

RESOLUTION NO. 73766

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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ MAKING CERTAIN FINDINGS CONCERNING MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE RACE STREET PLANNED DEVELOPMENT REZONINGS PROJECT (FILE NOS. PDC06-024 AND PDC06-025), FOR WHICH AN ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970,

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WHEREAS, the Race Street Planned Development Rezonings Project ("Project") requires the City of San Jose ("City") to approve certain rezoning applications (File Nos. PDC06-024 and PDC06-025); and

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WHEREAS, prior to the adoption of this Resolution, the Planning Commission of the City of San José has certified that the Final Environmental Impact Report ("FEIR"), for the Race Street Planned Development Rezonings Project was completed in accordance with the requirements of the California Environmental Quality Act ("CEQA") of 1970, as amended, and state and local guidelines; and

WHEREAS, no appeal of the certification of the FEIR by the Planning Commission was filed with the City of San José; and

WHEREAS, the project analyzed under the FEIR consisted of two Planned Development Rezonings (PDC06-024 and PDC06-025); and

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WHEREAS, the City Council of the City of San José is the decision-making body for the Race Street Planned Development Rezonings Project ("Project"); and

WHEREAS, the City Council of the City of San José intends to take approval actions related to the Project as the Project is more fully described within the FEIR (the "Project"); and

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

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

THAT THE CITY COUNCIL hereby finds 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 and on the Project, prior to acting upon or approving 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 95113-1905, 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;

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**I. FINDINGS CONCERNING SIGNIFICANT ENVIRONMENTAL EFFECTS**

**A. POPULATION AND HOUSING**

**1. Impact**

The proposed project would both reduce jobs and increase residents, increasing the existing imbalance between jobs and employed residents. This would conflict with City of San José policies regarding an overall jobs/housing balance.

**Mitigation**

There are no mitigation measures that would reduce this impact to a less than significant level.

**Finding**

The proposed Planned Development Rezoning would increase the existing imbalance between jobs and employed residents which conflicts with City policies regarding an overall jobs/housing balance. No mitigation measures would reduce this impact and therefore, the impact is **significant and unavoidable**.

**B. TRANSPORTATION**

**1. Impact**

The proposed PD rezonings will contribute traffic in excess of one percent of segment capacity to five freeway segments already operating at LOS F during either the AM or PM peak hour.

**Mitigation**

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. When project mitigation measures on CMP facilities are not feasible or fail to improve the level of service to the CMP's LOS standard, then a CMP-approved Deficiency Plan must be prepared. According to the CMP TIA guidelines, pending adoption of the Countywide Deficiency Plan, if a project causes a transportation impact that cannot be reduced to a less than significant level, the Lead Agency (the City of San José) must implement, or require the project's sponsor to implement, the "Immediate Actions" listed in Appendix D of the Draft Countywide Deficiency Plan as part of the project's approval.

Implementation of selected items from the "Immediate Implementation Action List" is therefore recommended. A copy of the list is presented in Appendix A of this EIR. The selection of the final items from the list would be determined by the City of San José. With implementation of these items, project mitigation would be in conformance with CMP guidelines.

Measures for a residential development include the following site design guidelines:

- Bike Facilities at Development Projects (G-2);
- Pedestrian Circulation System (G-4);
- Bike Storage (G-5); and
- Multi-Tenant Complex Transportation Demand Measure (TDM) Program.

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Although the implementation of a TDM Program could incrementally reduce traffic, it would not reduce the identified impacts to a less than significant level.

**Finding**

Vehicle trips generated by the proposed Planned Development rezonings would be slightly reduced with the implementation of TDM measures and the project's impacts on the freeway segments, would be reduced. The project would still, however, result in **significant and unavoidable impacts** to two SR 87 and three I-280 freeway segments.

**C. AIR QUALITY**

**1. Impact**

Freeway truck traffic on I-280 is a source of toxic air contaminants. The project would locate future residents within 300 feet of I-280 which would result in a significant impact due to toxic air contaminant exposure.

**Mitigation**

All residential units located within 300 feet of the edge of the closest lane of I-280 will be required to have inoperable windows (refer to Section 2.5.3). Air handling systems shall either be designed to filter intake air to reduce exposure to residences, or have the air intake location located further than 300 feet from the edge of the closest lane of I-280.

**Finding**

With the implementation of the above avoidance measures, air quality impacts related to toxic air contaminant (TACs) exposure from the proposed project would be reduced to a **less than significant** level.

**2. Impact**

Construction activities such as demolition, clearing, excavation and grading operations, construction vehicle traffic and wind blowing over exposed earth would generate fugitive particulate matter emissions that could temporarily affect local air quality.

**Mitigation**

The BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a less than significant level. The following dust control measures shall be implemented by project contractors during demolition and on-site recycling of materials and shall be reflected as notes on the project plans prior to issuance of demolition permits:

- Water to control dust generation during demolition of structures and break-up of pavement. Concrete crusher should add water to materials at point(s) of entry and whenever materials will be dropped or dumped;
- Cover all trucks hauling demolition debris from the site;
- Use dust-proof chutes to load debris into trucks whenever feasible. Watering should be used to control dust generation during transport and handling of recycled materials;
- All crushing or screening equipment used on site for the recycling of materials will be permitted by the Bay Area Air Quality Management District or the state's portable equipment statewide registration program, and utilize Best Available Control Technology for that type of equipment.

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The following construction practices shall be implemented during all phases of construction on the project site and shall be reflected as notes on the project plans prior to issuance of grading or building permits:

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

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- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two (2) feet of freeboard;
- Pave, apply water three times daily, or apply (non toxic) soil stabilizers on all parking areas and staging areas at construction sites;
- Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff related impacts to water quality;
- Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets;
- Apply non toxic soil stabilizers to inactive construction areas;
- Enclose, cover, water twice daily, or apply non toxic soil binders to exposed stockpiles (dirt, sand, etc.);
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- Replant vegetation in disturbed areas as quickly as possible;
- Minimize idling time (5 minutes maximum);
- Maintain properly tuned equipment;
- Limit the hours of operation of heavy equipment and/or the amount of equipment in use.

### **Finding**

Implementation of the above mitigation measures would reduce the construction impacts from redevelopment of the site to a **less than significant** level.

## **D. NOISE AND VIBRATION**

### **1. Impact**

Outdoor environmental noise levels will exceed the 60 dBA Ldn screening threshold for multiple family residences set forth in the State Building Code. Interior noise levels could exceed 45 dBA Ldn without the incorporation of noise insulation features into project design.

### **Mitigation**

A project-specific acoustical analysis will be completed prior to the issuance of a building permit so that the design of each residential unit will be sufficient to adequately reduce interior noise levels to 45 dBA Ldn or lower. Building sound insulation requirements would need to include the provision of forced-air mechanical ventilation satisfactory to the local building official for all new units with direct line of sight to area roadways and the rail corridor, so that windows could be kept closed at the occupant's discretion to control noise. Special building construction techniques (e.g., sound-rated windows and building facade treatments) may be required for new residential uses near Interstate 280. These treatments include, but are not limited to, sound rated windows and doors, sound

rated wall constructions, and acoustical caulking. The specific determination of what treatments are necessary will be made on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans and approved prior to issuance of a building permit. Feasible construction techniques such as these would reduce interior noise levels to 45 dBA Ldn or lower.

### Finding

Implementation of the identified mitigation measures would reduce the impacts to interior noise levels to a **less than significant level**.

## 2. Impact

Existing and proposed noise-sensitive land uses would be exposed to construction noise levels in excess of the significance thresholds for a period of more than one construction season.

### Mitigation

The following construction practices shall be implemented during all phases of construction on the project site and shall be reflected as notes on the project plans prior to issuance of grading or building permits:

- Construction will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit, as established by City ordinance. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building, and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- Equip all internal combustion engine driven equipment with intake and exhaust mufflers which are in good condition and appropriate for the equipment.
- Locate stationary noise generating equipment (e.g., portable concrete crusher) as far as possible from sensitive receptors.
- Utilize “quiet” air compressors and other stationery noise sources where technology exists.
- The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with the adjacent noise

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sensitive facilities so that construction activities can be scheduled to minimize noise disturbance.

- The contractor or project applicant shall designate a “disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. The applicant shall conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

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### Finding

Implementation of construction noise controls would reduce the construction noise impact to nearby noise-sensitive land uses; however, due to the fact that the duration of construction activities will likely extend to multiple construction seasons, this impact cannot be mitigated to a less than significant level. Therefore, the Project would still result in significant and unavoidable construction noise impacts.

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## E. HYDROLOGY, DRAINAGE, AND WATER QUALITY

### 1. Impact

Due to increased activity on the site, the project could result in additional pollutant loads in storm water runoff from the site.

### Mitigation

The project will use permeable podiums which consist of paving stones underlain with gravel or drain rock overlying a sloped concrete structural pad with waterproofing/ protection board/drain mat. Where feasible the project will direct storm water runoff from the impervious areas of the site to permeable pavement and media filtration units.

The project shall comply with Provision C.3 of the City of San José’s NPDES Permit, which provides enhanced performance standards for the management of storm water for new and redevelopment projects.

The project shall comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29), which establishes general guidelines and minimum Best Management Practices (BMPs) for specific land uses. Prior to issuance of a Planned Development Permit, numeric sizing calculations will be performed, in accordance with applicable requirements, to determine the size and locations of the post-construction BMPs. BMPs that may be used on the site in addition to the measures identified in the project description include:

- Landscape swales;
- Planter boxes;
- Mechanical treatment units (hydrodynamic separators);
- Location of all storm drain inlets to be stenciled with, “No Dumping! Flows to Bay”; and
- Covering all trash enclosures and materials handling areas.

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### Finding

Implementation of the proposed BMPs will reduce post-construction water quality impacts of the proposed redevelopment of the site to a **less than significant level**.

## 2. Impact

Construction of a proposed project on the site could cause a significant temporary increase in the amount of contaminants in storm water runoff during construction.

### Mitigation

Prior to construction of any phase of the project, the City will require the applicant(s) to submit a Storm Water Pollution Prevention Plan (SWPPP) and a Notice of Intent (NOI) to the State of California Water Resource Quality Control Board to control the discharge of storm water pollutants including sediments associated with construction activities. Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control Plan may include Best Management Practices (BMPs) as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the City's storm drainage system from construction activities. The SWPPP shall include control measures during the construction period for:

- Soil stabilization practices;
- Sediment control practices;
- Sediment tracking control practices;
- Wind erosion control practices; and
- Non-storm water management and waste management and disposal control practices.

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Prior to issuance of a grading permit, the applicant shall be required to submit copies of the NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works. The applicant shall also be required to maintain a copy of the most current SWPPP on-site and provide a copy to any City representative or inspector on demand.

Each phase of development shall comply with the City of San José Grading Ordinance, including erosion- and dust-control during site preparation, and with the City of San José Zoning Ordinance requirement for keeping adjacent streets free of dirt and mud during construction.

**Finding**

Preparation of a SWPPP and NOI will reduce the water quality impacts during construction to a **less than significant level**.

**F. BIOLOGICAL RESOURCES**

**1. Impact**

Redevelopment of the site with the proposed Planned Development rezonings could result in direct impacts to nesting raptors.

**Mitigation**

At the time of site redevelopment, a project shall implement the following measures:

- A qualified ornithologist shall conduct a protocol-level, preconstruction survey for nesting raptors on-site not more than 30 days prior to the onset of ground disturbance or tree removal, if disturbance is to occur during the breeding season (February 1 to August 31).
- If a nesting raptor is detected, an appropriate construction buffer shall be established. The actual size of the buffer will be determined by the project ornithologist and will depend on species and type of construction activity that would occur in the vicinity of the nest.
- A report summarizing the results of the pre-construction survey and subsequent efforts to protect nesting raptors (if found to be present) shall be submitted to the Director of Planning, Building and Code Enforcement.
- All future development on the site would be required to conform to the California State Fish and Game Code and the provisions of the Migratory Bird Treaty Act.

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**Finding**

Implementation of the identified program mitigation measures would reduce impacts to nesting raptors to a **less than significant level**.

**2. Impact**

The proposed project would result in the removal of approximately 119 ordinance-size trees and 436 trees that are less than ordinance-size.

**Mitigation**

All trees to be removed from the site shall be replaced at the following ratios:

<b>Table BIO-3: Tree Replacement Ratios</b>			
<b>Diameter of Tree to be Removed</b>	<b>Type of Tree to be Removed</b>		<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	
18 inches or greater	5:1	4:1	24-inch box
12-17 inches	3:1	2:1	24-inch box
1-11 inches	1:1	1:1	15-gallon container
x:x = tree replacement to tree loss ratio Note: Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such 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 & Code Enforcement, at the development permit stage:

- The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
- An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposed to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement.
- A donation of \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting will be provided to the Planning Project Manager prior to issuance of a development permit.

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Trees proposed for retention on the site shall be protected under the following Tree Preservation Guidelines prepared by the project arborist and outlined below.

- Prior to initiation of construction activity, temporary barricades shall be installed around all trees in the construction area. Six-foot high, chain link fences are to be mounted on steel posts, driven two feet into the ground, at no more than 10-foot spacing. The fences shall enclose the entire area under

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the dripline of the trees or as close to the drip line area as practical. These barricades will be placed around individual trees and/or groups of trees as the existing environment dictates. The temporary barricades will serve to protect trunks, roots and branches from mechanical injuries, will inhibit stockpiling of construction materials or debris within the sensitive 'dripline' areas and will prevent soil compaction from increased vehicular/pedestrian traffic. No storage of material, topsoil, vehicles or equipment shall be permitted within the tree enclosure area. The ground around the tree canopy shall not be altered. These barricades should remain in place until final inspection of the building permit, except for work specifically required in the approved plans to be done under the trees to be protected. Designated areas beyond the driplines of any trees should be provided for construction materials and on site parking.

- During and upon completion of any trenching/grading operation within a tree's dripline, should any roots greater than one (1) inch in diameter be damaged, broken or severed, root pruning to include flush cutting and sealing of exposed roots should be accomplished under the supervision of a qualified arborist to minimize root deterioration beyond the soil line within twenty-four (24) hours.
- Pruning of the foliar canopies to include removal of deadwood is recommended and should be initiated prior to construction operations. Such pruning will provide any necessary construction clearance, will lessen the likelihood or potential for limb breakage, reduce 'windsail' effect and provide an environment suitable for healthy and vigorous growth.
- A program of fertilization by means of deep root soil injection is recommended with applications in spring and summer for those trees to be impacted by construction. Such fertilization will serve to stimulate feeder root development, offset shock/stress as related to construction and/or environmental factors, encourage vigor, alleviate soil compaction and compensate for any encroachment of natural feeding root areas. Inception of this fertilizing program is recommended prior to the initiation of construction activity.
- A supplemental irrigation program for the pine and redwood trees and shall be accomplished at regular three to four week intervals during the period of May 1<sup>st</sup> through October 31<sup>st</sup>. Irrigation is to be applied at or about the 'dripline' in an amount sufficient to supply approximately 15 gallons of water for each inch in trunk diameter. Irrigation can be provided by means of a soil needle, 'soaker' or permeable hose. When using 'soaker' or permeable hoses, water is to be run at low pressure, avoiding runoff/puddling, allowing the needed moisture to penetrate the soil to feeder root depths.
- Mulching with wood chips (maximum depth three inches) within tree environments (outer foliar perimeter) shall be used, as appropriate, to lessen moisture evaporation from soil, protect and encourage adventitious roots and minimize possible soil compaction.
- Periodic inspections by the project arborist shall be completed during construction activities, particularly as trees are impacted by trenching/grading

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operations. Inspections at approximate four week intervals would be sufficient to assess and monitor the effectiveness of the Tree Preservation Plan and to provide recommendations for any additional care or treatment.

**Finding**

Implementation of the tree protection and replacement measures would reduce impacts from tree removal to a **less than significant level**.

**G. CULTURAL RESOURCES**

**1. Impact**

Due to the historic use of the site, deposits of historic materials could be present. Grading and excavation for the proposed redevelopment could result in a significant impact to buried historic resources.

**Mitigation**

A qualified archaeologist shall be retained to inspect the development areas after the removal of existing buildings, parking lots, and landscaping areas to search for archaeological deposits which may have survived the two previous building episodes on the property. In the event any materials are discovered, the project archaeologist shall provide the Director of Planning, Building, and Code Enforcement with a proposal to evaluate the discovery through a program of limited hand excavation to determine: 1) if the deposit is historically undisturbed, and 2) if the deposit(s) possess research qualities which may make them eligible for inclusion on the California Register of Historic Resources. In the event that evaluation demonstrates the presence of historically intact and significant resource deposits, work should remain halted in the area designated by the project archaeologist until a mitigation plan is submitted to the Director of Planning, Building, and Code Enforcement for review and approval. Mitigation measures may include limited data recovery through hand excavation coupled with a program of archaeological monitoring inside the area designated as archaeologically sensitive. The mitigation plan will ensure that all significant archaeological materials are identified, recorded, and/or removed for additional analysis prior to work recommencing in the area of the archaeological discovery.

In the event any unanticipated prehistoric or significant historic era cultural materials are exposed during construction, all grading and/or excavation operations within 50 feet of the find shall be halted, the Director of Planning, Building and Code Enforcement shall be notified, and a qualified professional archaeologist shall examine the find and make appropriate recommendations regarding the significance of the find and the appropriate mitigation. The recommendation shall be implemented and could include collection, recordation, and analysis of any significant cultural materials.

In the event that human remains are found, all project-related construction shall cease within a 50-foot radius of the find in order to proceed with the testing and mitigation measures required. 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 shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall 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 shall notify the Native American Heritage Commission who shall 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 land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- A final report shall be submitted to the Director of Planning, Building and Code Enforcement. This report shall contain a description of the mitigation program that was implemented and its results, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusion, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning, Building and Code Enforcement.

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### Finding

With implementation of the above identified mitigation measures, impacts to buried prehistoric and/or historic resources from development of the site would be reduced to a **less than significant level**.

## H. CUMULATIVE IMPACTS

### 1. Impact

The proposed project would result in a further reduction of the jobs/housing balance which is currently below one job per employed resident.

### Mitigation

There are no mitigation measures that would reduce the project's contribution to the cumulative population and housing impact to a less than significant level.

**Finding**

The proposed project would result in a cumulatively considerable contribution to cumulative population and housing impacts which would be **significant and unavoidable**.

**2. Impacts**

The proposed PD rezonings on the project site will contribute considerably to cumulative LOS impacts on five freeway segments.

**Mitigation**

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. When project mitigation measures on CMP facilities are not feasible or fail to improve the level of service to the CMP's LOS standard, then a CMP-approved Deficiency Plan must be prepared. According to the CMP TIA guidelines, pending adoption of the Countywide Deficiency Plan, if a project causes a transportation impact that cannot be reduced to a less than significant level, the Lead Agency (the City of San José) must implement, or require the project's sponsor to implement, the "Immediate Actions" listed in Appendix D of the Draft Countywide Deficiency Plan as part of the project's approval.

Implementation of selected items from the "Immediate Implementation Action List" is therefore recommended. A copy of the list is presented in Appendix A of this EIR. The selection of the final items from the list would be determined by the City of San José. With implementation of these items, project mitigation for cumulative freeway LOS impacts would be in conformance with CMP guidelines.

Measures for a residential development include the following site design guidelines:

- Bike Facilities at Development Projects (G-2);
- Pedestrian Circulation System (G-4);
- Bike Storage (G-5); and
- Multi-Tenant Complex Transportation Demand Measure (TDM) Program.

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Although the implementation of a TDM Program could incrementally reduce traffic, it would not reduce the identified cumulative freeway LOS impacts to a less than significant level. The contribution of the proposed PD rezonings on the

project site to cumulative impacts on five freeway segments, therefore, is significant and unavoidable.

**Finding**

The proposed PD rezonings on the project site would contribute considerably to significant cumulative near-term freeway LOS impacts. No feasible mitigation has been identified to reduce these impacts; therefore, these cumulative impacts would be **significant and unavoidable**.

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**II. ALTERNATIVES TO THE PROPOSED PROJECT**

**A. NO PROJECT ALTERNATIVE**

**1. Description**

The CEQA Guidelines stipulate that an EIR specifically include a “No Project” Alternative, which should address both “the existing conditions, as well as what will be reasonably expected to occur in the foreseeable future if the project is not approved, based on current plans and consistent with available infrastructure and community services.”

**2. Comparison to Proposed Project**

The project site is fully developed at this time. Under a “No Project/No Redevelopment” Alternative, the site could remain developed with the existing office/R&D buildings. This would avoid all of the proposed project’s significant impacts.

Overall, the No Project/No Redevelopment Alternative (assuming the continued use of the existing office/R&D buildings on-site) would be environmentally superior to the project because it would avoid all environmental impacts.

**3. Finding**

The City finds that this Alternative is infeasible for the following reasons: In general, the No Project/No Redevelopment Alternative would, by definition, not meet the project’s objectives as described in the EIR. This Alternative would not achieve the objectives of allowing for residential development on the site or supporting transit ridership on the adjacent VTA light rail line. This alternative would not meet any of the applicant’s objectives for the site.

Deleted: 3. Impact¶

¶ The proposed redevelopment of the site would result in an increase in daily trips and vehicle miles traveled. The project, therefore, would make a cumulatively considerable contribution to a cumulative air quality impact from pending General Plan amendments within the City of San José. ¶

¶ Mitigation ¶

¶ The BAAQMD has identified mitigation measures for reducing vehicle emissions from projects. Feasible mitigation measures to reduce vehicle and other emissions include:¶

¶ <#>Provide secure and conveniently placed bicycle parking and storage facilities.¶

¶ <#>Allow only natural gas fireplaces.¶ <#>Construct transit amenities such as bus turnouts/bus bulbs, benches, shelters, etc.¶

¶ <#>Provide direct, safe, attractive pedestrian access from project land uses to transit stops and adjacent development.¶

¶ <#>Utilize reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun’s rays and reduce local air temperature and cooling energy demand. ¶

¶ Provide physical improvements, such as sidewalk improvements, landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel.

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¶ The identified mitigation program would be expected to reduce project emissions by five to ten percent. Since trip generation under the proposed uses is more than double that under the existing uses and there would be a roughly corresponding increase in emissions, the cumulative impact of the project on air quality would not be substantially reduced with implementation of BAAQMD feasible mitigation measures. The project, therefore, would contribute to cumulative air quality impacts that are **significant and unavoidable**. ¶

**B. NO PROJECT/REDEVELOPMENT ALTERNATIVE**

**1. Description**

If the proposed General Plan Amendments and Planned Development Rezoning are not approved, the site could be redeveloped with office/R&D uses in a more urban form. Due to the site's location within a transit area allowed building heights on the site could reach 120 feet and up to 936,540 square feet of office/R&D uses could be developed on the site under the existing land use designation. This would increase the office/R&D development on the site by approximately 588,000 square feet.

**2. Comparison to Proposed Project**

The No Project/Redevelopment Alternative would avoid the population and housing impacts of the project related to the City's jobs/housing balance. Under this alternative, sensitive receptors would not be exposed to elevated exterior noise levels. Significant impacts related to redevelopment of the site including, water quality, biology, cultural resources, and construction (air quality, noise, and water quality) would be similar with redevelopment of office/R&D uses on the site.

Although this alternative would substantially increase vehicle trips to and from the site, it would not require a General Plan amendment and would not contribute to cumulative air quality impacts associated with implementation of pending General Plan amendments.

**3. Finding**

The City finds under the No Project/Redevelopment Alternative, redevelopment with new and larger office/R&D buildings on the site, may result in impacts to cumulative air quality, cumulative traffic, water quality, biological resources (trees), cultural resources, energy, and construction (air quality, noise, and water quality). This Alternative would avoid noise impacts since the office/R&D buildings would not be a sensitive use and design measures could adequately reduce interior noise levels. This Alternative would also avoid population and housing impacts since no planned jobs would be lost within the City. The City finds this alternative infeasible since it would not allow for residential uses on the site and does not meet most of the project objectives. This alternative would not provide housing support along a light rail transit line for the downtown central business district, or for the West San Carlos Street or Lincoln Avenue neighborhood business districts. This alternative would also not provide for the possibility of development of a neighborhood park in the near vicinity in that the project's PIO fees would not be directed to the identified public park priority in the neighborhood.

Deleted: This alternative would also not provide for the possibility of development of a neighborhood park in the near vicinity. (this needs explanation. Is this referring to the PIO \$ the project will generate?)

## C. REDUCED SCALE ALTERNATIVE

### 1. Description

The goal of a “Reduced Scale” alternative would be to reduce environmental impacts by proposing less development on the site. In order to avoid the freeway LOS impacts of the project, the amount of development allowed on the site would be reduced to approximately 370 units. This would be approximately 38 percent of the units proposed by the project. This alternative would require a General Plan land use designation change to *Medium High Density Residential (12-25 DU/AC)*. This land use designation is typified by two-story apartments and condominiums with surface parking, although structures of greater height with compensating amounts of open space would be possible. This designation is planned primarily for locations on major streets and near major activity centers.

### 2. Comparison to Proposed Project

This alternative would result in similar population and housing impacts as the proposed project due to the loss of planned jobs and an increase in housing within the City. The General Plan amendment required to implement this alternative would likely result in reduced General Plan transportation impacts. Like the proposed project interior noise levels in residential units could be reduced to 45 dBA Ldn or less through appropriate design and construction. Significant impacts related to redevelopment of the site including, water quality, biological resources, cultural resources, and construction (air quality and water quality) would be similar with redevelopment of the site, although additional landscape trees may be retained on the site due to reduced density. Construction noise impacts would likely be avoided because the project would not take as long to construct at this density.

The cumulative transportation impacts of the project would be reduced under the Reduced Scale Alternative. This alternative could likely result in a cumulative air quality impact since the VMT would increase in the proximity area, although the cumulative air quality impacts would be reduced.

### 3. Finding

The Reduced Scale Alternative would reduce or avoid cumulative project transportation and air quality impacts and construction noise impacts of the project. This Alternative, however, would not meet project objectives related to the development of high density, transit-oriented residential uses located adjacent to a light rail transit line that support central business district and nearby neighborhood business district commercial development and is therefore found to be infeasible.

**Deleted:** The Reduced Scale Alternative would require General Plan amendments to allow redevelopment of the site with residential uses. Details of the economic feasibility of developing the site at the reduced density are not known at this time.

## D. REDUCED DEVELOPMENT SITE ALTERNATIVE – AREAS 1 AND 2 ONLY

### 1. Description

The purpose of a “Reduced Development Site” alternative would be to allow the proposed land uses in Areas 1 and 2 only. The project site would be reduced in size to 16.1 acres and the General Plan designation and zoning of Area 3 would not change. The General Plan designation on Areas 1 and 2 would be changed to *Transit Corridor Residential (20+ DU/AC)* which would allow redevelopment at a density of approximately 60 dwelling units per acre. This Transit Corridor Residential land use designation is intended for medium high and high density residential uses within, or very near, Transit-Oriented Development Corridors and BART Station Area Nodes, Housing Initiative Area, or major bus routes. Residential development should occur at densities of 20 units or more per acre.

### 2. Comparison to Proposed Project

This alternative would result in similar population and housing impacts as the proposed project due to the loss of some potential jobs and an increase in housing within the City. Allowing the same number of units on a reduced development site would result in the same General Plan transportation impacts and a PD rezoning impact on freeway LOS. Like the proposed project interior noise levels in residential units could be reduced to 45 dBA Ldn or less through appropriate design and construction. This alternative would move residential development further from I-280 and thereby avoid exposing residents to freeway noise. Significant impacts related to redevelopment of the site including, water quality, biological resources, cultural resources, and construction (air quality, noise, and water quality) would be similar with redevelopment of the majority of the site.

Most of the cumulative impacts of the project would not be avoided with the Reduced Development Site Alternative. The traffic generated by this alternative would result in similar General Plan transportation impacts. This alternative could also result in a cumulative air quality impact since the VMT would increase in the proximity area.

### 3. Finding

This alternative is infeasible due to the additional construction cost related to a different construction type and one additional level of underground parking. This Alternative would also result in buildings taller by two stories at Areas 1 and 2 in order to balance out the number of units proposed by the project proponent. This condition would create building massing out of character with the surrounding recently-developed high-density residential structures on surrounding parcels.

**Deleted:** This Reduced Development Site Alternative would require General Plan amendments to allow redevelopment of Areas 1 and 2 with residential uses. The future redevelopment of this smaller site may be economically infeasible due to construction costs. (why make this statement, if not known? Otherwise, need more information to substantiate) This Alternative would also result in taller buildings (how much taller? 1-2 stories?) at Areas 1 and 2 in order to balance out the number of units proposed by the project proponent. This condition would create building massing out of character (1-2 stories higher would not be substantially out of character) with the surrounding recently-developed high-density residential structures on surrounding parcels.

**III. MITIGATION MONITORING AND REPORTING PROGRAM**

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Attached to this Resolution and incorporated and adopted as part of this Resolution herein, is the Mitigation Monitoring and Reporting Program for the Project. The Program identifies the impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

**IV. STATEMENT OF OVERRIDING CONSIDERATIONS**

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The City Council of the City of San José adopts and makes the following Statement of Overriding Considerations regarding the significant, unavoidable impacts of the Project and the anticipated 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 record, the City has determined that the Project will result in significant unmitigated impacts to population and housing (project and cumulative), transportation (project and cumulative), construction noise (project), and air quality (cumulative) as disclosed in the FEIR prepared for this Project. The impacts would not be reduced to a less than significant level by feasible changes or alterations to the Project.

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**B. OVERRIDING CONSIDERATIONS**

After review of the entire administrative record, including—but not limited to—the FEIR, the staff report, applicant submittals, and the oral and written testimony and evidence presented at public hearings, the City Council finds that specific economic, legal, social, technological and other anticipated benefits of the Project outweigh the unavoidable adverse environmental impacts, and therefore justify the approval of this Project. 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 (including the incorporation of feasible mitigation measures), and finds that the remaining significant, unmitigated or unavoidable impacts of the Project described above are acceptable because the benefits of the Project outweigh them. The City Council finds that each of the overriding considerations expressed as benefits and set forth below constitutes a separate and independent ground for such a finding. The Project will result in the following substantial benefits, which constitute the specific economic, legal, social, technological and other considerations that justify the approval of the Project:

**C. BENEFITS OF THE PROJECT**

1. The Project will further the City's Smart Growth Policies by being located near public transit and other existing neighborhood services thereby maximizing the existing public infrastructure investments made by the City and other public agencies.
2. The Project will develop two under-utilized, industrial park, in-fill sites into a high-density residential development that takes advantage of nearby transit facilities.
3. The Project will support investments in current transit by generating more ridership at nearby light rail and bussing stations than the current industrial park uses.
4. The Project will create high-density market rate homes that meet the goals for transit-oriented development to support the existing adjacent light rail transit station.
5. The Project will create a new mix of workforce housing opportunities proximate to the downtown employment center and West San Carlos and Lincoln Avenue retail corridors.
6. The Project will help address the City's substantial unmet affordable housing demand by providing affordable housing consistent with Inclusionary Housing Policy and with the General Plan Housing Element goals.
7. The Project will help to revitalize an unused and dilapidated industrial property and help rejuvenate this part of Midtown San José.
8. The Project provides an opportunity to expand a burgeoning residential neighborhood and create a sense of community.
9. The Project eliminates the potential for blight in a mixed-use area of Midtown by replacing vacant industrial park buildings on underutilized lots.
10. The Project through its future residents will help support the hundreds of surrounding neighborhood serving businesses.

ADOPTED this 15<sup>th</sup> day of May, 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CONSTANT, CORTESE, LICCARDO,  
NGUYEN, OLIVERIO, PYLE, WILLIAMS;  
REED

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

VACANT: DISTRICT 4

\_\_\_\_\_  
CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk

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City Clerk

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NOES:

ABSENT:

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VACANT

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk