

**DOCKETED**

<b>Docket Number:</b>	20-SPPE-01
<b>Project Title:</b>	Great Oaks South Backup Generating Facility Small Power Plant Exemption
<b>TN #:</b>	234481
<b>Document Title:</b>	Report of Conversation between CEC staff J Hinde and City of San Jose staff A Wang
<b>Description:</b>	--Supersedes TN 234435-- Regarding special use permit
<b>Filer:</b>	Lisa Worrall
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	8/25/2020 9:27:19 AM
<b>Docketed Date:</b>	8/25/2020



*Siting, Transmission  
 and Environmental  
 Protection Division*

**FILE:** n/a

**PROJECT TITLE:** Great Oaks South Backup  
 Generating Facility **Docket:** 20-SPPE-01

**TECHNICAL AREA(s): Land Use and Planning**

Telephone  Email  Meeting Location: N/A

**NAME(s):** Jeanine Hinde, Planner II, CEC **DATE:** 07/09/2020 **TIME:**

**WITH:** Angela Wang, Planner, City of San Jose, Department of Planning, Building and Code Enforcement

**SUBJECT:** Status of the City's review of the application for an amended special use permit for the Great Oaks South Backup Generating Facility

**COMMENTS:**

This report of conversation documents an e-mail exchange between Angela Wang, Planner at the City of San Jose, and Jeanine Hinde (staff) regarding the status of the City's review of the application for an amended special use permit for the project. The e-mail exchange is attached along with the 2017 approved and issued original Special Use Permit (SP15-031) for the Equinix Data Centers project.

<b>CC:</b>	<p><b>Signed:</b></p> <p style="text-align: center;">_____  s  _____</p> <p><b>Name:</b>                  Jeanine Hinde, Planner II</p>
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## RE: Small Power Plant Exemption Application for the Great Oaks South Data Center Project, Land Use & Planning

Wang, Angela <Angela.Wang@sanjoseca.gov>

Thu 7/9/2020 11:20 AM

To: Hinde, Jeanine@Energy <Jeanine.Hinde@energy.ca.gov>

Cc: Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>; Keyon, David <david.keyon@sanjoseca.gov>; Kelly, Patrick (PBCE) <patrick.kelly@sanjoseca.gov>

 1 attachments (843 KB)

SP15-031 Permit.pdf;

Hi Jeanine, see my answers below in red.

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**From:** Hinde, Jeanine@Energy <Jeanine.Hinde@energy.ca.gov>

**Sent:** Wednesday, July 8, 2020 12:01 PM

**To:** Keyon, David <david.keyon@sanjoseca.gov>; Petersen, Adam <Adam.Petersen@sanjoseca.gov>

**Cc:** Raval, Meenaxi <meenaxi.raval@sanjoseca.gov>; Wang, Angela <Angela.Wang@sanjoseca.gov>

**Subject:** Re: Small Power Plant Exemption Application for the Great Oaks South Data Center Project, Land Use & Planning

[External Email]

Hi David et al,

Thank you for the quick reply. I look forward to discussing answers to my questions with Angela and perhaps Meenaxi.

Best Regards,  
Jeanine

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**From:** Keyon, David <[david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov)>

**Sent:** Wednesday, July 8, 2020 11:52 AM

**To:** Hinde, Jeanine@Energy <[Jeanine.Hinde@energy.ca.gov](mailto:Jeanine.Hinde@energy.ca.gov)>; Petersen, Adam <[Adam.Petersen@sanjoseca.gov](mailto:Adam.Petersen@sanjoseca.gov)>

**Cc:** Raval, Meenaxi <[meenaxi.raval@sanjoseca.gov](mailto:meenaxi.raval@sanjoseca.gov)>; Wang, Angela <[Angela.Wang@sanjoseca.gov](mailto:Angela.Wang@sanjoseca.gov)>

**Subject:** Re: Small Power Plant Exemption Application for the Great Oaks South Data Center Project, Land Use & Planning

Hi Jeanine,

Adam Petersen is no longer working on this project from the environmental review side. Meenaxi Raval (copied) is now working on this project and Angela Wang (also copied) is working on the Planning permits.

These questions primarily pertain to the planning permits and code interpretations. Angela can help you with this.

Thank you,

**David Keyon**

Principal Planner, Environmental Review  
City of San Jose  
(408) 535-7898 [david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov)

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**From:** Hinde, Jeanine@Energy <[Jeanine.Hinde@energy.ca.gov](mailto:Jeanine.Hinde@energy.ca.gov)>  
**Sent:** Wednesday, July 8, 2020 11:42 AM  
**To:** Petersen, Adam <[Adam.Petersen@sanjoseca.gov](mailto:Adam.Petersen@sanjoseca.gov)>  
**Cc:** Keyon, David <[david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov)>  
**Subject:** Small Power Plant Exemption Application for the Great Oaks South Data Center Project, Land Use & Planning

[External Email]

Hi Adam,

I sent you and David Keyon an e-mail in late May with some questions concerning the Land Use & Planning analysis in the Initial Study that CEC staff is preparing for the Great Oaks South Data Center Project in the southern part of San Jose (APNs 706-02-057 and -060). The application for a small power plant exemption (SPPE) for the project was submitted to the CEC this past March, and CEC staff is working toward completing the Initial Study. I thought I would resend my questions to you, and I am hoping you can assist me with information so that the Land Use & Planning analysis accurately reflects the City's requirements. After I initially sent you these questions, the applicant provided some information clarifying structure heights; the updated information is reflected in the descriptions below:

**1) Special Use Permit (SUP)** - The SPPE application states that the City had previously approved the original SUP for the project on 01/23/2017. The application also refers to the "SUP Amendment." Is the original SUP still active or has it expired? Has the applicant submitted documents to the City requesting an amended SUP? Can you please tell me the

status of the City's review of the revised project? **The original SP15-031 is still active. Yes, SPA15-031-01, the SUP Amendment application was submitted to the City on 3/3/2020. The project has undergone two rounds of review. We are waiting for the 3<sup>rd</sup> submittal of the project to address our 2<sup>nd</sup> round review comments.**

**2) Building Height Regulations** - Maximum allowable height is 50 feet (unless a different maximum is established in Ch. 20.85). The data center would have three, two-story buildings. On June 24, the applicant submitted revised elevation drawings in response to staff's data requests (TN #233638). Building height to "precast" is shown as 49 feet. The height to the top of the parapet and coping is 53.25 feet. The elevations show 63.25 feet to the top of the "screen wall," and 72.25 feet to the top of the "penthouse." I have not found details in the Zoning Code on regulations or allowances for height variations or references to rooftop mechanical screening, etc. **Pursuant to Zoning Ordinance Section 20.85.020C (2), the maximum height for properties within designated Employment Centers is 250 feet.**

**2a)** How does the City define building height? Does it include the parapet and coping? I would like to know if the data center buildings would or would not conform to the City's regulation for height in the IP zoning district, and if not, what is required to achieve conformance? **The project conforms with the height requirement stated above. The building height definition is included in Zoning Code Section [20.200.510](#).**

**2b)** Are mechanical elements and screening structures on top of the roof subject to design or architectural review? Are those building elements excluded from building height? What is the City's process for approving a rooftop screen wall for mechanical equipment, and a penthouse? **SPA15-031-01 includes the review of the design changes. And just FYI that the architectural design change to one of the building has been reviewed and approved under a major Permit Adjustment, File No. AD 18-1179. During the review of AD18-1179, we asked the architect to provide several design options of the rooftop equipment and simulations and after several rounds of the review, we agreed with the current design included in this SPA15-031-01. (This SPA15-031-01 includes the same design changes to the other two buildings).**

**3) Floor Area Ratio (FAR)** - Half of the project site is designated IP, Industrial Park, and the other half is designated TEC, Transit Employment Center. Maximum FAR is 10.0 for IP designated areas and 12.0 for TEC designated areas. The project FAR is 0.7. (The buildings total 547,050 sq. ft., and the lot area totals approximately 784,080 sq. ft.) The FAR for the project is such a small value compared to the maximums allowed that I am wondering whether to conclude that the FAR is consistent, given that no minimum is specified, or, should I conclude something different? (The Great Oaks South Data Center buildings are consistent in terms of the scale of the other buildings in the surrounding area, which are mostly one- to three-stories high.) What is the City's recommended conclusion for the project's compliance (or noncompliance) with the two FAR values? **The project is consistent with the General Plan Implementation Policy-1.1. The FAR is up to 12 but there is no**

minimum requirement in GP. I am attaching the SP15-031 for your reference. This document includes the analysis of the GP and Zoning conformance.

I appreciate your help with these questions!

Thank you,

**Jeanine Hinde**

California Energy Commission

Siting, Transmission, and Environmental Protection Division

1516 Ninth Street, MS 40

Sacramento, CA 95814

City of San Jose - PBCE – Planning Division - Imaging Index Cover Sheet

Address/Location: west side of Via Del Oro between San Ignacio Avenue and Great Oaks Boulevard

Permit/Project No.: SP15-031 Issuance Date: 01/25/17

Prepped By: NTHOMAS Closed By: JPROVEDO RSN: 1629229

Category	Document Type	Sub Document Type
<input type="checkbox"/> (EF) Environmental Files (203)	<input type="checkbox"/> (PP) Public Project Files (203-03)	<input type="checkbox"/> (EN) EIR <input type="checkbox"/> (DA) Approved Document <input type="checkbox"/> (EM) Maps <input type="checkbox"/> (AE) Application <input type="checkbox"/> (AG) Agency Correspondence <input type="checkbox"/> (EG) General Correspondence <input type="checkbox"/> (TR) Technical Reports <input type="checkbox"/> (RE) Archaeological Reports <input type="checkbox"/> (EP) Plans
<input type="checkbox"/> (GP) General Plan (204)	<input type="checkbox"/> (GA) General Plan Amendments (204-02)	<input type="checkbox"/> (AM) Amendment <input type="checkbox"/> (AA) Application <input type="checkbox"/> (CG) Correspondence
	<input type="checkbox"/> (GE) Environmental Review (for 204 series GP Amendments)	<input type="checkbox"/> (GD) Approved Document <input type="checkbox"/> (GI) EIR <input type="checkbox"/> (GS) Supporting Documents <input type="checkbox"/> (GT) Technical Reports <input type="checkbox"/> (GR) Archaeological
<input checked="" type="checkbox"/> (DR) Development Review (207)	<input checked="" type="checkbox"/> (PR) Projects (207-02, 207-03, etc.)	<input type="checkbox"/> (ZN) Zoning <input checked="" type="checkbox"/> (PE) Permit <input type="checkbox"/> (MP) Maps <input type="checkbox"/> (AP) Application <input type="checkbox"/> (AC) Agency Correspondence <input type="checkbox"/> (GC) General Correspondence <input type="checkbox"/> (PL) Plans <input type="checkbox"/> ST Approved Storm-Water Ctrl Plans
	<input type="checkbox"/> (ER) Environmental Review (for 207 series Project Files)	<input type="checkbox"/> (EA) Approved Document <input type="checkbox"/> (EI) EIR <input type="checkbox"/> (ES) Supporting Documents <input type="checkbox"/> (ET) Technical Reports <input type="checkbox"/> (AR) Archaeological
	<input type="checkbox"/> (AD) Adjustments (207-12)	<input type="checkbox"/> (DO) Documents <input type="checkbox"/> (PA) Plans <input type="checkbox"/> SW Approved Storm-Water Ctrl Plan <input type="checkbox"/> PK Parking Analysis
	<input type="checkbox"/> (PI) Public Info Letters (207-29)	<input type="checkbox"/> (LE) Letter <input type="checkbox"/> (LS) Supporting Docs



*Planning, Building and Code Enforcement*

HARRY FREITAS, DIRECTOR

February 1, 2017

Equinix  
255 Caspian Drive  
Sunnyvale, CA 94089

Dear Equinix:

RE: **Special Use Permit, File No. SP15-031**, located at **706-02-053, -054, -055, -056**.

The enclosed is your copy of the Planning Director's action on this Special Use Permit.

*This permit may contain one or more conditions, such as revised plans, which must be met within a specific deadline. If conditions are not met the permit will automatically expire. Please read your permit carefully!*

The Planning Director's action taken on this permit or any of the conditions of this permit may be appealed by the applicant to the Planning Commission by filing a Notice of Appeal and a \$2,232.00 fee. The appeal must be submitted in person and presented on the Notice of Appeal form available from this department on or before **5:00 p.m, February 13, 2017**. If you have any questions, please feel free to contact your Project Manager, Ned Thomas at (408) 793-5302 or by e-mail at [ned.thomas@sanjoseca.gov](mailto:ned.thomas@sanjoseca.gov).

Sincerely,

Steve McHarris  
Deputy

cc: SVI LLC, 1 Lagoon Drive, Redwood City, CA 94065

Enclosures

NT:jp

## SPECIAL USE PERMIT

<b>FILE NO.</b>	<b>SP15-031</b>
<b>LOCATION OF PROPERTY</b>	<b>706-02-053, -054, -055, -056</b>
<b>ZONING DISTRICT</b>	<b>IP Industrial Park</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Transit Employment Center and Industrial Park</b>
<b>PROPOSED USE</b>	<b>Special Use Permit to allow the construction of three data center buildings totaling 579,000 square feet and the removal of thirteen on-site trees (nine ordinance-size and four non-ordinance size) and three off-site trees on an 18.56-gross acre site</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Mitigated Negative Declaration</b>
<b>OWNER/ADDRESS</b>	<b>SVI LLC 1 Lagoon Drive Redwood City, CA 94065</b>
<b>APPLICANT/ADDRESS</b>	<b>Equinix 255 Caspian Drive Sunnyvale, CA 94089</b>

## FACTS

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

- 1. Project Description.** This is a Special Use Permit to allow the construction of three data center buildings totaling 579,000 square feet and the removal of thirteen on-site trees (nine ordinance-size and four non-ordinance size) and three off-site trees on an 18.56-gross acre site. The three data centers are comprised of buildings with associated electrical and mechanical yards. Vehicle access to the site is provided to the site from Great Oaks Boulevard and San Ignacio Avenue. Delivery truck access is provided from Via Del Oro. Each of the proposed data center buildings will be two stories in height and include seven generators (six primary and one redundant) located adjacent to the buildings. Each generator will have an electric capacity of three megawatts (MW) and provide standby backup electricity for the new buildings. Diesel fuel for the generators will be stored in 8,000 gallon above-ground tanks under each generator. The three buildings will share a total of 253 parking spaces.
- 2. Surrounding Uses.** The site is bounded by Via Del Oro to the north, Great Oaks Boulevard to the east, San Ignacio Avenue to the west, and vacant land to the south. The site is surrounded by various industrial park uses.

3. **General Plan.** The project site has a split General Plan designation of Transit Employment Center and Industrial Park on the Envision San José 2040 General Plan Land Use/Transportation Diagram. The Transit Employment Center designation applies to areas planned for intensive job growth because of their importance as employment districts to the City and high degree of access to transit and other facilities and services. The Industrial Park designation is intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing and offices.

- a. Implementation Policy – 1.1: The Envision General Plan Land Use / Transportation Diagram designations should be used to indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts and to designate the intended roadway network to be developed over the timeframe of the Envision General Plan. Use the Zoning designation to indicate the appropriate type, form and height of development for particular properties.

*The subject 18.56-acre site has two different General Plan Land Use/Transportation Diagram designations. Generally, a property must adhere to the strict land use designations when developing a project. However, in some instances, the blending of land use designations is required to achieve the overall intent of the General Plan. While the data center use is consistent with the Industrial Park General Plan designation, it is not fully consistent with the Transit Employment Center designation. However, in order to allow the most efficient use of the site as a whole, some flexibility in location of certain components needs to be allowed in order to create a more complete and connected project. This General Plan policy allows this type of necessary flexibility. As such, this proposed zoning meets the intent of the General Plan by providing the appropriate mix of uses throughout the site without rigidly adhering to the delineated lines on the Land Use/Transportation Diagram.*

4. **Zoning.** The site is located in the IP Industrial Park Zoning District.

- a. **Setbacks.** The IP Zoning District requires a minimum front building setback of 15 feet and a minimum front parking and circulation setback of 25 feet. The subject buildings meet the minimum setback requirements.
- b. **Height.** Pursuant to Zoning Ordinance Section 20.85.020C (2), the maximum height for properties within designated Employment Centers is 250 feet. The maximum height of the proposed buildings is 53 feet.
- c. **Parking.** Data centers require one parking space per 250 square feet of work space for office/meeting/technician use, plus one parking space for each 5,000 square feet of floor area, or fraction thereof, devoted to computer equipment space. Based on the mix of uses within the three proposed buildings, a total of 252 parking spaces are required. A total of 253 parking spaces are provided.

5. **CEQA.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater 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. The Equinix Data Centers (SV-12, SV-13, SV-14) and Santa Teresa Substation, approved by the Director on January 25, 2017, was adopted for this project under the provisions of the environmental review requirements of Title 21 of the San José Municipal Code implementing the California Environmental Quality Act of 1970, as amended, and pursuant to Section 15164 of the

CEQA Guidelines. The project will not result in significant environmental effects that have not already been identified in the Mitigated Negative Declaration.

## FINDINGS

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

1. That the trees are in such a location in such surroundings, that their removal would not significantly frustrate the purposes of Chapter 13.32; and
2. That the location of the trees with respect to the proposed improvement unreasonably restricts the economic development of the parcel in question.

*Based on consideration of the above, removal of the trees is necessary to proceed with the proposed project. The trees will be replaced in accordance with the City of San José Standard Tree Replacement Ratios as outlined in the project's environmental document.*

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, with respect to the Special Use Permit findings (Section 20.100.820), that:

1. The Special Use Permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies.

*The project site has a split General Plan designation of Transit Employment Center and Industrial Park on the Envision San Jose 2040 General Plan Land Use/Transportation Diagram. The Transit Employment Center designation applies to areas planned for intensive job growth because of their importance as employment districts to the City and high degree of access to transit and other facilities and services. The Industrial Park designation is intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing and offices.*

*Implementation Policy – 1.1: The Envision San José General Plan Land Use/Transportation Diagram designations indicate the general intended land use, providing flexibility to allow for a mix of land uses, intensities and development forms compatible with a wide variety of neighborhood contexts. Use the Zoning designation to indicate the appropriate type, form and height of development for particular properties.*

*Generally, a property must adhere to the strict land use designations when developing a project. However, in some instances, the blending of land use designations is required to achieve the overall intent of the General Plan. While the data center use is consistent with the Industrial Park General Plan designation, it is not fully consistent with the Transit Employment Center designation. However, in order to allow the most efficient use of the site as a whole, some flexibility in location of certain components needs to be allowed in order to create a more complete and connected project. This General Plan policy allows this type of necessary flexibility. As such, this proposed zoning meets the intent of the General Plan by providing the appropriate mix of uses throughout the site without rigidly adhering to the delineated lines on the Land Use/Transportation Diagram.*

2. The Special Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

*The subject site is located in the IP Industrial Park Zoning District, and the site development permit, as approved, would allow development of a new building and related site improvements consistent with the development standards of this district. The proposed development conforms with all required setbacks, building height regulations, site and building design guidelines, and parking requirements.*

3. The Special Use Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

*The site development permit is consistent with the City Council's Post-Construction Urban Runoff Management Policy and complies with all relevant stormwater requirements.*

4. The proposed use at the location requested will not:

- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
- c. Be detrimental to public health, safety, or general welfare.

*The project site is surrounded by industrial park uses and will not negatively affect any surrounding properties or persons.*

5. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area.

*The proposed project will include new landscaping, irrigation, and trash facilities. The project will comply with the City's Industrial Design Guidelines, with adequate landscaping or screening to conceal all exterior mechanical equipment and facilities.*

6. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
- b. By other public or private service facilities as are required.

*The subject site has a high degree of accessibility from several major freeways, including Highway 101 and State Route 85. The area is also well served by other transportation facilities, including an existing light rail line.*

7. 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.

*The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater 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. The Equinix Data Centers (SV-12, SV-13, SV-14) and Santa Teresa Substation, approved by the Director on January 25, 2017, was adopted*

*for this project under the provisions of the environmental review requirements of Title 21 of the San José Municipal Code implementing the California Environmental Quality Act of 1970, as amended, and pursuant to Section 15164 of the CEQA Guidelines. The project will not result in significant environmental effects that have not already been identified in the Mitigated Negative Declaration.*

In accordance with the findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use permitted hereby.

**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 expire four years from and after the date of issuance hereof by said Director, if within such four-year period, the proposed construction 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 "Special Use Permit SV12, SV13 & SV14 (Formally Xilinx)" dated November 9, 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.

5. **Generators.** This permit includes the approval of 21 standby-by/backup generators with an electric capacity of three megawatts (MW) and provide standby backup electricity for the new buildings, located in the generator yards as shown on the approved plans. Any additional stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
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 Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
8. **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.
9. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
10. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
11. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
12. **Fencing.** Fence height and materials shall be provided as shown on the approved plans. Fencing along property street frontages is not permitted. Changes to the approved fencing shall require review by the Director of Planning, Building, and Code Enforcement.
13. **Sign Design.** Sign design and location, as delineated on the Approved Plan Set are hereby approved.
14. **Building and Property Maintenance.** The property owner or management company 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.
15. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
16. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set.
17. **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 José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.

- 18. Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit for a new building (excluding façade improvements to the existing buildings), the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, SP15-031, shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. *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.
  - d. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The applicant shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
- 19. Fire Flow.** Required fire flow for the site is calculated using CFC Appendix B, or as otherwise approved in writing by the Fire Chief. A 50% reduction in required fire flow may be authorized for sprinklered buildings containing light hazard occupancies. A 25% reduction in required fire flow may be authorized for sprinklered buildings containing ordinary hazard occupancies. No reduction is provided for unsprinklered or extra hazard occupancy buildings.
- 20. Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as shown on the Fire Plan dated November 16, 2016, as approved by the Fire Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief. A copy of the approved Fire Plan shall be included with the stamped Site Development Plans. The number and distribution of fire hydrants shall be based on CFC Table C105.1 (no reduction allowed for fire flow requirement).
- 21. Fire Hydrants and Driveways.** All fire hydrants shall be installed as shown on the approved Fire Plan dated November 16, 2016. All hydrants shall be installed at least 10 feet from all driveways, with final locations satisfactory to the Fire Chief.
- 22. Fire Lanes.** Fire lanes, suitably designated "FIRE LANE-NO PARKING," shall be provided as required by the Fire Department.
- 23. Fire Department Connections.** All fire department connections shall be located within 100 feet from a standard public fire hydrant. All alternate means of protections shall be provided as shown on the approved Fire Plan dated November 16, 2016. The public fire hydrant(s) shall be located on the same frontage as all fire service connections.
- 24. Fire Department Connections.** Fire sprinkler and standpipe fire department connections (FDC) serving the same building shall be located directly adjacent to each other. Buildings in excess of 200 feet long and or having frontage on multiple streets shall have multiple FDCs. The locations shall be provided as shown on the approved Fire Plan dated November 16, 2016 and shall be depicted on the riser key plan(s).

25. **Access Control.** When access control devices including bars, grates, gates, electric and/or magnetic locks, or similar devices which would inhibit rapid fire department emergency access to the building are installed, such devices shall be approved by the Fire Chief. All access control devices shall be provided with an approved means for deactivation or unlocking by the Fire Department. Access control devices shall also comply with CFC/CBC Chapter 10 for exiting.
26. **Emergency Vehicle Access.** Width, length, and grade of the fire apparatus access roads, streets, and avenues shall be identified on project plans and submitted to the Fire Chief for approval. Every portion of all building exterior walls shall be within 150 feet of an access road. To the satisfaction of the Fire Chief, the fire access shall include the following:
- a. An approved all weather surface;
  - b. Access road(s) that are at least 20 feet wide and have a minimum 13-foot 6-inch vertical clearance;
  - c. Load bearing designs that are maintained to support the loads of fire apparatus of at least 75,000 pounds;
  - d. Maintain a minimum inside turning radius of 30 feet and an outside turning radius of 50 feet;
  - e. Access roads designed with approved provisions for the turning around of fire apparatus if it has dead ends and is in excess of 150 feet;
  - f. Maximum grade of 15%;
  - g. A second point of access shall be required when a fire apparatus road exceeds 1,000 feet;
  - h. Curbs are required to be painted red and marked as "Fire Lane - No Parking" under the following conditions: (show exact locations on plan)
    - i. Roads, streets, avenues, and all other roadway designations that are 20 feet to less than 26 feet wide measured from face-of-curb to face-of-curb shall have curbs on both sides of the road painted and marked
    - ii. Roads, streets, avenues, and all other roadway designations that are 26 feet to less than 32 feet wide measured from face-of-curb to face-of-curb shall have one curb painted and marked
27. **General Fire Prevention Requirements.** The developer shall provide the following:
- a. *Fire Sprinkler System.* Building(s) shall be provided with an automatic fire extinguishing system in accordance with CFC 903.2 and SJFC 17.12.630. Systems serving more than 20 heads shall be supervised by an approved central, proprietary, or remote service to the satisfaction of the Fire Chief.
  - b. *Requirements for Trash Areas.* Outdoor covered areas and trash enclosures may require the sprinkler system to be extended to protect them.
  - c. *Fire Alarm System.* Building(s) shall be provided with an automatic fire alarm system as required by CFC 907.2 and 907.3.
  - d. *Standpipes Available During Construction.* All buildings under construction, three or more stories in height, shall have at least one standpipe for use during construction. Such standpipe shall be provided with fire department hose connections. Location(s) and numbers of standpipe(s) shall be reviewed and approved by the Fire Department.

- e. *Elevators.* Elevators shall be in accordance with the requirements stipulated in the California Building Code Chapter 30. All buildings with one or more passenger service elevators shall be provided with not less than one medical emergency service elevator.
  - f. *Management Association Responsibilities for Life & Safety Systems.* The developer/owner shall create and maintain a Management Association which will be responsible for the fire/life safety systems inspections per Title 19 and access to the systems if applicable.
  - g. *Hazardous Materials.* The applicant must contact the Hazardous Materials Division at (408) 535-7750 as soon as possible to initiate the process to determine if the type and quantity of hazardous material is acceptable per code and whether a Hazardous Materials Plan Review is required.
  - h. *Construction Fire Protection Plan.* A "Construction Fire Protection Plan" for approval by San José Building and Fire Departments is required prior to starting construction for wood framing projects consisting of 15 or more dwelling units or construction exceeding a total of 50,000 square feet.
28. **Recycling.** Scrap construction and demolition material shall 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.
29. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the first Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits for a new building (excluding façade improvements to the existing buildings), 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:* This project is located in the Edenvale Area Development Policy Area (EADP). This policy allows ongoing industrial development in the Redevelopment Area, and provides for new mixed-use, commercial and residential development with associated park and recreational uses. The project located in Area 2 of the EADP, which includes a base maximum floor area ratio (FAR) of 0.40 for development. The project is allowed 323,000 square feet of development which equates to 395 AM peak hour trips. This project is proposed to generate 51 AM peak hour trips which is less than the allowed amount of trips. We conclude that the subject project will be in conformance with the Edenvale Area Development Policy and a determination for a negative declaration can be made with respect to traffic impacts.
  - c. *Grading/Geology:*
    - i. A grading permit is required prior to the issuance of a Public Works Clearance.

- ii. All on-site storm drainage conveyance facilities and earth retaining structures four feet 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.
  - iii. 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.
  - iv. 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.
  - v. 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.
- d. *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.
- 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.
- e. *Stormwater Peak Flow Control Measures:* The project is located in a Hydro-modification Management (HM) area and will create and/or replace one acre or more of impervious surface. The project must comply with the City's Post-Construction Hydro-modification Management Policy (Council Policy 8-14) which requires HM projects to demonstrate that post-project runoff does not exceed estimated pre-project runoff rates and durations.
- i. The project's HM plan and sizing calculation have been reviewed and this project will be in conformance with City Policy 8-14.
  - ii. Final inspection and maintenance information for the HM controls must be included on the final HM plans.

- f. *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.
- g. *Assessments:*
  - i. This project is located within the boundaries of Community Facilities District No. 6 (Great Oaks – Route 85), which sold bonds to fund the construction of the extension of Great Oaks Blvd. and numerous intersection improvements throughout the Edenvale Redevelopment area west of U.S. Highway 101. The bonds are secured by the property and will mature in 2023. The maximum annual special tax on parcels 706-02-053, 706-02-054, 706-02-055 and 706-02-056 collectively is \$683,160.00. The 2016-17 special tax on these parcels totaled \$110,707.12. Future year taxes will be apportioned based on any parcel reconfigurations and will continue to be collected through the County property tax bills listed under Tax Code 939 “SAN JOSE-CFD #6”. Questions may be directed to Thomas Borden at (408) 535-6831.
  - ii. This project is also located within the boundaries of Maintenance District 9 (Santa Teresa - Great Oaks), which maintains the enhanced street island landscaping on Santa Teresa Blvd., Great Oaks Blvd., San Ignacio Avenue and Cottle Road. The benefitting properties within the district pay for the maintenance through annual assessments placed on the County property tax bills, which are adjusted annually by the Consumer Price Index. Collectively, the 2016-17 assessment on these properties is \$5,820.78, which is calculated at approximately \$181 per acre minus any credits for this fiscal year. Future year assessments will be apportioned based on land use and any parcel reconfigurations and will continue to be collected through the County property tax bills listed under Tax Code 931 “S J MAINT DIST #9.”
- i. *Vacation:* The project should vacate the existing 15-foot sidewalk easement along project frontages on San Ignacio Avenue and via del Oro. In addition, a street vacation may be required for the approximately six feet (6’) of right-of-way behind the proposed ten-foot (10’) sidewalk along a portion of the SV13 frontage on Via del Oro and approximately two feet (2’) of right-of-way behind the proposed ten-foot sidewalk along project frontage on Great Oaks Boulevard. The sidewalk easement and street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to Public Works Clearance. The applicant did not provide a preliminary title report for the subject street. As a result, the property may be subject to a sale and disposition process, which may involve public auction. Therefore, a title report must be submitted prior to any decisions regarding the possible vacation of this street.
- j. *Street Improvements:*
  - i. Remove and replace existing sidewalk to ten-foot (10’) attached sidewalk with tree wells at the back of curb along project frontages on San Ignacio Avenue, Via del Oro and Great Oaks Boulevard.
  - ii. Dedicate four feet (4’) along SV14 and a portion of SV13 project frontage to accommodate the ten-foot (10’) sidewalk.
  - iii. Construct City standard driveway along project frontages.
  - iv. Construct an emergency access driveway on San Ignacio Avenue and Via del Oro.
  - v. Remove and replace ADA ramps with City standard at the southeast corner of Via del Oro/Great Oaks Boulevard and south west corner of Great Oaks Boulevard/Via del Oro.

- vi. As part of the San Jose Bike Plan 2020, Class II bike lanes are planned for San Ignacio Avenue along the project frontages. The project will be required to install green bike land along project frontages.
  - vii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - viii. 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.
  - k. *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.
  - l. *Street Trees*: Street tree locations shall 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.
  - m. *Edenvale Landscaping Master Plan*: This project is located in Edenvale Area 2 (West of Highway 101), and shall conform to the following requirements:
    - i. The project shall conform to the Edenvale Landscaping Master Plan for the area within the public ROW and landscape easements.
    - ii. At the street improvement stage, the developer shall obtain a copy of the Edenvale landscaping design details from Public Works, and use them to prepare a landscaping plan. Although the developer is responsible for maintaining these improvements, Public Works will review the landscaping plan for consistency with the master plan.
30. **Conformance to MMRP**. This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development.
- a. *Air Quality*
    - i. MM Air-1: Generator operation for maintenance and testing purposes shall be limited so that the combined operation of all 21 generators does not exceed 356 hours in any consecutive 12-month period.
      - 1) The maximum number of hours of operation of the generators for maintenance and testing is regulated by the Bay Area Air Quality Management District (BAAQMD), which will issue individual Permits to Operate for each data center building (or groups of generators) as they are constructed. The conditions in each Permit to Operate will be enforceable by BAAQMD. Prior to issuance of an occupancy permit for each building, the applicant shall provide a letter to the Director of Building, Planning and Code Enforcement from BAAQMD and/or a qualified consultant that documents that the sum of the hours of operation permitted and regulated by BAAQMD for the three data centers combined does not exceed 356 hours in any consecutive 12-month period. This letter shall include a copy of the BAAQMD approved Permit to Operate.
      - 2) If, subsequent to issuance of occupancy permits, there is a change to the number of generators, a change to the model of generators, or a change in the number of

hours the generators will be tested, documentation shall be provided to the City of San José Department of Building, Planning and Code Enforcement that total emissions from maintenance and testing for the three data centers would not exceed the significance thresholds for Nitrogen Oxide (NO<sub>x</sub>) on both an average daily (54 pounds per day) and annual averaging (10 tons/year) period. This documentation shall be reviewed and approved by a Supervising Planner of the Environmental Review Division of the Department of Planning, Building, and Code Enforcement prior to the issuance of any Planning Permits approving changes to the generators.

*b. Biological Resources*

- i. MM BIO-1.1: If possible, construction should be scheduled between September and January (inclusive) to avoid the nesting season. If this is not possible, pre-construction surveys for nesting raptors and other migratory breeding birds shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during project implementation onsite and within 250 feet of the site. Between February and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for nests.
- ii. MM BIO-1.2: If an active nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist shall, in consultation with the California Department of Fish and Wildlife (CDFW), designate a constructionfree buffer zone (typically 250 feet for raptors and 100 feet for other birds) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified ornithologist has determined that the young birds have fledged.
- iii. MM BIO-1.3: The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement prior to the issuance of any grading or building permit.
- iv. MM BIO-2.1: A Tree Preservation Plan shall be prepared by a certified arborist prior to initiation of construction to describe how the Heritage Tree will be protected. The construction-phase Tree Preservation Plan shall include the following tree protection measures, which are based on guidelines established by the International Society for Arboriculture:
  - 1) Establish an area surrounding the Heritage Tree to be protected during construction as defined by a circle concentric with each tree with a radius 1-1/2 times the diameter of the tree canopy drip line. This "tree protection zone" is established to protect the tree trunk, canopy and root system from damage during construction activities and to ensure the long-term survival of the protected trees. The tree protection zone shall: (a) ensure that no structures or buildings, that might restrict sunlight relative to the existing condition, will be constructed in close proximity to the trees; and (b) that no improvements are constructed on the ground around the tree within the tree protection zone, thus ensuring that there is sufficient undisturbed native soil surrounding the tree to provide adequate moisture, soil nutrients and oxygen for healthy root growth.

- 2) Protect tree root systems from damage caused by: (a) runoff or spillage of noxious materials while mixing, placing, or storing construction materials and (b) ponding, eroding, or excessive wetting caused by incident rainfall through use of the following measures during excavation and grading:
  - a) Excavation: Do not trench inside tree protection zones. Hand excavate under or around tree roots to a depth of three feet. Do not cut main lateral tree roots or taproots. Protect exposed roots from drying out before placing permanent backfill.
  - b) Grading: Maintain existing grades within tree protection zones. Where existing grade is two inches or less below elevation of finish grade, backfill with topsoil or native soil from the project site. Place fill soil in a single uncompacted layer and hand grade to required finish elevation.
  - c) Apply six-inch average thickness of wood bark mulch inside tree protection zones. Keep mulch six inches from tree trunks.
- 3) Provide 48-inch tall orange plastic construction fencing fastened to steel T-posts, minimum six feet in length, using heavyweight plastic ratchet ties. Install fence along edges of tree protection zones before materials or equipment are brought on site and construction operations begin. Maintain fence in place until construction operations are complete and equipment has been removed from site.
  - d) Provide temporary irrigation to all trees in protection zones using a temporary on-grade drip or bubbler irrigation system sufficient to wet the soil within tree protection zones to a depth of 30 inches per bi-weekly irrigation event.

*c. Cultural Resources*

- i. MM CUL-1.1: An archaeologist qualified in local historical and prehistory archaeology shall complete a subsurface presence/absence program to determine whether any intact archaeological deposits are present on-site. Preparation of that work shall include aligning pertinent historic-period maps to the project area to identify specific sensitive areas that could be impacted by the proposed development. Should any archaeological features or deposits be identified, a focused research design and treatment plan shall be prepared to address any potential resources exposed during construction activities followed by archaeological excavation of these features.
- ii. MM CUL-1.2: In the event of the discovery of prehistoric or historic archaeological deposits or paleontological deposits, work shall be halted within 50 feet of the discovery and a qualified professional archaeologist (or paleontologist, as applicable) shall examine the find and make appropriate recommendations regarding the significance of the find and the appropriate mitigation. The recommendation shall be implemented and could include collection, recordation, and analysis of any significant cultural materials.
- iii. MM CUL-1.3: Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site within a 50-foot radius of the remains or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to

identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

- iv. MM CUL-1.4: A final report summarizing the discovery of cultural materials shall be submitted to the City's Environmental Senior Planner prior to issuance of building permits. This report shall contain a description of the mitigation program that was implemented and its results, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusion, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Environmental Senior Planner.

d. *Noise*

- i. MM NOI-1: The project applicant shall prepare a noise logistics plan, which shall be submitted for review and approval by the Supervising Planner of the Environmental Review Division of the Department of Planning, Building, and Code Enforcement prior to issuance of grading and building permits. This plan shall include, at a minimum, the following measures to reduce the exposure of adjacent office buildings to construction noise:
  - 1) Construction hours within 200 feet of commercial uses shall be limited to the hours of 7:00 a.m. and 7:00 p.m. weekdays, with no construction on weekends or holidays. Pile driving shall be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.
  - 2) Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists. A letter from a qualified acoustic specialist shall be attached to the noise logistics plan along with a list of proposed construction equipment, including air compressors and other stationary noise sources, certifying that the proposed construction equipment includes the best available noise attenuating technologies.
  - 3) All internal combustion engine-driven equipment shall use best available noise control practices and equipment (including mufflers, intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds). A letter from a qualified acoustic specialist shall be attached to the noise logistics plan along with a list of proposed construction equipment, certifying that the proposed construction equipment includes the best available noise attenuating technologies.
  - 4) Locate all stationary noise-generating equipment, such as air compressors and portable power generators, at least 200 feet from adjacent office and commercial land uses.
  - 5) Locate staging areas and construction material areas at least 200 feet from adjacent office and commercial land uses to the greatest extent feasible.
  - 6) Prohibit all unnecessary idling of internal combustion engines. Equipment shall be shut off when not in use and the maximum idling time shall be limited to five minutes.

- 7) The contractor will prepare a detailed construction plan identifying a schedule of major noise generating construction activities. This plan shall identify a noise control 'disturbance coordinator' and procedure for coordination with the adjacent noise sensitive facilities so that construction activities can be scheduled to minimize noise disturbance. This plan shall be made publicly available for interested community members. The disturbance coordinator will be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g. starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. The telephone number for the disturbance coordinator at the construction site shall be posted on the construction site and included in a notice sent to adjacent commercial businesses regarding the construction schedule.
- 8) All measures in the approved noise logistics plan shall be printed on all approved plans for grading and building permits.

31. **Standard Project Conditions.** This project shall conform to all applicable Standard Project Conditions approved for this development.
32. **Storm Drain Protection.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet.
33. **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) 535-8300 to obtain free stencils.
34. **Revocation, Suspension, Modification.** This Special Use Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

**APPROVED** and issued on this 25<sup>th</sup> day of January, 2017.

Harry Freitas, Director  
Planning, Building, and Code Enforcement

  
Deputy