

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS REGARDING ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES, APPROVAL OF MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE PLANNED DEVELOPMENT REZONING FOR THE MIRASSOU MIXED USE DEVELOPMENT PROJECT FOR WHICH AN ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED.

WHEREAS, the City of San José ("City"), as lead agency under the provisions of the California Environmental Quality Act, has prepared and completed the Final Environmental Impact Report ("Final EIR") for the Mirassou Mixed Use Development Project ("Project"), and the Final EIR has been assigned State Clearinghouse No. 2010082052; and

WHEREAS, a Draft Environmental Impact Report ("Draft EIR") was completed and released for public and agency review on September 23, 2010. The Draft EIR assesses the potential environmental effects of implementation of the Project, identifies means to eliminate or reduce potential adverse impacts, and evaluates a reasonable range of alternatives to the Project. The Final EIR comprises the Draft EIR together with the First Amendment to the Draft EIR, an additional volume that includes the comments on the Draft EIR submitted by interested public agencies, organizations and members of the public, written responses to the environmental issues raised in those comments, amendments to the text of the Draft EIR reflecting changes made in response to comments and other information, and other minor changes to the text of the Draft EIR; and

WHEREAS, prior to the adoption of this Resolution, the Planning Commission of the City of San José certified that the Final EIR for the Project was completed in accordance with the requirements of the California Environmental Quality Act and related state and local guidelines implementing that Act (collectively, "CEQA"); and

WHEREAS, the Project as a whole requires City approval of a General Plan Amendment and Planned Development (PD) Rezoning; and

WHEREAS, CEQA requires that, in connection with the approval of a project for which an EIR has been prepared which identifies one or more significant environmental effects, the decision-making body make certain findings and determinations regarding those effects.

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NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

THAT THE CITY COUNCIL does hereby find and certify that the Final EIR has been prepared and completed in compliance with CEQA. In making this certification, this Council further certifies that it has independently reviewed and considered the Final EIR and other information in the record prior to acting upon or approving the Project, and has found that the Final EIR represents the independent judgment of the City of San José as Lead Agency for the Project; and

THAT THE CITY COUNCIL does hereby make the following findings with respect to the significant effects on the environment of such Project, as identified in the Final EIR, with the stipulations that all information in these findings is intended as a summary of the full administrative record supporting the Final EIR, which full administrative record should be consulted for the full details supporting these findings; and

THAT THE CITY COUNCIL does hereby adopt and impose the mitigation measures set forth in Exhibit A to this Resolution, the Mitigation Monitoring and Reporting Program, as conditions of approval of the Project; and

THAT THE CITY COUNCIL does hereby approve and adopt the entire Mitigation Monitoring and Reporting Program for the Mirassou Mixed Use Project.

FINDINGS

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS

A. INTRODUCTION

These CEQA findings are adopted by the City Council of the City of San Jose as lead agency for the Mirassou Mixed Use Project. The Environmental Impact Report prepared and completed for the Mirassou Mixed Use Project is also sometimes identified as State Clearinghouse # 2010082052.

These CEQA findings are adopted in connection with the adoption of a resolution approving certain amendments to City's General Plan 2020 under and including City File Nos. **GP09-08-05/GPT09-08-05** and an ordinance approving a certain rezoning of the Project site under File No. **PDC10-001**, which approvals allow for a change to the San Jose 2020 General Plan Land Use/Transportation Diagram land use designation on the Project property from *Village Center* and *Public Park/Open Space* to *Village Center* and a General Plan text amendment to increase the residential

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cap in the Evergreen Specific Plan from 3,031 to 3,181 units, as well as, a Planned Development Rezoning from A(PD) Planned Development to A(PD) Planned Development to allow the following mixed-use development on the Project site: (1) up to 150 residential units, (2) up to 75,000 square feet of commercial retail uses, and (3) up to 25,000 square feet of office uses.

B. ENVIRONMENTAL REVIEW OF THE PROJECT

Pursuant to the provisions of CEQA, the City determined that an environmental impact report would be prepared for the Project. The City issued a Notice of Preparation, which was circulated to responsible agencies and interested groups and individuals for review and comment. The Draft EIR was prepared for the Mirassou Mixed Use Project to analyze its environmental effects. The Draft EIR was circulated for public review and comment from September 23, 2010 to November 18, 2010.

The City received approximately nineteen comments on the Draft EIR. Working with its environmental consultants, Denise Duffy and Associates, the City prepared responses to all comments raising environmental issues. The responses describe the disposition of significant environmental issues raised by the comments and make some minor changes and additions to the Draft EIR in response to comments received. The comments, responses to comments, changes to the Draft EIR and additional information are included in a First Amendment to the Draft EIR which was completed and made available to the public on November 19, 2010. The Draft EIR, the First Amendment to the Draft EIR, and all the appendices to the EIR comprise the Final EIR referenced in these findings as the "EIR" or the "Final EIR." The Final EIR is fully incorporated in this document by reference as if fully set forth herein.

The Planning Commission held a hearing on the Project and on the Final EIR on December 1, 2010. During these hearings, members of the public had the opportunity to submit comments and express their concerns and interest about the Project and the Final EIR.

In making these findings, the City Council recognizes that the environmental analysis of the Project raises several controversial environmental issues, and that a range of technical opinions may exist with respect to those issues and that there are differing and conflicting expert and other opinions regarding the Project, its impacts, and the feasibility of reducing or avoiding those impacts. These differences of opinion and expert opinion relate to the methodologies the EIR employed and the historical significance of buildings on the Project site, among other issues. The City Council has, by its review of the evidence and analysis presented in the Final EIR, and other evidence in the record, acquired an understanding of the breadth of this technical opinion and of the scope of the environmental issues presented by the Project. In turn, this understanding has enabled the City to make informed, carefully considered decisions after taking account of the various viewpoints on these important issues. These findings are based on a full appraisal of all viewpoints expressed in the EIR and

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in the record as well as other relevant evidence in the record of proceedings for the Project.

C. THE RECORD

The record upon which all findings and determinations related to the Project and the Final EIR are based includes the following:

- a. The Final EIR, and all documents referenced in or relied upon by the Final EIR.
- b. All information (including written evidence and testimony) provided by City staff to the Planning Commission and the City Council relating to the Final EIR or the proposed approvals for the Project.
- c. All information (including written evidence and testimony) presented to the Planning Commission or the City Council by the environmental consultant and sub-consultants who prepared the Final EIR, or incorporated into reports presented to these Commissions or the Council.
- d. All information (including written evidence and testimony) presented to the City by other public agencies relating to the Final EIR or the Project.
- e. All applications, letters, testimony and hearing presentations given by any of the Project sponsors or their consultants to the City in connection with the Project.
- f. All information (including written evidence and testimony) presented to the City by members of the public relating to the Final EIR or the Project.
- g. For documentary and information purposes, all City-adopted land use plans and ordinances, including, without limitation, general plans, specific plans, and ordinances.
- h. The Mitigation Monitoring and Reporting Program for the Project.
- i. All other documents comprising the record of proceedings pursuant to Public Resources Code section 21167.6(e).

These findings are based upon the evidence in the entire record of the City's proceedings relating to the Project. The City concludes that all the evidence supporting

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these findings was presented in a timely fashion, and early enough to allow adequate consideration by the City. Some findings are based on specific references, as noted below. References to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings. The reference to certain parts of the EIR set forth in these findings are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

The custodian of the documents and other materials that constitute the record of proceedings on which the City's decision is based is the Director of Planning, Building and Code Enforcement, or designee. Such documents and other materials are located at 200 East Santa Clara Street, San José CA 95113-1905.

D. CERTIFICATION OF THE EIR

In accordance with CEQA, the City Council has, by the foregoing resolution, certified that the EIR has been completed in compliance with CEQA, that the EIR was presented to the City Council as the decision-making body and that the members of the City Council reviewed and considered the information contained in the EIR prior to taking action on the Project. Preparation of the EIR has been overseen by the Director of the Department of Planning, Building and Code Enforcement, who also participated in its preparation. The City Council finds and determines that the conclusions and recommendations in the document represent the independent conclusions and recommendations of the City and that the EIR and these findings represent the independent judgment and analysis of the City. By these findings, the City Council confirms, ratifies and adopts all of the findings and conclusions of the EIR, except as they may be specifically modified by these findings.

The City Council recognizes that the EIR may contain clerical errors. The City Council has reviewed the entirety of the EIR and bases its determinations on the substance of the information it contains.

By adopting these findings, the City Council certifies that the EIR is adequate to support the review and approval of the Project and that it is adequate for each discretionary approval or other entitlement or approval required for construction and operation of the Project.

E. ABSENCE OF SIGNIFICANT NEW INFORMATION

The City Council recognizes that the EIR incorporates information obtained and produced after the Draft EIR was completed, and that it contains additions, clarification, and modifications. The City Council has reviewed and considered the information in the Final EIR and City Council finds and determines that neither the Final EIR, nor any of these modifications, adds significant new information to the Draft EIR that would require recirculation of the EIR under CEQA. No information has revealed the existence of (1) a significant new environmental impact that would result from the Project or an adopted mitigation measure; (2) a substantial increase in the severity of an environmental

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impact; (3) a feasible project alternative or mitigation measure not adopted that is considerably different from others analyzed in the Draft EIR that would clearly lessen the significant environmental impacts of the Project; or (4) information that indicates that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR. The City Council further finds and determines that the changes and modifications made to the Project and to the EIR after the Draft EIR was circulated for public review and comment do not collectively or individually constitute significant new information within the meaning of Public Resources code section 21092.1 or CEQA Guidelines section 15088.5.

F. MITIGATION MEASURES AND MMRP

As set forth in this resolution, the City Council has adopted the Mitigation Measures described in Exhibit A as conditions of approval of the Project.

The mitigation measures comprise the measures necessary to avoid or reduce significant impacts where it is feasible to do so. The mitigation measures incorporated into and imposed upon the Project will not have new significant environmental impacts that were not analyzed in the EIR.

It is the City's intent to adopt all mitigation measures recommended by the EIR. In the event a mitigation measure recommended by the EIR has been inadvertently omitted from Exhibit A or the Mitigation Monitoring and Reporting Program ("MMRP"), that mitigation measure is hereby adopted and incorporated from the EIR into those documents by reference and adopted as a condition of approval.

Public Resources Code section 21081.6, and CEQA Guidelines section 15097 require the City to adopt a monitoring or reporting program to ensure that the mitigation measures and revisions to the Project identified in the EIR are implemented. By the foregoing resolution, the MMRP has been adopted by the City Council. The City Council hereby finds and determines that the MMRP satisfies the requirements of CEQA.

The mitigation measures recommended by the EIR as reflected in the conditions of approval are specific and enforceable. As appropriate, some mitigation measures define performance standards to ensure no significant environmental impacts. The MMRP adequately describes conditions, implementation, verification, a compliance schedule and reporting requirements to ensure the Project complies with the adopted mitigation measures. The MMRP ensures that the mitigation measures are in place, as appropriate, throughout the life of the Project.

The mitigation measures set forth in Exhibit A and the corresponding conditions of approval are based upon the mitigation measures set forth in the DEIR.

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G. FINDINGS REGARDING ENVIRONMENTAL IMPACTS

In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the City hereby adopts the findings and conclusions set forth in the EIR regarding the environmental impacts that will result for the Project and also adopts the findings and conclusions regarding the effect of mitigation measures in reducing or avoiding such impacts. The City hereby ratifies, adopts and incorporates the analysis, explanation, findings, responses to comments, and conclusions of the EIR as they may be augmented or specifically modified by these findings. These findings do not repeat the full discussions of environmental impacts contained in the EIR; the EIR's discussions and the potential environmental impacts of the Project, the significance of those impacts prior to mitigation, the mitigation measures for those impacts, and the significance of the environmental impact with mitigation are summarized in Exhibit A.

As set forth in Exhibit A, all environmental impacts of the Project are less-than-significant, or will be mitigated to a less-than-significant level by the mitigation measures adopted as conditions of approval, except for the following: the project would contribute to long-term cumulative transportation impacts in the Evergreen area, and the proposed Project would result in cumulative air quality impacts in terms of consistency with the Clean Air Plan and in terms of cumulative contribution to regional air quality pollutant emissions.

Under Public Resources Code section 21081(a)(3) and (b) and CEQA Guidelines sections 156091(a)(3), 15092(b)(2)(B), the City Council determines that these significant effects on the environment will not be mitigated to a less than significant level through mitigation measures and further finds that the significant impacts that will occur are acceptable due to the overriding considerations described in part J below.

H. FINDINGS RELATING TO ALTERNATIVES

1. Findings Regarding Discussion and Analysis of Alternatives in the EIR

The EIR evaluates a range of potential alternatives to the proposed Project. The EIR examines the environmental impacts of each alternative in comparison with the proposed Project and the relative ability of each alternative to satisfy Project objectives. The discussion and analysis of alternatives in the Draft EIR is augmented by a further discussion of alternatives in the Responses to Comments section of the First Amendment to the Draft EIR. That discussion provides additional information about the range of alternatives examined in the Draft EIR, further describes the relationship between alternatives examined in the Draft EIR and Project objectives, and addresses several variations on the alternatives that were suggested in comments on the Draft EIR.

The City Council finds that the range of alternatives analyzed in the EIR reflects a reasonable attempt to identify and evaluate various types of alternatives that would

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potentially be capable of reducing the proposed Project's environmental effects, while accomplishing most but not all of the Project objectives. The City Council further finds that the EIR evaluated a reasonable range of alternatives to the Project and that the alternatives analysis is sufficient to inform the City and the public regarding the tradeoffs between the degree to which alternatives to the proposed Project could reduce environmental impacts and the corresponding degree to which the alternatives would implement goals and objectives for redevelopment and reuse of the site, as reflected in City policies. By these findings, the City adopts the EIR's analysis and conclusions regarding alternatives eliminated from further consideration, both during the scoping process and in response to comments.

In making these findings, the City Council certifies that it has independently reviewed and considered the information on alternatives provided in the EIR, including the information provided in comments on the Draft EIR that proposed other options for development of a residential project, and the responses to those comments in the Final EIR. The discussion and analysis of these alternatives is not repeated in these findings, but the discussion and analysis of the alternatives in the EIR is incorporated in these findings by reference.

In making these findings relating to alternatives, the City Council finds and determines that all the evidence supporting the findings set forth below was presented in a timely fashion, and early enough to allow adequate consideration by the City.

2. Overview of The City's Findings Relating to Alternatives

The EIR describes and evaluates three alternatives to the proposed Project. Most of these alternatives offer one or more environmental advantages in comparison with the proposed Project in terms of their ability to reduce or avoid significant impacts. As set forth above, the City has adopted mitigation measures that substantially mitigate the significant environmental effects of the proposed Project. As explained in Section G of these findings, these mitigation measures will mitigate most, but not all, Project impacts to a less-than-significant level. The City Council finds that Project impacts will be mitigated to a level that the City finds is acceptable.

As explained in more detail below, the City Council finds that the Project should be approved instead of one of the alternatives to it because, in comparison with the alternatives, the Project best implements City goals, policies and programs and, unlike the alternatives, has the ability to be successfully accomplished within a reasonable period of time taking account of environmental, economic, social, technological and other relevant factors. The collection of attributes presented by the Project thus comprises a reasonable accommodation of the social, economic and environmental interests at stake.

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3. Project Objectives

The overall goal of the Project is to provide new development or redevelopment of underutilized land and structures consistent with and in furtherance of the City's General Plan policies and its goals and strategies for housing and commercial development. To implement such City policies, goals and strategies, the Project applicant's objectives include, among others, the following:

- Develop a residential project that meet goals for a high quality design, including:
 - a safe and attractive project with a distinctive character;
- Reinforce the viability of commercial uses within the Evergreen Village Center, through the addition of commercial uses along Ruby Avenue;
- Maintain the viability of historic resources, including the Historic Winery Building and the Heritage House, on the Mirassou Project Site.

In considering whether to approve the Project, the City deems the Project applicant's objectives and goals subordinate to the City's goals, policies and objectives relevant to the site, as those goals are described in the EIR. The ability of the proposed Project or alternative to achieve the applicant's objectives is not controlling, and is largely relevant to the analysis set forth below to the extent the applicant's objectives are compatible with and implement City goals, policies and objectives relevant to reuse of the site.

4. Discussion and Findings Relating to Feasibility of Alternatives Evaluated In The EIR

As explained below, the City Council finds the various alternatives to be infeasible. In making these findings, the City Council notes that the determination whether a proposal is feasible involves a determination of whether it is capable of being successfully accomplished within a reasonable period of time, taking into account environmental, economic, legal, social, technological and other relevant factors. A key factor is the degree to which the Project and alternatives to the Project will implement relevant City goals and policies.

The City Council finds that when looked at as a whole, and considering the benefits presented by the Project together with its potential environmental impacts, the Project as conditioned and mitigated offers a reasonable and desirable means for achieving important City goals, policies and objectives including, among others, redevelopment and reuse of a vacant and underutilized site; enhancing the appearance of the site and its compatibility with the surrounding neighborhood; preservation of two historic buildings; and bringing additional private investment into this area of the City to help

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reinvigorate the Evergreen Village Center. The Project comprises a feasible and reasonable method of achieving these City goals, policies and objectives while offering benefits to the public that would not otherwise occur in the absence of the Project. As explained in more detail below, the City Council finds that the alternatives to the Project will not achieve these important City objectives to the same degree as the proposed Project. Further, as explained in the findings for each alternative below, unlike the Project, some of the alternatives would impede achievement of City policies and objectives relating to land use density, compatibility and neighborhood design.

The City Council further finds that the Project, as proposed, can feasibly be successfully accomplished in a reasonable period of time. The Project is proposed by an experienced Project applicant who has indicated an interest, backed up by a substantial investment in processing the Project applications and the EIR, in pursuing development of the Project within a reasonable time frame.

The City Council therefore finds that the reduced scale alternatives for the site are not feasible because they provide less assurance that the important policies and objectives discussed above (and further discussed in section I below) will be achieved.

Further factual findings relating to each alternative are set forth below.

No Project Alternative. Under CEQA, a “No Project Alternative” compares the impacts of proceeding with the proposed project with the impacts of not proceeding with the proposed project. A No Project Alternative describes the environmental conditions in existence at the time the Notice of Preparation was published, along with a discussion of what would be reasonably expected to occur at the site in the foreseeable future, based on current plans and consistent with available infrastructure and community services.

The No Project Alternative analyzed in the EIR represents the baseline scenario.

This alternative would avoid the proposed Project’s impacts related to demolition and construction, which includes impacts to trees, special status species, buried archaeological resources, and risks from the releases of hazardous materials in on-site soils and structures. The No Build scenario would avoid the generation of additional traffic to the site.

The No Project Alternative would eliminate the site-specific environmental effects of the proposed Project; however, this alternative would not satisfy any of the City’s Project Objectives other than neighborhood preservation objectives of the General Plan, and would not satisfy any applicant objectives nor provide the benefits of the Project described in Section I. This scenario could also extend the timeline for adaptive re-use and restoration of the two historic structures on site.

Alternative # 2: This alternative would retain the current *Village Center* and *Public Park/Open Space* land use designations in the City’s General Plan. The two historic

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structures on the site, the Mirassou Winery Building, and the Heritage House, would be retained.

This alternative would have similar environmental impacts. This alternative would result in the creation of park land or similar on approximately one third of the project site. This could eliminate most physical effects of the proposed project on this portion of the property, including grading activities resulting in the removal of trees and potential disturbance of buried archaeological resources. By reducing development potential on a third of the site, the overall impacts of the project could be reduced accordingly, although all physical impacts of the project as proposed can be mitigated by identified measures.

Development on the portion of the site currently designated *Village Center* would require demolition, clearing, and other physical environmental effects similar to the project, including potential impacts to trees, special status species, buried archaeological resources, and risks from the release of hazardous materials in onsite soils and structures. This would also result in short-term noise and air quality impacts during construction.

Under the *Village Center* designation, allowable uses could include a variety of retail and residential uses. The Evergreen Specific Plan encourages residential development that accommodates ground-floor commercial uses, but other residential types are also allowed. The configuration and mix of uses would depend on future market demands and developer preferences, but could include condos, townhouses, or retail centers. Development of higher intensity commercial uses could create greater traffic impacts in the area than a mix favoring residential uses, since commercial uses generate a higher number of vehicle trips. Larger traffic volumes could also increase traffic-related air pollutant emissions. In addition, if future residential uses were developed under the *Village Center* designation, they would be exposed to potentially significant noise impacts from nearby sources, similar to the proposed project.

This alternative would result in comparable cumulative traffic and air quality impacts as the proposed Project, which impacts are due in large part to build-out of the Evergreen area and City of San Jose.

The Build-out of Existing General Plan scenario would reduce impacts in the portion of the site currently designated for *Public Park/Open Space* uses. This could result in an overall reduction in impacts. Buildout on the portion of the Project site currently designated for *Village Center* use would result in development and impacts comparable to the Project. This alternative may provide a development scheme that is more in alignment with the vision in the Evergreen Specific Plan.

This alternative would not meet the applicant's goals of developing the entire 15-acre site with urban uses. In addition, the City is not able to purchase any portion of the property for park uses at this time, nor is any other entity in a position to make a market-

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value offer on the property, making this alternative economically infeasible for the applicant.

Reduced Project Alternative: The purpose of the alternatives analysis per CEQA is to evaluate alternate scenarios that would reduce the significant impacts of the proposed action. In order to meet the requirements of CEQA, the Reduced Project is presented to evaluate and compare this less-intensive development scenario. The Reduced Project consists of reducing the overall development on the site by approximately 25%. This would result in the development of a maximum of approximately 112 residential units, 37,500 square feet of retail use, and 18,000 square feet of office use. This alternative assumes preservation of the two historically significant buildings on the site.

The Reduced Project Alternative would require demolition, clearing, and other physical environmental effects similar to the Project, including potential impacts to trees, special status species, buried archaeological resources, and risks from the release of hazardous materials in onsite soils and structures. This alternative would also result in short-term noise and air quality impacts during construction. Given that the majority of the Project site would still require some type of disturbance, these impacts would be comparable or slightly less than the Project. The decrease in development would reduce demands on public services and utilities; however, these were not identified as significant impacts under the proposed project scenario. In addition, this scenario would reduce the number of new residential uses exposed to noise from existing sources.

The Reduced Project Alternative would reduce traffic generation to the site, corresponding to the decrease in uses. This could reduce traffic-related air pollution emissions, including greenhouse gas emissions, compared with the proposed Project. However, it would not avoid the cumulative traffic and air quality impacts of the Project, which would be due in large part to build-out of the Evergreen area and City of San Jose.

The Reduced Project Alternative would reduce many of the environmental impacts of the Project due to the reduced development densities. It should be noted, however, that with the exception of cumulative impacts on traffic and air quality, the Project-level impacts of the Project can be reduced to a less-than significant level with mitigation. This alternative would not fully meet the objectives of the Project by reducing development.

I. STATEMENT OF OVERRIDING CONSIDERATIONS

a. Impacts That Remain Significant

As discussed in Section G, the City has found that the following impacts of the Project remain significant following adoption and incorporation into the Project of the mitigation measures described in the Final EIR:

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Impact Topic	Impact
Cumulative	The project would contribute to long-term cumulative transportation impacts.
Cumulative	The proposed Project would result in cumulative air quality impacts in the following areas: consistency with the Clean Air Plan and cumulative contribution to regional air quality pollutant emissions.

B. OVERRIDING CONSIDERATIONS

In accordance with Public Resources Code section 21081(b) and CEQA Guidelines section 15093, the City has, in determining whether or not to approve the proposed Project, balanced the benefits of the proposed Project against its unavoidable environmental effects, and has found that the benefits of the Project outweigh those significant adverse environmental effects for the reasons set forth below. Despite the existence of significant adverse cumulative 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 cumulative 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 cumulative 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 cumulative 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.

FINDINGS REGARDING GENERAL PLAN GOALS, POLICIES AND OBJECTIVES

The City Council finds that the proposed Project is consistent with and promotes relevant General Plan goals and policies relevant to this site, including, but not limited to the following: Housing Major Strategy; Sustainable City Major Strategy; Growth Management Major Strategy; Urban Conservation/Preservation Major Strategy; Neighborhood Identity Policies; Residential Land Use Policies; Urban Design Policies;

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EXHIBIT A



Department of Planning, Building and Code Enforcement

JOSEPH HORWEDEL, ACTING DIRECTOR

MITIGATION MONITORING AND REPORTING PROGRAM

Mirassou Mixed Use Development

File nos. GP09-08-05/GPT09-08-05, PDC10-001

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
4.3 Air Quality				
<p>Construction of the project would result in significant short-term air quality impacts.</p>	<p>4.3-1 The contractor shall implement the following Best Management Practices per the BAAQMD:</p> <ul style="list-style-type: none"> a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. b. All haul trucks transporting soil, sand, or other loose material off-site shall be covered. c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. d. All vehicle speeds on unpaved roads shall be limited to 15 mph. e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. f. Idling times shall be minimized either by shutting equipment off 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 [CCR]). Clear signage shall be provided for construction workers at all access points. g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. h. Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's 	<p>Project Applicant</p>	<p>Incorporate the dust control measures into the contract specifications and documents.</p>	<p>Implement dust control measures during construction.</p>

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EXHIBIT A

	<p>phone number shall also be visible to ensure compliance with applicable regulations.</p> <p>4.3-2 Due to the potential exceedance of the NO_x threshold, the project proponent or contractor shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used for construction (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average of 20% NO_x reduction and 45% particulate matter reduction compared to the most recent CARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options if certified for NO_x reduction by the CARB. These measures shall be verified by the City in consultation with a qualified air quality consultant.</p>			
4.5 Biological Resources				
Construction of the project would result in potentially significant impacts to special status species, including nesting birds, burrowing owls, and bats.	<p>4.4-1 Should project construction be scheduled to commence between February 1 and August 31, the project proponent shall retain a qualified biologist to conduct a pre-construction survey for nesting special-status avian species within the onsite trees as well as all trees within 250 feet of the site. This survey shall occur within 30 days prior to the onset of construction.</p> <p>If pre-construction surveys undertaken during the nesting season locate active nests within or near construction zones, these nests and an appropriate buffer around them (as determined by a qualified biologist) shall remain off-limits to construction until the nesting season is over. Suitable setbacks from occupied nests shall be established by the biologist.</p>	Project Applicant	Retain a qualified biologist to conduct preconstruction surveys for nesting birds.	Conduct survey no more than 30 days prior to construction. Create buffers and postpone construction until all young have fledged, as determined by the monitoring biologist. Notify the City's Environmental Principal Planner of status.
See above	<p>4.4-2 The project proponent shall retain a qualified biologist to conduct a pre-construction survey for burrowing owls within 30 days prior to the onset of construction. This survey shall be conducted</p>	Project Applicant	Retain a qualified biologist to conduct preconstruction survey for burrowing owls.	Conduct survey within 30 days of construction. Create buffers as determined

DRAFT
EXHIBIT A

	<p>according to methods described in the Staff Report on Burrowing Owl Mitigation (CDFG, 1995). All suitable habitats of the study area shall be covered during this survey.</p> <p>If pre-construction surveys undertaken during the breeding season (February 1 through August 31) locate active nest burrows within or near construction zones, these nests and an appropriate buffer around them as determined by a qualified biologist will remain off-limits to construction until the breeding season is over.</p> <p>During the non-breeding season (September 1 through January 31), resident owls may be relocated to alternative habitat. The relocation of resident owls shall be conducted in accordance with a relocation plan prepared by a qualified biologist. Passive relocation is the preferred method of relocation. This plan shall provide for the owl's relocation to nearby lands possessing available nesting and foraging habitat. Any mitigation or relocation plan for the owls is subject to review and approval by CDFG.</p>		<p>Retain qualified biologist to relocate owls per CDFG if present.</p>	<p>by the monitoring biologist.</p> <p>If owls are present, qualified biologist to relocate in accordance with CDFG. Notify the City's Environmental Principal Planner of status.</p>
<p>See above</p>	<p>4.4-3 Prior to demolition, the project proponent shall retain a qualified bat specialist to perform a detailed bat survey to determine if special-status bat species are roosting or breeding in the onsite buildings to be demolished. The bat specialist should look for individuals, guano, staining, and vocalization by direct observation and potential waiting for nighttime emergence. The survey shall be conducted during the time of year when bats are active, between April 1 and September 15. If demolition is planned within this timeframe, the survey shall be conducted within 30 days of demolition. An initial survey could be conducted to provide early warning if bats are present, but a follow-up survey will be necessary within 30 days. If demolition is planned outside this timeframe (September 16 through March 31), the survey should be conducted in September prior to demolition. If no bats are observed to be</p>	<p>Project Applicant</p>	<p>Retain a qualified biologist to conduct surveys for special-status bats.</p> <p>Retain qualified biologist to humanely evict bats prior to demolition.</p>	<p>Conduct survey between April 1 - September 15 prior to construction. If demolition is planned within this timeframe, conduct survey within 30 days of demolition.</p> <p>If bats are present, qualified biologist to humanely evict. If a maternity colony is found, biologist to determine construction-free buffer until the nursery is no longer active.</p>

DRAFT
EXHIBIT A

	<p>roosting or breeding in these structures, then no further action would be required, and demolition can proceed.</p> <p>If a non-breeding bat colony is found in the structures to be demolished, the individuals should be humanely evicted via the partial dismantlement of the buildings prior to demolition under the direction of a qualified bat specialist to ensure that no harm or “take” would occur to any bats as a result of demolition activities. If a maternity colony is detected in the buildings, then a construction-free buffer should be established around the structure and remain in place until it has been that the nursery is no longer active. Demolition should preferably be done between March 1 and April 15 or August 15 and October 15 to avoid interfering with an active nursery.</p>			
<p>The project would result in the removal of 118 trees, including 63 that are ordinance-sized.</p>	<p>4.4-4 The project proponent shall replace any tree to be removed with new trees in accordance with the City’s Tree Replacement Ratios.</p> <p>In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:</p> <ul style="list-style-type: none"> - The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees. - Identify an alternative site(s) for additional tree planting. 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. - Provide a donation of \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. 	<p>Project Applicant</p>	<p>Incorporate replacement trees into the contract specifications and documents and/or provide a donation to Our City Forest.</p>	<p>Prior to building permit</p>

DRAFT
EXHIBIT A

	4.4-5	The project proponent shall implement the recommendations in the tree survey (HortScience Inc., 2009, see Appendix C).	Project Applicant	Incorporate measures into the contract specifications and documents.	Prior to building permit
4.5 Cultural Resources					
Project construction could result in the potential discovery and disturbance of buried cultural resources.	4.5-1	After the site is cleared of structures and pavement, the project proponent shall retain a qualified archaeologist to visually inspect the ground surface. In the event that Native American habitation and/or use of the area are discovered, the archaeologist shall submit a plan for the evaluation of the resource to determine its eligibility for inclusion on the California Register of Historic Resources. If eligible, a plan for mitigation/preservation of the resources shall be submitted to the City's Environmental Principal Planner for approval before any construction-related earthmoving is allowed inside the zone of archaeological sensitivity.	Project Applicant	Incorporate measures into the contract specifications and documents. Submit final report to the City's Environmental Principal Planner when mitigation, if required, is completed.	During all earth moving activities. Submit final report to City's Environmental Principal Planner for any mitigation.
Any alterations either of the two historic buildings on the site could significantly impact these historic resources.	4.5-2	Prior to issuance of any grading permits, the project proponent shall commission a photographic survey of the site and buildings in accordance with the City's standards and/or to the satisfaction of the professional standards of the archivist at History San Jose. The documentation shall be submitted to the City's Historic Preservation Officer for distribution.	Project Applicant	Prepare photographic survey of the site and buildings and submit to City Historic Preservation Officer	Prior to grading permit
	4.5-3	The project proponent shall preserve and rehabilitate the two historic buildings to be retained (winery building and Heritage House) in accordance with the standards set forth in the <i>Secretary of Interior's Standards for Rehabilitation and Rehabilitating Historic Buildings</i> . The character defining features of the historic buildings shall be maintained in accordance with the standards. Prior to rehabilitation planning, a Historic Structure Report shall be prepared to show how the character defining features and overall rehabilitation of the historic buildings will conform to the standards. Rehabilitation plans shall be submitted to the City's Historic Preservation Officer prior to issuance of the	Project Applicant	Prepare Historic Structure Report and submit to City Historic Preservation Officer	Prior to building permit

DRAFT
EXHIBIT A

	<p>appropriate permits for review. Final rehabilitation plans shall be completed to the satisfaction of the Director of Planning, Building, and Code Enforcement.</p>			
	<p>4.5-4 During the interim period until a reuse/adaptive reuse is determined and rehabilitation work begins, the historic resources shall be stabilized to protect them from further deterioration and protected from vandals, construction equipment or activities and infestations. An interim plan shall be submitted to the City's Historic Preservation Officer for review prior to issuance of any building permits.</p>	Project Applicant	Prepare an interim plan for historic structures and submit to City Historic Preservation Officer	Prior to building permit
	<p>4.5-5 The 1937 winery building does not have a defined use; compatible uses may include light industrial warehouse use and commercial mixed uses such as a restaurant, wine shop/storage, and fitness center. The Peter Mirassou House and gardens also do not have a defined use; compatible uses may include a single family residence, community center, or restaurant. Adaptive reuse of the historic buildings to be preserved shall adhere to the Secretary of Interior Standards, as set forth in Mitigation 4.5-3 above.</p>	Project Applicant	See Mitigation 4.3 above	See Mitigation 4.3 above
4.7 Hazards and Hazardous Materials				
Demolition and construction activities for the proposed project could result in the release of hazardous materials associated with potential contaminants in onsite soils and structures.	<p>4.7-1 Prior to construction, the applicant shall retain a qualified consultant to determine the full lateral and vertical delineation of pesticide, arsenic, and lead contamination in onsite soils. For areas where contamination exceeds applicable standards, the applicant shall prepare a Remediation Action Work Plan or similar, subject to review and approval from the overseeing agency (e.g., California Department of Toxic Substances Control, City of San Jose, or Regional Water Quality Control Board). The Work Plan shall identify measures for appropriately removing and/or managing chemicals detected in onsite soils, in accordance with all regulatory requirements for the intended</p>	Project Applicant	Retain a qualified consultant to determine the full lateral and vertical delineation of soil contamination. Prepare a Remediation Action Work Plan or similar if required and submit to the overseeing agency.	Prior to grading permit

DRAFT
EXHIBIT A

	uses.			
	4.7-2 If soils impacted by petroleum hydrocarbons are encountered during earthwork in the area of the former gas tanks or elsewhere on the site, as indicated by dark stained soil, the material shall be segregated, sampled, and appropriately disposed of at an approved site if concentrations above appropriate health standards are detected. The Santa Clara County Department of Environmental Health shall be notified of such actions.	Project Applicant	If petroleum hydrocarbons are encountered during earthwork, segregate, sample, and dispose of at an approved site and notify the Santa Clara County Department of Environmental Health.	During construction
	4.7-3 A mold study, as part of a moisture intrusion study, shall be conducted for the Heritage House prior to renovation and reuse. A trained professional (with a minimum qualification of being a Professional Engineer, Certified Industrial Hygienist, or AIA-Architect) shall be retained to assess mold and moisture intrusion conditions using sampling and analysis techniques and engineering/architectural principles, in accordance with the recommendations of Occupational Safety and Health Administration, National Institute for Occupational Safety and Health, Environmental Protection Agency, American Conference of Governmental Industrial Hygienists, California Department of Public Health, and American Industrial Hygiene Association. Any required remediation shall include removal of all mold, fungal growth, and contaminated materials, and correction of potential moisture intrusion source (roof leaks, condensation, pipe leaks, etc.).	Project Applicant	Retain a trained consultant to conduct mold study and submit to City.	Prior to construction near the Heritage House
Noise				
The proposed residential uses on the project site would be exposed to noise levels that could exceed interior and exterior noise standards.	4.10-1 Final design plans shall locate noise-sensitive outdoor residential use areas away from adjacent noise sources. Noise-sensitive spaces with buildings or noise barriers shall be shielded whenever possible, in accordance with the recommendations of the noise assessment (Salter Associates, 2009).	Project Applicant	Incorporate measures into the contract specifications and documents.	Prior to building permit

DRAFT
EXHIBIT A

	4.10-2	Project-specific acoustical analyses are required so that the design of the residential units will be sufficient to adequately reduce interior noise levels to 45 dBA DNL or lower. Building sound insulation requirements would include the provision of forced-air mechanical ventilation for all new units with direct line to significant transportation noise sources in the project vicinity, so that windows could be kept closed at the occupant's discretion to control noise. Special building sound insulation treatments may be required. These treatments would include, but are not limited to, sound rated windows and doors, sound rated wall constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what treatments are necessary would be determined on a unit-by-unit basis. The results of the analysis, conducted during the final design phase of the project, including the description of the necessary noise control treatments to achieve acceptable noise levels inside the living units, shall be submitted to the City along with the building plans and approved prior to issuance of a building permit.	Project Applicant	Retain noise consultant to provide acoustical analyses on case-by-case basis and incorporate recommendations into the contract specifications and documents.	Prior to building permit
Construction of the project would result in significant short-term noise impacts on nearby residences.	4.10-3	Standard noise abatement practices shall be implemented during all phases of construction for the proposed project:	Project Applicant	Incorporate into the contract specifications and documents.	Prior to building permit
4.13 Traffic and Circulation					
The project would result in significant traffic impacts that would be mitigated to a less-than-significant level with payment of the Traffic Impact Fee (TIF).	4.13-1	Prior to the issuance of a building permit, the project proponent shall submit a traffic operations analysis for the project to the City of San Jose, prepared by a qualified transportation consultant. This analysis shall evaluate traffic operations and access in the immediate project area and identify required improvements, subject to review and approval by the San Jose Department of Transportation.	Project Applicant	Retain traffic engineer to prepare a traffic operations analysis and incorporate required improvements into final plans; submit to San Jose Department of Transportation.	Prior to building permit
	4.13-2	The developer shall provide payment of the TIF to the City prior to the issuance of building permits.	Project Applicant	Submit payment of TIF to City.	Prior to building permit

DRAFT
EXHIBIT A