

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT EFFECTS, MITIGATION MEASURES, AND ALTERNATIVES, AND ADOPTION OF A STATEMENT OF OVERRIDING CONSIDERATIONS IN CONNECTION WITH THE APPROVAL OF A GENERAL PLAN TEXT AMENDMENT (APPLICATION FILE NO. GP09-T-01) FOR WHICH A FINAL ENVIRONMENTAL IMPACT REPORT WAS PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, prior to the adoption of this Resolution, the Planning Commission of the City of San Jose certified that the Final Environmental Impact Report for the Ohlone Mixed-Use Project (the "FEIR") was completed in accordance with the requirements of the California Environmental Quality Act of 1970, as amended, together with related state and local guidelines (collectively, "CEQA"); and

WHEREAS, the Ohlone Mixed-Use Project ("Project") requires the City of San Jose ("City") to approve an amendment to the text of the City of San Jose 2020 General Plan in order to amend the Midtown Specific Plan (File No. GP09-T-01, which is sometimes referred to herein as the "General Plan Text Amendment"), which action constitutes a project under CEQA; and

WHEREAS, the Project analyzed and more fully described under the FEIR consists of a General Plan text amendment to change the Midtown Specific Plan Land Use Plan diagram and text in the Mixed Use designation in the Midtown Specific Plan to indicate a density of up to 125 du/ac with a mix of retail and community amenities, and a height limit of 150 feet on the 8.25 –acre site described in the FEIR; and

WHEREAS, the Project also consists of a Planned Development rezoning application (File No. PDC08-061) to allow the construction of a mixed-use project consisting of up to 800 residential units and 30,000 square feet of retail commercial space on 8.25 acres, which rezoning action is not yet before the City Council for consideration, action or decision; and

WHEREAS, the City Council of the City of San Jose is the decision-making body for the Project, including the proposed General Plan Text Amendment; and

WHEREAS, the City Council of the City of San Jose intends to approve actions related to the Project; and

WHEREAS, CEQA requires that in connection with the approval of a project for which an environmental impact report has been prepared which identifies one or more significant environmental effects, the decision-making body of a lead or responsible agency must make certain findings regarding those significant effects on the environment identified in the environmental impact report;

WHEREAS, the City Council of the City of San José desires to make such CEQA findings in connection with taking an action in furtherance of the Project: the proposed General Plan Text Amendment.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ:

THAT THE CITY COUNCIL does hereby find that it has independently reviewed and analyzed the FEIR and other information in the record and has considered the information contained therein (including the written and oral comments received at the public hearings on the FEIR, on the Project, including the General Plan Text Amendment, and in any EIR appeals) prior to acting upon or approving any part of the Project, and has found that the FEIR represents the independent judgment and analysis of the City of San José as Lead Agency for the Project, and designates the Director of Planning, Building and Code Enforcement at his office at 200 East Santa Clara Street, San José, California 95113, as the custodian of documents and records of proceedings on which this decision is based; and

THAT THE CITY COUNCIL does hereby make the following findings with respect to the significant effects on the environment of the Project as it is described in the FEIR:

I. FINDINGS CONCERNING SIGNIFICANT ENVIRONMENTAL EFFECTS

A. AESTHETICS

1. Environmental Effect: The project will change the view of the site.

Mitigation: The mixed-use project design will conform to the City's Midtown Specific Plan, Residential Design Guidelines and Commercial Design Guidelines.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

2. Environmental Effect: All of the existing trees on the site are planned to be removed with the Project

Mitigation: Any tree that is removed will be replaced with the addition of a new tree(s) at the ratios shown in the City's standard Tree Replacement Ratios table. .

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

3. **Environmental Effect:** The mixed-use Project could potentially produce offsite light and/or glare.

Mitigation: Project lighting will conform to the City's Outdoor Lighting Policy (4-3).

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

B. BIOLOGICAL RESOURCES

1. **Environmental Effect:** There are 48 trees (including 1 street tree) on the mixed-use site. There is 1 large street tree and several small sprouts on the park site. All of the trees, none of which is native, are planned to be removed with the Project. Twenty-four (24) of the trees to be removed exceed 18 inches in diameter (56 inches in circumference) and require a permit for removal under the City's Tree Ordinance. The 19-inch-diameter street tree to be removed from the mixed-use site (Tree No. 48) and the 31-inch-diameter street tree to be removed from the park site will require the City Arborist's approval for removal.

Mitigation: Any tree that is removed will be replaced with the addition of a new tree(s) at the ratios shown in the City's standard Tree Replacement Ratios table.

The species and exact number of trees to be planted onsite and/or offsite will be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

Replacement trees are to be above and beyond standard landscaping; required street trees do not count as replacement trees.

In the event the Project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the

development permit stage: 1) The size of 15-gallon replacement tree will be increased to 24" box and count as two (2) replacement trees, 2) An alternative site or sites will be identified for additional tree planting, and alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes, to the satisfaction of the Director of the Department of Planning, Building and Code Enforcement, or 3) A donation of Three Hundred Dollars (\$300) per mitigation tree will be paid to *Our City Forest* or similar organization for in-lieu off-site tree planting in the community.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

2. **Environmental Effect:** The Project site provides potentially suitable habitat for tree-nesting raptors.

Mitigation: Construction should be scheduled between September and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified biologist to identify active raptor nests that may be disturbed during Project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying biologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the biologist, shall, in consultation with the California Department of Fish and Game, designate a construction-free buffer zone (typically 250 feet) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified biologist has determined that the young birds have fledged. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading or building permit.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR **[Less-Than-Significant Impact with Mitigation]**

3. **Environmental Effect:** The Project site provides potentially suitable habitat for bats.

Mitigation: Surveys for roosting bats shall be conducted by a qualified bat biologist no more than thirty (30) days prior to any building demolition or removal, or

construction activities. If no bats are observed to be roosting in these features, then no further action would be required and construction activities could proceed. If a female or maternity colony of bats is found on the Project site, and the Project can be constructed without disturbance to the roosting colony, a qualified bat biologist shall designate buffer zones (both physical and temporal) as necessary to ensure the continued success of the colony; buffer zones may include a 200-foot buffer zone from the roost and/or timing of the construction activities outside the maternity roosting season (after July 31st and before March 1st).

If an active maternity roost is known to occur on the site and the Project cannot be conducted outside of the maternity roosting season, bats shall be excluded after July 31st and before March 1st to prevent the formation of new maternity colonies. Such exclusion shall occur, under the direction of a qualified bat biologist, by sealing openings and providing bats with one-way exclusion doors. Bat roosts shall be monitored as determined necessary by a qualified bat biologist, and the removal or displacement of bats shall be performed in conformance with California Department of Fish and Game requirements.

A biologist report outlining the results of pre-construction bat surveys and any recommended buffer zones or other mitigation shall be submitted to the City's Environmental Principal Planner and shall be approved to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

C. CULTURAL RESOURCES

1. **Environmental Effect:** The Project site is in a potential archaeological resource zone. It is possible that unknown subsurface prehistoric cultural resources exist on the site that would be impacted by disturbances due to grading or trenching activities.

Mitigation: In the unlikely event that evidence of unknown prehistoric cultural resources (darker than surrounding soils containing evidence of fire – ash, charcoal, fire affected rock or earth; concentrations of stone, bone or freshwater shellfish; artifacts of these materials; and burials, both animal and human) is discovered during construction, work within 50 feet of the find will be stopped to allow adequate time for evaluation and mitigation, and a qualified professional archaeologist called in to make an evaluation; the material will be evaluated; and if significant, a mitigation program including collection and analysis of the materials prior to the

resumption of grading, preparation of a report and curation of the materials at a recognized storage facility will be developed and implemented to the satisfaction of the Director of Planning and submitted to the City's Environmental Principal Planner.

A qualified archaeologist shall be retained to inspect the ground surface after buildings on the park site have been removed to search for evidence of prehistoric archaeological deposits; if discovered, the resource shall be evaluated through a program of limited hand excavation and, if determined to be significant, a mitigation program including collection and analysis of the materials prior to the resumption of grading, preparation of a report and curation of the materials at a recognized storage facility shall be developed and implemented to the satisfaction of the Director of Planning and submitted to the City's Environmental Principal Planner.

Findings: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

2. **Environmental Effect:** Native American burials may exist on the site that could be disturbed by grading or trenching activities.

Mitigation: Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California: In the event of the discovery of human remains during construction, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner will be notified by the developer and will make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner will reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

Any Native American human remains that are discovered and would be subject to disturbance will be removed and analyzed, a report will be prepared, and the remains will be reburied in consultation and agreement with the Native American Most Likely Descendant designated by the Native American Heritage Commission. Prior to obtaining a Building Permit, a copy of the report will be submitted to the City's Environmental Principal Planner to the satisfaction of the Director of Planning.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

D. ENERGY

1. **Environmental Effect:** Project development would increase the demand for energy.

Mitigation: Energy efficient design standards including the design and exposure of windows, insulation, mechanical and electrical equipment and landscaping will be incorporated in accordance with the provisions of Title 24 of the California Administrative Code and of the San Jose Building Code.

The Project will be reviewed for conformance to the Green Building Policy at the Planned Development Permit stage.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

E. GEOLOGY AND SOILS

1. **Environmental Effect:** Development of the Project site may subject the soils to accelerated erosion.

Mitigation: A City-approved Erosion Control Plan will be developed and implemented with such measures as: 1) the timing of grading activities during the dry months, if feasible; 2) temporary and permanent planting of exposed soil; 3) temporary check dams; 4) temporary sediment basins and traps and/or 5) temporary silt fences.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

2. **Environmental Effect:** Ground shaking at this site could be caused by moderate to major activity on the active Bay Area faults, which could endanger structures and residents/ occupants on the site.

Mitigation: The proposed structures on the site will be designed and constructed in conformance with the Uniform Building Code Guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking on the site.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

Environmental Effect: The Project site contains areas of potentially liquefiable soils that could adversely impact the performance of the proposed buildings.

Mitigation: A geotechnical report addressing the potential liquefaction hazard will be submitted to, and reviewed and approved by, the City Geologist prior to issuance of a grading permit or Public Works clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC") report.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

4. **Environmental Effect:** The mixed-use site contains hazards associated with the presence of moderately compressible soils; the potential for liquefaction-induced total and differential settlement; the potential for moderately to highly expansive soils; and seismic shaking that could adversely impact the performance of the proposed buildings.

Mitigation: A design-level geotechnical investigation, performed in accordance with the recommendations of the geotechnical feasibility evaluation prepared by TRC, shall be conducted over the entire mixed-use site prior to the Planned Development Permit stage to evaluate potential impacts due to compressible soils, liquefaction, expansive soils, seismic shaking, etc.; and mitigation measures, including site grading requirements, utilization of special foundations and control of drainage, shall be developed and implemented as warranted.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

F. HAZARDS AND HAZARDOUS MATERIALS

1. **Environmental Effect:** The proposed building heights could affect operations at Mineta San Jose International Airport.

Mitigation: A “No-Hazard Determination” will be obtained from the FAA for each building, and any lighting/marketing or subsequent construction notification conditions will be incorporated into the project, by the Planned Development Permit stage.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

2. **Environmental Effect:** The Project site is proximate to the Mineta San Jose International Airport and aircraft may fly over the site.

Mitigation: An aviation easement over the Project site will be dedicated to the City of San Jose at the Planned Development Permit stage.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

3. **Environmental Effect:** There may be an existing water and/or groundwater monitoring well(s) on the Project site that, if no longer needed, should be destroyed prior to Project construction; if not properly destroyed, the well(s) could cause contamination of the groundwater.

Mitigation: If a water and/or groundwater monitoring well(s) is found during grading operations that is no longer needed, a well destruction permit will be obtained from the Santa Clara Valley Water District, and the monitoring well(s) will be destroyed in accordance with District standards and permit conditions.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

4. **Environmental Effect:** If an existing septic system is found on the Project site during grading operations, it should be abandoned prior to Project construction; if not properly abandoned, the septic system could present a hazard to human health.

Mitigation: If a septic system is found during grading operations, it will be abandoned in accordance with the requirements of the Santa Clara County Sewage Disposal Ordinance.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

5. **Environmental Effect:** The Project proposes the demolition of a structure(s) that may contain asbestos-containing materials (ACM), which present a hazard to human health.

Mitigation: The structures to be removed will be surveyed for the presence of asbestos-containing materials at the demolition permit stage; and if any suspect ACM are present, they will be sampled prior to demolition in accordance with NESHAP guidelines, and all potentially friable ACM will be removed prior to building demolition and disposed of by offsite burial at a permitted facility in accordance with NESHAP, Cal-OSHA and BAAQMD requirements.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

6. **Environmental Effect:** The project proposes the demolition of a structure(s) that may contain lead based paint (LBP), which presents a hazard to human health.

Mitigation: The structures to be removed will be surveyed for the presence of lead based paint at the demolition permit stage; and if any suspect LBP is present, it will be sampled prior to demolition, and all potential LBP will be removed prior to building demolition and disposed of by offsite burial at a permitted facility in accordance with EPA and OSHA requirements.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

7. **Environmental Effect:** A pole-mounted transformer is located on the Project site. Although transformer oil is typically not highly toxic or mobile in the environment, transformer oil may contain polychlorinated biphenyls (PCBs), which present a hazard to human health.

Mitigation: If a transformer(s) is to be removed or if leaks are observed, the transformer oil shall be tested for PCBs. If PCBs are detected, a mitigation program shall be developed to the satisfaction of the Environmental Compliance Officer of the City's Environmental Services Department and implemented. The mitigation program may include such measures as soil testing, removal, and/or offsite disposal at a permitted facility.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

8. **Environmental Effect:** Due to the long industrial / commercial history of the Project site, buried structures, debris or impacted soil and/or groundwater may be encountered during the site redevelopment activities; these materials may require special handling and disposal.

Mitigation: Prior to issuance of a Grading Permit, a Soil Management Plan shall be developed for the mixed-use site to the satisfaction of the Environmental Compliance Officer of the City's Environmental Services Department. The Soil Management Plan shall establish practices for managing and handling buried structures, wells, debris and/or impacted soil if these materials/structures are encountered prior to or during demolition and/or site grading. The measures identified in the Soil Management Plan, including special handling and/or disposal measures, shall be implemented as warranted.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

9. **Environmental Effect:** Due to the long history of commercial/ industrial site occupancy by businesses that used or likely used hazardous materials, the potential for hazardous soil gas vapors that could migrate through structures and present a hazard to human health and safety should be evaluated.

Mitigation: The soil gas beneath the mixed-use site shall be sampled and analyzed for petroleum hydrocarbons and volatile organic compounds (VOCs) prior to issuance of a Grading Permit. If sufficiently elevated hydrocarbon and/or VOC concentrations are identified, potential migration of vapors into the new structures shall be mitigated by measures such as vapor barriers and/or active or passive gas collection and venting.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

G. HYDROLOGY AND WATER QUALITY

1. **Environmental Effect:** Construction project development could impact surface water and/or groundwater quality in the area.

Mitigation: Prior to the commencement of any clearing, grading or excavation, the Project will comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the Director of Public Works, as follows:

The applicant will develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities; and

The applicant will file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

The Project will incorporate Best Management Practices (BMPs) into the Project to control the discharge of stormwater pollutants including sediments associated with construction activities.

The Project applicant will comply with the City of San Jose Grading Ordinance, including erosion and dust control during site preparation and with the City of San Jose Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:

Restriction of grading to the dry season (April 15 through October 15) or meet City requirements for grading during the rainy season;

Utilize onsite sediment control BMPs to retain sediment on the Project site;

Utilize stabilized construction entrances and/or wash racks;

Implement damp street sweeping;

Provide temporary cover of disturbed surfaces to help control erosion during construction; and

Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

- 2. Environmental Effect:** Post-construction Project development could impact surface water and/or groundwater quality in the area.

Mitigation: Prior to the issuance of a Planned Development Permit, the applicant must provide details of specific BMPs including, but not limited to, bioswales, disconnected downspouts, landscaping to reduce impervious surface area, and inlets stenciled “No Dumping – Flows to Bay” to the satisfaction of the Director of Planning, Building and Code Enforcement.

The Project will comply with Provision C.3 of NPDES permit Number CAS0299718, which provides enhanced performance standards for the management of stormwater of new development.

The Project will comply with applicable provisions of the following City Policies – 1) Post-Construction Urban Runoff Management Policy (6-29) which establishes guidelines and minimum BMPs for all projects; and 2) Post-Construction Hydromodification Management Policy (8-14) which provides for numerically-sized (or hydraulically-sized) TCMs.

Finding: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

H. NOISE

1. **Environmental Effect:** The residential portion of the Project will be impacted by future traffic noise levels that exceed adopted City exterior standards.

Mitigation: 42-inch-high solid railings shall be constructed at all upper level balconies or decks around the perimeter of the site.

Findings: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

2. **Environmental Effect:** The commercial portion of the Project will be impacted by future traffic noise levels that exceed adopted City exterior standards.

Mitigation: A noise report shall be submitted at the Planned Development Permit stage to the satisfaction of the Director of Planning, Building and Code Enforcement, to identify measures such as, but not limited to, mechanical equipment, commercial operational activities, and limiting hours of operation for delivery; and the measures shall be implemented as warranted during commercial operation.

Findings: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

3. **Environmental Effect:** The residential portion of the Project will be impacted by future traffic noise levels that exceed adopted City and Title 24 interior standards.

Mitigation: Mechanical ventilation will be provided in accordance with Uniform Building Code requirements when windows are to be closed for noise control, to the satisfaction of the Chief Building Inspector.

Windows and sliding glass doors shall be operable and up to STC 36 or higher rated windows and doors shall be installed at all living spaces facing roadways around the perimeter of the site.

All residential units shall be equipped with forced air ventilation systems to allow the occupants the option of maintaining the windows closed to control noise, and maintain an interior noise level of 45 dB DNL.

Prior to issuance of building permits, the developer shall retain a qualified acoustical consultant to check the building plans for all residential units to ensure that interior noise levels will be attenuated to 45 dB DNL to the satisfaction of the Director of Planning, Building and Code Enforcement.

Findings: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

4. **Environmental Effect:** Buildings on the mixed-use site will be subject to ground-borne vibration from passing light rail and/or freight trains.

Mitigation: A vibration assessment shall be conducted at the Planned Development Permit stage and measures to achieve acceptable ground-borne vibration levels will be incorporated into the Project to the satisfaction of the Director of Planning.

Findings: Changes or alterations have been required in, or incorporated into, the Project which will avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less-Than-Significant Impact with Mitigation]**

I. TRAFFIC

1. **Environmental Effect:** Project traffic will have an adverse impact on two peak hour directional freeway segments.

Mitigation: The Project shall implement TDM measures from the CMP TIA Guidelines, including measures such as bike lockers, racks and facilities at transit centers; bike storage at residential developments; improve roadside bicycle facilities; improve pedestrian facilities; bus stop improvements; TDM programs and public information programs; and HOV parking preference program to the satisfaction of the Director of Public Works.

A contribution toward the future San Carlos LRT Station shall be made with the Project.

Any missing sidewalk between the Project site and the existing Diridon LRT Station to the north shall be constructed.

Findings: The identified mitigations would reduce the Project's impact to the identified freeway segments, however, there is no feasible mitigation to reduce freeway segment impacts to a less than significant level. Mitigation of significant project impacts on freeway segments would require roadway widening to construct additional through lanes. It is not feasible for an individual development project to bear responsibility for implementing such extensive transportation system improvements. **[Significant and Unavoidable Impact]**

J. CUMULATIVE TRAFFIC IMPACTS

1. **Environmental Effect:** Traffic generated by proposed and recently-approved projects will result in significant cumulative traffic impacts identified in the FEIR. The contribution of the Project to this significant cumulative impact to four peak hour directional freeway segments will be considerable.

Mitigation: Given the magnitude of the cumulative traffic impacts described in the FEIR, there is no feasible mitigation for this impact beyond that already included in the Project. Mitigation of significant cumulative impacts on freeway segments would require roadway widening to construct additional through lanes. It is not feasible for an individual development project to bear responsibility for implementing such extensive transportation system improvements. The already identified mitigations for freeway segment impacts would reduce the Project's contribution to the cumulative impact to the freeway segments; however, there is no feasible mitigation to reduce cumulative freeway segment impacts to a less than significant level due their extensive nature.

Finding: The identified mitigations would reduce the Project's contribution to the impacts to the identified freeway segments; however, there is no feasible mitigation to reduce cumulative freeway segment impacts to a less than significant level. Mitigation of significant cumulative impacts on freeway segments would require roadway widening to construct additional through lanes. It is not feasible for an individual development project to bear responsibility for implementing such extensive transportation system improvements. **[Significant and Unavoidable Impact]**

2. **Environmental Effect:** Traffic generated by proposed and recently-approved projects will result in significant cumulative traffic impacts at the Meridian Ave/W. San Carlos intersection, which is a Protected Intersection under the City of San Jose Transportation Level of Service Policy. The contribution of the Project to this significant cumulative impact will be considerable.

Mitigation: As a protected intersection, the Meridian Avenue/West San Carlos intersection has been identified as an intersection that has been built out to its planned maximum capacity. Therefore, there is no feasible mitigation for this cumulative impact; however, the Project will be responsible for constructing offsetting improvements to facilitate other modes of transportation in the vicinity in conformance with City policy.

Finding: Specific policy considerations embodied in the City's Protected Intersection Policy under the City of San Jose Transportation Level of Service Policy make infeasible the mitigation measures or project alternatives identified in the FEIR. **[Significant and Unavoidable Impact]**

II. FINDINGS CONCERNING ALTERNATIVES

An EIR must describe a range of reasonable alternatives to the project, or the location of the project, which would feasibly obtain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant environmental effects of the project. The decision-maker may reject the alternative if it determines that specific considerations make the alternative infeasible. The findings with respect to alternatives identified in the FEIR are described below.

A. NO PROJECT ALTERNATIVE

If the Project does not proceed, the westerly portion of the site probably would remain vacant while the light industrial uses on the easterly portion would remain for an unknown length of time. The site could remain developed with the existing uses.

Environmental Effects Compared to the Project: This would avoid all of the proposed Project's significant impacts. Overall, the No Project Alternative (assuming the continued use of the existing onsite uses) would be environmentally superior to the Project because it would avoid all environmental impacts of the Project.

Finding: The No Project Alternative does not achieve any of the Project objectives. Therefore, the No Project Alternative is infeasible.

B. REDUCED PROJECT ALTERNATIVE

The Reduced Project alternative would be the development of approximately 600 residential units and 30,000 square feet of retail commercial space or 400 residential units and 200,000 square feet of retail commercial space.

Environmental Effects Compared to the Project: The Reduced Project Alternatives would reduce the Project's impact on the two Level F freeway segments: 1) SR 87 – I-280 to Julian Street, NB a.m. and 2) SR 87 – Julian Street to I-280, SB p.m. to less than one percent of the freeway capacity and would no longer be considered significant. These alternatives would reduce, but not eliminate, the cumulative impact to the intersection of Meridian Avenue and W. San Carlos Street. The height of the buildings for a 400- to 600-unit project would be reduced to approximately 7 to 10 stories, which would be closer, but still a couple to several stories higher than, those buildings in the surrounding area.

Finding: Large-scale commercial development would require a minimum of 5 parking spaces per 1,000 net square feet of commercial space, which would result in 2,000 total parking spaces for 200,000 square feet of commercial space. The development of 400 residential units would, thus, be financially infeasible because large parking requirements for retail/commercial use with the need for additional parking, both underground and garage level, would produce escalated construction costs. In addition, the site contains a high groundwater table that would result in additional environmental and construction constraints.

Absorption for retail and commercial development is limited due to high vacancy throughout Midtown. A recent market survey assessing retail and commercial feasibility at the Project site concludes that the Project could "absorb" only 12,000 square feet of neighborhood-serving retail, and that commercial development for the foreseeable future is also infeasible due to high vacancy in the Downtown.

The Reduced Project alternative would not meet the Project objectives of providing up to 800 transit-oriented residential units on the site and would not be financially feasible.

For the reasons stated above, the Reduced-Scale Alternative is infeasible.

C. CURRENT MIDTOWN SPECIFIC PLAN HEIGHT PROJECT ALTERNATIVE

The Current Midtown Specific Plan Height Project alternative would be development under the current Midtown Specific Plan requirements of 90-foot height limit and setbacks as identified in the current Midtown Specific Plan. The buildings would be 6 to 7 stories with one 8-story building along Auzerais Avenue to accomplish the proposed 800 units.

Environmental Effects Compared to the Project: This alternative would have the same freeway and intersection impacts as the proposed Project and would not reduce or eliminate any unavoidable significant impacts.

Finding: This Alternative is not environmentally superior to the proposed Project.

D. LOCATION ALTERNATIVES

1. San Jose Water Land Company – Delmas Avenue Site

The San Jose Water (SJW) Land Company - Delmas Avenue site is an 8.8-acre site located near the Midtown Specific Plan Area. This site is located near the proposed BART route, and is adjacent to the Vasona Corridor Light Rail Transit line and station. Dedication and development of the 3.99-acre addition to Del Monte Park could be part of this alternative.

Environmental Effects Compared to the Project: Portions of this alternative site are within the 65 dB CNEL noise contour, and land uses would be exposed to excessive noise levels. The SJW Land Company site is located adjacent to the east bank of Los Gatos Creek and the west bank of the Guadalupe River. Development of this site would have potential impacts to biological resources, water quality and buried cultural resources during construction that the proposed mixed-use Project site would not have.

Soil and groundwater contamination has been reported on the SJW Land Company site. Like the proposed Project, potential impacts to future residents can be reduced to a less-than-significant level with proper treatment and disposal of contaminated soil and groundwater.

Finding: Although the alternative site would allow for residential and commercial uses, it would not be large enough to accommodate the proposed land uses. The site is designated for General Commercial use and may allow development of up to 65 dwelling units per acre under the Discretionary Alternate Use Policies. This site could accommodate a high density residential development near a transit site; however, it would not allow for development of a similar number of units unless housing was built east of Delmas Avenue, which would expose residences to unacceptable noise levels. Development of this site would also result

in transportation impacts. This alternative location, therefore, would not substantially reduce the significant impacts of the Project and is not feasible for failure to achieve basic Project objectives.

2. Reed and Graham, Inc. Site

The 15.6-acre Reed and Graham, Inc. site is located south of the proposed Project at the end of Sunol Street. The Mixed Use General Plan designation on the site would allow up to 675 multi-family residential units and up to 625,000 square feet of office development. This site is within 2,000 feet of the planned San Carlos LRT station.

Environmental Effects Compared to the Project: This site is located closer to I-280, a major source of traffic noise; and there could be greater noise impacts associated with traffic noise. Like the proposed Project, potential interior noise impacts could be mitigated by the incorporation of acoustical treatments, such as sound-rated windows and doors, in building design and construction.

Because of the existing and historic uses of the site, hazardous materials contamination could be present on the site. It is anticipated that these impacts could be reduced to a less-than-significant level with standard remediation measures.

At this location, tall buildings would be closer to, and very visible from, I-280. Dedication and development of the 3.99-acre addition to Del Monte Park could be part of this alternative.

Finding: This alternative site could meet the Project objective of developing 800 residential units and 30,000 square feet of retail commercial space. However, the site location alternative is not environmentally superior and would not meet the Project objective of development within the Midtown Specific Plan Area, and the property is not under the control of the applicant and is therefore infeasible to accomplish the Project objectives.

III. STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to California Public Resources Code § 21081 and CEQA Guidelines § 15093, the City Council of the City of San José adopts and makes the following Statement of Overriding Considerations regarding the remaining significant and unavoidable impacts of the Project and the anticipated economic, social, and other benefits of the Project.

A. SIGNIFICANT UNAVOIDABLE IMPACTS

With respect to the foregoing findings and in recognition of those facts that are included in the administrative record, the City has determined that the Project would cause significant and unavoidable impacts, as set forth above, including the following:

1. Project-specific impacts to two freeway segments.
2. A cumulatively considerable contribution to cumulative traffic impacts at the Meridian/W. San Carlos intersection.
3. A cumulatively considerable contribution to cumulative traffic impacts to four freeway segments.

These impacts cannot be mitigated to a less than significant level by feasible changes or alterations to the Project for the reasons noted above.

B. OVERRIDING CONSIDERATIONS

Despite the existence of significant adverse impacts that have not been mitigated to below the level of significance, the City Council has balanced the benefits of the Project against these significant and unavoidable environmental effects. Pursuant to this balancing, the City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant and unavoidable impacts of the Project are acceptable in light of the economic, legal, environmental, social, technological or other considerations set forth herein because these benefits of the Project outweigh the significant and adverse impacts of the Project.

The City Council hereby finds that each of the economic, legal, social, technological or other benefits listed below constitutes a separate and independent basis of justification for the Statement of Overriding Considerations, and each is able to independently support the Statement of Overriding Considerations and override the significant and unavoidable environmental effects of the Project. In addition, each benefit is independently supported by substantial evidence contained in the administrative record.

C. BENEFITS OF THE PROPOSED PROJECT

The City Council has considered the FEIR, the public record of proceedings on actions related to the proposed Project and other written materials presented to the City, as well as oral and written testimony at all hearings related to the Project, and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:

1. The Project will support the General Plan's Economic Development Major Strategy, as the Project will allow for revitalization of industrial areas surrounding the economically vital Downtown.
2. The Project will support the General Plan's Growth Management Major Strategy, as the Project will facilitate compact development and would help avoid the need for the delivery of costly City services at the edge of the City.
3. The Project will support the General Plan's Housing Major Strategy, as the changes will maximize the provision of high density infill housing within the Urban Service Area and near transit facilities.
4. The Project will support the General Plan's Sustainable City Major Strategy, as the Project will locate development in an infill location, supporting cooperative/regional efforts to improve air and water quality and conserve resources.
5. The Project will support the General Plan's Residential Land Use Policy No. 22, as the changes encourage the creation of a well-designed streetscape with integrated retail development towards planned and existing transit stops.
6. The Project will provide additional ridership to support existing and planned transit.
7. The Project will construct offsetting improvements to the Citywide transportation system, thereby providing substantial additional benefit to the community by improving the overall multi-modal transportation system in the area. Building such improvements will contribute substantially to achieving General Plan goals for improving and expanding the City's multi-modal transportation system, and, therefore, the Project is consistent with the City's General Plan multi-modal Transportation Policies, including the Traffic LOS Policy.

D. CONCLUSION

The City Council has weighed the above benefits of the proposed Project against its significant and unavoidable environmental effects identified in the FEIR and hereby determines that each of these benefits outweighs those adverse environmental effects and, therefore, further determines that these significant and unavoidable environmental effects of the Project are acceptable.

ADOPTED this day of , 2009, by the following vote:

AYES:

NOES:

RD:RG
12/1/09

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk