

## SITE DEVELOPMENT PERMIT

<b>FILE NO.</b>	<b>H12-022</b>
<b>LOCATION OF PROPERTY</b>	<b>South side of W. Santa Clara Street between San Pedro and Market Streets (1 S. Market Street)</b>
<b>ZONING DISTRICT</b>	<b>DC Downtown Core</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Downtown</b>
<b>PROPOSED USE</b>	<b>Site Development Permit to allow a 23-story mixed-use building consisting of up to 312 residential units, 6,000 square feet of ground-floor retail, and an associated parking garage on a 0.97 gross acre site</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Mitigated Negative Declaration</b>
<b>OWNER/ADDRESS</b>	<b>Market Street Tower Venture, LLC 21710 Stevens Creek Boulevard, #200 Cupertino, CA 95014</b>
<b>DEVELOPER/ADDRESS</b>	<b>Essex Portfolio, L.P. 925 East Meadow Drive Palo Alto, CA 94303</b>

### FACTS

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

1. This site has a designation of Downtown on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The site is located in the DC Downtown Core Zoning District.
3. The site is approximately 0.97 acres in size.
4. The site is developed with two commercial buildings that are not listed on the City's Historic Resources Inventory.
5. This is a Site Development Permit to allow the demolition of two commercial buildings and construction of a new 510,000 square foot, 23-story mixed-use building with up to 312 residential units, 6,000 square feet of ground-floor retail, and an associated parking garage.
6. Surrounding land uses consist of commercial to the north, commercial office to the east, two vacant commercial buildings to the south, and commercial uses and a parking garage to the west.
7. The site is located adjacent to two City Landmarks: (1) the Alcantara Building/Hotel Metropole, located at the northwest corner of Market Street and Post Street; and (2) the Sunol Building, located at the northeast corner of San Pedro Street and Post Street.

8. The site is the former location of the former San Jose Electric Light Tower, which straddled the intersection of Santa Clara Street and Market Street between December 13, 1881 until its collapse on December 3, 1915.
9. The project includes the removal of 34 trees on-site, including one ordinance-sized tree and 33 non-ordinance sized trees.
10. Multi-family residential and commercial retail uses are permitted uses in the DC Downtown Core Zoning District.
11. Under the provisions of Table 20-140 of the San Jose Municipal Code, a total of 312 vehicle parking spaces are required for the residential portion of the project based on 312 residential units. A total of 395 vehicle parking spaces are proposed on-site. No parking is required for commercial retail uses in the DC Downtown Core Zoning District.
12. Under the provisions of Table 20-120 of the San Jose Municipal Code, a total of 78 bicycle parking spaces are required for the residential portion of the project based on 312 residential units. A total of 85 bicycle parking spaces are proposed on-site.
13. Under the provisions of Section 20.100.610(A)(1) of the San José Municipal Code, a Site Development Permit is required prior to the issuance of any building permit for erection, construction, enlargement, placement or installation of a building or structure on any site.
14. Under the provisions of Section 20.80.460 of the San Jose Municipal Code, the Director, or on appeal the Planning Commission or City Council, shall determine whether the benefits of permitting the demolition, removal or relocation of a building outweighs the impacts of the demolition, removal or relocation of a building prior to the issuance of any development permit which allows for the demolition, removal, or relocation such building.
15. Under the provisions of Section 20.70.110 of the San Jose Municipal Code, new structures exceeding 150 feet and a floor area ratio of 6:1 which are constructed within 100 feet of a City Landmark or Contributing Structure in a designated landmark district shall be reviewed by the Historic Landmarks Commission prior to consideration or approval of a development permit for new construction.
16. On February 6, 2013, the project was referred to the Historic Landmarks Commission. Key comments from the Commission included the following:
  - a. The building's architectural presence at the corner of Santa Clara Street and Market Street should be improved given that this is an intersection of historic significance.
  - b. The building recess revealing the Alcantara Building/Metropole Hotel is acceptable, but the recessed area should be treated in such a way that minimizes security issues.
17. Under the provisions of Section 20.70.200(A) of the San Jose Municipal Code, properties located in the downtown zoning districts shall only be subject to the height limitations necessary for the safe operation of San José International Airport.
18. On November 20, 2012, the Federal Aviation Administration (FAA) accepted a "Determination of No Hazard" (Form 7460-1) from the permittee, for a proposed building on the subject site 260 above ground level (AGL) or 349 above mean sea level (AMSL). As of February 21, 2013, the "Determination of No Hazard" is still under review.
19. On March 1, 2013, the Director of Planning adopted a Mitigated Negative Declaration for the project.

## FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that under the provisions of Section 20.80.440(A) of the San José Municipal Code, no demolition permit or removal permit shall be issued unless and until a Development Permit which specifically approves such demolition or removal has been issued and has become effective pursuant to the provisions of Chapter 20.100.

1. The Director of Planning has considered the following in evaluating the proposed demolition:
  - a. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
  - b. The failure to approve the permit would jeopardize public health, safety or welfare.
  - c. Both inventoried and non-inventoried buildings, sites and districts of historical significance will not be negatively impacted.
  - d. The approval of the demolition of the building would maintain the supply of existing housing stock in the City;
  - e. Rehabilitation or reuse of the existing building would not be feasible; and
  - f. The approval of the demolition of the building should facilitate a project that is compatible with the surrounding neighborhood.
2. Further, the Director of Planning concludes and finds, based on the analysis of the above facts, that:
  - a. The two buildings were constructed for commercial uses and such demolition would not decrease the City's housing stock.
  - b. Of the two existing buildings, the building located at the southeast corner of Santa Clara Street and San Pedro Street is vacant.
  - c. Both buildings are not listed on the City's Historic Resources Inventory.
  - d. The site is not located in a National Register or City Landmark District, or City Conservation Area.
  - e. The architecture of the proposed structure is compatible in terms of scale with the existing historic buildings on the adjacent parcels.
  - f. The proposed project is in conformance with the California Environmental Quality Act.
  - g. The benefits of permitting the demolition, removal or relocation of the subject buildings outweigh the impacts of the demolition, removal or relocation.

Finally, the Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts with respect to the Site Development Permit findings (Section 20.100.630), that:

1. The interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious in that:
  - a. Building mass and bulk is offset through changes of plane, step backs, and balconies.

- b. To visually lighten the appearance of massing, building corners at intersections of streets have a transparent window corner.
- c. Rooftop equipment enclosed and integrated into building form.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
  - a. The structure is comparable in size to adjacent buildings, including a 9-story office building located to the east across Market Street, a 15-story office building located to the south across Post Street, and a 15-story commercial building located to the west across San Pedro Street.
  - b. The architecture is compatible in terms of scale with the existing historic buildings on the adjacent parcels in that the height of the proposed parking structure is comparable to the height of the Alcantara Building/Metropole Hotel and Sunol Building.
  - c. At least 75 percent of the Market Street frontage will be ground-floor commercial space with transparent façade to continue the storefront feature of the adjacent Alcantara Building/Metropole Hotel.
  - d. The use of materials such as transparent storefront glass, woven stainless steel mesh panel screens, CMU block wall with varied textures and colors on the proposed structure minimize the presence of the parking structure along the ground-floor.
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties in that:
  - a. A Mitigated Negative Declaration was granted for this project under the provisions of environment review requirements of Title 21 of the San José Municipal Code implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
  - b. The project establishes a Mitigation Monitoring or Reporting Program to address adverse effects to air quality, biological resources, cultural resources, and hazards and hazardous materials.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
  - a. Parking garage ventilation louvers are screened by decorative stainless steel mesh panels.
  - b. Utility and trash facilities are located inside the building.
  - c. Rooftop equipment are screened from off-site view.
5. Traffic access, pedestrian access and parking are adequate in that:
  - a. The project is in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3).
  - b. The project includes the increasing sidewalks along Market Street to a 15-foot width and a 12-foot width along San Pedro Street.

- c. The proposed site improvements enhance the parking area for the subject site and maintain the access with the adjacent commercial parcel.
  - d. The project conforms to the vehicle and bicycle parking requirements set forth in the Zoning Ordinance.
  - e. The project includes two two-way driveways on San Pedro Street for vehicle access to the parking structure on-site.
6. The application is consistent with site's Envision San Jose 2040 General Plan Land Use/Transportation Diagram designation of Downtown in that:
- a. Consistent with General Plan Land Use Policy 2.2, the project contributes to housing growth capacity in the downtown area to support key infrastructure investments, including the planned Bay Area Rapid Transit (BART) system.
  - b. Consistent with General Plan Land Use Policy 3.1, the project proposes residential development in compact, intensive form to maximize social interaction other downtown activities, including employment, entertainment, and cultural uses.
  - c. Consistent with General Plan Land Use Policy 3.4, the project's ground-floor commercial space further facilitates the development of retail and service establishments downtown.

After investigation and hearing held pursuant to Chapter 13.32 of the San José Municipal Code, the Director of City Planning finds that:

- a. The location of the trees with respect to the proposed improvements unreasonably restricts the economic development of the parcel in question.

**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 Site Development Permit shall automatically twenty-four (24) months from and after the date of issuance hereof by said Director, if within such 24-month period, the proposed construction of building has not commenced, pursuant to and in accordance with the provisions of this Site 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 José Municipal Code.
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. **Conformance to Plans.** Development of the site shall conform to approved Site Development plans entitled “1 South Market Apartments,” dated February 13, 2013, 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.
5. **Revocation.** This Site Development Permit is subject to revocation for violation of any of its provisions or conditions.
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. **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 José Municipal Code.
8. **Required Plan Revisions.** Prior to the submittal for a Building Permit for the structures, the permittee shall obtain approval of a Major Permit Adjustment (billed on a time and material basis for staff time in excess of one and a half hours) addressing each of the items below.
  - a. **Infrastructure for Ground-floor Uses.** Revise plan set sheets A201 and A403 to include vents and grease traps and other necessary infrastructure to accommodate a restaurant within the ground-floor tenant spaces. The grease trap shall be located in the loading dock area on San Pedro Street, unless another location is approved by the Director of Planning, Building and Code Enforcement.
  - b. **Parking Garage, West Elevation.** The west façade (San Pedro Street) of the parking structure shall be revised. The revised plan shall include a woven stainless steel mesh panel screen extending from the north portion of the upper levels of the parking structure to the ground-floor at the pedestrian level between the northerly vehicle gate and the fire pump room doors. In addition, provide details of the proposed building materials, specifying varied textures and colors of the CMU block wall. Parking structure egress stair door shall be of transparent glass. Provide a canopy over the egress stair door to define the doorway.
  - c. **Signage.** Submit revised plans showing the ability of the building façade to accommodate a variety of different signage types of varying size amounts and illumination available for ground-floor commercial tenant spaces, as allowed per Title 23 (Sign Ordinance) of the San Jose Municipal Code, including fin signs.
  - d. **Landscaping.** Provide a landscaping plan for the 4<sup>th</sup> level pool deck and 18<sup>th</sup> level common terrace. On the 4<sup>th</sup> level, add planter boxes along the Market Street side of the pool deck and terrace. Landscaping on the 4<sup>th</sup> level shall extend above and/or over the parapet and be visible off-site at the pedestrian level. Landscaping on the 4<sup>th</sup> and 18<sup>th</sup> level shall be added to screen blank walls and stairwells (e.g. trees, tall shrubs, and vines).

- e. **Tree Removals and Replacement.** This Permit includes the removal of one (1) ordinance-sized tree and thirty-three (33) non-ordinance sized trees on-site. Provide a landscaping plan addressing the required replacement of trees at the below stated ratios. The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees. The applicant shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager, to verify compliance with the replacement requirements. Such evidence shall be labeled H12-022 and sent to the Planning Project Manager within 30 days of the replacement of the subject trees.

Tree Replacement Requirements			
Diameter of tree to be Removed	Native	Non-Native	Minimum Size of Each Replacement Tree
17.8 inches or greater (56.0 Inches Circumference)	5:1	4:1	24-inch box
12 – 17.8 inches (37.7 – 56.0 Inches Circumference)	3:1	2:1	24-inch box
Less than 12 inches (Less than 37.7 Inches Circumference)	1:1	1:1	15-gallon container

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

- i. Replacement trees may be planted in the public right-of-way along the project frontage, if street trees do not currently exist or if there are gaps in street tree coverage. Contact the City Arborist at (408) 794-1901 or [arborist@sanjoseca.gov](mailto:arborist@sanjoseca.gov) for the designated street tree(s).
  - ii. A donation of \$300 per mitigation tree to Our City Forest non-profit organization, (408) 998-7337 or [www.ourcityforest.org](http://www.ourcityforest.org), for in-lieu off-site tree planting in the community. These funds shall be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to removal of the subject tree.
9. **Building Permit.** Procurement of a Building Permit 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 José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
10. **Building Demolition.** A Demolition Only Permit may be issued for the demolition of the existing commercial building prior to the issuance of a Building Permit for the replacement mixed-use building.
11. **Foundation Permit.** A Foundation Only Permit may be issued for the foundation of the proposed mixed-use building prior to the issuance of a Building Permit for the replacement mixed-use building.

12. **Building Clearance for Building Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, H12-022, shall be printed on all plans submitted to the Building Division.
  - b. *Conformance Review.* A project construction 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 plan check approval and building permit issuance by the Building Division, the developer shall obtain confirmation from the Planning Division that the project conforms to all applicable requirements of the subject Permit, including the plan sets.
  - c. *Major Permit Adjustment Required.* The permittee shall comply with condition #8 of this permit, which requires the submittal and approval of a Major Permit Adjustment prior to the submittal of a Building Permit for the structure.
  - d. *Lot Line Adjustment Required.* Prior to the issuance of a Building Permit, the permittee shall secure approval and provide recordation of a Lot Line Adjustment to remove existing lot lines that cause the development to not comply with zoning and/or building code setbacks.
  - e. *FAA Clearance Required.* Prior to the issuance of a building permit, the permittee shall obtain from the Federal Aviation Administration a “Determination of No Hazard to Air Navigation” for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and “No Hazard Determination” expiration date. The data on the FAA forms should be prepared by a licensed civil engineer or surveyor using NAD83 location coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.
  - f. *Air Quality Mitigation.*
    - i. A toxic air contaminant (TAC) analysis will be prepared by a qualified air quality constant to quantify the emissions of nearby stationary sources based on the most current Bay Area Air Quality Management District (BAAQMD) data. If stationary source emissions are found to be below the BAAQMD threshold for a 70-year residential exposure, the TAC analysis will be filed with the Environmental Review Division Manager of the Planning Division and no further mitigation is required.
    - ii. If the TAC analysis concludes that emissions of nearby stationary sources exceed the BAAQMD threshold for a 70-year residential exposure, the project applicant will be required to install a mechanical filtration system during project construction that is specifically designed to reduce the residential exposure in the tower below the BAAQMD threshold. The design of the filtration system will be based on the recommendations of qualified air quality consultant. City staff must approve the design of the mechanical filtration system prior to issuance of building permits.
13. **Public Works Department Clearance (3-06182).** Prior to the issuance of Building permits, the permittee will be required to have satisfied all of the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

- 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. *Grading/Geology:*
  - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
  - ii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- c. *Shoring:* Shoring plans will be required for review and approval as part of the Grading Permit for this project.
- d. *Santa Clara Valley Transportation Authority – BART Silicon Valley & Bus Rapid Transit Project:* The BART Silicon Valley (BART) alignment as currently planned would operate in a tunnel under Santa Clara Street, with the Downtown San Jose Station located between Third and Market Streets. The Bus Rapid Transit Project (BRT) is under final design.
  - i. The BART project has identified the location of station access portals at the southwest and southeast corners of Market and Santa Clara Streets. In anticipation of BART, the project is required to comply with the following prior to issuance of a grading permit:
    - 1) Coordinate with the Santa Clara Valley Transportation Authority (VTA) regarding foundation impacts to the future BART project. Please refer to VTA letter dated January 22, 2013 for further information.
    - 2) Tie backs should not be used as part of the shoring design along Market Street to minimize potential impacts to the building from the BART tunneling operation.
- e. *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 site design measures, source controls, and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
  - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.

- f. *Flood: Zone D.* The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for zone D.
- g. *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.
- h. *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.
- i. *Assessments:* This project is located within Zone A (Premium Zone) of the Downtown San Jose Property-Based Business Improvement District which provides enhanced cleaning, safety and image enhancement programs within the boundaries of the district. The benefiting properties within the district pay for the services through annual assessments placed on the property tax bills which may be increased b up to 5% each year. The 2012-13 assessment is calculated based on the land use of its building and lot square footage. Commercial properties pay \$0.0962 per building and lot square footage; Residential properties pay \$0.0775 per building and lot square footage. For this project, the annual assessment for the lot is approximately \$4,065, and for the building structure is approximately \$39,750. Public agencies and non-profit uses not exempt from this special assessment. Future year assessments will continue to be collected through the County property tax bills.
- j. *Street Improvements:*
  - i. At improvement plan stage, include traffic signal modification plans for the following:
    - 1) Modification of the southwest corner of Santa Clara Street and Market Street due to the widening of the existing sidewalk to ADA and City Standards, which may include the addition of push button poles.
    - 2) Relocate the existing traffic cabinet at the southwest corner of Santa Clara Street and San Pedro Street inside the proposed building per the Downtown Streetscape Master Plan or at a location approved by the City.
  - i. Remove curb, gutter and sidewalk along Market Street, Santa Clara Street and San Pedro Street and construct City Standard curb, gutter and 15' attached sidewalk along Market and Santa Clara and 12' attached sidewalk along San Pedro Street.
  - ii. Remove and replace handicap ramps located at the north corner of San Pedro Street and Post Street with a new ADA compliant ramp.
  - iii. Dedication of approximately 2' for street purposes along San Pedro will be required.
  - iv. Restriping along Santa Clara Street will be required.

- v. Driveways located on San Pedro shall have a 26' maximum width per City Standards.
- vi. Close unused driveway cut(s).
- vii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- b. *Commercial Signs:* A revocable encroachment permit must be applied for any proposed signs associated with the retail component of this project. Any proposed signs projecting into the public right-of-way cannot project more than four feet six inches (4'-6") from the surface of which it is attached and must be located at least eight (8) feet above grade.
- c. *Sanitary:*
  - i. Sanitary sewer capacity for San Pedro and Market Street sewer mains have been analyzed and been determined to have sufficient capacity. No flow monitoring or upsizing will be required to these mains. Project will not be allowed to connect to the Santa Clara Street main as this line was not analyzed for capacity.
  - ii. The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
- d. *Greater Downtown Area Master Plans:* This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
- e. *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.
- f. *Street Trees:* 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 park strip along Stockton Avenue and in cut-outs at the back of curb along Clinton Place and The Alameda. Obtain a DOT street tree planting permit for any proposed street tree plantings. Contact the City Arborist at (408) 794-1901 for the designated street tree.
- g. *Referrals:* This project should be referred to the Santa Clara Valley Transportation Authority (VTA) for comments and review for the BART Silicon Valley (BART) and Bus Rapid Transit (BRT) projects.

#### **14. Cultural Resources Mitigation.**

- a. Prior to the issuance of demolition or grading permits, a qualified geologist or a geotechnical engineer shall prepare a study of the vibration that will be caused by demolition, excavation and construction activities and its potential impact on adjoining structures. Based on the results of the study, mitigation measures regarding the restriction and monitoring of vibration inducing activities shall be adhered to by the project sponsor. Initial pile-driving shall be monitored and if vibrations are above threshold levels, modifications shall be made to reduce vibrations to below established levels. A copy of the study, recommended mitigation measures and monitoring reports shall be provided to the Environmental Review Division Manager of the City of San Jose Department of Planning, Building and Code Enforcement.

- b. Prior to the issuance of demolition or grading permits, a registered structural/civil/geotechnical engineer (engineer), with a minimum of five years of experience in the rehabilitation of historic buildings, shall review excavation and shoring plans prepared for the proposed development. The engineer shall prepare a report of findings, recommendations and any related design modifications necessary to retain the structural integrity of the Alcantara Building/Metropole Hotel and Sunol Building. In addition, the engineer (with geotechnical consultation as necessary) shall determine whether, due to the nature of excavations, soils, method of soil removal, and the existing foundation of the Alcantara Building/Metropole Hotel and Sunol Building, the potential for settlement would require underpinning and/or shoring. If underpinning and/or shoring is determined to be necessary, appropriate designs shall be prepared and reviewed by the engineer and city staff, shall be installed.
- c. Protective barriers are required to protect the exposed walls of the Alcantara Building/Metropole Hotel and Sunol Building from potential damage caused by construction activities. Prior to the issuance of demolition or grading permits, a structural engineer with a minimum of five years of experience in the rehabilitation of historic buildings, together with a historical architect with a minimum of five years of experience in the rehabilitation of historic buildings, as well as meeting the Secretary of the Interiors Standards and Guidelines for Archeology and Historic Preservation, Professional Qualifications Standards, shall prepare designs and specifications for protective barriers required to protect the exposed walls of the Alcantara Building/Metropole Hotel and Sunol Building from potential damage caused by construction activities. All documents prepared in accordance with this mitigation measure shall be reviewed and approved by the Chief Building Official.
- d. Prior to the demolition of existing buildings, a historical architect and a structural engineer shall undertake An Existing Condition study of the Alcantara Building/Hotel Metropole and Sunol Building. If pile-driving is proposed, the report must also include the San Jose Building and Loan Association, San Jose Masson Building and Lyndon Building. The documentation shall take the form of written descriptions and photographs to establish the baseline condition of the buildings prior to construction, including the location and extent of any visible existing cracks chipping, or flaking, especially to the character defining features of these buildings, and shall include those physical characteristics of the resources that convey their historic significance and that justify their inclusion on, or eligibility for inclusion on, the California Register of Historical Resources and local register. The documentation shall be reviewed and approved by the City's Historic Preservation Officer and the Chief Building Official and maintained on file throughout the construction process.
- e. During demolition and construction, the historical architect and structural engineer shall monitor the Alcantara Building/Hotel Metropole and Sunol Building and, if pile-driving will be used, the San Jose Building and Loan Association, San Jose National Bank, Lamolle House, Farmer's Union Building, Masson Building and Lyndon Building, and report any changes to existing conditions, including, but not limited to, expansion of existing cracks, new spalls, or other exterior damage/deterioration. Monitoring reports shall be submitted to the City's assigned staff on a periodic basis to be determined by the City's Historic Preservation Officer and the Chief Building Official.

- f. If, in the opinion of the structural engineer and historical architect, substantial adverse impacts to historic resources related to construction and demolition activities are found during construction, the monitoring team shall so inform the project sponsor, or sponsor's designated representative responsible for construction activities, as well as the City's Historic Preservation Officer and the Chief Building Official. The project sponsor and the City shall consider the structural engineer and historical architect's findings and recommendations and mutually agree on corrective measures, which shall be carried out by the project sponsor.
- g. Prior to demolition and construction, the historical architect shall establish a training program for construction workers involved in the project that communicates the importance of protecting historic fabric and materials, and directions on how to exercise care when working around and operating equipment near the historic structures, including storage of materials away from historic buildings. It shall also include information on means to reduce vibrations from demolition and construction, and monitoring and reporting any potential problems that could affect the historic resources in the area. The project sponsor shall be responsible for implementation of the training program. The training program shall be reviewed and approved by the City's Historic Preservation Officer.
- h. Prior to the issuance of grading permits, a soil management plan (SMP) and a health safety plan (HSP) shall be prepared by a qualified hazardous materials consultant. The SMP will include a soil handling plan which segregates the lead contaminated fill material from the underlying native soil, post-excavation soil sampling to confirm the removal of the lead contaminated fill material, and maintenance requirements to ensure that the long-term soil management measures, specifically capping the soils, will remain effective during use of the site and during the occupancy period. The HSP will outline proper soil handling procedures and health and safety requirements to minimize worker and public exposure to hazardous materials during construction. The SMP and HSP shall be prepared and submitted to the Environmental Review Division Manager of the Planning Division and the Environmental Services Department Municipal Compliance Officer for review and approval prior to the issuance of grading permits.

**15. Biological Resources Mitigation.**

- 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 through August.
- 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 through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). 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 the California Department of Fish and Game, 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.

16. **Fire Clearance for Issuing Permits.** The permittee will be required to comply with all applicable fire and building codes and standards relating to fire and panic safety as verified by the Fire Department during the Building Permit process.
17. **Construction Impact Mitigation Measures.** The permittee is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction 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 shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Interior construction that is not audible at the adjacent property lines is permitted on Saturday and Sunday between 9:00 am and 6:00 pm. Accomodations for necessary extended construction activities such as matt slab pours, crane erection, and power connections may be allowed on a case-by-case basis with a required 5-day advance approval by the Director of Planning, Building and Code Enforcement.
  - c. *Signage.* The name and phone number of the disturbance coordinator, the hours of construction limitations, City File Number H12-022, city contact and phone number (department and phone number), and shall be displayed on a weatherproof sign posted at each entrance to the project site.
  - 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. *Dust Control.* 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.
18. **Green Building.** The project shall comply with the provisions of Ordinance No. 28622 in the San Jose Municipal Code or subsequent ordinance for private-sector green building that is in effect at the time that a building permit application is submitted to the Department of Planning, Building and Code Enforcement Building Division. For new high-rise residential construction measuring 75 feet in height or greater, a completed LEED checklist is required with application for Building Permit.

19. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
20. **Building and Property Maintenance.** The developer shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
21. **Colors and Materials.** All building colors and materials are to be as specified on the approved plan set.
22. **Alcoholic Beverages.** This permit does not include any approval for a drinking establishment or the off-sale of alcoholic beverages. Any alcohol sales must obtain all appropriate permits.
23. **Late Night Uses.** Late night uses require the approval of a Conditional Use Permit in accordance with Chapter 20.70 of Title 20 of the San José Municipal Code.
24. **Roof Equipment.** All roof equipment shall be screened from off-site view. Screening shall be architecturally compatible with the primarily building.
25. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
26. **Signage.** This permit does not include the approval of any signage. Any future signs are to conform to the regulations of Title 23 of the Municipal Code and allowed with the issuance of a Sign Permit Adjustment.
27. **Lighting.** This permit includes the approval of wall-mounted, as shown on the approved plans. Any additional lighting are to conform to the City of San José's Outdoor Lighting Policy and allowed with the issuance of a Permit Adjustment.
28. **Loading Activities.** All loading activities shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
29. **No Outside Storage.** No outside storage is permitted for the project.
30. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
31. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
32. **Nuisance.** The uses of this site shall be operated in a manner that does not create a public or private nuisance. Nor shall the uses adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance must be abated immediately upon notice by the City.

33. **Recycling.** It is required that scrap construction and demolition debris be recycled instead of disposing of it in a landfill. An infrastructure exists within San José to accommodate such recycling efforts. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material. Additional information may be found at <http://www.sjrecycles.org/construction-demolition/cddd.asp> or by contacting the Commercial Solid Waste Program at (408) 535-8550.

**APPROVED** and issued on this **1st day of March, 2013.**

Joseph Horwedel, Director  
Planning, Building, and Code Enforcement

Deputy

DRAFT