



First Amendment to the
Draft Supplemental Environmental Impact Report to
the Final Environmental Impact Report
for the Downtown Strategy 2040 (SCH# 2018082075)

San Jose Tribute Hotel

File Nos. H16-042 and HP17-003
September 2019

Prepared by



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1.0 INTRODUCTION

This Amendment, together with the Draft Supplemental Environmental Impact Report (Draft SEIR), constitutes the Final Supplemental Environmental Impact Report (Final SEIR) for the San José Tribute Hotel project.

1.1 PURPOSE OF THE FINAL SEIR

In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, this Final SEIR provides objective information regarding the environmental consequences of the proposed project. The Final SEIR also identifies mitigation measures and alternatives to the project in order to reduce or eliminate significant environmental impacts. The Final SEIR is intended to be used by the City of San José in making decisions regarding the project.

Pursuant to CEQA Guidelines Section 15090(a), prior to approving a project, the lead agency shall certify that:

- 1) The Final SEIR has been completed in compliance with CEQA;
- 2) The Final SEIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the Final SEIR prior to approving the project; and
- 3) The Final SEIR reflects the lead agency's independent judgment and analysis.

1.2 CONTENTS OF THE FINAL SEIR

CEQA Guidelines Section 15132 specifies that the Final SEIR shall consist of:

- a) The Draft SEIR or a revision of the Draft;
- b) Comments and recommendations received on the Draft SEIR either verbatim or in summary;
- c) A list of persons, organizations, and public agencies commenting on the Draft SEIR;
- d) The lead agency's responses to significant environmental points raised in the review and consultation process; and
- e) Any other information added by the lead agency.

1.3 PUBLIC REVIEW

In accordance with CEQA and the CEQA Guidelines (Public Resources Code Section 21092.5[a] and CEQA Guidelines Section 15088[b]), the City shall provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the SEIR. The Final SEIR and all documents referenced in the Final SEIR are available for public review at the office of the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, Third Floor, San José, California on weekdays during normal business hours. The Final SEIR is also available for review on the City's website at <http://www.sanjoseca.gov/activeeirs>.

2.0 DRAFT SEIR PUBLIC REVIEW SUMMARY

The Draft SEIR for the San José Tribute Hotel project, dated May 2019, was circulated to affected public agencies and interested parties for a 45-day review period from May 28, 2019 through July 12, 2019. The City undertook the following actions to collect public input on the scope of the SEIR and to inform the public of the availability of the Draft SEIR:

- The City filed a Notice of Preparation (NOP) with the California State Clearinghouse for a 30-day review period from September 4, 2018 through October 3, 2018, under State Clearinghouse Number 2018082075. The City distributed the NOP to affected agencies, interested groups and individuals.
- The City held a public Scoping meeting to receive public input on the scope of the Draft SEIR on September 17, 2018 at 6:30 PM. Comments received at the public Scoping meeting were addressed in the Draft SEIR.
- The City published the Notice of Availability (NOA) of the Draft SEIR in the San José Mercury News on May 28, 2019, and filed it with the County of Santa Clara County Clerk-Recorder on the same day. The NOA was also mailed on May 28, 2019 to local neighboring jurisdictions, project-area residents and other members of the public who had indicated interest in the project and in general notification of City documents (see *Section 3.0* for a list of agencies, organizations, businesses, and individuals that received the Draft SEIR).
- The Draft SEIR was delivered to the State Clearinghouse on May 28, 2019, and posted on the City's website at (<http://www.sanjoseca.gov/activeeirs>). Hard copies of the Draft SEIR were available at the Department of Planning, Building and Code Enforcement and the Dr. Martin Luther King Jr. Main Library (150 East San Fernando Street, San José, CA 95112).

During the public review of the Draft SEIR, the City received four comment letters as listed below. Responses to the comment letters are provided in *Section 4.0* below.

1. State of California, Governor's Office of Planning and Research (July 18, 2019)
2. State of California, Native American Heritage Commission (July 8, 2019)
3. Santa Clara Valley Transportation Authority (July 10, 2019)
4. Hopkins Carley (July 11, 2019)

The City received a letter from the Office of Planning and Research (OPR) dated July 22, 2019 indicating that OPR had received a late comment letter on this project. A review of the OPR database revealed that the only letter submitted was the same letter the City had directly received from the Native American Heritage Commission dated July 8, 2019, included in the list above, and responded to in *Section 4.0* below. This OPR letter is included as Letter E in *Section 4.0*.

3.0 DRAFT SEIR RECIPIENTS

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft SEIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies.

The City published the Notice of Availability (NOA) of the Draft SEIR in the San José Mercury News on May 28, 2019. The public comment period began on May 28, 2019 and ended on July 11, 2019. The City mailed and/or electronically mailed the NOA to local neighboring jurisdictions, public/quasi-public agencies, tribal contacts, environmental planning groups, and other members of the public who expressed interest in the project. The Draft SEIR was posted on the City's website at <http://www.sanjoseca.gov/activeeirs>, and hard copies of the Draft SEIR were made available at the Martin Luther King, Jr. Library in downtown San José, as well as the Department of Planning, Building and Code Enforcement at City Hall, 200 East Santa Clara Street. The following agencies received a copy of the Draft SEIR from the State Clearinghouse:

- California Department of Fish and Wildlife, Region 3
- California Office of Historic Preservation
- California Department of Parks and Recreation
- Caltrans, District 4 Caltrans, Division of Aeronautics
- California Highway Patrol
- California Department of Transportation, District 4
- California Department of General Services
- California Department of Resources Recycling and Recovery
- California State Water Resources Control Board, Division of Financial Assistance
- California Regional Water Quality Control Board, Region 2
- Native American Heritage Commission
- California Public Utilities Commission

4.0 RESPONSES TO DRAFT SEIR COMMENTS

In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received by the City of San José on the Draft SEIR.

Comments are organized under headings containing the source of the letter and its date. The specific comments from each of the letters and/or emails are presented with each response to that specific comment directly following. Copies of the letters and emails received by the City of San José are included in their entirety in Attachment A of this document. Comments received on the Draft SEIR are listed below.

Comment Letter and Commenter Page of Response

A. State of California, Governor’s Office of Planning and Research (July 18, 2019)	5
B. State of California, Native American Heritage Commission (July 8, 2019)	6
C. Santa Clara Valley Transportation Authority (July 10, 2019)	8
D. Hopkins Carley (July 11, 2019)	9
E. State of California, Governor’s Office of Planning and Research (July 22, 2019)	15

LETTER A: State of California, Governor’s Office of Planning and Research (July 18, 2019)

Comment A.1: The State Clearinghouse submitted the above named EIR to selected state agencies for review. The review period closed on 7/12/2019, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act, please visit: <https://ceqanet.opr.ca.gov/2018082075/2> for full details about your project.

Response A.1: This comment documents the project’s compliance with CEQA Guidelines Section 15205, which requires submittal of the Draft SEIR to the State Clearinghouse for review by State agencies. No further response is required.

LETTER B: State of California, Native American Heritage Commission (July 8, 2019)

Comment B.1: There is no documentation of **government-to-government consultation by the lead agency** under AB-52 with Native American tribes traditionally and culturally affiliated to the project area as required by statute, or that mitigation measures were developed in consultation with the tribes. Tribal contact during Cultural Resource assessments by consultants does not meet the requirements for government-to-government consultation.

Response B.1: At the time of the release of the Notice of Preparation for this SEIR in September 2018, no tribes had provided AB 52 project notification requests to the City of San José except for projects in Coyote Valley (approximately 13 miles southeast of Downtown). The City routinely notifies all tribes who are traditionally and culturally affiliated with the geographic area of the City when project documents are available for public review.

As described on page 65 of the Draft SEIR, the cultural resources consultant for the project, Holman & Associates, conducted initial Native American consultation for the project. The NAHC was contacted in October 2018 to request a review of the Sacred Lands File (SLF) for any evidence of cultural resources or traditional properties of potential concern to Native Americans within or adjacent to the project site. The NAHC search of the SLF did not identify any sacred sites within the project area. NAHC's letter also included a list of six individuals/groups to contact that may have knowledge of the area. These tribes were contacted and either did not respond or did not have concerns regarding the project and its potential impacts on tribal resources.

An email notification of the Notice of Availability of the Draft SEIR for this project was sent to tribal contacts on May 28, 2019.

Comment B.2: Mitigation for inadvertent finds of human remains is inaccurate. The MLD has 48 hours from the time they are given access to the site to make recommendations. Please refer to California Public Resources Code § 5097.98 for the process of designating a MLD for human remains determined to be Native American (see separate attachment).

Response B.2: The referenced mitigation (MM CR-2.6) has been updated to reflect the 48-hour requirement, as shown in *Section 5.0* of this document.

Comment B.3: Agencies should be aware that AB 52 does not preclude them from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52. For that reason, we urge you to continue to request Native American Tribal Consultation Lists and Sacred Lands File searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>. Additional information regarding AB 52 can be found online at http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf, entitled "Tribal Consultation Under AB 52: Requirements and Best Practices."

The NAHC recommends lead agencies consult with all California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

Response B.3: Please refer to Response B.1 above. Consultation was conducted with NAHC and local Native American tribes. The City routinely notifies all tribes who are traditionally and culturally affiliated with the geographic area of the City when project documents are available for public review.

LETTER C: Santa Clara Valley Transportation Authority (July 10, 2019)

Comment C.1: VTA and the City of San Jose have worked closely to develop a workable solution that allows the project to include a passenger drop-off area along South First Street while preserving adequate width for the bus-only lane, general purpose lane, and sidewalk. With regards to the final configuration, VTA acknowledges the current design shows a reduction of 1 foot from the Bus Lane. While this is an impact to a VTA facility, VTA will work with the City of San Jose and the developer to ensure that the impact to VTA operations is minimized.

Response C.1: As reflected in this comment, the City will continue to work with VTA and the developer to minimize construction effects on VTA bus operations.

Comment C.2: Regarding the construction phase of the project, the SEIR contains a “preliminary site utilization plan” that shows a schematic layout of the public right-of-way during construction, including conceptual traffic and pedestrian routes (p. 8). These new routes assume that, for the duration of construction, VTA bus stops near the project site would be relocated and that the existing bus-only lane would be shared between VTA buses and general-purpose traffic. The SEIR notes that “a more detailed construction staging and construction haul route plan would be prepared as part of the Grading Permit process” (p. 8).

Response C.2: The City confirms that the project applicant will be required to provide a detailed construction staging and construction haul route plan prior to issuance of a grading permit, as a condition of approval of the project.

Comment C.3: VTA notes that the site utilization plan will require further refinement and approval by the City of San Jose and VTA, as both agencies share common interests to ensure that the operational impacts to VTA buses are minimized, that traffic and ADA-accessible/pedestrian routes are appropriate, and that other potential concerns are carefully coordinated. Additionally, VTA acknowledges that the construction phase will require temporary shared use of the bus-only lane by VTA buses and general-purpose traffic. VTA requests that the City include, as a Condition of Approval, the reimbursement of VTA costs associated with relocating bus stops due to the construction of the project. It critical during the construction phase that this lane be always kept clear near both the construction site and relocated bus stop. Any prepared traffic control plans should be designed with this parameter and submitted at a future date and time for VTA review and concurrence.

Response C.3: As part of the encroachment permit process, the applicant will be required to coordinate with the City and the VTA to ensure that operational impacts to VTA buses and pedestrian routes are minimized. The City confirms that the project applicant will be required to reimburse any costs associated with the proposed relocation of bus stops prior to issuance of a grading permit, as a condition of approval of the project.

Comment C.4: Thank you for the opportunity to review this project. VTA looks forward to ongoing coordination with the City of San Jose (Public Works) and the future contractor on this project. Please do not hesitate to contact us with any questions.

Response C.4: The City’s Department of Public Works will coordinate with VTA on this project when the project applicant applies for an encroachment permit.

LETTER D: Hopkins Carley (July 11, 2019)

Comment D.1: Downtown Historic Guidelines. While the DSEIR indicates compliance with Secretary of Interiors Standard 9, it does so with a discussion about the compatible scale of details and the cantilever. The DSEIR is inadequate because it fails to specifically address the impacts of the huge mass in proximity to the diminutive mass of the historically significant Montgomery Hotel as seen in Figure 7 attached to the DSEIR.

With respect to the above-references to the 2004 Downtown Historic Guidelines, the Project fails to comply with guidelines that require respecting existing general height and massing, avoiding box-like massing in adjacent additions, locating additions in a manner that does not dominate a historic buildings primary façade, and window patterns and rhythms that are reflective of an adjacent historic building on all facades. The DSEIR is inadequate because it fails to recognize and address the lack of compliance with these Downtown Historic Guidelines.

Response D.1: The Draft SEIR provides a detailed discussion of the project’s compliance with the Secretary of Interior’s Standards and Downtown Historic Guidelines in Section 3.2 *Cultural Resources*. This section summarizes the conclusions of the historic reports for the project contained in Appendix D of the Draft SEIR and includes a review of the project’s scale and mass (see Draft SEIR pages 57 – 60). The evaluation prepared by Archives & Architecture (May 2018) concludes that the project is compatible yet differentiated from the historic Montgomery Hotel building, creating an addition that preserves the essential integrity of the historic building on the property and “is considered compatible with the massing, materials, scale, and features of the historic building.” As described in the Draft SEIR, the intermediate detailing extends into the south elevation that creates a more three-dimensional design, relating to the blocky shape of the original building to further break down the massing and scale of the cantilevered element. The property depth of the upper level is patterned with human-scaled openings and the face of the cantilevered mass wraps onto the face of the vertical support mass. This layered feature provides visual equilibrium to the design, as the cantilever is visually supported above and to the side of the historic hotel. This creates a sense of balance within the new addition structure “that is harmonious with the significant character of the historic structure” (Archives & Architecture, May 2018).

In addition, the Draft SEIR describes the project’s compliance with the City’s Downtown Historic Guidelines on pages 60 – 61, which summarizes the conclusions of the historic evaluation that makes the following conclusion:

“Because of its rhythmic detailing and overlapping forms, the proposed tall building mass is visually balanced with the historic hotel building and other historic building masses in the Downtown Core. The historic building is a relatively compact, symmetrical mass; in design terms it could be referred as “static.” The skyscraper addition, including a narrow and tall solid form with an overlapping, cantilevered element, presents a visually balanced, asymmetrical mass. The proposed new building includes an airy, modern pedestal that mediates between the upper proposed massing and the surrounding historic and non-historic retail massing. This proposed “larger building” is broken down into visually smaller masses that are in the scale of the historic massing (existing 3-part building massing) and relate to the area’s historic building heights. The proposed building is compatible with the historic massing guideline.”

In addition, the final design of the proposed hotel building was completed based on comments from the Historic Landmark Commission’s Design Review Subcommittee (June 15, 2016), the Historic Landmarks Commission (December 7, 2016), and comments from the San José Downtown Association. The historical evaluation conducted by Carey and Company (May 2017) identified the design changes requested during these meetings (see Appendix D of the Draft SEIR). The changes that were made to the project design based on the comments from the reviewing bodies are summarized below.

Historic Landmarks Commission Design Review Subcommittee, June 15, 2016:

1. Atrium glazing moved inboard to reveal more of the north façade of the historic building.
2. Detailing at connection of atrium framing at historic façade refined.
3. Entrance canopy visually lightened.
4. Position of skylight framing adjusted to lessen visual impact to historic building
5. Tower column moved inboard of building enclosure.
6. Glazing at east façade of tower reduced by adding opaque panels at column ant end of corridor.
7. Horizontal banding at tower and overall color revised to hue compatible with existing historic building.
8. Balconies added at atrium level to emulate balcony expression on existing building.

Historic Landmarks Commission, December 7, 2016:

9. Balconies at atrium level were omitted prior to December 7, 2016 presentation.
10. Atrium glazing connection to historic façade were further refined.
11. The Commission expressed interest that the base of the building be refined such that texture, scale and materiality respond to the “human scale” of the pedestrian experience.
 - a. The design team made various adjustments to address this concern. Refer to item 15 below.
12. Adjustments resulting from this meeting were few because the design team had made revisions based upon the Design Review Subcommittee, and these received general approval from the Commission at large.

San Jose Downtown Association, June 22, 2016:

13. The Association expressed concern regarding a proposed curb but for passenger loading and unloading.
 - a. The design was subsequently altered that addressed this concern.
 - b. The lower portion of the tower was set back from the property line by approximately 7 feet to preserve the width of the public right of way in compensation for the approved reconfiguration of the curb and sidewalk for drop-off.
14. The Association expressed a desire for the atrium glazing to be further reconfigured in deference to the historic building north façade.
 - a. The design was subsequently altered in response to recommendations of the Historic Officer to further recess a portion of the glazing where it meets the historic façade.

15. The Association suggested visual elements compatible with the balcony expressions on the historic building.
 - a. The design was subsequently revised in response to recommendations from historic architect to re-introduce balconies at the atrium levels, and a panel aligned with the middle stories of the historic building and rendered in material compatible in texture and color to that of the principle surface of the historic building was added to the lower portion of the tower.
16. The Association recommended greater “animation” of the building facades and feature lighting on the upper portions of the tower.
 - a. The design was revised in response to recommendations from historic architect retained to include extending the metal cladding over a portion of the solid tower at the west and east facades and the horizontal fins on the glazed tower faces were revised in dimension and frequency to modulate the building scale.
 - b. Lighting was added to the revised façade to accent these revisions.

Based on this response, the impacts of the project on the historically significant Montgomery Hotel related to overall design and mass are adequately addressed in the Draft SEIR and no further analysis is required under CEQA. In addition, the project would comply with applicable Downtown Design Guidelines. See also Response D.2 below.

Comment D.2: Downtown Design Guidelines. The recently adopted Downtown Design Guidelines references Historic Sites and Districts in section 2.3 and also defines First Street as a Historic Commercial Corridor. The Downtown Design Guidelines also address the Massing Relationship to Context (Section 4.2.2), and Historic Adjacency (Section 4.2.4). These specifically address the requirement for transition massing or breaking the larger building mass to a similar scale as the historic structure. In the Elements section, the Guidelines further reinforce the window, door and the façade rhythms as a requirement. Most importantly, the Downtown Design Standards 4.4.4 discourage blank facades. Despite the directions in these Design Guidelines, the Project has two major facades to the west and north with large areas of blank walls. Moreover, one could make the case that the front façade to the east is an additional blank wall at the stairwell. The DSEIR is inadequate because it says nothing about and fails to address the Project’s lack of compliance with these Guidelines.

Response D.2: The most recent San José Downtown Design Guidelines and Standards were adopted on April 23, 2019. As stated on page 2 of the document under Applicability: “The Downtown Design Guidelines are effective thirty (30) days after approval by the City Council (‘Effective Date’).” Any planning application submitted after the effective date for a new permit or permit amendment is required to comply with the April 2019 Downtown Design Guidelines and Standards. The application for the Tribute Hotel project was submitted on October 18, 2016. Therefore, the project is not required to comply with the April 2019 Downtown Design Guidelines, but is required to comply with the previous iterations of the Downtown Design Guidelines dated May 2004 and November 2003. The analysis in the Draft SEIR for this project was based on these prior documents.

The project revised the original design of the new building based on comments from the Historic Landmark Commission’s Design Review Subcommittee (June 15, 2016), the Historic Landmarks Commission (December 7, 2016), and comments from the San José Downtown Association. The materials, fenestration, and ground floor building elements were revised in response to comments received during the reviews and are reflected in the current plans. See additional details in Response D.1.

Based on the above, the project's compliance with applicable Downtown Design Guidelines is adequately addressed in the Draft SEIR. No further analysis is required under CEQA.

Comment D.3: Proposed Modifications to First Street. The traffic study indicates adequacy of parking and operations; however, based upon the Fairmont's experience with respect to drop-offs and parking for guests and, even more importantly, on-site events, the study is not adequate and does not reflect reality. Considering the Fairmont's experience including having significantly larger drop off facilities than is proposed for the Project, the five (5) temporary spaces proposed for this Project is impractical and insufficient when considering the time for remote parking valet, cuing of web-based rides and the impacts of the inevitable bus traffic associated with events at the Montgomery and/or Tribute hotels. The DSEIR is inadequate and further study is warranted to ensure that operational conflicts with current traffic and transit operations on First Street will not occur.

Response D.3: The traffic study for the project evaluated passenger drop-off/pick-up operations on First Street based on counts and multiple field observations of the Four Points Hotel, and on standard hotel operations on a typical weekday. The City does not require evaluation of special events in hotels. The proposed Tribute Hotel is not proposing new event spaces that would support events that would cause conflicts with traffic and transit operations. Based on this response, the impacts related to traffic are adequately addressed in the Draft SEIR and no further analysis is required under CEQA.

Comment D.4: Aesthetic Context & Urban Design. The Fairmont finds the aesthetics of the North and its views of the West elevations as having fenestration treatments that are not acceptable aesthetically nor consistent with the current context of the Fairmont Annex and the adjoining Casa Olga. All of the buildings in the immediate area have glazing that is a significantly higher percentage of the façade and have substantially more articulation of the façade. Currently, the proposed Tribute Hotel façade has blank wall sections with minimal glazing of the façade on a plain, flat unattractive unarticulated plane of wall to look at. This design is inconsistent with the Downtown Guidelines' purpose of Design Excellence, and Sense of Place in the Downtown as well as its more detailed requirements. Further, from the Fairmont's perspective, the proposed design flies in the face of common sense.

The Fairmont would like to see a façade that was more consistent with the existing hotel or surrounding neighbors in terms of aesthetics, feel, proportions and articulation. In addition, it would ask the City to require a design that has more sensitivity to relate the urban context of the Project with a pedestrian scale base, a more attractive façade treatment on the exposure to the Fairmont as opposed to an unattractive façade that is an eyesore compared to what the Design Guidelines inspire for the Downtown.

Response D.4: The aesthetics of the proposed hotel addition are evaluated on pages 31 – 43 of Appendix A of the Draft SEIR (see *A. Aesthetics*). This analysis determined that the project would have a less than significant impact related to visual quality and aesthetics. Viewpoint analysis under CEQA is from public view locations. Views from inside the Fairmont Hotel or the adjacent senior housing development to the west were not evaluated in the Draft SEIR because these are views from private viewpoints. Photo simulations were created to illustrate the public views of the project from Paseo de San Antonio and Cesar Chavez Plaza near the Fairmont Hotel, as shown in Figures 13b and 13c in the Initial Study contained in Appendix A of the Draft SEIR.

In addition, 3.2. *Cultural Resources* of the SEIR addresses the project's consistency with the Secretary of the Interior's Standards and City's Downtown Historic Design Guidelines, which were analyzed in the historic evaluation. The evaluation determined that the proposed project meets the Secretary of the Interior's Standards and the City's Downtown Historic Design Guidelines regarding design.

Based on this response, the impacts related to aesthetics are adequately addressed in the Draft SEIR and no further analysis is required under CEQA.

Comment D.5: Groundborne Vibration. Construction of the project would generate vibration levels that would exceed the current General Plan thresholds. The threshold limits the use of Clam Shovels, Hydromills, Vibratory Rollers, Hoe Rams, Bulldozers, Caisson Drilling, Loaded Trucks, and Jackhammers in close proximity to the Montgomery Hotel. Other than monitoring and documenting, the DSEIR does not address specific mitigations of the difference between the identified difference between 1.2 in/sec PPV and the General Plan Threshold of 0.08 in/sec PPV. In addition, the DSEIR does not address the combined effect of this construction vibration while the historic structure with the concurrent groundborne vibration of the Light Rail on First Street which might increase the potential damage to the historic structure. We see no basis for the DSEIR to conclude that the proposed mitigations will result in a less than significant impact. The DSEIR's analysis here should be reevaluated and corrected.

Response D.5: As described on pages 81–83 of the Draft SEIR, the noise and vibration assessment determined that construction vibration levels at all off-site receptors, including the Fairmont Hotel, are below the 0.2 in/sec PPV threshold (see Appendix F of the Draft SEIR). The difference between the predicted vibration level of 1.2 in/sec PPV and the 0.08 in/sec threshold at the Montgomery Hotel is not relevant because once the threshold is exceeded, then the mitigation measures are applied. If vibration levels are high enough to cause cosmetic damage, then repairs would be made. Even at 1.2 in/sec PPV there is only about a 20 percent chance that cosmetic damage would occur. Any vibration level above the threshold requires monitoring, documentation, and repair, if necessary, as identified in the mitigation measures in the Draft SEIR (see Mitigation MM NSE-2 in the Draft SEIR on pages 83 through 85).

A combined vibration effect from project construction and Light Rail Transit (LRT) vibration would not occur because the LRT creates minimal vibration in the project vicinity. The comment presumes that the maximum vibration level from construction would occur at precisely the same time as the maximum LRT vibration level and the two levels together would produce a substantially higher vibration level. If this scenario were to occur, the construction vibration level of 1.2 in/sec PPV would not be substantially increased by the LRT vibration level, which is approximately 0.02 in/sec PPV at 60 feet from the centerline of the LRT (below the 72 VdB threshold as explained on page 18 of the Noise and Vibration Assessment in Appendix F of the Draft SEIR). Further, the vibration levels would have to occur within the same frequency range, which is highly unlikely. LRT vibration levels will not contribute to substantially higher construction vibration levels.

Based on this response, the impacts related to groundborne vibration are adequately addressed in the Draft SEIR and no further analysis is required under CEQA.

Comment D.6: Conclusions. In our view, the DSEIR for the Project is inadequate in multiple respects. It fails to address the Project's overshadowing massing of the Historic Montgomery Hotel. The Downtown Strategy 2040 EIR incorporates the General Plan Policies supporting the Downtown Design Guidelines and the Historic Design Guidelines. The project has numerous inconsistencies with these policies as mentioned above. As a result, we feel the proposal has a particularly negative impact on the Fairmont's views to this project.

Response D.6: Please refer to Responses D.1 and D.2 above.

Comment D.7: Additionally, the DSEIR does not address the drop-off and operational issues against the realistic backdrop of events and the use of Uber and Lyft. That reality will likely require more drop-off cueing than the proposed five (5) spaces to avoid overloading and avoid backing into the transit mall.

Response D.7: Please refer to Response D.3 above.

Comment D.8: Finally, the construction of the project generates vibration levels that exceed the General Plan threshold, and the Draft Supplemental Environmental Impact Study does not address the combined effects of the simultaneous vibrations from construction and the ongoing vibration from the Light Rail Transit System during this construction period.

Response D.8: Please refer to Response D.5 above.

LETTER E: State of California, Governor’s Office of Planning and Research (July 22, 2019)

Comment E.1: The comment(s) on your EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on 7/12/2019. **Please check the CEQA database for these comments:** <https://ceqanet.opr.ca.gov/2018082075/2> because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2018082075) when contacting this office.

Response E.1: A review of the OPR database revealed that the only letter submitted was the same letter the City had directly received from the Native American Heritage Commission dated July 8, 2019, and has been replied to in the Response to Comment Letter B above.

5.0 DRAFT SEIR TEXT REVISIONS

This section contains revisions to the text of the San José Tribute Hotel Draft SEIR dated May 2019. Revised or new language is underlined and deletions are shown in ~~strikeout~~ text.

Page 64, the mitigation is revised as follows:

MM CR-2.6 If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 ~~24~~ hours after being notified by the NAHC.

Attachment A
Draft SEIR Comment Letters



Gavin Newsom
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Kate Gordon
Director

July 15, 2019

Reena Mahamood
San Jose, City of
200 E. Santa Clara St., 3rd Floor
San Jose, CA 95113

Subject: San Jose Tribute Hotel Project
SCH#: 2018082075



Dear Reena Mahamood:

The State Clearinghouse submitted the above named EIR to selected state agencies for review. The review period closed on 7/12/2019, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act, please visit: <https://ceqanet.opr.ca.gov/2018082075/2> for full details about your project.

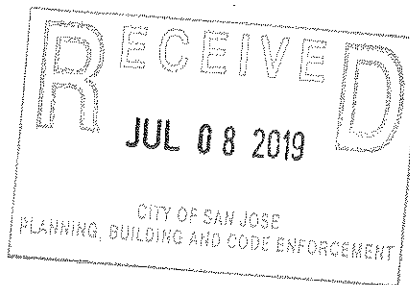
Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

STATE OF CALIFORNIA
 NATIVE AMERICAN HERITAGE COMMISSION
 Cultural and Environmental Department
 1550 Harbor Blvd., Suite 100
 West Sacramento, CA 95691
 Phone (916) 373-3710
 Email: nahc@nahc.ca.gov
 Website: <http://www.nahc.ca.gov>

Gavin Newsom, Governor



July 2, 2019

Reema Mahamood
 City of San Jose
 200 E. Santa Clara Street, 3rd Floor Tower
 San Jose, CA 95113

RE: **SCH# 2018082075, San Jose Tribute Hotel Project, City of San Jose; Santa Clara County, California**

Dear Ms. Mahamood:

The Native American Heritage Commission (NAHC) has reviewed the Draft Environmental Impact Report (DEIR) prepared for the above referenced project. The review included the Project Information and Description; the Executive Summary; and the Environmental Setting, Impacts and Mitigation, section 3.2, Cultural Resources, prepared by the City of San Jose. We have the following concern(s):

1. There is no documentation of **government-to-government consultation by the lead agency** under AB-52 with Native American tribes traditionally and culturally affiliated to the project area as required by statute, or that mitigation measures were developed in consultation with the tribes. Tribal contact during Cultural Resource assessments by consultants does not meet the requirements for government-to-government consultation. B-1
2. Mitigation for inadvertent finds of human remains is inaccurate. The MLD has 48 hours from the time they are given access to the site to make recommendations. Please refer to California Public Resources Code § 5097.98 for the process of designating a MLD for human remains determined to be Native American (see separate attachment). B-2

Agencies should be aware that AB 52 does not preclude them from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52. For that reason, we urge you to continue to request Native American Tribal Consultation Lists and Sacred Lands File searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>. Additional information regarding AB 52 can be found online at http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf, entitled "Tribal Consultation Under AB 52: Requirements and Best Practices". B-3

The NAHC recommends lead agencies consult with all California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

A brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments is also attached.

If you have any questions, please contact me at my email address: gayle.totton@nahc.ca.gov.

Sincerely,

Gayle Totton

Gayle Totton, B.S., M.A., Ph. D
 Associate Governmental Program Analyst

Attachment
 cc: State Clearinghouse

The California Environmental Quality Act (CEQA)¹, specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment.² If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared.³ In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

CEQA was amended in 2014 by Assembly Bill 52. (AB 52).⁴ **AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015.** AB 52 created a separate category for "tribal cultural resources"⁵, that now includes "a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment."⁶ Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.⁷ Your project may also be subject to **Senate Bill 18 (SB 18)** (Burton, Chapter 905, Statutes of 2004), Government Code §65352.3, if it also involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space. **Both SB 18 and AB 52 have tribal consultation requirements.** Additionally, if your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966⁸ may also apply.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

Pertinent Statutory Information:

Under AB 52:

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a **lead agency** shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice.

A **lead agency** shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project.⁹ and **prior to the release of a negative declaration, mitigated negative declaration or environmental impact report.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18).¹⁰

The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects.¹¹

1. The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.

If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency.¹²

With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process **shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10.** Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.¹³

If a project may have a significant impact on a tribal cultural resource, the **lead agency's environmental document shall discuss** both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.

¹ Pub. Resources Code § 21000 et seq.

² Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b); CEQA Guidelines Section 15064.5 (b)

³ Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1); CEQA Guidelines § 15064 (a)(1)

⁴ Government Code 65352.3

⁵ Pub. Resources Code § 21074

⁶ Pub. Resources Code § 21084.2

⁷ Pub. Resources Code § 21084.3 (a)

⁸ 154 U.S.C. 300101, 36 C.F.R. § 800 et seq.

⁹ Pub. Resources Code § 21080.3.1, subds. (d) and (e)

¹⁰ Pub. Resources Code § 21080.3.1 (b)

¹¹ Pub. Resources Code § 21080.3.2 (a)

¹² Pub. Resources Code § 21080.3.2 (a)

¹³ Pub. Resources Code § 21082.3 (c)(1)

- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.¹⁴

Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.¹⁵

Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable.¹⁶

If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b).¹⁷

An environmental impact report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days.¹⁸

This process should be documented in the Tribal Cultural Resources section of your environmental document.

Under SB 18:

Government Code §65352.3 (a) (1) requires consultation with Native Americans on general plan proposals for the purposes of "preserving or mitigating impacts to places, features, and objects described §5097.9 and §5091.993 of the Public Resources Code that are located within the city or county's jurisdiction. Government Code §65560 (a), (b), and (c) provides for consultation with Native American tribes on the open-space element of a county or city general plan for the purposes of protecting places, features, and objects described in Public Resources Code §5097.9 and §5097.993.

- SB 18 applies to **local governments** and requires them to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf
- **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.**¹⁹
- **There is no Statutory Time Limit on Tribal Consultation under the law.**
- **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research,²⁰ the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction.²¹
- **Conclusion Tribal Consultation:** Consultation should be concluded at the point in which:
 - The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation.²²

NAHC Recommendations for Cultural Resources Assessments:

- Contact the NAHC for:

¹⁴ Pub. Resources Code § 21082.3 (b)

¹⁵ Pub. Resources Code § 21080.3.2 (b)

¹⁶ Pub. Resources Code § 21082.3 (a)

¹⁷ Pub. Resources Code § 21082.3 (e)

¹⁸ Pub. Resources Code § 21082.3 (d)

¹⁹ (Gov. Code § 65352.3 (a)(2)).

²⁰ pursuant to Gov. Code section 65040.2,

²¹ (Gov. Code § 65352.3 (b)).

²² (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

- A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
- A Native American Tribal Contact List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
 - The request form can be found at <http://nahc.ca.gov/resources/forms/>.
- Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - If part or the entire APE has been previously surveyed for cultural resources.
 - If any known cultural resources have been already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

Examples of Mitigation Measures That May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

- Avoidance and preservation of the resources in place, including, but not limited to:
 - Planning and construction to avoid the resources and protect the cultural and natural context.
 - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - Protecting the cultural character and integrity of the resource.
 - Protecting the traditional use of the resource.
 - Protecting the confidentiality of the resource.
- Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed.²³
- Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.²⁴

The lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

- Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources.²⁵ In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains: Health and Safety Code section 7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

²³ (Civ. Code § 815.3 (c)).

²⁴ (Pub. Resources Code § 5097.991).

²⁵ per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)).



July 10, 2019

City of San José
 Department of Public Works
 200 East Santa Clara Street, 3rd Floor Tower
 San José, CA 95113-1903

Attention: Reema Mahamood

Subject: City File Nos. H16-042 and HP17-003 / Tribute Hotel

Dear Ms. Mahamood:

Thank you for the opportunity to review the Draft Supplemental Environmental Impact Report (SEIR) for the San Jose Tribute Hotel. VTA appreciates the City of San Jose's ongoing engagement on the Tribute Hotel project. VTA has reviewed the SEIR and has the following comments.

VTA and the City of San Jose have worked closely to develop a workable solution that allows the project to include a passenger drop-off area along South First Street while preserving adequate width for the bus-only lane, general purpose lane, and sidewalk. With regards to the final configuration, VTA acknowledges the current design shows a reduction of 1 foot of width from the Bus Lane. While this is an impact to a VTA facility, VTA will work with the City of San Jose and the developer to ensure that the impact to VTA operations is minimized.

C-1

Regarding the construction phase of the project, the SEIR contains a "preliminary site utilization plan" that shows a schematic layout of the public right-of-way during construction, including conceptual traffic and pedestrian routes (p. 8). These new routes assume that, for the duration of construction, VTA bus stops near the project site would be relocated and that the existing bus-only lane would be shared between VTA buses and general-purpose traffic. The SEIR notes that "a more detailed construction staging and construction haul route plan would be prepared as part of the Grading Permit process" (p. 8).

C-2

VTA notes that the site utilization plan will require further refinement and approval by the City of San Jose and VTA, as both agencies share common interests to ensure that the operational impacts to VTA buses are minimized, that traffic and ADA-accessible/pedestrian routes are appropriate, and that other potential concerns are carefully coordinated. Additionally, VTA acknowledges that the construction phase will require temporary shared use of the bus-only lane by VTA buses and general-purpose traffic. VTA requests that the City include, as a Condition of Approval, the reimbursement of VTA costs associated with relocating bus stops in the vicinity due to the construction of the project. It critical during the construction phase that this lane be always kept clear near both the construction site and relocated bus stop. Any prepared traffic

C-3

control plans should be designed with this parameter and submitted at a future date and time for VTA review and concurrence.

↑ C-3
Cont'd

Thank you for the opportunity to review this project. VTA looks forward to ongoing coordination with the City of San Jose (Public Works) and the future contractor on this project. Please do not hesitate to contact us with any questions.

C-4

Sincerely,



Scott Haywood
Transportation Planning Manager

cc: Ryan Do, San Jose Development Services; Jay Tyree, Inez Evans, Carolyn Gonot

SJ1733

July 11, 2019

Jay M. Ross
jross@hopkinscarley.com
T. 408.286.9800
F. 408.998.4790

Via E-mail, Original to Follow
reema.mahamood@sanjoseca.gov

City of San José, Department of Planning, Building and Code Enforcement
Attn: Reema Mahamood, Environmental Project Manager
200 East Santa Clara Street, 3rd Floor Tower
San José CA 95113-1905

**RE: Draft Supplemental Environmental Impact Report for Tribute Hotel Project
211 S First St, APN 259-42-079
File No's: H16042 and HP17-003
SCH# 2018082075**

Dear Reema:

My firm and I represent the Fairmont Hotel in connection with the above-referenced project. Working with Ernie Yamane of Steinberg Hart, we share the following comments for the City to address regarding the Draft Supplemental Environmental Impact Report SCH#2018082075 ("DSEIR") for the proposed Tribute Hotel addition ("Project"). We note that the Project is governed by the Downtown Strategy 2040, including its EIR and General Plan policies. Policy CD-4.1 mandates abiding by design guidelines in development proposals and policy CD-6.10 incorporates the Downtown Design Guidelines. Additionally, the DSEIR specifically references the 2004 Downtown Historic Guidelines and the Secretary of Interior Standards. In addition, the Fairmont has specific concerns about the Traffic Operations and the Visual Impacts of the Project from its location. These items are discussed in more detail below.

Downtown Historic Guidelines

While the DSEIR indicates compliance with Secretary of Interiors Standard 9, it does so with a discussion about the compatible scale of details and the cantilever. The DSEIR is inadequate because it fails to specifically address the impacts of the huge mass in proximity to the diminutive mass of the historically significant Montgomery Hotel as seen in Figure 7 attached to the DSEIR.

With respect to the above-referenced 2004 Downtown Historic Guidelines, the Project fails to comply with guidelines that require respecting existing general height and massing, avoiding box-like massing in adjacent additions, locating additions in a manner

D-1

that does not dominate a historic buildings primary façade, and window patterns and rhythms that are reflective of an adjacent historic building on all facades. The DSEIR is inadequate because it fails to recognize and address the lack of compliance with these Downtown Historic Guidelines.

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D-1
Cont'd

Downtown Design Guidelines

The recently adopted Downtown Design Guidelines references Historic Sites and Districts in section 2.3 and also defines First Street as a Historic Commercial Corridor. The Downtown Design Guidelines also address the Massing Relationship to Context (Section 4.2.2), and Historic Adjacency (Section 4.2.4). These specifically address the requirement for transition massing or breaking the larger building mass to a similar scale as the historic structure. In the Elements section, the Guidelines further reinforce the window, door and the facade rhythms as a requirement. Most importantly, the Downtown Design Standards 4.4.4 discourage blank facades. Despite the directions in these Design Guidelines, the Project has two major facades to the west and north with large areas of blank walls. Moreover, one could make the case that the front façade to the east is an additional blank wall at the stairwell. The DSEIR is inadequate because it says nothing about and fails to address the Project's lack of compliance with these Guidelines.

D-2

Proposed Modifications to First Street

The traffic study indicates adequacy of parking and operations; however, based upon the Fairmont's experience with respect to drop-offs and parking for guests and, even more importantly, on-site events, the study is not adequate and does not reflect reality. Considering the Fairmont's experience including having significantly larger drop off facilities than is proposed for the Project, the five (5) temporary spaces proposed for this Project is impractical and insufficient when considering the time for remote parking valet, cuing of web-based rides and the impacts of the inevitable bus traffic associated with events at the Montgomery and/or Tribute hotels. The DSEIR is inadequate and further study is warranted to ensure that operational conflicts with current traffic and transit operations on First Street will not occur.

D-3

Aesthetic Context & Urban Design

The Fairmont finds the aesthetics of the North and its views of the West elevations as having fenestration treatments that are not acceptable aesthetically nor consistent with the current context of the Fairmont Annex and the adjoining Casa Olga. All of the buildings in the immediate area have glazing that is a significantly higher percentage of the façade and have substantially more articulation of the façade. Currently, the proposed Tribute Hotel façade has blank wall sections with minimal glazing of the façade on a plain, flat unattractive unarticulated plane of wall to look at. This design is inconsistent with the Downtown Guidelines' purpose of Design Excellence, and Sense of Place in the Downtown as well as its more detailed requirements. Further, from the Fairmont's perspective, the proposed design flies in the face of common sense.

D-4
↓

The Fairmont would like to see a façade that was more consistent with the existing hotel or surrounding neighbors in terms of aesthetics, feel, proportions and articulation. In addition, it would ask the City to require a design that has more sensitivity to relate to the urban context of the Project with a pedestrian scale base, a more attractive façade treatment on the exposure to the Fairmont as opposed to an unattractive façade that is an eyesore compared to what the Design Guidelines inspire for the Downtown.

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D-4
Cont'd

Groundborne Vibration

Construction of the project would generate vibration levels that would exceed the current General Plan thresholds. The threshold limits the use of Clam Shovels, Hydromills, Vibratory Rollers, Hoe Rams, Bulldozers, Caisson Drilling, Loaded Trucks, and Jackhammers in close proximity to the Montgomery Hotel. Other than monitoring and documenting, the DSEIR does not address specific mitigations of the difference between the identified difference between 1.2 in/sec PPV and the General Plan Threshold of 0.08 in/sec PPV. In addition, the DSEIR does not address the combined effect of this construction vibration while the historic structure with the concurrent groundborne vibration of the Light Rail on First Street which might increase the potential damage to the historic structure. We see no basis for the DSEIR to conclude that the proposed mitigations will result in a less than significant impact. The DSEIR's analysis here should be reevaluated and corrected.

D-5

Conclusions

In our view, the DSEIR for the Project is inadequate in multiple respects. It fails to address the Project's overshadowing massing of the Historic Montgomery Hotel. The Downtown Strategy 2040 EIR incorporates the General Plan Policies supporting the Downtown Design Guidelines and the Historic Design Guidelines. The Project has numerous inconsistencies with these policies as mentioned above. As a result, we feel the proposal has a particularly negative impact on the Fairmont's views to this Project. Additionally, the DSEIR does not address the drop-off and operational issues against the realistic backdrop of events and the use of Uber and Lyft. That reality will likely require significantly more drop-off cueing than the proposed five (5) spaces to avoid overloading and avoid backing into the transit mall. Finally, the construction of the project generates vibration levels that exceed the General Plan threshold, and the Draft Supplemental Environmental Impact Study does not address the combined effects of the simultaneous vibrations from construction and the ongoing vibration from the Light Rail Transit System during this construction period.

D-6
D-7
D-8

The Fairmont would be more than happy to work with the City of San Jose and the Applicant on the mitigations of these concerns. In the meantime, we offer the above comments for you to incorporate and address in the DSEIR and the Project.

Very truly yours,

HOPKINS & CARLEY
A Law Corporation



Jay M. Ross

CC: David Tran (via e-mail only to david.tran@sanjoseca.gov)
Hamed Adib (via e-mail only to hadib@eccanyon.com)
Ernest T. Yamane, AAA, LEED AP (via e-mail only to EYamane@steinberghart.com)



Gavin Newsom
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Kate Gordon
Director

July 22, 2019

Reena Mahamood
San Jose, City of
200 E. Santa Clara St., 3rd Floor
San Jose, CA 95113

Subject: San Jose Tribute Hotel Project
SCH#: 2018082075

Dear Reena Mahamood:

The comment (s) on your EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on 7/12/2019. **Please check the CEQA database for these comments:** <https://ceqanet.opr.ca.gov/2018082075/2> because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2018082075) when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

cc: Resources Agency

E-1