TO: HONORABLE MAYOR AND COUNCIL

FROM: Harry Freitas

DATE: May 31, 2016

SUBJECT: SEE BELOW

SUBJECT: APPEAL HEARING ON THE PLANNING DIRECTOR’S RELIANCE ON THE PREVIOUSLY CERTIFIED RESERVE APARTMENTS MIXED-USE PROJECT FINAL ENVIRONMENTAL IMPACT REPORT FOR A PLANNED DEVELOPMENT PERMIT

RECOMMENDATION

a) Conduct an Appeal Hearing and consider the appeal of the Director of Planning, Building and Code Enforcement’s reliance on the previously certified Reserve Residential Project Final Environmental Impact Report adopted by the City Council on February 23, 2016 (Resolution No. 77676) for Planned Development Permit No. PD15-067 to allow for the demolition of an existing apartment complex with 216 units, and the construction of up to 640 multi-family residential units and 8,000 square feet of ground floor commercial space on a 7.68 gross acre site at the northwest corner of S. Winchester Boulevard and Williams Road (881 S. Winchester Boulevard).

b) Adopt a resolution denying the appeal and upholding the Director of Planning, Building and Code Enforcement’s reliance on the Reserve Residential Project Final Environmental Impact Report adopted by the City Council on February 23, 2016 (Resolution No. 77676) for Planned Development Permit No. PD15-067 and finding that:

   (1) The City Council has read and considered the Determination of Consistency with the Reserve Residential Project Final Environmental Impact Report in connection with Planned Development Permit No. PD15-067;

   (2) The Determination of Consistency, together with the Reserve Residential Project Final Environmental Impact Report, was prepared and completed in compliance with the California Environmental Quality Act of 1970, together with state and local implementation guidelines;
(3) Reliance on the Determination of Consistency and Reserve Residential Project Final Environmental Impact Report for the Planned Development Permit No. PD15-067 reflects the independent judgment and analysis of the City of San José;
(4) Preparation of a subsequent or supplemental EIR is not required because no substantial changes are proposed in the project. No substantial changes occurred under which the project is being undertaken, and no new information is known since the certification of the Reserve Residential Project Final Environmental Impact Report; and
(5) The Director of Planning, Building and Code Enforcement shall transmit copies of the Reserve Residential Project Final Environmental Impact Report and Determination of Consistency to any other decision-making body of the City of San José for the project.

OUTCOME

Denial of the environmental appeal will allow the applicant to implement the Planned Development Permit (File No. PD15-067) to demolish the existing apartment complex and construct a new multi-family residential development in accordance with the approved Planned Development Zoning (PDC14-040). Upholding the environmental appeal would void the approved Planned Development Permit and require the preparation of a new environmental document prior to reconsidering Planned Development Permit No. PD15-067.

EXECUTIVE SUMMARY

The Planning Director conducted a public hearing on Planned Development Permit No. PD15-067 (PD Permit) on April 27, 2016 and approved the PD Permit on April 29, 2016. The PD Permit implemented the rezoning ordinance (PDC14-040) approved by the City Council on February 23, 2016 authorizing the demolition of an existing apartment complex with 216 units and the development of up to 640 multi-family residential units and 8,000 square feet of commercial space on 7.68 gross acre site (Project).

The appellant claims that the previously certified Reserve Residential Project Final Environmental Impact Report (City Council Resolution No. 77676 adopted on February 23, 2016) fails to adequately analyze a number of issues to support approval of the PD Permit. Specifically, the appellant alleges that the analysis is deficient because the adopted Reserve Residential Project Final Environmental Impact Report (FEIR) did not adequately address the displacement of existing residents in the apartments proposed to be demolished and the resulting changes in greenhouse gas (GHG) emissions from these residents, who may have to commute longer distances to jobs in the area.

The FEIR was certified by the City Council on February 23, 2016. There was no request for reconsideration of the certified FEIR filed pursuant to Section 21.07.080 of the San José Municipal Code relating to the certification of the FEIR. As such, the recently certified FEIR is adequate and valid under CEQA for the Project. Staff believes the Council may deny the environmental appeal on this ground alone. Further, pursuant to California Public Resources Code Section 21166 and CEQA
Guideline Section 15162, when an EIR has been certified for a project, no subsequent EIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, that (i) there are substantial changes in the proposed project from the project analyzed in the prior EIR, (ii) there are substantial changes in the circumstances under which the project is undertaken from what was analyzed in the prior EIR, and (iii) there is new information of substantial importance that would require a new or subsequent environmental impact report.

Staff believes none of the condition cited above exist requiring a new EIR and considers the Determination of Consistency to provide adequate analysis under CEQA for the project as the PD Permit is consistent with the approved Planned Development Zoning Ordinance No. 29697 (PD Zoning) and the certified FEIR. Claims raised by the appellant do not raise new significant information requiring additional environmental analysis because 1) social and economic factors are beyond the scope of CEQA review if such factors do not result in a secondary physical change in the environment, 2) the appellant has not provided substantial evidence to support the claim that the displacement of existing residents will result in a significant secondary impact related to GHG emissions, 3) the GHG emissions of the project were adequately analyzed in the FEIR and found to be less than significant, and 4) the cited inconsistencies with State Senate Bill 375 and Plan Bay Area are not applicable to the project.

BACKGROUND

Environmental Review
The City prepared a Draft Environmental Impact Report (DEIR) for the Project which analyzed the environmental impacts of the Project and discussed alternatives to the proposed Project. The DEIR was circulated for public review and comment for 45 days from July 24, 2015 to September 8, 2015. The DEIR identified seven significant impacts resulting from the Project related to transportation, construction period, air quality, noise, biology (nesting migratory birds and tree preservation), hazardous materials (exposure to contaminated soils), and cumulative transportation. The DEIR identified mitigation measures to reduce all of the significant impacts to a less than significant level.

The City received three comment letters from State and regional agencies, and 37 comment letters from organizations and individual members of the public. Comments received focused primarily on traffic, the desire for a reduced-height alternative, access to sunlight, privacy concerns, pedestrian safety, impact to local schools, the removal of mature trees, availability of water supply to serve the project, the effect of the project on emergency vehicle response times, and the displacement of existing residents in rent-controlled units. None of the comments raised substantive issues that required re-circulation of the DEIR. The City prepared responses to comments on the DEIR and text edits in a First Amendment to the DEIR, which was posted to the City’s website prior to the December 2, 2015 Planning Commission hearing on the PD Zoning. The DEIR and the First Amendment together comprised the Final EIR (FEIR) for the Project.

The City Council adopted the FEIR on February 23, 2016 (Council Resolution No. 77676) and approved the PD Zoning for publication. After the second reading of the PD Zoning on March 8, 2016, the City filed a Notice of Determination at the County of Santa Clara Clerk Recorder’s Office
on March 10, 2016. The City did not receive any request for reconsideration of the certified FEIR pursuant to Section 21.07.080 of the San José Municipal Code. Additionally, no legal challenge was filed in court challenging the certified FEIR within the required 30 days of recordation of the Notice of Determination. Therefore, the FEIR is conclusively presumed to comply with CEQA under State law.

**PD Permit Approval**
The Director of Planning, Building and Code Enforcement conducted a public hearing on April 27, 2016. Eight members of the public expressed concerns about the project, including: 1) displacement of existing residents from rent-controlled housing in a tight rental market, 2) the displacement of existing residents will lead to an increase in greenhouse gas (GHG) emissions, as these residents will have to commute longer distances to jobs and services in the area, 3) the City did not provide adequate notice of the project to existing residents, 4) the removal of mature trees on the site, 5) the EIR for the project did not adequately analyze cut-through traffic, and 6) the project is out of character with the neighborhood. Staff responded by clarifying that the City currently has no policy to address displacement of existing residents and notices sent to the residents conformed to the City’s Public Outreach Policy (Council Policy 6-30). In response to comments on the analysis of displacement and GHG emissions in the FEIR, staff mentioned that the PD Permit is the same project as analyzed in the previously adopted FEIR. The GHG emissions resulting from the displacement of existing residents were not analyzed because such an analysis would be speculative as it is not known to where the existing residents will relocate. Furthermore, the project will result in an increase in residential units on the site (424 additional residential units above the existing 216 units), allowing for an increase in the number of residents who will be able to live in a more centralized location that is closer to jobs and services. This is reflected in the GHG analysis prepared for the FEIR, which found the project’s contribution to GHG emissions to be less than significant. Finally, staff mentioned that concerns expressed about project traffic, trees, and neighborhood character were already addressed in the FEIR.

After considering the entire administrative record and public testimony, the Director of Planning, Building and Code Enforcement found the project consistent with the adopted FEIR and the PD Zoning for the site and approved the PD Permit, to allow the demolition of an existing 216-unit apartment complex and the development of up to 640 multi-family residential units (one unit less than allowed under the approved PD Zoning) and 8,000 square feet of commercial space.

The PD Permit implements the approved PD Zoning (File No. PDC15-040), which rezoned the project site from the RM Multiple Residence Zoning District to the R-M (PD) Planned Development Zoning District, to allow the development of up to 641 multi-family residential units and 8,000 square feet of ground floor commercial space on the project site.

**Appeal of Environmental Determination**
A timely appeal of the Director of Planning, Building and Code Enforcement’s adoption of the Determination of Consistency was filed on May 2, 2016, by Sandy Perry. Per Section 21.04.140 of Title 21 of the San José Municipal Code, an appeal of an environmental clearance determination must be heard by the City Council.
Upon conclusion of the environmental appeal hearing, the City Council may find that the Determination of Consistency has been completed in accordance with the requirements of CEQA, that on the basis of the whole record there is no substantial evidence that the project with mitigation will have a significant effect on the environment, and that the Determination of Consistency reflects the City’s independent judgment and analysis. If the Council makes such a finding, it shall uphold the Director of Planning, Building and Code Enforcement’s adoption of the Determination of Consistency.

If the City Council finds that the Determination of Consistency is inadequate, the City Council shall direct staff to prepare additional environmental prior to consideration of whether the PD Permit should be approved. The approval of the PD Permit by the Director of Planning, Building and Code Enforcement will be nullified. A new decision shall be made after the new environmental document is prepared and considered by the appropriate decision maker.

ANALYSIS

This section addresses the following: 1) staff responses to specific comments raised by the appellant; 2) project conformance with the Envision San José 2040 General Plan; and 3) project conformance with the approved Planned Development Zoning and to the applicable provisions of the City of San José Zoning Ordinance.

Environmental Appeal

The analysis below summarizes the alleged deficiencies with the environmental document asserted by the appellant and provides City staff’s responses demonstrating that the Determination of Consistency satisfies the requirements of CEQA.

1. Comment: Comments on the DEIR from Diana Castillo of the Law Foundation on September 8, 2015, and April 27, 2016, relating to General Plan Housing Policies H-1.1 and 1.2 and affordable housing were not adequately addressed.

Response: The City responded to the referenced comment on pages 96 – 97 of the First Amendment to the DEIR, which states:

"While the project would demolish the existing 216 apartments on-site, it would replace them with 650 (later revised down to 641 subsequent to circulation of the DEIR) new apartments and, as a result, would not require the construction of replacement housing elsewhere. Furthermore, the project is consistent with the planned growth of the City and the project area and would not induce substantial population growth.

The existing apartments are rent controlled but are still considered market rate units, primarily because rents can increase to current market rate on vacated apartments. The ordinance only limits the total dollar amount of yearly rental increases for long term residents. While the DEIR does acknowledge the temporary displacement of existing residents, the ability or inability of the current tenants to find housing based on economic factors is not an acceptable analysis under"
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CEQA. Pursuant to CEQA Guidelines Section 15131 (and 15382), economic impacts in and of themselves shall not be treated as significant impacts on the environment. Only in cases where an economic effect would result in a physical effect on the environment may an EIR address economic impacts.”

The appellant alleges this response is inadequate because the project does not comply with Envision San José 2040 General Plan Policies relating to affordable housing, and the FEIR did not adequately analyze GHG emissions resulting from the displacement of existing residents for the reasons outlined in the appeal letter. Responses to specific claims in the appeal letter are addressed below.

It should be noted that the City has broad discretion under its general police powers to evaluate and make land use approvals. The City’s land use decision should be generally consistent with the Envision San José 2040 General Plan, but, the City is not required to comply with every single General Plan policies. As described in detail herein, approval of the PD Permit is consistent with the Envision San José 2040 General Plan.

2. Comment: The project does not comply with General Plan Policies H-1.1 and H-1.2 relating to social equity and diversity in new and rehabilitated housing developments and will increase CO2 gases due to displacement of tenants who will have to travel greater distance.

Response: The referenced General Plan Policies address social and economic issues and are not intended to reduce impacts on the environment. Section 3.0 of the FEIR discussed consistency with adopted plans and policies, including the Envision San José 2040 General Plan. Based on the analysis in the FEIR, the discussion in the Planning Commission to City Council Memorandum for the PD Zoning (dated January 8, 2016), and the findings in the PD Permit, the project was determined to conform to the Envision San José 2040 General Plan because it will increase the housing supply in an identified growth area (the Winchester Urban Village) in close proximity to jobs and amenities. Finally, the City does not have a policy that addresses the displacement of existing residents.

CEQA Guidelines Section 15131 and 15382 state that social and economic effects in and of themselves shall not be treated as significant impacts on the environment, unless such effects are demonstrated to result in a physical change that results in a significant environmental impact. The appellant has not provided substantial evidence to support the claim that the displacement of existing residents will lead to a significant impact related to GHG emissions due to an increase in Vehicle Miles Traveled (VMT).

As explained in the response to Comments 3 and 4 below, the analysis of GHG emissions in the FEIR found that project emissions will be significantly less than the thresholds established by the Bay Area Air Quality Management District (BAAQMD). Furthermore, although the existing units are subject to the City’s rent control ordinance, they are market rate units with no income limitations for new tenants. Therefore, it is speculative to assume that all of the existing residents will be unable to find housing in the area and, therefore, will be forced to travel greater distances to jobs and services in the area.
3. **Comment:** The adverse environmental impact resulting from the displacement of the existing residents was not studied. Specifically, without the provision of alternative affordable housing, existing residents would be required to commute longer distances to jobs in the area due to the lack of affordable housing in the vicinity of the project. Staff’s claim at the April 27, 2016, Director’s Hearing that the project would result in a reduction in vehicle miles traveled (VMT) and an overall increase in residential units is not credible.

**Response:** The project will result in the demolition of 216 units and the construction of up to 640 units, a net increase of 424 residential units. As discussed above, the EIR did not evaluate trips generated by the displaced residents because it is not known where these residents will move, and any analysis would be purely speculative. However, the concept of increasing residential density in areas close to employment centers, retail, schools, and other amenities to reduce project-level VMT (and, therefore, GHG emissions) is supported by studies, and forms the basis for the City’s Envision 2040 General Plan and the subsequent Plan Bay Area document referenced by the appellant. For example, the Plan Bay Area document states, “One of the main goals of both Plan Bay Area and the Bay Area Air Quality Management District’s 2010 Clean Air Plan is to reduce greenhouse gas emissions from cars and trucks by focusing future land development in existing urban areas that are easily accessible to transit, jobs, shopping and other services. Compact infill development can reduce vehicle use and vehicle miles traveled by 20 to 60 percent when compared to traditional suburban developments.”

The analysis of project GHG emissions in the EIR confirms that the proposed increase in residential units on the project site will not result in a significant contribution to GHG emissions. The project GHG analysis used the California Emissions Estimator Model (CalEEMod) to evaluate project GHG emissions based on factors including estimated vehicle miles traveled (VMT) of future project residents and employees (service population), energy use, and solid waste generation. The Bay Area Air Quality Management District (BAAQMD) considers projects to have a significant contribution to cumulative GHG emissions if it either 1) does not comply with an adopted GHG Reduction Strategy, 2) generates more than 1,100 metric tons (MT) of CO2e, or 3) generates more than 4.6 MT CO2e per service population (project residents plus employees). The GHG analysis concluded that the project would result in emissions of 2.6 CO2e per service population, which is significantly less than the BAAQMD efficiency threshold of 4.6 CO2e per service population. Therefore, the project was found to have a less than significant impact to GHG emissions.

The appellant also argues that General Plan goals for an increase in the ratio of jobs to employed residents within San José require that the EIR include an analysis of VMT generated by new jobs needed to offset the fiscal impact of the increase in residents. However, goals in the General Plan to improve the City’s jobs to housing ratios are long-range, citywide goals that do not apply to individual development projects that are consistent with the General Plan Land Use/Transportation Diagram designation, such as the proposed project.

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1 Association of Bay Area Governments and the Metropolitan Transportation Commission. “Plan Bay Area” 2013. Pg. 122.
4. **Comment:** The FEIR did not address the CO₂ emissions from displaced residents as required under SB 375 and does not comply with Plan Bay Area developed by the Metropolitan Transportation Commission and the Association of Bay Area Governments.

**Response:** Senate Bill 375 (SB 375) requires regional transportation plans to link transportation and land use planning together into a more comprehensive, integrated process. The goal of these integrated plans (Sustainable Community Strategy, or SCS) is to make travel more efficient, resulting in reduced GHG emissions from passenger vehicles along with other benefits. SB 375 guides the development of regional plans prepared by Metropolitan Planning Organizations, such as the Plan Bay Area prepared by the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC). Plan Bay Area is a regional planning document intended to guide local jurisdictions in preparing planning documents, such as general plans and specific plans. It is not intended to apply to individual projects nor does it establish specific thresholds of significance for the purpose of environmental review under CEQA. The Envision San José 2040 General Plan was approved in 2011, prior to the adoption of Plan Bay Area in 2013. The Envision San José 2040 General Plan is intended to accomplish the goals outlined in SB 375.

SB 375 does not require individual projects to analyze displacement of existing residents, nor does it require an analysis of CO₂ and other GHG emissions from displaced residents in the CEQA review process. It does require that Housing Elements prepared by local jurisdictions include provisions to conserve existing affordable housing stock and recommend ways to mitigate the loss of affordable housing units. However, this guidance is not intended to apply to the CEQA analysis of individual private projects.

SB 375 does create the ability for streamlined CEQA review for projects that meet the definition of Transit Priority Projects located within a designated Priority Development Area. Transit Priority Projects are eligible for streamlined CEQA review process but must provide either affordable housing as part of the development project, pay affordable housing in-lieu fees, or provide additional public open space (SB 375 Section 12255.1(c)). Although the project is located within a Priority Development Area, the project did not seek CEQA streamlining as a Transit Priority Project; therefore, provisions for affordable housing or public open space outlined in SB 375 did not apply.

5. **The EIR is not in compliance with State Law.**

**Response:** As discussed above, the FEIR was certified by the City Council on February 23, 2016. The City filed a Notice of Determination at the County of Santa Clara Clerk Recorder's Office on March 10, 2016 after the City Council adopted the Ordinance on March 8, 2016. The City did not receive any request for reconsideration of the certified FEIR pursuant to Section 21.07.080 of the San José Municipal Code. Additionally, no legal challenge was filed in court challenging the certified FEIR within the required 30 days of recordation of the Notice of Determination. Therefore, the FEIR is conclusively presumed to comply with CEQA under State law.

Also, as discussed in the response to Comment 4, above, the project is not seeking a streamlined CEQA review process as a Transit Priority Project. Therefore, the applicant is not required to
comply with the affordable housing or open space requirements outlined in SB 375 for Transit Priority Projects.

6. Comment: The EIR should have been prepared by an independent firm with no ties to the applicant.

Response: As described in the response to Notice of Preparation comments, the EIR was prepared by a consultant working for the City of San José. While the developer must cover the cost of the EIR, the developer has no input into the process. The City, as the Lead Agency, is legally responsible for the contents of the EIR and controls all aspects of the EIR preparation.

Conclusion
The appeal letter never addressed the adequacy of the Determination of Consistency and instead primarily focused on the analysis of the previously adopted FEIR. The issues raised in the appeal letter do not present new information requiring additional environmental review. The displacement of existing residents is a social/economic issue which does not require analysis under CEQA unless it results in secondary physical impacts on the environment. The appellant has not provided substantial evidence to support the claim that the displacement of existing residents on the project site will result in a significant secondary impact to GHG emissions. As demonstrated in the certified FEIR, project GHG emissions were found to be less than significant and an analysis of future GHG emissions of displaced residents was not required because such an analysis would be speculative. Furthermore, claims by the appellant that the project does not comply with SB 375 and Plan Bay Area have no merit as the project did not seek CEQA streamlining as a Transit Priority Project under SB 375, and goals under Plan Bay Area apply to the development of local plans (such as a general plan or specific plan), not individual projects. Finally, as the PD Permit complies with the adopted PD Zoning and does not differ from the project analyzed in the FEIR, a Determination of Consistency is the appropriate environmental clearance.

The FEIR was certified by the City Council on February 23, 2016. Subsequent to certification, there was no request for reconsideration of the certified FEIR pursuant to Section 21.07.080 of the San José Municipal Code, nor was any legal challenge filed within 30 days of recordation of the Notice of Determination. As such, the recently certified FEIR is adequate and valid under CEQA for the Project. Further, pursuant to California Public Resources Code Section 21166 and CEQA Guideline Section 15162, when an EIR has been certified for a project, no subsequent EIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, that (i) there are substantive changes in the proposed project from the project analyzed in the prior EIR, (ii) there are substantial changes in the circumstances under which the project is undertaken from what was analyzed in the prior EIR, or (iii) new information of substantial importance that would require a new or subsequent environmental impact report has been provided. None of these conditions apply to the Project.

General Plan Conformance
The project site is designated as Urban Residential and within an Urban Village Boundary on the Envision 2040 General Plan Land Use/Transportation Diagram. The Urban Residential land use designation has a permitted residential density of 30-95 DU/AC, a FAR of 1.0 to 4.0 (3 to 12 stories),
and allows medium density residential development, as well as a broad range of commercial uses, including retail, offices, hospitals, and private community gathering facilities, within identified Urban Villages, or within Specific Plan areas, or in areas in close proximity to an Urban Village or transit facility.

The approved PD Zoning and subject PD Permit allow for up to 640 residential units at a density of 85 DU/AC, a minimum of 8,000 square feet of commercial uses, and a maximum building height of 85 feet, which is in conformance with the Urban Residential land use designation.

The site is located within the Winchester Urban Village Boundary. An Urban Village Plan has not been developed for this Village. The General Plan states that prior to implementation of the Urban Village Plan, the underlying General Plan land use designation determines the appropriate use and application of General Plan land use policies for the property. As such, the proposed rezoning was analyzed for its conformance with its Urban Residential land use designation. The Memorandum to the City Council from the Planning Commission dated January 8, 2016 (Attachment 5) provides an in-depth analysis of the Project’s General Plan conformance.

Zoning Conformance

The subject site is zoned R-M(PD). The City Council adopted the PD Zoning on March 8, 2016, (File No. PDC14-040, Ordinance 29697), which became effective on April 8, 2016. The PD Zoning allows the demolition of the existing apartment complex and the development of up to 641 multi-family residential units and 8,000 square feet of commercial space. The PD Permit conforms to the approved General Development Standards in the adopted PD Zoning as multi-family residential and commercial uses are permitted uses, and the proposed structures meet the setbacks, height, open space, and parking requirements of the approved General Development Plan. The details are described in the approved Planned Development Permit and site plan are on file with the Planning Department.

EVALUATION AND FOLLOW-UP

If the Council denies the environment appeal and approves the Determination of Consistency, the Director of Planning, Building and Code Enforcement’s approval of the PD Permit will be upheld and, the applicant may proceed with the acquisition of the necessary demolition, grading, and building permits and complete the development of the Reserve redevelopment project.
POLICY ALTERNATIVES

As discussed in the Analysis section, the Council has one distinct decision to make:

1. **Environmental Review**: The Council can either:
   a. Approve the use of the Determination of Consistency; or
   b. Require that additional environmental review be conducted, resulting in a new environmental document that would require review and approval by the Director of Planning, Building and Code Enforcement prior to consideration of the PD Permit.

For the reasons stated in the Analysis section, staff recommends that the City Council adopts a resolution and denying the environmental appeal approving the use of the Determination of Consistency, make the required findings under CEQA as set forth above, and uphold the Director of Planning, Building and Code Enforcement's approval of the Planned Development Permit.

PUBLIC OUTREACH

For this item, staff followed Council Policy 6-30: Public Outreach Policy in that notices for the public hearings for the project were mailed to the owners and tenants of all properties located within 1,000 feet of the project site. Furthermore, staff mailed a copy of this City Council Memorandum to adjacent property owners pursuant to Section 21.04.140 of the San Jose Municipal Code.

COORDINATION

The preparation of this memorandum was coordinated with the Department of Public Works and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable Zoning and General Plan goals and policies as discussed in the Analysis section.

CEQA

CONCLUSION

The Determination of Consistency meets the requirements of CEQA by disclosing the environmental effects of the project. Because the appeal does not raise new environmental issues or indicate that environmental impacts are more severe than previously disclosed, there is no need for additional environmental review. As the project does not include substantial changes to the previously adopted Environmental Impact Report and there is no new information involving significant effects since the adoption of the FEIR, additional environmental review is not required pursuant to CEQA Guideline section 15162(a). Staff recommends that the City Council uphold the use of the Determination of Consistency, adopt the related Mitigation Monitoring and Reporting Program, and approve the Planned Development Permit.

/s/
HARRY FREITAS, DIRECTOR
Planning, Building and Code Enforcement

For questions about the environmental appeal, please contact David Keyon at (408) 535-7898.

Attachments:  
Attach 1 - Determination of Consistency with the Reserve Residential Project Final Environmental Impact Report, dated April 25, 2016.  
Attach 2 - Environmental Appeal from Sandy Perry, dated May 3, 2016.  
Attach 3 - Planned Development Permit approved by the Planning Official on April 29, 2016.  
Attach 4 - Final Environmental Impact Report for The Reserve Residential Project adopted by the City Council on February 23, 2016 (Resolution No. 77676), found at: http://www.sanJose.ca.gov/index.aspx?nid=4941  
Attach 5 - Memorandum to the City Council from the Planning Commission, dated January 8, 2016 at http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2124&meta_id=557364  
Attachment 1

CITY OF SAN JOSÉ

DETERMINATION OF CONSISTENCY WITH THE RESERVE RESIDENTIAL PROJECT ENVIRONMENTAL IMPACT REPORT

Pursuant to Section 15162 of the CEQA Guidelines, the City of San José has determined that the project described below is pursuant to or in furtherance of a Final Environmental Impact Report (EIR) identified below and does not involve new significant effects beyond those analyzed in the Final EIR. Therefore, the City of San José can take action on the project as being within the scope of the Final EIR.

PROJECT DESCRIPTION AND LOCATION: PD15-067 – The Reserve Planned Development Permit. Planned Development Permit to allow for the demolition of an existing apartment complex and the development of up to 640 multi-family residential units and 8,000 square feet of commercial space on 7.68 gross acre site. Location: 881 S. Winchester Boulevard, at the northwest corner of S. Winchester Boulevard and Williams Road (APN 299-26-059).

The environmental impacts of this project were addressed by a Final EIR titled “The Reserve Residential Project Final Environmental Impact Report,” with findings adopted by City Council Resolution No. 77676 on February 23, 2016. Specifically, the following impacts were reviewed and found to be adequately considered by the EIR, as supplemented:

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David Keyon
Project Manager

4/25/2016
Date

Harry Freitas, Director
Planning, Building and Code Enforcement

Meenaxi R P
Deputy

DK/04-25-16
PD15-067
The Reserve Planned Development Permit
Appeal of Environmental Determination

Attachment 2
Environmental Appeal from Sandy Perry, dated May 3, 2016.
NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF

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TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:

The Reserve Apartments - demolition, re-development

881 S. Winchester

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet):

see attached

PERSON FILING APPEAL

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<td>5/2/16</td>
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</tbody>
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CONTACT PERSON

(IF DIFFERENT FROM PERSON FILING APPEAL)

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
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<th>ZIP CODE</th>
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<tr>
<th>DAYTIME TELEPHONE</th>
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<th>E-MAIL ADDRESS</th>
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<tr>
<td>( )</td>
<td>( )</td>
<td><a href="mailto:perry.sandy@aol.com">perry.sandy@aol.com</a></td>
</tr>
</tbody>
</table>

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.
Summary: We believe this project is inconsistent with Housing Policy H-1.1 and 1.2. This project creates significant environmental impacts that are not in compliance with the General Plan. The EIR does not address AB375 concerns. EIR should have been done by independent firm.

On September 8, 2015, Diana Castillo of the Law Foundation brought up concerns regarding the July 2015 DEIR that were never properly addressed* and were again brought up April 27. These issues relate to Housing Policy H-1.1 and 1.2 (Social Equity and Diversity). San Jose has a tremendous need for affordable housing for a range of incomes and that project does not address that, nor does it help meet its affordable housing goals contained in the Regional Housing Needs Assessment.

This development does not help the city meet an affordable goal given it is taking out a naturally affordable product and it plays no role in replacing or adding to the affordable housing stock. This is inconsistent with Housing Policy H-1.1 and 1.2. In fact, it’s almost the opposite since the development of this new housing will facilitate the creation of a less economically, culturally, and demographically diverse and integrated community. It also does not facilitate the provision of housing across location, type, price, and status as rental or ownership that respond to the needs of all economic and demographic segments of the community including seniors, families, the homeless and individuals with special needs. The vehicle miles traveled will create increased CO2 gasses because these displaced peoples will be commuting from greater distances all over the Bay Area. The General Plan/Envision 2040 idea of Urban Villages, of which this development is a part of, hastens or creates the very homelessness Housing Policy H-1.2 seeks to address, and the displacement created by these Urban Villages causes and increase in CO2, not a decrease, that the Envision 2040 plan seeks.

During the public testimony on April 27, it was stated that the permit should be denied or delayed until its adverse environmental impacts could be addressed, specifically the adverse impact of displacing 216 families from rent controlled apartments with no plan to ensure the availability of alternative affordable housing that would not require long commutes. In refusing to deny or delay the permit, planning staff erroneously stated that although demolition and displacement could create longer commutes for families now living in The Reserve Apartments, the new proposed project on the site might create shorter commutes for the 640 families projected to move into the new apartments that would be constructed.

This argument is not credible. Given the San Jose General Plan revised goal of creating 1.1 jobs per employed resident, it is reasonable to assume that if the new units house 960 employed residents (assuming 1.5 employed residents per household), then the city will be planning to create some 1056 jobs (1.1 X 960) to offset the fiscal impact of the new housing.

Therefore the total number of new commuters from outside the area caused by this project alone would include the estimated 324 workers displaced from The Reserve Apartments (216 X 1.5) plus the 96 commuters to the new jobs created by the city to offset the fiscal impact of the new housing. The new project will not reduce or offset the number of long commutes created by the tenants displaced at The Reserve Apartments, as stated by City staff. Instead it will add another 96 commuters to the displaced Reserve Apartments commuters for a total of 420. This is a significant environmental impact and therefore the project should be rejected unless and until it can offset those 420 long commutes with affordable housing located reasonably close to the existing jobs held by current Reserve Apartments residents and the future jobs created as dictated by the General Plan.
State law was adopted through SB375 that required regions and communities to develop a plan to reduce CO2 through a series of measures. This includes housing all residents and workers within their jurisdictions, developing housing at all income levels wasn’t developed in a manner that displaces low income families. SB375 adds additional factors to CEQA to specifically address the impact of CO2 and displaced residents. The development of the SB375 compliance plan was conducted in our region by the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG), approved by the City of San Jose and adopted by the State of California as our guiding compliance document. It is known as Plan Bay Area (PBA).

The Reserve Apartments are in a Priority Development Area (PDA) as designated by our local government, included in the PBA document developed by MTC and ABAG and adopted as mandated by SB375. While SB375 was mentioned once at a meeting, the additional factors that SB375 layers onto CEQA was not, nor were any mitigation measures outlined that would comply with the approved SB375 PBA document. PBA specifically states that the housing affordability goal precludes displacement, and by ensuring such housing.

By displacing over 500 people out of 216 rent-controlled units San Jose looks like it is very much in violation of this SB 375. San Jose must review the displacement issue that was brought up at the April 27 final planning hearing because in fact, SB 375 does discuss displacement and looks at the displacement issue as part of the environmental impact. The EIR did not address in any way that SB375 or the fact that by virtue of the fact that the Reserve Apartments are within a PDA and a Transit Corridor that there are specific housing laws related to this that need to be followed according to SB 375. These must be addressed. The EIR is not in compliance with State Law and needs to be reviewed again in light of this. San Jose should not move forward with this project until the EIR has adequately addressed Environmental Law SB375 as it relates to displacement and related housing regulations as put forth in the law.

Lastly, we believe the EIR should have been conducted by an independent firm with no ties to Greystar Corporation or Erik Schonnauer as they are more likely to do so in an objective manner. Rather than a firm appointed by Greystar Corporation or their lobbyist, Schonnauer, who is likely to provide the EIR results their employer is seeking.

*The response to Ms. Castillo’s letter was "As there is no physical change to the environment that would result from the displacement of residents in the existing apartments, no further discussion is required. Less that Significant Impact."
PD15-067
The Reserve Planned Development Permit
Appeal of Environmental Determination

Attachment 3
Planned Development Permit approved by the Planning Official on April 29, 2016
## PLANNED DEVELOPMENT PERMIT

<table>
<thead>
<tr>
<th>FILE NO.</th>
<th>PD15-067</th>
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<tbody>
<tr>
<td>LOCATION OF PROPERTY</td>
<td>Northwest corner of S. Winchester Boulevard and Williams Rd. (881 S. Winchester Boulevard)</td>
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<tr>
<td>ZONING DISTRICT</td>
<td>R-M (PD) Planned Development</td>
</tr>
<tr>
<td>ZONING FILE NUMBER</td>
<td>PDC14-040; Ordinance No. 29697</td>
</tr>
<tr>
<td>GENERAL PLAN DESIGNATION</td>
<td>Urban Residential</td>
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<tr>
<td>PROPOSED USE</td>
<td>Planned Development Permit to allow for the demolition of an existing apartment complex and the construction of 640 multi-family residential units and 8,000 square feet of commercial space on a 7.68 gross acre site.</td>
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<td>ENVIRONMENTAL STATUS</td>
<td>Environmental Impact Report The Reserve Residential Project (PDC14-040); Resolution No.77676</td>
</tr>
<tr>
<td>OWNER/ADDRESS</td>
<td>Randy Ackerman, Managing Director Greystar 221 Main Street, Suite 1280, San Francisco, CA 94105</td>
</tr>
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</table>

### FACTS

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

1. The proposed Planned Development Permit would facilitate the demolition of an existing 216 unit apartment complex and allow for the development of a new mixed use, multi-family development with up to 640 residential units, surface and structured parking, and a minimum of 8,000 square feet of ground floor commercial space.

2. The 7.68-acre project site is comprised of a single parcel and is located at the northwest corner of South Winchester Boulevard and Williams Road in the City of San José.
3. The subject site is within an Urban Village Boundary (Winchester) and has an underlying land use designation of Urban Residential, which has a permitted residential density of 30-95 DU/AC and an FAR of 1.0 to 4.0 (3 to 12 stories). Prior to implementation of an Urban Village Plan, the underlying General Plan land use designation determines the appropriate use and application of General Plan land use policies for the property. As such, the proposed Planned Development Permit was analyzed for its conformance with its Urban Residential land use designation.

4. This project proposes a residential density of 85 DU/AC at an FAR of 2.2, in a building that is 3 to 6 stories.

5. The subject site is zoned R-M (PD) Planned Development, File No. PDC14-040, which was approved by City Council on February 23, 2016 with Ordinance No. 29697 and became effective on April 08, 2016.

6. In accordance with Section 20.100.900 of the San José Municipal Code, a Planned Development Permit is required.

7. This project is providing parking in a parking garage that has one floor of underground and one floor of partially submerged parking which is wrapped by active building uses and will not be visible from the public right-of-way. Visitor parking spaces are provided along the alley at the northern portion of the property which will be accessed from Winchester Boulevard and Williams Road.

8. The City prepared an Environmental Impact Report (EIR) for the project, which analyzed the environmental impacts of the project and discussed alternatives to the proposed project. The EIR was circulated for public review and comment for 45 days from July 24 to September 8, 2015. The City received three comment letters from State and regional agencies and 37 comment letters from organizations and individual members of the public. The City Council certified of the Environmental Impact Report and approved Adoption of a Mitigation Monitoring for this project on February 23, 2016 with the resolution No. 77676.

9. This project is located in a designated Urban Village per the Envision San Jose 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.

10. This project fronts Winchester Boulevard, which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for Santa Clara Valley Transportation Authority light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.

11. The project is located in a non-Hydromodification Management area and is not required to comply with the City’s Post-Construction Hydromodification Management Policy (Council Policy 8-14).

12. A Traffic Impact Analysis has been performed for this project based on 326 AM and 413 PM peak hour trips.
FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan, in that:
   a. This site is located within “Winchester Urban Village” and is consistent with Urban Village Major Strategy. This Permit will provide a mix of housing, commercial and a publicly accessible plaza. The density from this project can support future transit ridership which is essential in bringing improved public transit for this Boulevard.
   b. This project is consistent with the General Plan Major Strategy of Streets for People. Complete streets promote land uses and compact development that bring many activities close together. This project is consistent with this Strategy in that it provides enough density in a compact development that would support transit ridership, as well as walking and bicycling.
   c. This project is located within Winchester Urban Village. Urban villages are also areas for focused growth in the City of San Jose. The project is consistent with the Focused Growth Strategy in that it provides a compact and dense development in a mixed-use format that supports transit ridership. It also supports a higher and not lower density thereby providing more housing options in the community.
   d. This project does not provide significant parking above the number of parking required by the Zoning Ordinance. The Zoning Ordinance allows parking reductions for projects located within an urban village; however, at this time this project is not proposing to utilize a parking reduction, but the Development Standards do provide an allowance to use the exception.
   e. This project provides commercial ground floor activity close to the sidewalk on Winchester Boulevard and a pedestrian-friendly residential edge along Winchester Boulevard and Williams Road. This residential edge provides welcoming building entrances opening to the sidewalk. The parking is located underground and does not interrupt the pedestrian activity and the liveliness of the street. Winchester Boulevard lacks of quality urban plazas and this project provides an 8,000 square foot publicly-accessible plaza along Winchester Boulevard that is highly visible to the public, can have multiple functions.
   f. The project will facilitate a vibrant, transparent and human-scaled ground-floor commercial space along Winchester Boulevard, as well as active residential space along Winchester Boulevard and Williams Road. Ground floor entrances both for commercial and residential portion are well-defined, inviting, and oriented to the pedestrian realm. The ground floor commercial space is flexible to accommodate a wide range of tenants and adapt to market changes over time.
   g. This project has a density of 85 DU/AC and a maximum building height of 85 feet. The height for this building drops down to 40 feet when fronting the adjacent single-family residence at the western property line. The building will also have a significant setback of 60 feet from this property line and as a result, it has an appropriate interface with the surrounding uses. This project provides 640 dwelling units and 8,000 square feet of commercial space and contributes to the planned job and housing capacity for the Winchester Urban Village. This residential density will add more people to support future transit ridership, provide housing close to future planned employment in proximity of this project, and support a walkable environment.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
   a. The proposed project conforms to the approved General Development Plan under File No. PDC14-040 as multi-family residential and commercial uses are permitted uses.
   b. The proposed project meets the setback, height, open space, and parking requirements of the approved General Development Plan (File No. PDC14-040).

3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious, in that:
   a. The architectural design of the project is consistent with the Architecture and Urban Design Standards in PDC14-040 for ground floor interface, building massing, architectural corner elements, building entrances, and landscaping.

4. Pursuant to Section 20.80.460 of the San José Municipal Code the following criteria have been considered by the Director of Planning to determine whether the benefits of permitting the demolition of the existing building outweighs the impacts of demolition:
   a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
   b. The failure to approve the permit would jeopardize public health, safety or welfare;
   c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.
   d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
   e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
   f. Rehabilitation or reuse of the existing building would not be feasible; and
   g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

5. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, which even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties in that:
   a. A Final Environmental Impact Report (EIR) for Planned Development Rezoning (PDC14-040), was certified and the project approved by the City Council on February 23, 2016. The EIR evaluated impacts related to air quality, cultural resources, geology, hydrology and hazardous materials, land use, noise, and traffic and transportation. Based on the analysis, it has been concluded that the Reserve Mixed Use Project Final EIR adequately addresses the environmental effects of the proposed project, and project would not result in significant environmental effects that are not already identified in the Final EIR. Therefore, a Determination of Consistency has been made and further environmental clearance is not required.
   b. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.
c. Mitigation measures were made a condition of the approval of the project.

d. A Mitigation Monitoring and Reporting Program was adopted for this project.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Chapter 20.100 of the San José Municipal Code, the subject Planned Development Permit.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
   a. Acceptance of the Permit by the applicant; and
   b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **Permit Expiration.** This Planned Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such four year period, the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San Jose Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.

3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit for construction and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the “Building Code” shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **Conformance to Plans.** Development of the site shall conform to approved Planned Development plans entitled “Planned Development Permit for The Reserve-A Mixed Use Development” last dated April 26, 2016, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.

6. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.

7. **Conformance with Previously Approved Zoning and Environmental Clearance.** All conditions of approval and required environmental mitigation measures from the approved Planned Development Zoning (File no. PDC14-040) remain in effect.

8. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.

9. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses. Issuance of this permit in no way negates the permittee’s or property owner’s obligation to fully and timely comply with each and every provision set forth in the Development Standards of Planned Development Zoning, File No. PDC14-040.

10. **Scope of Planned Development Permit.** This Planned Development Permit approves the demolition of an existing apartment complex and the construction of 640 multi-family residential units and 8,000 square feet of commercial space on a 7.68 gross acre site.

11. **Subsequent Permits Required.** This permit does not include approval of the removal and replacement of trees on site. Prior to the issuance of building permits, a subsequent Planned Development Permit Amendment is required for tree removal and replacement.

12. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San Jose Municipal Code.

13. **Affordable Housing.** The project may be subject to the City’s Inclusionary Housing Ordinance, Policy, or Affordable Housing Impact Fee. If the projects are subject to the referenced Ordinance, Policy, or Fee, an Affordable Housing Agreement shall be executed by the City and Permittee, and recorded against the entire Project prior to the approval of any final or parcel map or issuance of any building permit for said projects. If the Permittee is required to pay an impact fee, the fee shall be paid prior to the issuance of building permits. No Temporary Certificate of Occupancy, or Certificate of Occupancy, or Notice of Completion for any residential units will be issued until all requirements of the Inclusionary Housing Ordinance, Inclusionary Housing Policy and/or the Housing Impact Fee Resolution have been met.

14. **Green Building.** The project must receive a minimum green building certification of LEED Certified or green point rated. The applicant shall pay a Green Building Refundable Deposit at the building permit stage. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the
Municipal Code. In the event that building permits are issued for individual units and not a more than one “model” unit, the applicant will need to submit a green building checklist prior to the issuance of a building permit.

15. Building Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

a. Park Impact Fees. The applicant shall provide evidence to the Chief Building Official that the applicable Park Impact Fees, pursuant to Ordinance 24172 (Chapter 14.25 of Title 14 of the San José Municipal Code), have been paid to the satisfaction of the Director of Public Works.

b. Construction Plans. This permit file number, PD15-067, shall be printed on all construction plans submitted to the Building Division.

c. Americans with Disabilities Act. The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).

d. Emergency Address Card. The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

e. Street Number Visibility. Street numbers of the buildings shall be easily visible at all times, day and night.

f. Construction Plan Conformance. A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

16. Fire Clearance for Issuing Permits. The Fire Department’s review was limited to verifying compliance of the project to Chapter 5, Appendix B, and Appendix C of the 2013 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

17. Landscaping. Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

a. Trees. No palm trees shall be planted with the exception of the common space located on the podium deck.

18. Landscaping Maintenance. The Property Owner shall maintain on-site landscaping areas and landscaping areas along the public right-of-way areas/streets to the satisfaction of the Director of Public Works.

19. Irrigation Standards. The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San Jose Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect prior to Certificate of Occupancy.
20. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

21. **Storm Water Stenciling.** All drain inlets shall be labeled “No Dumping—Flows to Bay.” Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.

22. **Colors and Materials.** All building colors and materials shall be as shown on the approved plans. Changes to the approved colors and materials shall require review by the Director of Planning, Building, and Code Enforcement.

23. **Lighting.** All exterior lighting shall be as shown on the approved plans. On-site, exterior, unroofed lighting shall conform to the Outdoor Lighting Policy. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.

24. **Fencing.** Fence height and materials shall be as shown on the approved plans. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.

25. **Mechanical Equipment.** The location of mechanical equipment (AC Units) shall be located as shown on the approved plans and shall be screened from view.

26. **Sign Approval.** No signage is approved with this Planned Development Permit. All proposed signage is subject to the approval of a Sign Permit Adjustment.

27. **Relocation Benefits Plan.** Prior to the issuance of a demolition permit by the Building Division, the permittee shall provide evidence to the Director of Planning, Building, and Code Enforcement that the relocation benefits plan for existing tenants has been compiled with to the satisfaction of the Director of Planning, Building, and Code Enforcement. The plan should include but be not limited to the following:

   a) **Ongoing resident communication:** A monthly written updates on progress of the redevelopment plans such that current residents will be made aware of any anticipated changes to the formal Notice of Relocation date and other pertinent information, and offer all residents the opportunity for in-person meetings to discuss any concerns they may have.

   b) **Notice of Relocation:** Provided to all households a minimum of 120 days prior to the required vacancy of the property.

   c) **Early Termination of Lease:** Any resident in a fixed term lease at the time the written Notice of the Future Redevelopment and Eventual Termination of Tenancy is initially served will be permitted to terminate their lease on thirty (30) days’ notice without penalty.

   d) **Eligibility for Relocation Benefits:**

      i. A household will be eligible to receive Special Relocation Benefits if the household’s income is at or below 80% of the AMI (Area Median Income) for Santa Clara County published by HUD and adjusted for household size.

      ii. A household will be eligible to receive Basic Relocation Benefits if the household income is over 80% of AMI.
iii. Eligibility for Special Relocation Benefits will be determined through a third party, hired by Greystar, which will verify the household’s income by following HUD guidelines for income calculations.

iv. Households must be current residents in good standing at the time the 120-day Notice to Vacate is issued in order to be eligible for any benefits.

e) Relocation Benefits for Eligible households:
   a. Special Relocation Benefits for Eligible low income households (at or below 80% of AMI):
      i. Three (3) months of current rent;
      ii. Full refund / return of security deposit;
      iii. Access to a relocation specialist for assistance in locating a new residence and who will work with residents to streamline the relocation process if a resident elects to move to another property managed by Greystar for which resident is qualified.
      iv. $3,000 additional for households with special circumstances, including any or all of the following: seniors (62+), persons with disabilities or handicaps, who may require additional assistance with relocation because of their disability, and families with at least one (1) dependent child living at the property.

   b. Basic Relocation Benefits for all other Eligible households:
      i. Full refund / return of security deposit;
      ii. Access to the relocation specialist for assistance locating a new residence.

28. Public Works Clearance for Building Permit(s) or Map Approval. Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: http://www.sanjoseca.gov/index.aspx?nid=2246.

   a. Construction Agreement: The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

   b. Transportation: A Traffic Impact Analysis has been performed for this project based on 326 AM and 413 PM peak hour trips. See separate Traffic memo dated 10/29/2015 for additional information. The following are project conditions in the Traffic memo:
      i. Conform to the Protected Intersection Policy for multiple impacts at protected intersections by construction of offsetting improvements. The improvements will be determined during the PD permit stage of the project. The cost of the offsetting improvements must be equal to the highest peak hour trips multiplied by the fee. The
fee as of July 1, 2015 is equal to $4,232 per peak hour trip for multiple intersection impacts. The fee will automatically adjust annually on July 1st based on a 3.5 percent annual cost escalation. The off-setting improvements must be approved with the public improvement plans prior to issuance of Public Works Clearance.

ii. Contribute a fair share contribution towards the County of Santa Clara Expressway project for impacts to San Tomas Expressway/Moorpark Avenue in order to add a fourth through travel lane. The fair share contribution amount will be determined prior to PD permit issuance.

iii. Add a second eastbound left-turn lane on Winchester Boulevard/Williams Road. This will require removal of the traffic islands at the northwest quadrant of Winchester Boulevard/Williams Road.

iv. Extend existing eastbound left-turn lane at Winchester Boulevard/Williams Road by 75 feet.

c. **Other Public Works Conditions:**

   i. Parking spaces adjacent to the column located in the parking garage should be removed to allow for adequate turnaround space.

   ii. Provide 26 feet wide drive aisles.

   iii. Provide a minimum 15 foot sidewalk along project frontage on Winchester Boulevard.

d. **Off-Setting Improvements:**

   Per the City's Protected Intersection policy, the Reserve project will construct transportation improvements in the vicinity of the project and/or impacted protected intersections up to a value of roughly $1.8M. In priority order, the City requests that the Reserve construct the following:

   i. Reconstruct the intersection of Winchester Boulevard and Williams Road to remove pork chop islands, reduce length of pedestrian crossings, improve alignment across Williams Road and construct median islands along Williams Road at the intersection. This will require a traffic signal modification. The project is conditioned to reconstruct the north west quadrant of the intersection, Item 2(c) of this memo. The cost for item 2(c) should not be funded with the Off-Setting Improvements funds.

   ii. Upgrade the existing bike tunnel and overcrossing at I-280 at Monroe Street to include lighting, signage, and other safety improvements. This will require an encroachment permit from Caltrans. The City will provide support to the Developer in obtaining a permit from Caltrans. Please note that signal modifications at Moorpark and Monroe (the southern base of the tunnel/overcrossing) are underway by DOT staff and should be coordinated with this effort.

   iii. Additional Priorities (if value remains per the policy once the cost of items 3(a) - 3(b) are understood and agreed to, pursue the following:)

      1) Repair/upgrade existing sidewalks, install/uprade ramps, and/or install missing sidewalks where curb and gutters already exist (locations to be provided by DOT staff).

      2) Install shared bike route markings ("sharrows") and signs on Eden from Moorpark to West Rosemary Lane and Cypress from Moorpark to Williams.
3) Plant street trees in areas where they are currently missing (locations to be provided by DOT staff).

4) Install or improve bicycle signal detection systems along existing bikeways (locations to be provided by DOT staff). v) Improve the quality of existing streetlights (converting lights to LEDs) and/or install missing streetlights (locations to be provided by DOT staff).

29. **Grading/Geology:**

   a. A grading permit is required prior to the issuance of a Public Works Clearance.

   b. All on-site storm drainage conveyance facilities and earth retaining structures 4’ foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2010 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10 year storm event.

   c. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.

   d. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

   e. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit.

30. **Stormwater Runoff Pollution Control Measures.** This project must comply with the City’s Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

   a. The project’s Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.

   b. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.

   c. Media Filter Unit(s) located within Building footprints must conform to Building Division Directive P-005 located at the following: http://www.sanjoseca.gov/documentcenter/view/38835

31. **Stormwater Peak Flow Control Measures.** The project is located in a non-Hydromodification Management area and is not required to comply with the City’s Post-Construction Hydromodification Management Policy (Council Policy 8-14).
32. **Sewage Fees.** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

33. **Parks.** This residential project is subject to either the requirements of the City’s Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.

34. **Undergrounding.** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Winchester Boulevard and Williams Road, prior to issuance of a Public Works Clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2016 base fee is $451 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record’s City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued (based on 2016 rate, the fee is approximately $434,000).

35. **Street Improvements:**
   a. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
   b. Construct 15’ wide sidewalk with tree wells at back of curb along Winchester Boulevard project frontage.
   c. Construct 10’ wide sidewalk with tree wells at back of curb along Williams Road project frontage.
   d. Close unused driveway cut(s).
   e. Construct up to a 26’ wide City standard driveway on Williams Road.
   f. Construct up to a 26’ wide City standard driveway at the northern side of project frontage on Winchester Boulevard.
   g. Relocate the hooded inlets on the project frontages of Winchester Boulevard and Williams Road.
   h. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any Planning and Building necessary pavement restoration will be included as part of the final street improvement plans.
   i. Coordinate with VTA the relocation of the west bound bus stop on Williams Road between the project driveway and the intersection of Winchester Boulevard/Williams Road. Bus stop improvements should be to the satisfaction of VTA.

36. **SNI.** This project is located within the Winchester SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.

37. **Sanitary.** Extend the sanitary sewer main on Williams Road to project frontage.

38. **Electrical.** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
39. **Street Trees.** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current “Guidelines for Planning, Design, and Construction of City Streetscape Projects”. Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

**Environmental Mitigation.**

1. **Construction/Demolition Impact Mitigation Measures.** The applicant is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction/demolition activities in compliance with these conditions, or be subject to enforcement action.

   a. **Compliance.** The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.

   b. **Construction Hours.** Construction and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel.

   c. **Plans.** The construction hours shall be printed on all plans for the project used to construct the project.

   d. **Enforcement.** The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.

   e. **Construction Deliveries.** Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.

   f. **Fencing.** The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during all other times, except for a 30-minute period immediately preceding and following the above hours of construction.

   g. **Assembly Area.** Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
h. **Disturbance Coordinator.** A Construction/Disturbance Coordinator shall be identified by the developer for this project. The Construction/Disturbance Coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also compile information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem in a timely manner. The coordinator shall maintain a log of calls and shall make that log available to the City of San Jose upon request.

i. **Construction Equipment.** Equip all internal combustion engine-driven equipment with mufflers which are in good condition and appropriate for the equipment.

   i. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists.

   ii. Locate stationary noise-generating equipment as far as possible from sensitive receptors. Staging of construction equipment will be as far as feasible from the sensitive receptors.

   iii. Prohibit unnecessary idling of internal combustion engines.

j. **Posting of Telephone Number.** The name and phone number of the construction/Disturbance coordinator, the hours of construction limitations, City File Number PD12-013, City contact and phone number, shall be displayed on a weatherproof sign posted at each entrance to the project site. A local phone number with answering service shall be maintained during the duration of project construction.

k. **Street Cleaning and Dust Control.** During construction, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

l. **Construction Watering.** The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during construction to the satisfaction of the Director of Public Works.

m. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

n. Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to 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.

o. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.

p. Pave, or apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
q. Sweep daily (or more often if necessary) to prevent visible dust from leaving the site (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.

r. Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.

s. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).

t. Enclose, cover, water at least twice daily, or apply not-toxic soil binders to exposed stockpiles (dirt, sand, etc,) to prevent visible dust from leaving the site.

u. Limit traffic speed on unpaved roads to 15 mph.

v. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

w. Install wheel washers for all existing trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.

x. Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas.

y. Suspend excavation and grading activities when winds instantaneous gusts exceed 25 mph.

z. Limit the area subject to excavation grading, and other construction activity at any one time.

aa. All excavation and grading work will be scheduled in dry weather months or construction sites will be weatherized.

bb. Stockpiles and excavated soils will be covered with secured tarps or plastic sheeting.

c. Ditches will be installed, if necessary, to divert runoff around excavations and graded areas.

dd. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible and feasible. Building pads shall be laid as soon as possible and feasible, as well, after grading unless seeding or soil binders are used.

ee. 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.

ff. Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

gg. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.

hh. All diesel-powered off-road equipment larger than 50 horsepower and operating at the site for more than two days continuously shall meet U.S. EPA particulate matter emissions standards for Tier 2 engine or equivalent.

ii. All diesel-powered portable equipment (i.e., air compressors) shall meet U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent.
jj. Demolition and construction activities on- or off-site, within 500 feet of sensitive receptors, such as residential development, shall be restricted to the hours of 7 AM to 7 PM Monday through Friday, non-holidays only, consistent with the San Jose Municipal Code (Section 20.100.450).

kk. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. Temporary noise barriers could reduce construction noise levels by 5 dBA. Staging areas shall be located a minimum of 200 feet from noise-sensitive receptors, such as residential units.

ll. The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.

mm. Construct solid plywood fences around the construction site where it is adjacent to operational businesses, residences, or noise-sensitive land uses.

nn. If impact equipment (e.g., jack hammers, pavement breakers, rock drills) is needed during construction of the proposed project, hydraulically or electric-powered equipment shall be used wherever feasible to avoid the noise associated with compressed-air exhaust from pneumatically-powered tools. However, where use of pneumatically-powered tools is unavoidable, an exhaust muffler on the compressed-air exhaust shall be used. External jackets on the tools themselves shall also be used if available and feasible.

oo. The developer will implement the following measures to minimize construction noise impacts on the surrounding sensitive land uses to the fullest extent possible. The measures may include, but are not limited to, the following:
   i. Early and frequent notification and communication with the neighborhood of the construction activities and construction schedule.
   ii. Prohibit unnecessary idling of internal combustion engines.
   iii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
   iv. Best available noise control practices (including mufflers, intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds) shall be used for all equipment and trucks in order to minimize construction noise impacts.

2. Noise
   a. Sound rated construction methods shall be required for residential units fronting Winchester Boulevard, to maintain interior noise levels at 45 dBA DNL or less. Additional treatments may include, but are not limited to, sound rated wall construction, acoustical caulking, insulation, acoustical vents, etc. A preliminary review of the project plans and elevations indicates that windows and doors with a minimum Sound Transmission Class (STC) rating of 26 to 28 would be needed at units along Winchester Boulevard. The specific determination of what noise insulation treatments (i.e., sound rated windows and doors, sound rated wall construction, acoustical caulking, protected ventilation openings, etc.) are necessary will be completed by a qualified acoustical
consultant on a unit by unit basis for those units identified as being impacted by exterior noise levels of 70 dBA DNL. Results of the analysis, including the description of the necessary noise control treatment, will be submitted to the City along with the building plans and approved prior to issuance of any building permits.

b. A suitable forced-air mechanical ventilation system, as determined by the Department of Planning, Building and Code Enforcement, for units nearest Winchester Boulevard and Williams Road will be installed to ensure that interior noise standards are met. The units required to have forced-air mechanical ventilation systems for units facing both Winchester Blvd. and Williams St. The project developer will be required to submit a findings report by a qualified acoustical consultant verifying the interior noise levels of the affected units prior to the issuance of occupancy permits.

c. A detailed acoustical study shall be prepared during final building design to evaluate the potential noise generated by building mechanical equipment and demonstrate the necessary noise control to meet the city’s 55 dBA DNL goal. Noise control features such as sound attenuators, baffles, and barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations around the project site. The noise control features identified by the study will be incorporated in the project.

3. **Biology**

a. Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1 through August 31.

b. If it is not possible to schedule demolition and construction between September and January, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1 through April 30) and no more than 30 days prior to the initiation of these activities during the later part of the breeding season (May 1 through August 31). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with California Department of Fish and Wildlife, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction, until the birds are fledged.

c. Prior to any construction on-site, the contractors working in the vicinity of trees to be preserved are required to meet with a Certified Arborist at the site to review all work procedures, access routes, storage areas, and tree protection measures.

d. Prior to demolition, vegetation removal, or grading, establish a Tree Protection Zone around the trees, based on the outside edge of existing sidewalk cutout planting space or the tree canopy.

e. Install hay bales around the trunk or erect fencing at the outside edge of the cut-out. Use wooden fencing; orange plastic is not permitted.
f. Trees to be removed shall be felled so as to fall away from any Tree Protection Zones and avoid pulling and breaking of roots of trees to remain. If roots are entwined, under the direction of a Certified Arborist, the major woody root mass shall require severing before extracting the trees, or grinding the stump below ground.

g. Design irrigation systems so that no trenching will occur within the Tree Protection Zone.

h. Route underground services including utilities, sub-drains, water, or sewer around the Tree Protection Zone. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury.

i. Use herbicides that are safe for the trees on-site, even below pavement.

j. Trees to be preserved must be irrigated during the construction period. The irrigation schedule to be determined by a Certified Arborist. The soil within the Tree Protection Zone shall be irrigated so that the soil will be wet to a depth of 30”. Irrigate each tree weekly during months with no or low rainfall.

k. Any grading, construction, demolition, or other work that would encounter roots of trees to be preserved shall be monitored by a Certified Arborist.

l. If injury occurs to any tree during construction, it shall be evaluated as soon as possible by the Consulting Arborist so that appropriate treatments can be applied.

m. Fences are to remain until all site work has been completed. Fences may not be relocated or removed without permission of the project superintendent.

n. Materials, equipment, temporary buildings, fuels, paints, and other construction items shall not be placed within the drip line of existing off-site trees.

4. Hazardous Materials

a. Prior to any construction activities, soil samples shall be collected in the vicinity of the identified oil spillage in the drive aisle.

b. After demolition of the buildings and hardscape, but prior to the issuance of grading permits, soil samples shall be taken to determine the levels of contamination in the soil from previous agricultural operations.

i. Soil samples shall be collected from the approximate surface of the native soil, to 0.5 foot depth, and shall be analyzed for organochlorine pesticides and pesticide related metals (e.g. arsenic, lead, and mercury).

c. The soil sampling results will be compared to appropriate risk-based screening levels and submitted to the Santa Clara County Department of Environmental Health (SCCDEH) and the City’s Director of Planning, Building and Code Enforcement for review prior to issuance of grading permits.

d. If contaminated soils are found in concentrations above established thresholds for construction worker and residential environment safety, a Site Management Plan (SMP) will be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site.
e. A SMP will be prepared to establish management practices for handling soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; on-site soil reuse guidelines based on the RWQCB, San Francisco Bay Region’s reuse policy; sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; and soil stockpiling protocols.

f. Prior to issuance of grading permits, a copy of the SMP must be approved by the SCCDEH and the City’s Director of Planning, Building and Code Enforcement, and copied to the Environmental Service Department’s Environmental Compliance Officer.

g. In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling shall be conducted prior to the demolition of on-site buildings to determine the presence of asbestos-containing materials and/or lead-based paint.

h. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.

i. All potentially friable ACMs shall be removed in accordance with NESHAP guidelines prior to building demolition. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of CCR, Section 1529, to protect workers from asbestos exposure.

j. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.

k. Materials containing more than one percent asbestos are also subject to BAAQMD regulations.

l. Removal of materials containing more than one percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

5. Cumulative Transportation

a. The applicant shall construct a second eastbound left-turn lane on Williams Road at Winchester Boulevard. Improvement plans, contracts, and bonds shall be approved by the Department of Public Works prior to issuance of building permits. The addition of a second eastbound left-turn lane at the Winchester Boulevard/Williams Road intersection would reduce the average delay to an acceptable LOS D in the AM Peak Hour.

b. The addition of a fourth through lane to both the north and south approaches of the San Tomas Express/Moorpark Avenue intersection would reduce the average delay to better than background conditions in the PM Peak Hour. This improvement has been identified in the County Expressway Planning Study as a Tier 1 improvement and payment of fair share fees toward this improvement would mitigate the project’s impact.
6. **Water Quality.** Pursuant to the City’s requirements, the following Standard Permit Conditions, based on RWQCB recommendations, have been included in the project to reduce potential construction-related water quality impacts:
   a. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
   b. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
   c. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
   d. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
   e. All trucks hauling soil, sand, and other loose materials shall be covered.
   f. All paved access roads, parking areas, staging areas, and residential streets adjacent to the construction sites shall be swept daily with water sweepers.
   g. Vegetation in disturbed areas shall be replanted as quickly as possible.
   h. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system may also be installed at the request of the City.

7. **Cultural Resources**
   a. A qualified archaeologist will be on-site to monitor the initial excavation of the project site once.
   b. All pavement is removed. After monitoring the initial excavation, the archaeologist will make recommendations for further monitoring if it is determined that the site has cultural resources. If the archaeologist determines that no resources are likely to be found on site, no additional monitoring will be required.
   c. In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped, the Director of Planning, Building and Code Enforcement will be notified, and the archaeologist will examine the find and make appropriate recommendations prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery during monitoring would be submitted to the Environmental Senior Planner.
   d. In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner will be notified and shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.
8. **Trees.** The following Standard Permit Conditions are included in the project to reduce impacts to off-site trees during all construction activities, such as clearing, grading, demolition, excavation, and building:

   a. To the extent feasible, no site clearing, grading, excavation, or construction shall occur within the drip line of existing off-site trees.

   b. If site clearing, grading, excavation, or construction must occur within the drip line of existing off-site trees, these activities shall be done under direct supervision of a Certified Arborist (Certification of International Society of Arboriculture). No cutting of any part of off-site trees, including roots, shall be done without direct supervision of the Certified Arborist and prior notification of the owners of the trees.

   c. Materials, equipment, temporary buildings, fuels, paints, and other construction items shall not be placed within the drip line of existing off-site trees.

   d. Any cutting of existing off-site tree roots shall be done with light, approved equipment under the direct supervision of the Certified Arborist.

   e. Grading shall not create drainage problems for off-site trees by channeling water into them, or creating sunken areas.

   f. If off-site trees become damaged during construction activities, the trees will be replaced according to the tree replacement ratios in Table 4.10-2. The location and species of replacement trees will be at the discretion of the City Arborist and the Department of Planning, Building and Code Enforcement.

**APPROVED and issued on this 27th day of April, 2016.**

Harry Freitas, Director  
Planning, Building, and Code Enforcement

Deputy
PD15-067
The Reserve Planned Development Permit
Appeal of Environmental Determination

Attachment 4
PD15-067
The Reserve Planned Development Permit
Appeal of Environmental Determination

Attachment 5
Memorandum to the City Council from the Planning Commission, dated January 8, 2016, at
&meta_id=557364
PD15-067
The Reserve Planned Development Permit
Appeal of Environmental Determination

Attachment 6
Recorded Notice of Determination for the certification of The Reserve
Residential Project Final Environmental Impact Report, dated March 10,
2016
Santa Clara County Clerk – Recorder’s Office
State of California

REGINA ALCOMENDRAS, County Clerk – Recorder
by Mike Louie, Clerk – Recorder Office Spec.

**CEQA DOCUMENT DECLARATION**

**ENVIRONMENTAL FILING FEE RECEIPT**

PLEASE COMPLETE THE FOLLOWING:

1. LEAD AGENCY: City of San Jose, Department of Planning, Building, and Code Enforcement (Attn: David Keyon)

2. PROJECT TITLE: The Reserve Apartments (File No. PDC14-040)

3. APPLICANT NAME: The Reserve REIT, Inc.  PHONE: (713) 966-5000

4. APPLICANT ADDRESS: 750 Bering Drive, Suite 300, Houston, TX 77057

5. PROJECT APPLICANT IS A:  □ Local Public Agency  □ School District  □ Other Special District  □ State Agency  □ Private Entity

6. NOTICE TO BE POSTED FOR _______ 30 _______ DAYS.

7. **CLASSIFICATION OF ENVIRONMENTAL DOCUMENT**

   a. **PROJECTS THAT ARE SUBJECT TO DFG FEES**

      |   |  |  |
      |   |  |  |

      1. ENVIRONMENTAL IMPACT REPORT (PUBLIC RESOURCES CODE §21152) $ 3,070.00 $ 3,070.00
      2. NEGATIVE DECLARATION (PUBLIC RESOURCES CODE §21080(C)) $ 2,210.25 $ 0.00
      3. APPLICATION FEE WATER DIVERSION (STATE WATER RESOURCES CONTROL BOARD ONLY) $ 850.00 $ 0.00
      4. PROJECTS SUBJECT TO CERTIFIED REGULATORY PROGRAMS $ 1,043.75 $ 0.00
      5. COUNTY ADMINISTRATIVE FEE (REQUIRED FOR A.4 THROUGH A.4 ABOVE) Fish & Game Code §711.4(e) $ 50.00 $ 50.00

   b. **PROJECTS THAT ARE EXEMPT FROM DFG FEES**

      |   |  |  |
      |   |  |  |

      1. NOTICE OF EXEMPTION ($50.00 COUNTY ADMINISTRATIVE FEE REQUIRED) $ 50.00 $ 0.00

   c. **NOTICES THAT ARE NOT SUBJECT TO DFG FEES OR COUNTY ADMINISTRATIVE FEES**

      |   |  |  |
      |   |  |  |

      □ NOTICE OF PREPARATION NO FEE $ 0.00
      □ NOTICE OF INTENT NO FEE $ 0.00

8. OTHER: 

   FEE (IF APPLICABLE): $ 0.00

9. TOTAL RECEIVED: $ 3,120.00

*NOTE: "SAME PROJECT" MEANS NO CHANGES. IF THE DOCUMENT SUBMITTED IS NOT THE SAME (OTHER THAN DATES), A "NO EFFECT DETERMINATION" LETTER FROM THE DEPARTMENT OF FISH AND GAME, DOCUMENTING THE DFG'S DETERMINATION THAT THE PROJECT WILL HAVE NO EFFECT ON FISH, WILDLIFE AND HABITAT, OR AN OFFICIAL, DATED RECEIPT / PROOF OF PAYMENT SHOWING PREVIOUS PAYMENT OF THE DFG FILING FEE FOR THE "SAME PROJECT IS ATTACHED ($50.00 COUNTY ADMINISTRATIVE FEE REQUIRED)

DOCUMENT TYPE: □ ENVIRONMENTAL IMPACT REPORT □ NEGATIVE DECLARATION $ 50.00 $ 0.00

NOTICES THAT ARE NOT SUBJECT TO DFG FEES OR COUNTY ADMINISTRATIVE FEES

□ NOTICE OF PREPARATION NO FEE $ 0.00
□ NOTICE OF INTENT NO FEE $ 0.00

*NOTE: "SAME PROJECT" MEANS NO CHANGES. IF THE DOCUMENT SUBMITTED IS NOT THE SAME (OTHER THAN DATES), A "NO EFFECT DETERMINATION" LETTER FROM THE DEPARTMENT OF FISH AND GAME, DOCUMENTING THE DFG'S DETERMINATION THAT THE PROJECT WILL HAVE NO EFFECT ON FISH, WILDLIFE AND HABITAT, OR AN OFFICIAL, DATED RECEIPT / PROOF OF PAYMENT SHOWING PREVIOUS PAYMENT OF THE DFG FILING FEE FOR THE "SAME PROJECT IS ATTACHED ($50.00 COUNTY ADMINISTRATIVE FEE REQUIRED)

DOCUMENT TYPE: □ ENVIRONMENTAL IMPACT REPORT □ NEGATIVE DECLARATION $ 50.00 $ 0.00

**NOTICE: **NO PROJECT SHALL BE OPERATIVE, VESTED, OR FINAL, NOR SHALL LOCAL GOVERNMENT PERMITS FOR THE PROJECT BE VALID, UNTIL THE FILING FEES REQUIRED PURSUANT TO THIS SECTION ARE PAID." Fish & Game Code §711.4(c)(3)

(Fees Effective 01-01-2016)
NOTICE OF DETERMINATION
FOR AN ENVIRONMENTAL IMPACT REPORT

The Reserve Apartments, a Planned Development Zoning to rezone from the R-M Residential Zoning District to the A(PD) Planned Development Zoning District to allow for the demolition of an existing 216 unit apartment complex and the development of up to 641 multi-family residential units and 8,000 square feet of commercial space on 7.68 gross acre site. **Location:** 881 S. Winchester Boulevard, at the northwest corner of S. Winchester Boulevard and Williams Road (APN 299-26-059) **Council District:** 1.

This is to advise that on March 8, 2016 the City Council of the City of San José approved the above-described project and has made the following determinations regarding such project:

1. A Final Environmental Impact Report was prepared for this project and adopted on March 8, 2016 pursuant to the provisions of CEQA.

2. The project will have significant effects on the environment relating to transportation, air quality, noise, biological resources, hazardous materials, and cumulative traffic.

3. Mitigation measures were made a condition of approval of the project.

4. A Mitigation Monitoring or Reporting Program was adopted for this project.

5. A Statement of Overriding Considerations was not adopted for this project.

6. Findings were made pursuant to the provisions of CEQA.

The EIR and record of project approval may be examined at the City of San José, Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, 1st Floor Tower, San José CA 95113-1905. This notice is in compliance with Section 21108 and 21152 of the Public Resources Code.

The above-described project was approved and issued on March 8, 2016.

Harry Freitas, Director
Planning, Building and Code Enforcement

Date: 3-10-16

Deputy
Regina Alcromedras
Santa Clara Co.
Clerk-Recorder

03/10/16  14:03:23

Receipt # 2819682
Wrkstn ID C62A

Public
Fees $3,120.00
** TOTAL 3,120.00
Check 3,120.00

PLEASE KEEP