet	13 feet
Maximum Height	120 feet per Zoning Code Section 20.85.020.D	37 feet

\*Zoning Code Section 20.55.101 allows some exceptions to the setback regulations. Per Section 20.55.101.E, side setbacks greater than 10 feet shall be permitted as required by Building or Fire code for public health and safety reasons. If the interior side setbacks are within 10 feet, per Building Code, the opening area shall not exceed 25%, which is unreasonable for living units which require certain amount of opening areas for light,

ventilation, and exit access purposes. The current proposed interior side setbacks are ranging from 12 to 19 feet, which would allow a much larger opening area (75%) per Building Code and to accommodate the 20-foot wide alley. Therefore, providing an interior side setback of 12 to 19 feet is allowed under Section 20.55.101.E.

- d. **Parking:** Per Zoning Code Section 20.90.220.A.1.a, a 20% reduction in automobile parking is allowed if the project site is within 2,000 feet of an existing light rail station. The site is within 500 feet of the existing Penitencia Creek Light Rail Station. A parking reduction of up to 50% may be authorized if the project implements at least three transportation demand management (TDM) measures as specified in Section 20.90.220.A.1.

**Mixed Use Building on Parcel 1:**

**Vehicle Parking Requirement**

Use/Unit Type	Ratio	Required
Office (3,000 Gross Sq. Ft.)	1 per 250 net Sq. Ft.	10.2 (3,000x0.85/250)
Studio/One-bedroom (35 units)	1.25 per unit	43.75
One-bedroom (190 units)	1.25 per unit	237.5
Two-bedroom (120 units)	1.7 per unit	204
	<b>Total required</b>	<b>496 without reduction</b> <b>397 with 20% parking reduction</b> <b>248 with 50% parking reduction</b>

*Vehicle Parking: The mixed-use building would provide 364 vehicle parking spaces. The proposed parking reduction is 26.6%. The project will be implementing a TDM plan. The proposed TDM plan is included in the Transportation Analysis dated February 10, 2022 prepared by Hexagon Transpiration Consultants, Inc. This TDM plan provides evidence that the TDM program will reduce parking demand and identifies the percentage of parking demand that will be reduced through the TDM plan.*

*The proposed TDM measures (Condition No. 34) include providing subsidized memberships to a car sharing program eligible to 90% of residents, providing a travel behavior change program which includes mass communication campaigns and travel feedback programs that encourage use of using transit, walking, and biking, and having an on-site TDM coordinator who would be responsible for implementing and managing the TDM plan. In addition, the TDM plan is required to be monitored and reported to City annually. Project Condition No. 14 also requires Planning review if any future parking reduction is proposed. Therefore, with these project conditions, the project meets the vehicle parking requirement.*



### Bicycle Parking Requirement

Use/Unit Type	Ratio	Required
Office (3,000 Gross Sq. Ft.)	1 per 4,000 net Sq. Ft.	1 short-term space
345 Apartment Units	1 per 4 units	87 including at least 53 long-term spaces
	<b>Total Required</b>	<b>88 spaces</b>

*Bicycle Parking: The mixed-use building would provide one short-term bicycle parking space in front of the proposed office space, and 132 long-term bicycle parking spaces within the bike room on the 1<sup>st</sup> floor. The project exceeds the bicycle parking space requirement.*

### Motorcycle Parking Requirement

Use/Unit Type	Ratio	Required
Office (3,000 Gross Sq. Ft.)	1 per 20 code-required vehicle parking or minimum 3 spaces per Zoning Code Section 20.90.350.B	3
345 Apartment Units	1 per 20 code-required vehicle parking	25
	<b>Total Required</b>	<b>28 spaces</b>

*Motorcycle Parking: The mixed-use building would provide 89 motorcycle parking spaces within the ground floor and underground parking garages. The project exceeds the motorcycle parking space requirement.*

### Townhome Buildings on Parcel 2:

#### Vehicle Parking Requirement

Unit Type	Ratio	Required
Three-bedroom (16 units)	2.6 per unit	41.6
Four-bedroom (16 units)	2.75 per unit	44
	<b>Total required</b>	<b>86 without parking reduction</b> <b>69 with 20% reduction</b>

*Vehicle Parking: As discussed above, the project would require 69 parking spaces with 20% parking reduction due to the close proximity to the existing light rail station. The townhome site would provide 69 parking spaces including 64 spaces in parking garage and 5 surface parking spaces.*

*Bicycle Parking: One per four units is required. The townhome site would require 8 bicycle parking spaces and 8 bicycle parking spaces are provided.*

*Motorcycle Parking: One per 20 code-required vehicle parking space is required. The townhome site would require 5 motorcycle parking spaces and 8 motorcycle parking spaces are provided.*

*Based on the above analysis, the project complies with the Zoning Code parking requirements.*

e. **Common and Private Open Space:**

- Common open space: Per Section 20.55.102.D.1, projects located within a quarter mile walking distance, by way of a pedestrian accessible public right-of-way or easement, of existing public open spaces or POPOS shall be exempted from common open space requirements. The project is adjacent to Penitencia Creek public open space. Therefore, the project is exempt from the common open space requirement.

- Private open space:

Per Section 20.55.102.D.2.b, for development projects which are exempted from common open space requirements because of their proximity to public open space or POPOS, up to 50% of the total private open space requirement may be fulfilled through the development of an equivalent amount of common open space.

*Although the project is exempt from the common opens space requirement, the mixed use building provides 17,365 square feet of common open space on the podium level.*

Mixed use development project: Per Section 20.55.102.C.1, mixed use development project shall provide private open space in the following manner:

- Studios and 1-bedroom units shall provide a minimum of 30 square feet per residential unit;
- Units with 2 or more bedrooms shall provide a minimum of 45 square feet per residential unit;

*With 35 studios, 190 1-bedroom units, and 120 2-bedroom units, the proposed mixed use building would be required to provide 12,150 (30x 225 + 45 x 120) private open space. As stated above, per Section 20.55.102.D.2.b, the private open space requirement could be reduced to 6,075 square feet given that more than 6,075 square feet of common open space is provided. The project would provide 16,195 square feet of private open space. In addition, more than 50% of the units (175 units) contain minimum 60-square foot private open space. This complies with Section 20.55.102.C.3 which requires at least 50% of all dwelling units shall have direct access to the private open space.*

100% Residential Project: Per Section 20.55.102.C.2, 100% residential projects shall provide private a minimum of 60 square feet of private open space per units with 2 or more bedrooms. *The proposed townhome buildings include 3-bedroom and 4-bedroom units. Each 3-bedroom townhome unit would include a 80-square-foot porch/deck and each 4-bedroom townhome unit would include a 96-square-foot porch/deck.*

*Based on the above analysis the project complies with the common and private open space requirement.*

f. **Lighting:** Pursuant to Section 20.55.103, the outdoor lighting must conform with the City's Lighting Policy to shield down the outdoor lighting, and comply with the Site

Lighting standards included in the Citywide Design Standards and Guidelines (CDSG). lighting adjacent to residential properties shall be arranged, shielded to avoid light spillage to those properties.

*The project is consistent with the lighting policy in that all outdoor lighting would be fully shielded and directed downwards. CDSG Standard 2.3.7.S3 requires the lighting fixture height not to exceed 12 feet when the distance of the fixture from the adjacent residential property line is less than twice the height of the fixture. The site is surrounded by residential use. The distance of the wall lights on the mixed use building is 10 to 15 feet from the residential property lines. All the wall lights do not exceed 8 feet in height. Therefore, the project complies with the lighting requirements.*

5. **Citywide Design Standards and Guidelines.** The project is subject to the San Jose Citywide Design Standards and Guidelines (CDSG). CDSG supports walkable, functional and safe communities. CDSG requires project design to relate to the surrounding context. The project site is within 500 feet of an existing light rail station on North Capitol Avenue. The proposed buildings are oriented towards North Capitol Avenue with building entrances accessible from North Capitol Avenue sidewalks. The proposed buildings are located closer to the North Capitol Avenue sidewalks with active space on the ground floor to provide eyes on the street and encourage pedestrian activities.

The overall building design incorporates recesses and projections, color and material changes to reduce the building massing and provide architecture interest to the building facades. The project architecture, massing, and materials have been determined to be consistent with applicable standards. The following includes the discussion of the consistency with a few key building design standards:

- Standard 3.1.1-Massing Relationship to Context: CDSG requires building massing to transition to the scale of the surroundings. CDSG Standard 3.1.1 provides standards for building stepbacks from the front and the rear. Specifically, Standard 3.1.1.S1 requires project design to provide building stepbacks fronting rear shared property lines with a stepback plane of 60 degree from horizontal and fronting public-right-of-way within a stepback plane of 75 degrees from horizontal.

The rear shared property line for Parcel 1 is the southwestern property line. Per CDSG, for building fronting along a rear shared property line, start the stepback plane from the intersection of the rear setback line with the maximum allowed height for the site to the rear. Maximum allowed height is defined by the conforming Zoning District to the General Plan Land use designation. The site to the rear of the property is also designated TR Transit Residential. The maximum allowed height would be 120 feet per the TR zoning district at this location. Hence, the 60-degree plane should start from the height of 120 feet. The proposed 85.5-foot-tall building would be completely within this 60-degree plane line.

For stepback requirement fronting public-right-of-way, per Figure 3.5 of CDSG, within and outside General Plan growth areas, when public right-of-way width is more than the maximum allowed height for the building across the right-of-way, the stepback plane starts at the maximum allowed building height equal to the right-of-way width. There are duplexes across the street from North Capitol Avenue. Those duplex sites are designated MUN Mixed Use Neighborhood. The maximum allowed height is 35 feet per Table 20-137 under Zoning Code Section 20.55.104 for duplexes within MUN zoning district, the conforming zoning district to MUN land use designation. The width of North Capitol



Avenue right-of-way is approximately 125 feet. Hence the 75-degree plane line should start from the height equal to the North Capitol Ave right-of-way width, 125 feet. The propose building is 85.5 feet in height, which would be completely within this 75-degree plane line.

The project design is therefore consistent with CDSG Standard 3.1.1.S1. Although the project basically does not require setbacks from the rear shared property line (because the site to the rear has the same General Plan land use designation), the proposed 7-story building setbacks 28.5 feet from this rear shared property line on the 2<sup>nd</sup> floor to provide a transition to the adjacent three-story townhome building.

- Standard 3.1.2-Form, Proportion and Scale: The building corner at the North Capitol Avenue and Penitencia Creek Road intersection incorporates different façade treatments and recessed entrance to comply with Standard 3.1.2.S1. Standard 3.1.2.S3 states that for streetwalls more than 200 feet in length, provide at least one recess or projection in the façade that is at least 15 feet wide and 10 feet deep for residential, commercial, and mixed-use developments. The 7-story building has an approximately 295-foot long streetwall along Penitencia Creek Road. The building incorporates a 15-foot wide, 10-foot deep recess to break this streetwall to reduce building massing. The project is therefore consistent with Standard 3.1.2.S3.

6. **Site Development Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Site Development Permit, as follows:

- a. The site development permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies; and

*Analysis: The proposed project has a combined density of 107.7 DU/AC. Therefore, the project is consistent with the TR Transit Residential General Plan land use designation. As discussed above, the project is also consistent with General Plan policies LU 10.3, CD 4.6, and TR 8.6.*

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

*Analysis: As analyzed above, TR Transit Residential zoning district regulations apply to the project pursuant to State Housing Law AB-3194. The proposed project meets the setback, height, open space and lighting requirements of TR zoning district and meets the parking requirements by the implementation of the TDM plan.*

- c. The site development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

*Analysis: The project is subject to and conforms to the Public Outreach Policy for Pending Land Use and Development Proposals. The on-site signs have been posted at the site since July 8, 2021 to inform the neighborhood of the project. Public Notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Staff has been available to respond to questions from the public. A virtual community meeting was held on October 4, 2021. Approximately 74 people from the public were in attendance and 21 attendees provided comments or expressed concerns on the project. Comments were mainly about traffic, parking, building scale, density, fire and safety.*

*The project is also consistent with Council Policy 4-3, Outdoor Lighting on Private Developments, in that the proposed outdoor lighting will be directed downwards. The project will have minimal light spillage to the adjacent residential neighborhood.*

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

*Analysis: As discussed above, the project site consists of two non-contiguous lots. Parcel 1 would include a 7-story building containing ground floor office, residential amenity space/lobby and a bike room facing the two streets, parking garage in the basement level and the first level, 345 residential units from level 2 to level 7. The main entrance of the building is located at the street corner. The office space has direct access from North Capitol Avenue sidewalk. The garage is accessed from the driveway at Penitencia Creek Road. The building design reflects the interior function of the building with more transparent façade on the ground floor active space along North Capitol Avenue and along the northeast portion of Penitencia Creek Road, and more solid façade along the inactive space.*

*Parcel 2 would include 4 three-story, 8-unit townhome buildings. The townhome buildings are designed to have building fronting on North Capitol Avenue with direct access from sidewalk to the porch of each unit to provide a pleasant and welcoming façade along this Grand Boulevard. The garages are located at the back of the building and are accessed from two alleys via Penitencia Creek Road. A small surface parking lot is located at the southwest end of the site, which also provides a buffer to the adjacent townhome building.*

*The 7-story building incorporates color, material and facade plane changes to break down the building massing/façade so that the building would be more compatible with the proposed three-story townhome buildings. The 7-story building and the townhome buildings also apply the same color theme and materials such as white and light gray stucco, darker gray and brown cementitious panels and black metal railing. The elevations of the proposed buildings and all uses on sites are mutually compatible and aesthetically harmonious.*

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

*Analysis: The site is surrounded by residential use. A three-story townhome community is immediately adjacent to the southwest of the site. The height and massing of the proposed three-story townhome buildings on Parcel 2 are compatible with these existing three-story townhome buildings. The proposed 7-story building steps back 28.5 feet from the southwestern property line on the 2<sup>nd</sup> floor to provide a height transition to the adjacent 3-story building. The 7-story building design incorporates recesses and projections, color and material changes to break the building massing/facades and provide architecture interest. An existing single-family residence is located to the northwest of the site. Although the proposed 7-story building would be incompatible with the existing one-story single-family residence, this adjacent lot is also designated TR Transit Residential on the 2040 General Plan Land Use Diagram for high density development. The project would be compatible with the potential future development on this lot. There are duplexes across the street from North Capitol Avenue. North Capitol Avenue is a 125-foot wide*

*major arterial which provides a buffer for the propose project to those existing duplexes. The 7-story building would not be overwhelming the duplexes across North Capitol Avenue. The proposed project is oriented towards North Capitol Avenue with active space on the ground floor facing North Capitol Avenue and northeast portion of Penitencia Creek Road. Therefore, the orientation, location and elevation of the proposed buildings and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.*

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

*Analysis: The project occurs in an urbanized area that is adequately served by all required utilities and public services and the Stormwater Control Plan is in compliance with the City's stormwater policies that require low impact development stormwater measures to minimize stormwater pollutant discharges. The temporary construction of the project would not have an unacceptable negative effect on adjacent properties because the project will implement standard permit conditions in accordance with City standards and regulations for construction and operation. The construction hours will be limited to 7:00 a.m. to 7:00 p.m. Monday to Friday.*

*The project would have a potentially significant impact on Air Quality, Biological Resources, Cultural Resources, Hazards and Hazardous Materials, Noise, and Transportation. However, these significant impacts can be mitigated to less-than-significant levels by incorporating certain mitigation measures which are included as part of the Project Conditions.*

*Therefore, the project would not result in significant negative noise, vibration, dust, drainage, erosion, or stormwater runoff and odor impacts to the surrounding properties.*

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

*Analysis: The proposed project will include new trees, landscaping, shrubs, and planter areas. The trash will be within the building.*

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

*Analysis: As discussed above, the project meets the parking requirements. Vehicular access to the site would be from Penitencia Creek Road. Adequate pedestrian access is provided via walkways and paved areas connecting to the adjacent public sidewalks. The project would be required to widen the sidewalks along project's North Capitol Avenue frontage and Penitencia Creek Road frontage.*

*Per the Public Works Final Traffic Memo dated 4/18/2022, the project's office component would meet the screening criteria as a small office infill of 10,000 s.f. of gross floor area or less. However, the project's residential VMT is 10.86 per capita, which would exceed the residential threshold of 10.12 per capita. The project would result in a significant transportation impact on VMT and mitigation measures are required. The project will implement mitigation measures specified in the Final Traffic Memo and incorporated in the MMRP to increase accessibility for transit users, bicyclists, and*

*pedestrians, and implement a TDM plan. The mitigation measures will reduce the project residential VMT to less-than-significant levels and fully mitigate the project VMT impact.*

7. **Demolition Permit Findings.** With respect to the demolition of the existing building, the Director of Planning, Building, and Code Enforcement has considered the following:

The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.

- a. The failure to approve the permit would jeopardize public health, safety or welfare;
- b. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
- c. The approval of the demolition of the building would maintain the supply of existing housing stock in the City;
- d. Both inventoried and non-inventoried buildings, sites and districts of historical significance will not be negatively impacted
- e. Rehabilitation or reuse of the existing building would not be feasible; and
- f. The demolition, removal or relocation of the Building without an approved replacement Building should not have an adverse impact on the surrounding neighborhood.

*Analysis: The existing residential building located at 905 North Capitol Avenue (Parcel 1) was built in 1969 and is not a historic resource per the Historic Resources Assessment prepared for the project by Treanor HL dated March 28, 2022. The demolition will not reduce the housing stock and adaptive reuse of the structure is not feasible. The proposed project will result in the replacement of the structure with a new 7-story mixed use building including 345 residential units. As analyzed in this permit, the demolition of the building and replacement with commercial and high-density residential development would not have any adverse impacts on the surrounding neighborhood.*

8. **Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Tree Removal Permit, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;
- c. 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.

*Analysis: The project includes the removal of 10 ordinance-sized trees and 24 non-ordinance-sized trees on Parcel 1, and the removal of 6 ordinance-sized trees and 2 non-ordinance-sized trees on Parcel 2. These trees are located within the proposed development area and distributed within the site. The removal of those trees is necessary in order for the proposed development to be developed with an efficient floor plan. The removal of these 42*



*trees would require 110 15-gallon replacement trees and the project proposes 55 24-inch box trees on site.*

9. **Environmental Review.** An Initial Study (IS)/Mitigated Negative Declaration (MND) was prepared by the Director of the City of San José's Department of Planning, Building and Code Enforcement for the subject project. The document was circulated for public comment between April 26, 2022 to May 16, 2022. A total of 15 comment letters were received. Comments were received from public agencies and private parties, including neighbors. Comments received concerned the following: the traffic impact of the project, inadequate parking and on-site circulation for the project, impact of the project's scale and massing on the neighboring communities, project density, the project's tree removal and replacement plan, water demand from the project, the project's impacts to park and recreational facilities, incompleteness of technical reports, and requests for further off-site improvements.

The comments received did not result in any substantial changes to the project description, analyses, and/or impacts that was previously disclosed in the IS/MND. These environmental comments are addressed by staff in a formal Response to Comments document.

The IS/MND identified potential impacts to Air Quality, Biological Resources, Cultural Resources, Hazards and Hazardous Materials, Noise, and Transportation. The IS/MND concluded that the project would not result in any significant and unavoidable environmental impacts with implementation of identified mitigation measures and standard permit conditions. The project includes a Mitigation Monitoring and Reporting Program (MMRP) and incorporates standard conditions and best management practices for construction activities and a Transportation Demand Management (TDM) program to lessen the identified impacts to a less than significant level. In addition to the mitigation measures, other standard permit conditions are included in the Site Development Permit as conditions of approval to ensure all potential impacts have been addressed. The IS/MND concluded that the proposed project would not result in a significant and unavoidable impact and an MND is the appropriate level of CEQA clearance for the project.

The entire IS/MND, Responses to Comments, and other related environmental documents are available on the Planning web site at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies/905-n-capitol-avenue-residential-development>

In accordance with the facts and findings set forth above, a Site Development Permit 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 San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to be constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and



- b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the 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. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development Permit plans entitled, "905 North Capitol Ave, San Jose, CA 95133" dated revised April 28, 2022, on file with the Department of Planning, Building and Code Enforcement ("Approved Plans"), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.

7. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
8. **Demolition Permit.** A demolition permit may be issued for the project only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
9. **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.
10. **Replacement Trees.** The project is required to plant 55 new 24-inch box replacement trees on site for the removal of 16 ordinance-sized trees and 26 non-ordinance-sized trees on site.
11. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, LED fixtures as shown in the Approved Plan Set. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property. All proposed changes shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
12. **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.
13. **Affordable Housing Requirements.** This Permit is subject to its Affordable Housing Compliance Plan as set forth by the Department of Housing, which includes the following conditions:
  - a. Prior to earliest of: approval of any parcel or final map or issuance of any building permits, the permittee must execute and record their Affordable Housing Agreement memorializing the IHO obligations against the property, any other property required for the satisfaction of the compliance option selected in the Plan, and record the Affordable Housing Agreement or a City covenant against contiguous property under common ownership and control. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
  - b. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO 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.

- c. 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.
14. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance, as amended. Any future parking reductions proposed by the project in accordance with any changes to the Municipal Code regulating minimum required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment.
15. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Changes in building colors and materials shall require a Permit Adjustment.
16. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
17. **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.
18. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
19. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground, unless prohibited by the Building Code or the utility provider.
20. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
21. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
22. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
23. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
24. **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.
25. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
26. **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.

27. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
28. **Stormwater Stenciling.** All storm drain inlets and catch basins shall be stenciled with the “NO DUMPING - FLOWS TO BAY,” applied to the top and/or face of the curb next to the storm drain inlet. The development maintenance entity and/or property owner shall ensure that all storm drain inlet markings located on privately maintained streets within the property are present and maintained.
29. **Landscaping.** Planting shall be provided by the Permittee, as indicated on the final Approved Plans. All Planting areas shall be irrigated.
30. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
31. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
32. **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, H21-015, shall be printed on all construction plans submitted to the Building Division.
  - b. *San Jose’s Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City’s Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit [www.sjenvironment.org/reachcode](http://www.sjenvironment.org/reachcode).
  - c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
33. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as amended and adopted by the City.
34. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract 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. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

b. **Transportation:**

i. A Transportation Analysis has been performed for this project. See separate Transportation Analysis Memo dated 04/18/2022 for additional information. The following conditions shall be implemented:

a) The project's residential VMT of 10.86 per capita would exceed the City residential VMT threshold of 10.12 VMT per capita. Therefore, the project would result in a significant transportation impact on VMT, and mitigation measures are required to reduce the significant VMT impact.

b) Implement the following multimodal physical mitigation measures to reduce project VMT and partially mitigate the VMT impact:

a) **Bike Access Improvements** - Construct Class IV protected bike lanes along both sides of N. Capitol Avenue between Penitencia Creek Road and Gilchrist Road per the San Jose Better Bike Plan 2025. These bikeway segments would connect the eastern and western trailheads of the Penitencia Creek Trail.

b) **Pedestrian Network Improvements** - Implement a new crosswalk along the south leg of the N. Capitol Avenue/Penitencia Creek Road intersection, including pedestrian signal heads with push buttons and ADA curb ramps.

c) **Traffic Calming Measures**

i) Narrow the existing travel lane widths along N. Capitol Avenue between Penitencia Creek Road and Gilchrist Road in conjunction with the implementation of Class IV protected bike lanes mitigation measure.

ii) Install an all-way stop control and crosswalks at the intersection of Penitencia Creek Road and Kestral Way.

The physical mitigation measures listed in a), b), and c) above shall be constructed by the applicant for the Apartment Building. Prior to pulling of any Building Permits, the Apartment Building developer shall bond for these physical traffic improvements. Should the apartment project not provide the City of San Jose the Site Improvement Bonds prior to Townhome project's Building Permits being issued, the Townhome developer shall bond for the design and installation of that section of the Class IV bike lanes listed in a) above, along the North Capitol frontage of the Townhome project only, and the bike lane along the Townhome project frontage shall be designed and installed prior to the final acceptance and bond release of the Townhome project. The obligations of



the Townhome developer in the immediately preceding sentence shall no longer apply once the Apartment Building developer provides the bonds for all of the traffic improvements listed in a) through c) above, including the bike lanes along the frontage of the Townhome project.

- c) The Permittee shall implement the following TDM measures, which are also specified in the proposed TDM plan included in the Transportation Analysis dated February 10, 2022 prepared by Hexagon Transpiration Consultants, Inc., for full mitigation of VMT impact reducing project VMT down to 10.04 VMT per capita and an 8% reduction of City parking requirements.
- a) **Car Sharing Program** - Provide subsidized memberships to a car sharing program eligible to 90% of residents.
  - b) **Voluntary Travel Behavior Change Program** - Provide a travel behavior change program with an expected participation rate of at least 75% of residents.
  - c) **On-site TDM Coordinator**  
Include an annual monitoring requirement establishing an average daily trip (ADT) cap of 120 AM peak-hour trips and 146 PM peak-hour trips. The annual monitoring report must demonstrate the project is within 10% of the ADT cap and must be prepared by a traffic engineer.  
If the project is not in conformance with the trip cap, the project may add additional TDM measures to meet the trip cap. A follow up report will be required within six months. If the project is still out of conformance, penalties will be assessed. See Council Policy 5-1.
- ii. This project is subject to the City's US-101/Oakland/Mabury Transportation Development Policy (TDP). The US-101/Oakland/Mabury TDP requires new residential and commercial developments that generate vehicular trips at the Policy Interchanges to pay a Traffic Impact Fee (TIF) towards managing existing traffic congestion at US-101/Oakland Interchange and providing additional traffic capacity in the vicinity. The 2022 TIF is \$43,696 for each project peak hour trip that travels through either the US-101/Oakland or US-101/Mabury Interchanges and is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco. Based on 2022 rate and 7 project PM peak-hour trips, the project's TIF is approximately \$305,872.
- c. **Grand Boulevard:** This project fronts Capitol Avenue which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- d. **Grading/Geology:**
- i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of

- 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
  - v. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
- e. **Shoring:**
- i. Shoring plans **may be** required for review and approval as part of the Grading Permit for this project.
  - ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. All other shoring will not be allowed to encroach more than 12” within the public right-of-way (i.e. soldier beams).
  - iii. If tie-backs are proposed for use along the adjacent properties, agreements between the Applicant and the adjacent property owner(s) will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.
- f. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City’s Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project’s Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.

- g. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- h. **Flood Zone AO, Depths 2':**
- i. Apartments with 3,000 S.F Offices:
    - a) Elevate the lowest floor to 2 feet or more above the existing highest adjacent grade to the proposed structure or floodproof to the same elevation. Floodproofing shall be allowed for mixed-use and non-residential structures only and all residential units must be elevated above the base flood elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
    - b) If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 086-0-34) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
  - ii. Townhouses:
    - a) Elevate the lowest floor to 3 feet or more above the existing highest adjacent grade to the proposed structure (depth of flooding plus 1 additional foot per 2016 CRC).
    - b) Provide flood vent openings for all enclosures below the depth of flooding (ex. crawlspace, at-grade garages). The design must either be certified by a registered professional engineer or meet the following requirements: (1) install flood vent openings on at least two exterior walls/doors of each enclosure to automatically equalize the lateral pressure of the floodwaters; (2) provide a minimum of two vent openings having a total net area of not less than one square inch per one square foot of enclosed area; (3) the bottom of each opening shall be no higher than twelve inches above the exterior adjacent grade.
  - iii. All Structures
    - a) Building support utility systems such as HVAC, electrical, plumbing, including ductwork, and other service facilities must be elevated above the depth of flooding or protected from flood damage.
    - b) Construction materials used below the depth of flooding must be resistant to flood damage or protected from flood damage.
    - c) An Elevation Certificate (FEMA Form 086-0-33) for each proposed structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction is required prior to issuance of an occupancy permit.
  - i. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

- j. **Parks:** This residential project is subject to either the requirements of the City’s Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the “Formula for Dedication of Land” and/or “Schedule of Fees and Credits” contained within in the chapter.
- k. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to North Capitol Ave prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2022 base fee is \$574 per linear foot of frontage and is subject to change every January 31<sup>st</sup> based on the Engineering News Record’s City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
- l. **Environment Assessment of Easement Dedications:** A (Street Easement) easement dedication is required as part of this permit. An environmental assessment of the easement dedication area from an environmental consultant is required prior to recordation of the easement.
- m. **Street Improvements:** Street Improvements for the project will be phased per the following:
  - i. **Parcel A (Apartment Building):**
    - a) Provide a 15’ attached sidewalk with 5’x5’ tree wells along North Capitol Avenue project frontage. This will require an approximate 7’ street easement dedication.
    - b) Provide a 10’ attached sidewalk with tree wells along Penitencia Creek Road project frontage. This will require street dedication of approximately 1’ to 7’ on the north side of Penitencia Creek Road.
    - c) Remove and replace curb, gutter, and sidewalk along Kestral Way project frontage with an ADA compliant 9’ detached sidewalk. This includes a 0.5’ curb, 4.5’ wide park strip, and a 4’ wide sidewalk section.
    - d) Remove and replace handicap ramp at the intersection of North Capitol Avenue and Penitencia Creek Road project corner per City Standard Detail R-11.
    - e) Remove and replace handicap ramp at the Penitencia Creek Road and Kestral Way project corner per City Standard Detail R-10.
    - f) Proposed driveway width along the north side of Penitencia Creek Road to be 24’ wide at the garage entrance and 15’ at the loading area per City Standard Detail R-6.
    - g) Close unused driveway cut(s).
    - h) Install all-way stop control (signing/stripping) at the Penitencia Creek Road and Kestral Way intersection.
    - i) Signal modification to install a new crosswalk along the south leg of the North Capitol Ave/Penitencia Creek Rd intersection. Signal modification for implementation of the 4<sup>th</sup> crosswalk will require a traffic controller upgrade. A signal pole relocation for the new southeast ramp may be required. A CPUC GO-88 approval will be needed.

- j) Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
  - k) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - l) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- ii. **Lots 1-4 (Condominium Units):**
- a) Provide a 15' attached sidewalk with 5'x5' tree wells along North Capitol Avenue project frontage. This will require an approximate 10' street easement dedication.
  - b) Provide a 10' attached sidewalk with tree wells along Penitencia Creek Road project frontage. This will require street dedication of approximately 1' on the south side of Penitencia Creek Road.
  - c) Remove and replace curb, gutter, and sidewalk along Kestral Way project frontage with an ADA compliant 9' detached sidewalk. This includes a 0.5' curb, 4.5' wide park strip, and a 4' wide sidewalk section.
  - d) Proposed driveway width along the south side of Penitencia Creek Road to be 20' wide per City Standard Detail R-6.
  - e) Remove and replace handicap ramp at the intersection of North Capitol Avenue and Penitencia Creek Road project corner per City Standard Detail R-11.
  - f) Remove and replace handicap ramp at the Penitencia Creek Road and Kestral Way project corner per City Standard Detail R-10.
  - g) Proposed driveway widths along Penitencia Creek project frontage to be 20' wide per City Standard Detail R-6.
  - h) Proposed easterly driveway width along Kestral Way project frontage to be 26' wide per City Standard Detail R-5.
  - i) Close unused driveway cut(s).
  - j) Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
  - k) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - l) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- n. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable



Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.

- i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
  - a) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).
  - b) **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- ii. Developer shall minimize the potential impact to vehicular and pedestrian traffic by:
  - a) Implementing the closures at the time the onsite activities dictate the need for the closure.
  - b) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition a.ii above.
- o. **Sanitary:** The project is required to submit plan and profile of the sewer mains with lateral locations for final review and comment prior to construction.
- p. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- q. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb along North Capitol Avenue and Penitencia Creek Road and in the park strip along Kestral Way. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
- r. **Private Streets:** Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.

- s. **Referrals:** This project should be referred to the Santa Clara Valley Transportation Authority (VTA).
35. **Conformance to Mitigation Monitoring & Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development.
36. **Standard Environmental Permit Conditions.** This project shall conform to all applicable Standard Permit Conditions, identified as part of the environmental review process, approved for this development. The following mitigation or avoidance measures are organized by impact category:
  - a. Air Quality:
    - i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
    - ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard
    - iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
    - iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
    - v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
    - vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
    - vii. Replant vegetation in disturbed areas as quickly as possible.
    - viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
    - ix. Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 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.
    - x. 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.
    - xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.
  - b. Biological Resources:
    - i. Any tree to be removed will be replaced with new trees in accordance with the City's Tree Replacement Ratios, as set forth below.

<b>Tree Replacement Ratios</b>				
<b>Circumference of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio  
 Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.  
 A 38-inch tree equals 12.1 inches in diameter.  
 A 24-inch box tree = two 15-gallon trees  
 Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.

- ii. To compensate for the 56 trees to be removed, the following tree replacement will be implemented: 14 trees replaced at a 1:1 ratio, ten trees at a 2:1 ratio, 15 trees at a 3:1 ratio, six trees at a 4:1 ratio, and five trees replaced at a 5:1 ratio. The total minimum number of replacement trees required to be planted would be 130 trees, which will be planted onsite.
- iii. In the event that a project site does not have sufficient area to accommodate the required tree replacement, one or more of the following may 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:
- iv. 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. As demonstrated in Figure 9, all 106 proposed tree plantings would be 24-inch box size, which counts for 212 replacement trees.
- v. Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of grading 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.
- vi. 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.

vii. The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-ScreeningForm?bidId=>? to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

c. Cultural Resources:

- i. 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 (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Commission for the City of San Jose and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 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 PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) 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.

d. Geology and Soils:

*Seismic Hazards*

- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

*Paleontological Resources*

- vi. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) 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 project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or the Director's designee.



e. Hazards:

*Asbestos and Lead-Based Paint*

- 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:

*Construction-related Water Quality*

- 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 required to cover all trucks or 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 knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
  - ix. The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with City of San José Zoning Ordinance.
  - g. Noise: The following noise insulation features shall be incorporated into the proposed project to reduce interior noise levels to 45 dBA DNL or less at residential interiors:
    - i. Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
    - ii. Preliminary calculations indicate that residential units along the eastern building façade of the multi-family residential building and the first row of townhomes would require windows and doors with a minimum rating of 31 to 35 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
    - iii. Preliminary calculations indicate that residential units within 260 feet of the centerline of North Capitol Avenue located along the northern and southern building façades of the multi-family residential building would require windows and doors with a minimum rating of 28 to 31 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL. All remaining units located along these building façades would require adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
    - iv. Preliminary calculations indicate that corner townhome units located in the second and third row buildings set back from North Capitol Avenue would require windows and doors with a minimum rating of 28 to 31 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL. All remaining corner townhomes would require adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
    - v. Interior Noise Standard for Residential Development. The project applicant 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 project applicant 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.
37. **Revocation, Suspension, Modification.** This Permit 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 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

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

**APPROVED** and issued on this 29<sup>th</sup> day of June 2022.

Christopher Burton, Director  
Planning, Building, and Code Enforcement

Deputy,  
Robert Manford

DRAFT