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| <b>STATEMENT OF EXEMPTION</b> |
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| <b>FILE NO.</b>             | H23-014/ER23-138                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>LOCATION OF PROPERTY</b> | 741 S. Winchester Boulevard                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>PROJECT DESCRIPTION</b>  | Site Development Permit submitted under the Housing Accountability Act (“Builder’s Remedy”) to allow the construction of seven-story 264-unit multifamily residential building and the removal of 23 trees (14 ordinance-size, 9 non-ordinance-size), with an application under State Density Bonus Law including an approximately 9.8% density bonus and a request for multiple waivers on an approximately 2.97-gross-acre site. |

**CERTIFICATION**

Under the provisions of Section 21080.66 (Added by AB 130 and amended by SB 158) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

**PROJECT DESCRIPTION**

This project is for a Site Development Permit submitted under the Housing Accountability Act (“Builder’s Remedy”) to allow the construction of seven-story 264-unit multifamily residential building and the removal of 23 trees (14 ordinance-size, 9 non-ordinance-size), with an application under State Density Bonus Law including an approximately 9.8% density bonus and a request for multiple waivers on an approximately 2.97-gross-acre site.

**AB 130 CONSISTENCY**

Pursuant to CEQA Guidelines Section 21080.66, a residential project must meet the following criteria in order to qualify for a statutory exemption from CEQA under AB 130.

1. **Project must meet the definition of a Housing Development Project:** A project must meet the definition of a “Housing Development Project” per Section 65905.5(b) of the CA Government Code to qualify for a statutory exemption. The project meets this definition because it meets the following criteria:
  - Project contains only residential units.
  - Project is a mixed-use development consisting of residential and nonresidential uses that meet any of the following conditions:
    - At least two-thirds of the new or converted square footage is designated for residential use.
    - At least 50 percent of the new or converted square footage is designated for residential use and the project meets both of the following:
  - The project includes at least 500 net new residential units.

- No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except a portion of the project may be designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.
- At least 50 percent of the net new or converted square footage is designated for residential use and the project meets all of the following:
  - The project includes at least 500 net new residential units.
  - The project involves the demolition or conversion of at least 100,000 square feet of nonresidential use.
- The project demolishes at least 50 percent of the existing nonresidential uses on the site.
- No portion of the project is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except a portion of the project may be designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.
- Transitional housing or supportive housing.
- Farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

**Eligibility: Consistent.** The project is a residential development consisting of 264 residential units. Therefore, the project is a Housing Development Project as defined by Section 65589.5 (h)(2) of the Government Code.

2. **Zoning and General Plan Consistency:** The project must be consistent with the General Plan and Zoning.

**Eligibility: Consistent.** The project is located within the CG Commercial General Zoning District and the Urban Village Commercial General Plan Land Use Designation, both of which allow multi-family residential uses. The project would result in a density of 88.8 dwelling units per acre (DU/AC), which is consistent with the General Plan designation's maximum density of 800 DU/AC. The applicant has submitted a concurrent application pursuant to State Density Bonus Law and has requested waivers from development standards, including building placement and rear setback requirements. With the requested waivers under State Density Bonus Law, the project would be consistent with the applicable development standards of the Zoning District, including setbacks and height limits. Therefore, the project is consistent with the General Plan and Zoning.

3. **Project site size limitations:** The project site does not exceed 20 acres.

**Eligibility: Consistent.** The proposed project is located on an approximately 2.97-gross-acre site.

4. **Project site must be in an urban area surrounded by urban uses:** The project is located within an urban area and is surrounded by urban uses.

**Eligibility: Consistent.** The project site is located on the west side of South Winchester Boulevard approximately 100 feet south of the intersection with Riddle Road (741 South Winchester Boulevard). The project site is surrounded by residential uses to the north, commercial retail uses to the south, residential and commercial retail uses to the east, and residential uses to the west. Therefore, the project is located within an urban area and surrounded by urban uses.

5. **The project meets minimum density requirements:** The minimum density of the project is more than 15 DU/AC.

**Eligibility: Consistent.** The project would construct 264 dwelling units on a 2.97-gross-acre site, resulting in a density of 88.8 DU/AC. Therefore, the density of the project is over 15 dwelling units/acre.

6. **The project will not demolish a historic structure:** The project does not propose demolition of a historic structure placed on a national, state, or local historic register (the City's Historic Resources Inventory).

**Eligibility: Consistent.** The project site is currently occupied by a paved parking lot and does not contain any historic structures.

7. **The project is not on natural or protected lands:** The proposed project cannot be on natural and protected lands, as defined pursuant to Section 21067.5, based on the following criteria:
- a. Site is not on prime farmland or farmland of statewide importance.
  - b. Site does not contain wetlands.
  - c. Site is not within a fire hazard area.
  - d. The site is not a hazardous waste site that is listed pursuant to Section 65962.5 unless either of the following apply:
    - o The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses **OR**
    - o The State Department of Public Health, State Water Resources Control Board, Department of Toxic Substances Control, or a local agency making a determination pursuant to subdivision (c) of Section 25296.10 of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.
  - e. Site is not within an earthquake fault zone.
  - f. Site is not within a flood hazard area or floodway.
  - g. Site is not designated for conservation.
  - h. Site is not habitat for protected species.

**Eligibility: Consistent.** The project site is a vacant lot, surrounded by urban uses. The site does not contain any sensitive habitats. The project site is not located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. The site is not within an earthquake fault zone, flood hazard area, nor is it on natural or protected lands.

## TRIBAL CONSULTATION

The City sent AB 130 Tribal Consultation Invitations to Tribal Representatives of the Ohlone Indian Tribe, Amuh Mutsun Tribal Band, Northern Valley Yokut/Ohlone Tribe, Amah Mutsun Tribal Band of Mission San Juan Bautista, Costanoan Rumsen Carmel Tribe, Muwekma Ohlone Tribe of the SF Bay Area, Tamien Nation, Wuksachi Indian Tribe/Eshom Valley Band, Indian Canyon Mutsun Band of Costanoan, on August 8, 2025. The only tribe to request formal consultation was the Tamien Nation. The City did not receive a request to consult from any other tribal representatives noticed.

The City met with Tamien Nation on October 16, 2025. The tribe recommended Tribal Cultural Resources Awareness Training conducted by the Tamien Nation, and Archaeological Worker Environmental Awareness Program Training provided by a qualified archaeologist for construction personnel. The Tamien Nation also requested full time monitoring by a Tamien Nation Tribal Monitor and a Secretary-of-the Interior qualified archaeologist during all ground-disturbing activities, and that the monitoring plan shall be developed in collaboration with Tamien Nation. The City reviewed the requested

measures intended to protect tribal cultural resources and responded to the Tamien Nation on October 24, 2025, providing the draft condition language that would be included with the permit, using the City's standard permit conditions for Cultural Awareness Training, Native American Monitoring, Subsurface Cultural Resources, and Human Remains. In its October 24 letter, the City requested confirmation or concerns back from the tribe by November 3, 2025, to confirm that the City's Standard Permit Conditions were consistent with their recommendations, otherwise the consultation would be completed. The Tamien Nation did not provide further responses or concerns, and on November 3, 2025, the tribal consultation was closed for this project. These conditions were included in the Site Development Permit.

## **CONCLUSION**

The project is a qualifying Housing Development Project that meets project site size and unit density requirements. The project is in an urban area and consistent with the General Plan and Zoning. The project site is not located on natural or protected lands, a hazardous waste site that is listed pursuant to Section 65962.5, nor is it within fire, earthquake, or flood hazard areas. Therefore, the project qualifies for a statutory exemption under CEQA Section 21080.66 and AB 130.

July 30, 2026

Environmental Project Manager: Cort Hitchens