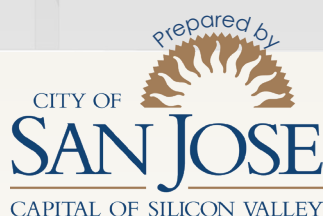
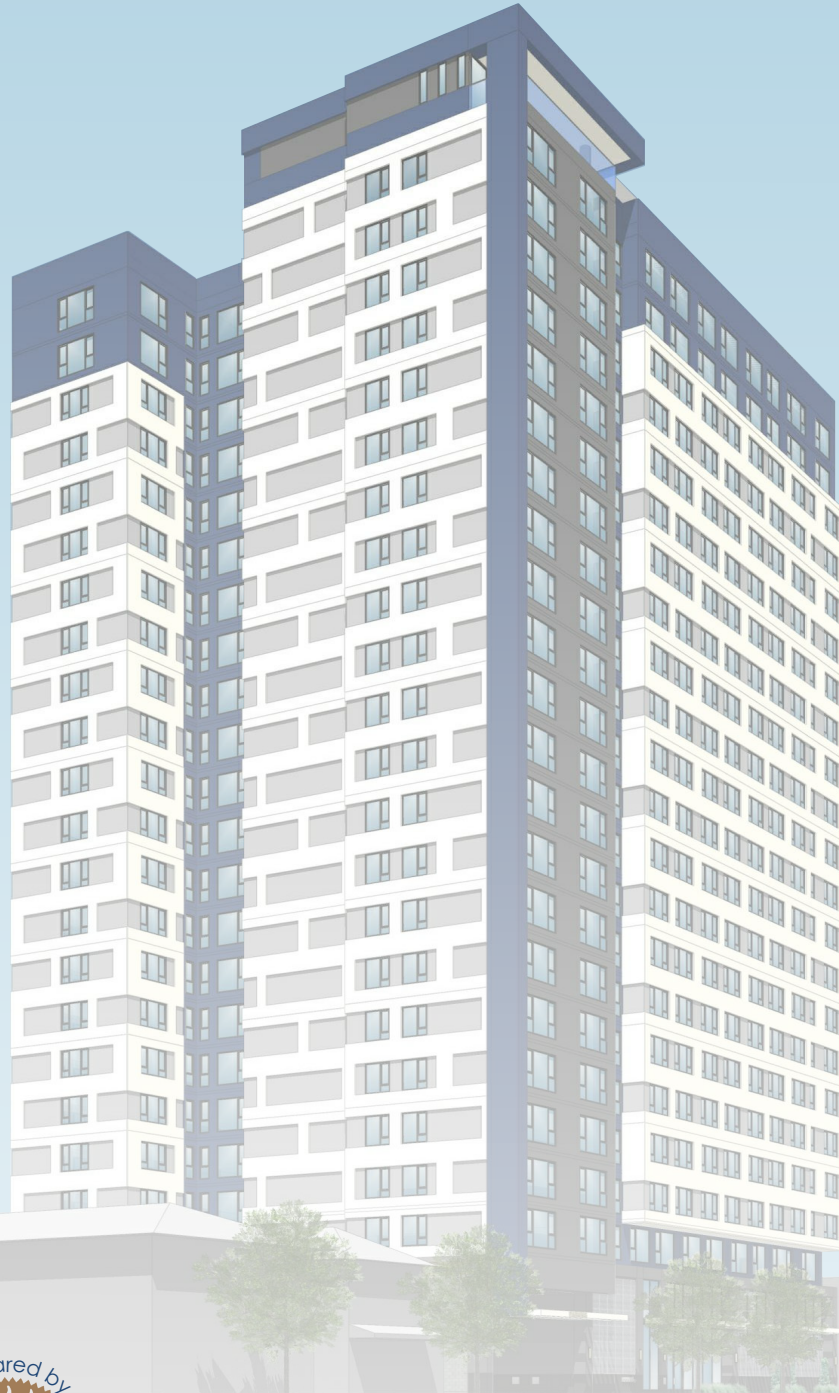


First Amendment to the
Draft Supplemental Environmental Impact Report
The Mark Residential
SP20-021



July 2021

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SECTION 1.0 INTRODUCTION

This First Amendment, together with the Draft Supplemental Environmental Impact Report (SEIR), constitute the Final SEIR for The Mark Residential project.

1.1 PURPOSE OF THE FINAL SEIR

In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, the Final SEIR provides objective information regarding the environmental consequences of the proposed project. The Final SEIR also examines mitigation measures and alternatives to the project intended 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 EIR has been completed in compliance with CEQA;
- (2) The Final EIR 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 EIR prior to approving the project; and
- (3) The Final EIR reflects the Lead Agency's independent judgment and analysis.

1.2 CONTENTS OF THE FINAL EIR

CEQA Guidelines Section 15132 specify 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 EIR. The Final SEIR and all documents referenced in the Final SEIR are available for review on the City's website: <https://www.sanjoseca.gov/active-eirs/>.

SECTION 2.0 DRAFT SEIR PUBLIC REVIEW SUMMARY

The Draft SEIR for The Mark Residential project, dated April 2021, was circulated to affected public agencies and interested parties for an extended 70-day review period from April 29, 2021 through July 7, 2021. The City undertook the following actions to inform the public of the availability of the Draft SEIR:

- The Notice of Availability of Draft SEIR was published on the City's [website](#) and in the San José Mercury News;
- The Notice of Availability of the Draft SEIR was mailed to neighboring cities, tribal contacts, organizations, and individual members of the public who had indicated interest in the project or requested notice of projects in the City;
- The Notice of Availability was sent to members of the public who signed up for City notices via *Newsflash*;
- The Draft SEIR was delivered to the State Clearinghouse on April 23, 2021, which forwarded the Draft SEIR to various governmental agencies and organizations, (see *Section 3.0* for a list of agencies and organizations that received the Draft SEIR); and
- Copies of the Draft SEIR were made available on the City's [website](#).

SECTION 3.0 DRAFT SEIR RECIPIENTS

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft EIR 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 following agencies received a copy of the Draft SEIR via the State Clearinghouse:

- California Air Resources Board
- California Department of Conservation
- California Department of Fish and Wildlife, Bay Delta Region 3
- California Department of Forestry and Fire Protection
- California Department of Parks and Recreation
- California Department of Transportation, District 4
- California Department of Transportation, Division of Aeronautics
- California Department of Transportation, Division of Transportation Planning
- California Department of Water Resources
- California Highway Patrol
- California Native American Heritage Commission
- California Natural Resources Agency
- California Public Utilities Commission
- California Regional Water Quality Control Board, San Francisco Bay Region 2
- Department of Toxic Substances Control
- Office of Historic Preservation
- State Water Resources Control Board, Division of Drinking Water

Copies of the Notice of Availability for the Draft SEIR were sent by mail and/or email to the following organizations, businesses, and individuals who expressed interest in the project:

- Indian Canyon Band of Costanoan Ohlone People
- Law Foundation of Silicon Valley
- Pacific Gas and Electric
- Tamien Nation
- Santa Clara Valley Water District

- Charles and Karen Clifford
- Kathleen Crowe
- Alice Gosak
- Deb Hudson
- Penny Martell
- Sheila McGann-Tiedt

- John Mitchell
- Charlene and Michael Schmidt
- Clarice Shephard
- Walter Soellner
- Mark Williams
- Steve Cohen
- Benjamin Leech, PAC SJ

SECTION 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 Appendix A of this document. Comments received on the Draft EIR are listed below.

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REGIONAL AND LOCAL AGENCIES

A. Santa Clara Valley Water District (May 13, 2021)

Comment A.1: The Santa Clara Valley Water District (Valley Water) has reviewed the Notice of Availability of a Draft Supplemental Environmental Impact Report (SEIR) for the Mark Residential Project received on April 29, 2021. Valley Water has the following comments to be taken into consideration when developing the Final SEIR for this project:

Pages 75 and 83 of the Initial Study incorrectly state that the project area is within the Lexington Dam inundation area; however, according to the Lexington Dam Inundation Map the project area is located just outside of the area subject to inundation from the James J. Lenihan Dam on Lexington Reservoir. The document should be revised to correctly state the associated inundation area is only within the Leroy Anderson Dam inundation area.

Response A.1: The comment provides administrative text corrections to the Draft SEIR. The SEIR is revised to correctly state the associated inundation area is only within the Leroy Anderson Dam inundation area. Refer to Section 5.0 Draft SEIR Text Revisions in this First Amendment for the text amendments. These text amendments do not change the findings of the Draft SEIR and recirculation of the Draft SEIR is not required.

Comment A.2: Valley Water records don't show any wells located on the project site. To protect groundwater quality and in accordance with District Ordinance 90-1, all existing wells affected by the redevelopment of the site need to be identified and properly registered with Valley Water and either be maintained or destroyed in accordance with Valley Water's standards. Destruction of any well and the construction of any new wells proposed, including monitoring wells, requires a permit from Valley Water prior to construction. Property owners or their representatives should contact Valley Water's Wells and Water Measurement Unit at (408) 630-2660, for more information.

The proposed project location is not located adjacent to any Valley Water facility or right of way. Therefore, according to Valley Water's Water Resources Protection Ordinance, a Valley Water permit is not required for the proposed project.

Response A.2: The commenter is correct in that the project is not located adjacent to any Valley Water facility or right of way and, therefore, does not require a Valley Water permit. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

ORGANIZATIONS, BUSINESSES, AND INDIVIDUALS

B. Pacific Gas and Electric (April 29, 2021)

Comment B.1: Thank you for submitting the SP20-021 plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page.
2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.
3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

Response B.1: The applicant will comply with all applicable permit application requirements. This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

C. Penny Martell (April 30, 2021)

Comment C.1: How many parking spaces will be available to go with the 240 residential units?

Response C.1: As discussed on pages 6 and 119 of Appendix A of the Draft SEIR, the project would provide up to 95 parking spaces on-site and, under a shared parking arrangement, up to 172 parking spaces off-site at the 88 East San Fernando Street parking garage for a total of up to 267 off-street parking spaces. The 88 East San Fernando Street parking garage is located 0.5 mile from the project site. This comment does not raise any issues with the adequacy Draft SEIR; therefore, no further response is required.

D. Kanyon Konsulting, LLC. (May 3, 2021)

Comment D.1: My name is Kanyon Sayers-Roods. I am writing this on behalf of the Indian Canyon Band of Costanoan Ohlone People as requested, responding to your letter dated: April 29, 2021.

As this project's Area of Potential Effect (APE) overlaps or is near the management boundary of a recorded and potentially eligible cultural site, we recommend that a Native American Monitor and an Archaeologist be present on-site at all times. The presence of a monitor and archaeologist will help the project minimize potential effects on the cultural site and mitigate inadvertent issues.

Kanyon Konsulting, LLC has numerous Native Monitors available for projects such as this, if applicable, along with Cultural Sensitivity Training at the beginning of each project. This service is offered to aid those involved in the project to become more familiar with the indigenous history of the peoples of this land that is being worked on.

Response D.1: As discussed on page 63 of the Draft SEIR, the project site has a low to moderate potential for Native American resources based on the results of a literature search conducted for the project by Holman & Associates on July 1, 2020, and findings in the Downtown Strategy 2040 Final EIR. Consistent with the Downtown Strategy 2040 Final EIR, the project is required to implement Standard Permit Conditions to reduce and avoid impacts to as yet unidentified archaeological resources and will implement the Downtown Strategy 2040 standard permit conditions as recommended in the July 2020 literature search. See Section 5.0 which elaborates on the standard permit conditions. This text change does not require recirculation of the DEIR as it further clarifies the standard permit conditions the project is subject to and does not change any impacts.

This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment D.2: Kanyon Konsulting, LLC believes in having a strong proponent of honoring truth in history, when it comes to impacting cultural resources and potential ancestral remains. We have seen that projects like these tend to come into an area to consult/mitigate and move on shortly after. Doing so has the strong potential to impact cultural resources and disturb ancestral remains. Because of these possibilities, we highly recommend that you receive a specialized consultation provided by our company as the project commences.

As previously stated, our goal is to Honor Truth in History. And as such we want to ensure that there is an effort from the project organizer to take strategic steps in ways that #HonorTruthinHistory. This will make all involved aware of the history of the indigenous communities whom we acknowledge as the first stewards and land managers of these territories.

Potential Approaches to Ingenious Culture Awareness/History:

-- Signs or messages to the audience or community of the territory being developed. (ex. A commerable plaque or as advantageous as an Educational/Cultural Center with information about the history of the land)

-- Commitment to consultation with the native peoples of the territory in regards to presenting messaging about the natives/Indigenous history of the land (Land Acknowledgement on website, written material about the space/org/building/business/etc)

-- Advocation of supporting indigenous lead movements and efforts. (informing one's audience and/or community about local present Indigenous community)

Response D.2: Consistent with the Downtown Strategy 2040 Final EIR and the requirements of CEQA Section 15064.5 the Draft SEIR identified the potential for as yet unrecorded subsurface resources and identified Standard Permit Conditions that must be implemented to ensure that the project would have a less than significant impact on cultural resources. The commenters suggestions for cultural awareness are acknowledged but do not mitigate an impact under CEQA. Nevertheless, the commenters suggestions are included herein and will be provided as part of the public record to the Director of Planning, Building and Code Enforcement for consideration during the decision-making process.

This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

E. Tamien Nation (May 25, 2021)

Comment E.1: Thank you for the notice of availability of the draft SEIR via email dated April 29, 2021 regarding the proposed housing project located at 459, 465-469, and 475 South Fourth Street, Downtown San José, California. We appreciate your effort to contact us and wish to respond.

The Tamien Nation Cultural Resources Department has reviewed the project and concluded that it is within the aboriginal territory of Tamien Nation. Therefore, we have a cultural interest and authority in the proposed project area.

Based on the information provided, the Tribe has concerns that the project could impact known cultural resources. Therefore, we have a cultural interest and authority in the proposed project area. At your earliest convenience, please send us the most recent cultural resource study and detailed ground disturbance plan.

Please refer to identification number TN-20210429-01 in any correspondence concerning this project.

Thank you for providing us with this notice and the opportunity to comment.

Response E.1: An Archaeological Literature Search was completed July 1, 2020 by a qualified archaeologist with Holman & Associates at the Northwest Information Center of the California Historical Resources Information System (CHRIS) which identified all recorded archaeological resources within one-quarter mile of the project site. One resource, a historic house, was identified within the study area. No Native American resources have been recorded in the project area. Based on the known resources within the downtown area, the results from the literature search and the findings in the Downtown Strategy 2040 Final EIR, and the site's proximity to Guadalupe River and Coyote Creek, the project area was determined to have a low to moderate potential for as yet unrecorded Native American artifacts. Due to the moderate potential for prehistoric resources and high potential for historic era resources, the project applicant is required to implement Standard Permit Conditions to reduce and avoid impacts to as yet unidentified resources consistent with the Downtown Strategy 2040 Final EIR and CEQA Guidelines Section 15064.5. See Section 5.0 for the text revisions which further clarify the applicable standard permit conditions.

As discussed on pages 121-122 of Appendix A of the Draft SEIR, the City sent a letter to tribal representatives in the area to welcome participation in a consultation process for all ongoing, proposed, or future projects within the City's Sphere of Influence or specific areas of the City in 2017, consistent with Assembly Bill 52 (AB 52). The tribal representatives for tribes known to have traditional lands and cultural places within the City of San José were also sent the Notice of Preparation for the proposed project on September 1, 2020. No response or request for consultation was received. Because no request for consultation was received within the mandated 30-day response window, analysis of the proposed project proceeded with available documentation from CHRIS.

Nonetheless, the requested documents were sent to the commenter on May 28, 2021. On June 1, 2021, Chairwoman Geary emailed Tamien Nation's request for consultation for the project and the City followed up on June 8, 2021 to schedule a consultation meeting and confirmed the project would be subject to the Downtown Strategy's standard permit conditions for monitoring. Chairwoman Geary and City Staff met on July 8, 2021 to discuss the tribe's concerns and on July 13, 2021 to

review the Downtown Strategy’s Standard Permit Conditions. A summary letter reiterating the applicable Standard Permit Conditions was sent by the City on July 14, 2021 to Tamien Nation to conclude the coordination.

This comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

F. Tamien Nation (June 1, 2021)

Comment F.1: Thank you for the cultural resource report received May 28, 2021 regarding the proposed housing project located at 459, 465-469, and 475 South Fourth Street, Downtown San José, California. We appreciate your effort and wish to respond. Based on the information provided in the cultural resource study, the Tribe has concerns that the project could impact known cultural resources. Therefore, we have a cultural interest and authority in the proposed project area and would like to initiate a formal consultation with the lead agency. At the time of consultation, please provide a project timeline and detailed ground disturbance plan.

Please contact the following individual to coordinate a date and time for the consultation meeting:
Quirina Geary, Chairwoman
Tamien Nation
Phone: (707) 295-4011
Email: qgeary@tamien.org

Please refer to identification number TN–20210429-01 in any correspondence concerning this project. Thank you for providing us with this notice and the opportunity to comment.

Response F.1: See Response E.1.

G. Law Foundation of Silicon Valley (June 8, 2021)

Comment G.1: I am following up on this property. Do you have a contact at Housing for the property? I wanted to ensure that this property is in compliance SB 330, the Housing Accountability Act. SB 330 requires a right to return for tenants who have lived there, as well as affordable housing on site for buildings which were affordable to low-income tenants. It sounds like the buildings were rent-controlled, and thus would be subject to the requirements that require affordable housing on site. Please let me know if you have any further information about the City’s requirements to enforce SB 330 or who I might contact to get more information.

Response G.1: As described on page 3 of the Draft SEIR, the existing approximately 0.46-gross acre project site contains two multi-family residential buildings (Assessor’s Parcel Numbers 467-47-092, 467) and one single-family residence (Assessor’s Parcel Number 467-47-057) for a total of sixteen residential units on-site.

City staff directed commenter to the City's Housing Department for information on rent status and the City's compliance with SB 330.

Fifteen of the units have been determined to be "protected units" under SB330 and will be required to be replaced within units affordable to low-income households.

The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

H. Charles and Karen Clifford (June 13, 2021)

Comment H.1: I wanted to express our concerns in writing to the City of San José in regards to the proposed project development on South 4th Street.

First, I would like to express my concern that this project is being conducted during a pandemic. My husband has had six surgeries during this time and most people in the neighborhood have been dealing with real life issues during this time. Charles and I have meet with Alex, and his main structural engineer, along with Noah (our tenant) and Steve Cohen from the neighborhood. We received a phone call from Alex in regards to wanting to drill on our property to do an evaluation. It was at this time, that we were made aware of the project, next to our building, was going forward.

We opened our basement and invited them in to take a look at our foundation, but we did not agree to drilling on our property. We then had an extensive conversation about what was being proposed for this project. (since we had no idea of scale or production) Noah, is a professor and expressed that teaching during construction would be of concern and also informed them that students have cars. Most of his students attending San Jose State currently do. He gave them a percentage of his students who drove cars. The percentage did not take in consideration of their visitors. Noah is not the only professor residing at our location. They know, firsthand, student behavior.

Response H.1: The City distributed the Notice of Preparation (NOP) for the proposed project in August 2020 and a joint Community Meeting and Environmental Scoping Meeting was held on September 17, 2020. Notice of the joint meeting was sent to all owners and tenants within 1,000 feet of the project site (1,798 notices were mailed). Additionally, the NOP was posted in the San José Mercury Newspaper and available for review online. The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment H.2: We are not against development or change, but expressed in details our concerns of the structure being TOO BIG and NOT enough parking. They did state that they leased a parking structure several blocks away from the proposed development. We have been in business and part of the downtown community for many years and know that having parking several blocks away from where one would live will not work. We gave the developer examples of current structures and parking issues with them. We invited them to come take a look at the parking around 7:00pm and see for themselves the situation.

When I asked how many onsite parking spaces would be available, we were shocked at the ratio. Alex informed us that the parking proposal was when in the city's guidelines.

Response H.2: As discussed on pages 6 and 119 of Appendix A (Initial Study) of the Draft SEIR, per the City's parking requirement outlined in Section 20.70.100 of the San José Municipal Code, the proposed project would be required to provide one parking space per unit for a total of 240 parking spaces. Since the project is within a development area policy (Downtown Area Growth Boundary) and provides and meets the City's bicycle parking requirement per table 20-90 of the San José Municipal Code, the project would be eligible for a 20 percent parking reduction (per San José Municipal Code Section 20.90.220). Therefore, the parking required for the project would be 192 off-site parking spaces (with the allowed parking reduction). The City will allow the project to supplement its proposed on-site parking with off-site parking to meet the required 192 off-street parking space requirement in accordance with Section 20.90.200 of the San José Municipal Code. The off-site parking agreement would require execution prior to the issuance of a Certificate of Occupancy.

The project would provide up to 95 parking spaces on-site and up to 172 parking spaces off site at the 88 East San Fernando Street parking garage (located 0.5 mile from the project site) for a total of up to 267 parking space. Therefore, the project would meet the minimum city requirement of 192 parking spaces. This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment H.3: Second, We expressed concerns for The Spartan Barber Shop (Frank Annino) was has been in business at 485 S. 4th Street since the 50's. We wanted to know how the streets were going to be affected for his customers, as well as Bicycle Express at 131 E. William Street (Our business location)

Response H.3: The Traffic Analysis, Appendix H of the Draft SEIR, concluded the addition of project traffic would increase the projected maximum queue lengths at nearby studied intersections including 4th and William streets near the Bicycle Express and Spartan Barber Shop by at most one vehicle. The comment does not raise any specific environmental issues under CEQA; therefore, no recirculation would be needed.

Comment H.4: With all of our concerns that were expressed to Urban development, only one was really addressed, that they could get commercial spacing for Noah to teach.

Meeting during a pandemic via Zoom is not a fair or vital way to hear from the community or neighborhood. We have never done or used Zoom, and I am sure there are many our folks, like myself who have not. It feels to me, that this project is being pushed forward without really addressing the concerns of people or the neighborhood.

I really hope this letter does not fall on deaf ears and that the City of San Jose really takes a better look at the scale and impact of this proposal.

Response H.4: The Community Meeting and Environmental Scoping Meeting was held via Zoom on September 17, 2020 and was accessible via the internet as well as through phone in accordance with the Governor’s Executive Order N-29-20. Additionally, environmental and planning staff have been available to receive comments and answer questions from the public via phone and email. The comment does not raise any specific environmental issues under CEQA; therefore, no recirculation would be needed.

I. Mark Williams (June 13, 2021)

Comment I.1: We would like to register our objections to The Mark tower project as currently proposed.

1. When this project was introduced to the neighborhood back in 2020, the height and density were given on the overview post card sent out. Now, with no additional correspondence, significant increases have been made.

>>> We need you to explain why the Planning Department is not properly notifying nearby neighbors of major changes to a project.

Response I.1: The City distributed the Notice of Preparation (NOP) for the proposed project in August 2020 and a joint Community Meeting and Environmental Scoping Meeting was held on September 17, 2020. Notice of the joint meeting was sent to all owners and tenants within 1,000 feet of the project site (1,798 notices were mailed). Additionally, the NOP was posted in the San José Mercury Newspaper and available for review online. As described in the NOP, the project proposed construction of a residential building with 222 dwelling units and a maximum height of 250 feet. Since publication of the NOP, the project design changed. Specifically, the height of the building increased by 24 feet and the unit count increased to 240 (a net of 18 units). Pursuant to CEQA Guidelines Section 15375, the intent of an NOP is to solicit guidance from agencies as to the scope and content of the environmental information to be included in the EIR.

During the planning review process project proposals may change to ensure compliance with city policies and design standards. As noted on page 3 of the Draft SEIR, the applicant modified the original project design to provide a larger setback at the rear property line for greater compliance with the City of San José’s Downtown Design Guidelines. It also notes the increase in building height and unit count. The comment does not raise any specific environmental issues under CEQA; therefore, no recirculation of the draft SEIR is required.

Comment I.2: 2. Back in the 2008-2009 time frame, a smaller re-purposing project on the same property was promoted. Our neighborhood organization was united in opposition because of the

density of that project and the effects it would have on the residential neighborhood to which it would have belonged. The Planning Commission at that time wisely agreed with us and correctly rejected the plan. Now an even larger and more inappropriate project is being forced into that location, with even worse repercussions for the surrounding residences.

>>> We need you to explain fully why the previous project was considered too dense, yet one many times more dense is now somehow considered acceptable.

Response I.2: In December 2018, the City of San José approved the Downtown Strategy 2040 which is a plan that outlines the intensification of jobs and housing within the downtown consistent with the General Plan. The General Plan designation for the project site is Downtown which allows a maximum floor area ratio (FAR) of 30.0 and up to 800 dwelling units per acre. The proposed project's density, floor area ratio, and height align with the General Plan's land use designation.

The comment does not raise any specific environmental issues under CEQA; therefore, no recirculation of the draft SEIR would be required.

Comment I.3: 3. A wise plan would be to step down the building heights into the residential neighborhoods. This was done in Market Almaden, and is being done with the Google project.

>>> We need you to explain why our neighborhood does not merit the considerations that Planning provided to other projects near downtown.

Response I.3: As discussed in the Aesthetics Section 4.1 of Appendix A of the Draft SEIR and the Cultural Resources Section 3.2 of the Draft SEIR, the project is subject to the City's design review guidelines and process. The project is subject to the 2019 Downtown Design Guidelines as well as the 2004 San José Downtown Historic Design Guidelines. As described on pages 59-60 of the Draft SEIR, as proposed the project's rear building setback and height transition are inconsistent with the 2019 Downtown Design Guidelines and Standards. As a private development project, the project applicant proposes the design and use of the project. The Planning Division assesses the project in relation to applicable city policies, standards, and design guidelines to provide the decision-makers with the necessary information to either approve or deny the project. In accordance with the 2019 Downtown Design Guidelines, the project is requesting exceptions to certain guidelines provisions including the building's rear transition, skyline level massing, and active frontage requirement.

Comment I.4: 4. The decision to reduce on-site parking to force the tower residents to abandon their cars is yet another huge embarrassment to the credibility of the Planning Department. Clearly, the new residents will all be flooding the streets of the nearby neighborhood, and you know this will be the case. The San Jose downtown core is now so hostile to new businesses that it is nearly empty. Residents move in downtown, realize that there are no national chain grocery stores, drug stores, or fast food restaurants within walking distance. So they have to **drive** everywhere. The Planning Department has created even more of a need for downtown residents to own and drive a car!

>>> Why would the project not start with adequate parking for the next 15 years (the realistic timeline for BART), and then allow the parking areas to be converted to habitable space or commercial use at that time, when BART has been made available to the area?

We would request that this project be delayed until these issues can be properly addressed.

Response I.4: As described on page 115 of the Draft SEIR, the project would comply with all applicable plans for pedestrian, bicycle, and transit circulation. Per the City's parking requirement outlined in Section 20.70.100 of the San José Municipal Code, the proposed project would be required to provide one parking space per unit for a total of 240 parking spaces. Since the project is within the Downtown Growth Boundary Area, the project would be eligible for a 20 percent parking reduction (per San José Municipal Code Section 20.90.220) with the provision of all the required bicycle parking and therefore the parking required for the project would be 192 off-site parking spaces (with the allowed parking reduction). As discussed on pages 6 and 119 of Appendix A of the Draft SEIR, the City will allow the project to supplement its proposed on-site parking with off-site parking to meet the required 192 off-street parking space requirements in accordance with Section 20.90.200 of the San José Municipal Code. The project would provide up to 95 parking spaces on-site and up to 172 parking spaces off site at the 88 East San Fernando Street parking garage which approximately 0.5 mile from the project site. The project would provide a total of 192 parking spaces consistent with the City's requirement. This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

J. Alice Gosak (June 14, 2021)

Comment J.1: Walter--You have touched on a problem that has given me a good deal of concern. Some 102 parking spaces were removed from use on San Salvador around the university in the interest of installing bike lanes. This practice has not taken the lives of students into consideration. Not every student lives in the dorms; some live at a distance in their family homes and drive to part-time jobs after classes. The distances are often too great to undertake on a bicycle.

Every time I am driving around San Jose, I count the bicyclists and skateboarders I see using the bike lanes. On a good day, I see 5. How long before "if you build it, they will comes" kicks in? Don't count me in that "they." Early on, Sam Liccardo (and others I know) were in collisions with drivers while riding their bikes. While I don't wish that pain on Sam or anyone else, I shudder at the thought that it could have been me as such a collision would have ended the independent life I currently enjoy.

Response J.1: The comment does not raise any specific project issues or environmental issues under CEQA. Therefore, no further response is required.

Comment J.2: This is not a city with adequate public transportation. San Francisco, by contrast, is and an apartment dweller can live without a car, taking public transport and renting a car for occasional trips out of the city. I don't foresee that lifestyle developing in San Jose in the near future.

Minimally, developers should be required to provide adequate parking spaces in the buildings they construct. Also, I would like to see some consideration given to the ideas that Kathey Crowe has mentioned in providing transportation for seniors. Lastly, I would like to see attention given to providing affordable food stores, drugstores, and other services within walkable distance downtown. One of my elderly friends who lived downtown was indignant that the Walgreen's on 2nd Street was closed while the administration crowed about the abundance of bars and restaurants downtown.

The city's priorities need to be brought in line with reality not dreams of the future.

Response J.2: Refer to Response H.2. The comment does not raise any specific project issues or environmental issues under CEQA; therefore, no further response is required. See Response H.4.

K. Charlene Schmidt (June 14, 2021)

Comment K.1: I am writing to you as a resident of the SUN neighborhood here in Downtown San Jose. News has come to light that there will be several new developments planned for my area, which are in turn raising concerns about already impacted parking spaces in our direct area. As there will be 750 new rooms opening in one proposed building on the next block, many of our neighbors are fearful that our parking situation will become far more dire.

Response K.1: The commenter is incorrect that there would be 750 rooms in the project. The project proposes 240 units or 750 beds. As stated on page 3 of the Draft SEIR, the intent of the building is to provide student housing for San José State University (SJSU). By law there cannot, however, be restrictions on who may occupy the building. As such, the building may be rented by unit or by bed. The analysis in this document assumes standard occupancy for high-rise apartments. The development shall comply with all applicable Fair Housing laws, regulations, and requirements.

The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment K.2: As the parking permits that were highly argued for by our area did not include the addition of new developments, I would implore you to rethink about carving these large new developments out of the area that would allow the use and distribution of such parking permits. Developments should be forced to make arrangements for their own tenants that do not highly impact the surrounding areas, as the residents of these buildings will likely try to park in the surrounding streets adjacent to their new homes.

Response K.2: The project complies with the San José Municipal Code's off-street parking requirements. Per the City's parking requirement in Section 20.70.100, the

proposed project would be required to provide a total of 240 parking spaces and would automatically be eligible for at least a 20 percent reduction thus requiring 192 off-site parking spaces with the allowed parking reduction pursuant to Section 20.90.220. As discussed on pages 6 and 119 of Appendix A of the Draft SEIR, the City will allow the project to supplement its proposed on-site parking with off-site parking to meet the required 192 off-street parking space requirement pursuant to Section 20.70.330.D of the San José Municipal Code. The project proposes 95 parking spaces on-site and up to 172 parking spaces off site at the 88 East San Fernando Street parking garage (located 0.5 mile from the project site) for a total of up to 267 off-street parking spaces dedicated to the project.

As described in Appendix H of the SEIR, the project site is located within the SUN Residential Parking Program (RPP) zone where a permit is required to use on-street parking from 8AM to 8PM every day except Sundays and holidays. To obtain a parking permit the applicant must live in or own a residential property or operate a business in the parking permit zone. The California Vehicle Code authorizes cities to establish residential permit parking zones. Based on a 2016 California State Attorney General Opinion – when cities restrict parking for residents, they may not distinguish among households based on the type of residence; thus, new developments cannot be “carved out” by the City.

This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment K.3: As these new developments are planning on catering to SJSU students, I am sure that many of the residents will have cars. Many of these developments do not give the option to park nearly enough cars vs the amount of people that are moving into the area. As we are at the tail end of an unprecedented time for our world with the pandemic, many of my neighbors have decreased the use of personal cars or staying at home due to work from home situations. Even with this, parking has become increasingly difficult in the last several months.

Our neighborhood does implore that these developments be excluded from gaining parking permits. Further more, a stipulation that all ongoing developments be excluded, as the permits were not agreed upon with the inclusion of possibly 1000+ additional residents.

Response K.3: See Response H.2 above. The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

L. Clarice Shephard (June 14, 2021)

Comment L.1: This project is wrong for the historic neighborhood. It is too tall, too many units and very little onsite parking. The project is completely out of scale to our low rise neighborhood and I expect it may even cast a shadow over my property.

The neighborhood has not been included or notified of any public meetings even those of us who live very close to the project area has ever received public mailing. A real failure of the planning department. The information required to properly make comments is not available to the neighborhood to even properly write this letter. At the moment we no longer have enforced parking and we do not know when or if we will get this back or what it will look like if it returns.

Response L.1: In December 2018, the City of San José approved the Downtown Strategy 2040 which is a plan that outlines the intensification of jobs and housing within the downtown consistent with the General Plan. The General Plan designation for the project site is Downtown which allows a maximum floor area ratio (FAR) of 30.0 and up to 800 dwelling units per acre. The proposed project's density, FAR, and height aligns with the Downtown General Plan Land Use Designation.

As described on page 88 of Appendix A of the Draft SEIR, a shade and shadow study was prepared for the proposed project. The project would cast the longest shadows during the winter morning and afternoon hours to the northwest and northeast; however, no shadows would be cast on any downtown public parks and the shade cast on the surrounding commercial and residential land uses would not impair the use of the properties.

A notice of the Joint Community Meeting and Environmental Scoping Meeting for the project was sent to all addresses (1,798) within a 1,000-foot radius of the project in August 2020 and a public scoping meeting was held on September 17, 2020 via Zoom. The applicant also posted a notice of development sign on the project site consistent with City requirements. Anyone who requested to be on the distribution list for the project also received a Notice of Availability for the Draft SEIR on April 23, 2021. This Notice of Availability for the Draft SEIR was posted in the San José Mercury Newspaper and the documents were posted online. The comment period for the SEIR was extended from the required 45 days to 70 days to provide additional time for surrounding neighbors to review the Draft SEIR and provide comments.

This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment L.2: This project is being shoved down our throats with no opportunity to be heard and even if we speak up the city council will not even be reviewing this project since the city does not care about the individual resident just the business and large developers. Shame on the city and its leadership.

The city believes we can live without cars but the infrastructure to support this does not exist for this to happen. VTA does not run near our neighborhood or with any frequency or direction for it to be of use. Light rail takes 45 min to travel from downtown to Kaiser San Jose and less than 30 minutes to drive, we do not have bart to take us to other locations and trains run too infrequently. This project is

going to create a huge nightmare of traffic in and around a neighborhood that can ill afford it, and we just do not have enough street parking for those who already live here.

I am firmly against this project.

Response L.2: The Draft SEIR addressed traffic impacts from the proposed project in Section 4.17 of Appendix A (Initial Study) and discussed the project's relation to pedestrian, bicycle, and transit services.

Per the City's parking requirement in Section 20.70.100, the proposed project would be required to provide a total of 240 parking spaces and would automatically be eligible for at least a 20 percent reduction thus requiring 192 off-site parking spaces with the allowed parking reduction pursuant to Section 20.90.220. As discussed on pages 6 and 119 of Appendix A of the Draft SEIR, the City will allow the project to supplement its proposed on-site parking with off-site parking to meet the required 192 off-street parking space requirement pursuant to Section 20.70.330.D of the San José Municipal Code. The project proposes 95 parking spaces on-site and up to 172 parking spaces off site at the 88 East San Fernando Street parking garage (located 0.5 mile from the project site) for a total of up to 267 off-street parking spaces dedicated to the project. This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

M. Deb Hudson (June 14, 2021)

Comment M.1: I am writing to object to the Mark Tower Project as Currently Proposed. Specifically : Impact on parking for adjoining streets within the SUN RPP

History: SUN was developed in the early 1900s when there was not even one car on the street for each street address. Most properties still don't have garages. In the 1950s much of the wood frame housing stock was bulldozed and mid-century utilitarian apartment units were built to accommodate the growing attendance at San Jose State. As that housing aged and the individual automobile gained supremacy, a third influx into the neighborhood saw multiple families take up residence in single apartments and rental houses and ever more cars had to be parked. In the early 2000s The SUN RPP was created at the urging of the South University Neighborhood Association to alleviate extreme pressure on parking for residents due to increasing density, SROs, ARCFs, SJSU students & overflow from the Entertainment District. SUN residents walked the entire neighborhood block by block to get the required 50% +1 signatures on each and every block to create the RPP.

Response M.1: The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment M.2: The Mark: This building creates 240 Units & 750 Bedrooms. Parking plans currently call for providing 192 total parking spaces with the target renter being adult SJSU Students.

How does this even make sense? Students looking to manage costs “double up” in living spaces and nearly all come with cars. We know. We have dealt with parking impact even since the RPP was created. Even if it turns out that ‘only’ 300 or less than half of the 750 bedrooms own one car each that is still an extraordinary number of additional vehicles competing for an impacted parking zone.

We urge you in the strongest terms to “Carve” this building out of the SUN Parking Permit Zone. It will add hundreds and potentially thousands of extra cars to the daily competition on the already completely over-parked SUN streets.

I’m told that the Developer is planning on writing a restriction into the lease agreements that forbids the residents from obtaining SUN Permits. Does the City have any control over leasing agreements between private management and residents? Has this been reviewed by the City Attorney? Does DOT agree to not issue permits?

Response M.2: See Response K.2, above regarding the RPP. The commenter is incorrect that there would be 750 bedrooms in the project. The project proposes 240 units or 750 beds. The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment M.3: A neighbor reminded me that back in the 2008-2009 time frame, a smaller re-purposing project was proposed. Our neighborhood association was united in opposition because of the density of that project and the effects it would have on the surrounding neighborhood. The Planning Commission at that time agreed with us and rejected the plan on basis of density. Now an even larger and more inappropriate project is being forced into the neighborhood, with even graver impact on the surrounding residences.

I am distressed & discouraged by a massive development again being pushed thru onto a low-income neighborhood seemingly without proper public outreach or concern for the impact it will have on neighborhood parking and quality of life.

We understand the desire for fewer automobiles and walkable neighborhoods in downtown. That was the reality when this neighborhood was first developed. There was extensive public transport downtown in the form of trolley cars and then later busses. But those were done away with in favor of individual transport for half-a-century. The City’s current ‘Micro Mobility’ push does not address the overall larger need. Even before the Pandemic, the VTA Routes & Frequencies were being cut within the City/County. Bart will not be downtown for at least a decade. There is no adequate infrastructure to support the aspirational goal of moving about the city and/or county without a car.

Please stop this impending flood of vehicles into SUN by carving this development out of the existing RPP.

Response M.3: In December 2018, the City of San José approved the Downtown Strategy 2040 which is a plan that outlines the intensification of jobs and housing within the downtown consistent the with General Plan. The General Plan designation for the project site is Downtown which allows a maximum floor area ratio (FAR) of 30.0 and up to 800 dwelling units per acre. The proposed project’s

density, floor area ratio, and height align with the General Plan’s land use designation.

Parking impacts are not considered to be an environmental issue and are not required to be analyzed under the California Environmental Quality Act (CEQA). However, the project complies with the required parking. Per the City’s parking requirement in Section 20.70.100, the proposed project would be required to provide a total of 240 parking spaces and would automatically be eligible for at least a 20 percent reduction thus requiring 192 off-site parking spaces with the allowed parking reduction pursuant to Section 20.90.220. As discussed on pages 6 and 119 of Appendix A of the Draft SEIR, the City will allow the project to supplement its proposed on-site parking with off-site parking to meet the required 192 off-street parking space requirement pursuant to Section 20.70.330.D of the San José Municipal Code. The project proposes 95 parking spaces on-site and up to 172 parking spaces off site at the 88 East San Fernando Street parking garage (located 0.5 miles from the project site) for a total of up to 267 off-street parking spaces dedicated to the project.

N. John Mitchell (June 14, 2021)

Comment N.1: Walter makes sound and practical observations. It has gotten to the point where automobiles for the sake of quick profit, political ambition and greed are being pushed out with no foresight or consideration of the transportation needs of our poor, underserved, minority and elderly populations.

Right now we are in the middle of a severe water shortage – again! Yet the relentless push for more housing increases ever more. Housing and transportation are politically linked. However, like other “quality of life” issues such as public safety and blight, water and transportation are not the primary concerns of the up and coming new San Jose. If you don’t believe me, look around.

Response N.1: Full build out of the development capacity in the Downtown Strategy 2040 Plan was assessed for impacts to utilities (including water supply), transportation and all other required resources areas. The proposed project is within the development capacity studied. The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

O. Kathleen Crowe (June 14, 2021)

Comment O.1: As a more senior person, I know that the ability to drive has indeed been my freedom. It is especially important for those of us who live alone. As a volunteer treasurer on a local senior center board, I am very proud of Saratoga for the Ryde program. This program provides cost effective rides to literally hundreds of seniors each month who are no longer able to drive and need support to get to doctor's appointments and so forth. What those folk do that don't leave in Saratoga or Los Gatos, I find it difficult to consider if they can't afford Uber or Lyft.

Response O.1: The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment O.2: Parking downtown is very difficult especially for students with the university at the center of the city. Students who can't afford food and housing have an especially challenging dilemma trying to pay for parking and so they often take up space that people who live downtown need. And I agree that developers definitely need to provide adequate parking for the huge number of people they are planning to house. What about underground parking...too expensive? How about those people who likely will work at Google, take public transportation. What a concept that might be.

I know IBM when a big employer in South San Jose, offered us free passes to the VTA to inspire us back in the 90's to free up congested freeways. It was a Sunday afternoon drive compared to what it is now. We have some societal issues and more crazy drivers than I have ever seen in the 57 years I have lived in San Jose..... from the Valley of the Hearts Delight to mayhem.

We need sound third alternatives to congestion that is affecting us all. Not everyone can bike or take public transportation. Perhaps a cost effective Ryde program might help some of our more fragile and isolated citizens and a ride share for our students who live downtown ...Safety Partners maybe?

Response O.2: See Response M.3. The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

P. Law Foundation of Silicon Valley (June 14, 2021)

Comment P.1: The Law Foundation of Silicon Valley writes to provide comment on the Public Review Draft EIR for the Mark Residential Project (File No.: SP20-021) in San José, CA. The City of San Jose must require that the project comply with the Housing Crisis Act of 2019, by requiring the replacement of any lost affordable units on-site and a first right to return for any displaced tenants.

Response P.1: The commenter is correct. The existing site includes two multi-family buildings comprised of 15 affordable units and one market rate unit which are proposed for demolition. The buildings were analyzed by the Housing Department and determined to be subject to the Ellis Act and the requirements of SB 330 for protected units. The 15 protected units must be replaced with units at rents affordable to low-income households (60 percent of AMI). The project includes 15 affordable units and is consistent with this requirement. The project will be conditioned to record a Regulatory Agreement to restrict 15 units for low-income households for 55 years.

The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment P.2: I. The Mark Residential Project Must Replace All Protected Units with On-Site Affordable Units under The Housing Crisis Act of 2019

The Housing Crisis Act of 2019 established a statewide housing emergency for the subsequent five years and requires new housing development projects to comply with specific anti-displacement provisions. The law established replacement requirements for developers with projects that would demolish particular types of “Protected Units,” as well as ensure displaced tenants would be guaranteed rights to relocation assistance and a right to return.¹ “Protected Units” include any units that are subject to local rent control ordinances, deed-restricted affordable rental units, units withdrawn from the rental market under the state Ellis Act within the past ten years, and any units that were occupied by a low- or very-low-income renter within the past five years.²

The Mark Residential Project takes place at a project site that has three residential structures, all of which are intended to be demolished and include several Protected Units. The existing residential structures include 465 South Fourth Street, an apartment building constructed in 1939, and 475 South Fourth Street, an apartment complex constructed in 1960.³ Both of these residential buildings are covered under San José’s Apartment Rent Ordinance (ARO) and contain Protected Units because they have more than two rental units and were issued a certificate of occupancy prior to 1979.⁴ The project site also includes 459 South Fourth Street, which may include Protected Units if it was occupied by a low- or very-low-income renter within the past five years.⁵ Therefore, by demolishing these apartment complexes, the Mark Residential Project would be removing a number of Protected Units from the rental market.

Response P.2: The project would be required to provide 15 affordable housing units at rents affordable to households earning no more than 60 percent of AMI as part of compliance with Senate Bill 330 (SB 330). Additionally, the development would be subject to the City’s Ellis Act Ordinances and Inclusionary Housing Ordinance. See also Responses G.1 and P.1 herein. This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment P.3: The Housing Crisis Act of 2019 requires that all demolished Protected Units must be replaced in-site the Mark Residential Project.⁶ The replacement units must match the number and size of units lost, lease at the same level of affordability, and find occupants of the same or lower income level than the families who were displaced.⁷ The replacement units must remain affordable for at least 55 years or comply with San José Apartment Rent Ordinance.⁸ The Housing Crisis Act of 2019 has no provision that would allow a developer to pay fees in lieu of building units on-site.

¹ Cal. Gov. Code § 66300(d)(2)(A)(ii - iii)

² Id.

³ Draft Supplemental Environmental Impact Report: The Mark Residential SP20-021, CITY OF SAN JOSE & DAVID J. POWERS & ASSOCIATES INC. (April 2021) 49, available at <https://www.sanjoseca.gov/home/showpublisheddocument/72001/637552205414500000>

⁴ San José Mun. Code Sec. 17.23.167.

⁵ This information may be available from the San José Housing Department’s Rent Registry, the Project developer, or other means.

⁶ Cal. Gov. Code § 66300(d)(2)(A)(i)

⁷ Cal. Gov. Code § 66300(d)(2)(A)(i - ii)

⁸ Cal. Gov. Code § 66300(d)(2)(A)(iii)

Currently, the Project does not include any affordable units on-site. The City must require that the Project change its plan to include at least as many deed-restricted or rent-stabilized units as the number of Protected Units it will demolish in order to comply with the Housing Crisis Act of 2019. While we understand that the developer has elected to pay in-lieu fees to comply with San Jose's Inclusionary Housing Ordinance, these fees are not an option under the Housing Crisis Act of 2019.

Furthermore, the City has an obligation to ensure the Project complies with state law and to document the impact of displacement in its Final Environmental Impact Report. We urge the Department of Planning, Building, and Code Enforcement to investigate the rental history of 459, 465, and 479 South Fourth Street to ensure the proper number of Protected Units is identified.

Response P.3: Section 4.14 of Appendix A of the Draft SEIR specifies that existing residents would be displaced as a result of the project and that the existing apartment buildings would be subject to the City's Ellis Act Ordinance which includes requirements for noticing and relocation benefits. For more information on the applicable housing requirements, Ellis Act, and housing conditions of approval for the project, see Responses G.1, P.1, and P.2 herein. and refer to the Staff Report (dated July 28, 2021) for the subject project that would be available here: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/commissions-and-hearings/planning-director-hearings/agendas-minutes-2021/-fsiteid-1> This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment P.4: II. The Mark Residential Project Must Offer Relocation Assistance and a Right of First Refusal to any Tenants Displaced from the Project Site under the Housing Crisis Act of 2019

The Housing Crisis Act also requires the developer to provide both relocation assistance and a right of first refusal to all displaced tenants. Tenants must be permitted to occupy their units until six months before construction.⁹ The current draft of the City's Environmental Impact Report does not provide any information regarding tenants who were or are expected to be displaced from the existing residential units. Information on the displaced tenants should be provided, including the approximate income levels of the household, as is available through data from San José's Rent Registry and other means. There is no information about whether the tenants received relocation assistance.

Response P.4: Refer to Responses G.1, P.1, P.2 and P.3. This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment P.5: All tenants who were or are to be displaced by the Project are also entitled to a right of first refusal for a comparable unit available at the final completed development for an affordable

⁹ Cal. Gov. Code § 66300(d)(2)(C)

rent.¹⁰ In other words, a tenant who was displaced from their two-bedroom apartment for this project has a right to return to an affordable two-bedroom apartment at the final residential complex.

The City's Environmental Impact Report must provide information regarding any tenants displaced from 459, 465, and 479 South Fourth Street to ensure the Project developer complied with the Housing Crisis Act of 2019 by informing tenants displaced by this project of their right to return and paying adequate relocation benefits.

Response P.5: Refer to Responses G.1, P.1, P.2 and P.3. This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Q. Michael Schmidt (June 14, 2021)

Comment Q.1: At a maximum listed height of 250ft, this building would not only dwarf anything else in the South University Neighborhood, it would be the 9th tallest in San Jose. At 23 Stories, 240 Units & 750 Beds with a proposed roof deck and lounge & a target renter base of SJSU Students the enormity of the project related to noise, traffic & pollution is hard to put in context. There is nothing comparable nearby.

Response Q.1: The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required. See responses to specific comments below.

Comment Q.2: Specifically on Parking

Many South University Neighborhood residents work outside of Downtown. The area is already highly overparked. So, adding more competition to the limited amount of Street Parking is of great concern.

For 240 Units & 750 Beds they plan to provide 192 total parking spaces both on-site, but the majority are planned to be off-site. The current plan is to provide as many as 95 **but as few as 20 new on-site spaces**. If it is 20 on-site spaces, then the other 172 would be provided blocks away at 88 E San Fernando, and the contract for these Off-Site Spaces will end. So, these off-site spaces will disappear in the future -perhaps in as little as 5 years. To be clear, the proposal is to provide 192 total spaces for 750 beds with the target renter being unrelated, adult SJSU Students not families. Thus, the percentage of the building's residents who own cars is sure to be high. In addition, to reach the Off-site Parking they'll have to walk **Half a Mile**. So, even the students with Off-Site Parking will have a large incentive to park closer to home in the SUN RPP. They'll also have to pay extra to lease a parking space.

Unless this massive structure is Carved-Out of the SUN Parking Permit Zone, it will add hundreds (up to 1000) extra cars to the daily competition on the already completely overparked SUN streets. Even if it turns out that 'only' 60% (or 450) of the 750 residents own cars, that is still 258 (450-192) additional vehicles competing in an already impacted parking zone.

Response Q.2: Parking impacts are not considered to be an environmental issue and are not required to be analyzed under the California Environmental Quality Act (CEQA). Per the City's parking requirement in Section 20.70.100, the proposed project would be required to provide a total of 240 parking spaces and would automatically be eligible for at least a 20 percent reduction thus requiring 192 off-site parking spaces with the allowed parking reduction pursuant to Section 20.90.220. As discussed on pages 6 and 119 of Appendix A of the Draft SEIR, the City will allow the project to supplement its proposed on-site parking with off-site parking to meet the required 192 off-street parking space requirement pursuant to Section 20.70.330.D of the San José Municipal Code. The project proposes 95 parking spaces on-site and up to 172 parking spaces off site at the 88 East San Fernando Street parking garage (located 0.5 miles from the project site) for a total of up to 267 off-street parking spaces dedicated to the project.

As described in Appendix H of the SEIR, the project site is located within the SUN Residential Parking Program (RPP) zone, where a permit is required to use on-street parking from 8AM to 8PM every day except Sundays and holidays. To obtain a parking permit the applicant must live in or own a residential property or operate a business in the parking permit zone. The California Vehicle Code authorizes cities to establish residential permit parking zones. Based on a 2016 California State Attorney General Opinion – when cities restrict parking for residents, they may not distinguish among households based on the type of residence; thus, new developments cannot be “carved out” by the City.

This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment Q.3: Lease Restrictions

Per the Developer, "lease agreements for residents of the proposed project will prohibit residents from applying for a SUN RPP permit. In addition, the project will not pursue a Condition of Approval from Planning that would allow the project to make a permit amendment in the future if on-site parking reductions occur." To this we say, good. And we do not argue against including the lease restriction. However, we ask what practical impact will this lease restriction have? How will this restriction be enforced? How will they find violators & how frequently will they look? The Developer stated they have a commitment to manage the property for 5 years only - what happens after that? And finally, the City states that if the address is in the current SUN RPP then it will sell the permits to the residents. Per the City Project Manager on Oct 20th, "The applicants are also proposing to restrict the residents from obtaining permits via the lease agreement. However, please note that the City has no control over leasing agreements between private management and residents." So, are there any 'teeth' to this solution? Doesn't the City have a responsibility to protect the daily experience of residents in one of the oldest neighborhoods in the City?

Response Q.3: See Response K.2 above.

Comment Q.4: SUN RPP Creation

The SUN RPP was created to alleviate some pressure on parking for residents due to SJSU Students who drive to campus from other areas & overflow from the Entertainment District. Many SUN volunteers contributed numerous hours to get the required signatures. Please support the prior effort to improve our daily lives.

Process

As a neighborhood, we were surprised at how this massive Development started, seemingly without proper notice, in the middle of a worldwide Pandemic which none of us have ever experienced. We hope that it's not being pushed through no matter what the needs of the current residents are. For example, on Noticing for the Sept 17th, 2020 meeting - was it done? I, as SUN President, received an email from the D3 Office with only one days notice on Sept 16th about the "online joint community and environmental public scoping meeting". Were Postcards sent out as occurred for the Bike Lanes? A few of us who live a block away did not receive a Notice in the mail. When I asked if a 2nd "Public Scoping Meeting" would occur, the answer from the City Project Manager was, "We do have a Public Outreach policy that states that if there is significant community attendance during the first Community Meeting, then a second Community Meeting is required. However, the meeting was only attended by about 30 people. Therefore, there will not be a second Community Meeting scheduled." Hopefully, our concern is obvious - if notification was not given with enough time during an unprecedented time in recent world history then it appears to us that the City's process is frustratingly flawed. The Project Manager does state later that "there are several more chances for community participation". However, we are now further down the line and decisions have already been & are being made. In addition, the meeting was supposed to be recorded but, per Planning, there was a "glitch" & no recording was made. So, the neighborhood has not been able to watch the meeting after the fact. For SUN, in-person communication thru door knocking is by far the most effective method that we have found through decades of experience. The Pandemic has not allowed us to do so (as we did when creating the RPP), and Public Comment officially ends one day before California opens up. We request more time to discuss before decisions are made.

Response Q.4: A notice of the Joint Community Meeting and Environmental Scoping Meeting for the project was sent to all addresses (1,798) within a 1,000-foot radius of the project in August 2020 and a public scoping meeting was held on September 17, 2020 via Zoom. The applicant also posted a notice of development sign on the project site consistent with City requirements. Anyone who requested to be on the distribution list for the project also received a Notice of Availability for the Draft SEIR on April 23, 2021. This Notice of Availability for the Draft SEIR was posted in the San José Mercury Newspaper and the documents were posted online. The comment period for the SEIR was extended from the required 45 days to 70 days to provide additional time for surrounding neighbors to review the Draft SEIR and provide comments. Information on the proposed project is available at <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/the-mark-residential-tower-project-sp20-021>

No decision on whether or not to approve the project will be made by the Director of Planning, Building, and Code Enforcement until the public hearing at which time the public can provide additional comments in writing or by speaking at the hearing.

This comment does not provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment Q.5: State Opinion

Urban Catalyst states that the City interprets a State opinion to mean that the Code, "does not authorize local authorities, in issuing long-term residential parking permits, to distinguish among residents based on the type of dwelling in which they live." What about the obvious need to modify laws as societal circumstances change? This immense structure does not yet even exist. At the time the RPP was established it did not exist. It's enormous size is completely out-of-scale compared to anything else in SUN & the RPP zone. This Code can't be immutable. Even the US Constitution can be changed. - perhaps then the boundaries of a Residential Permit Parking Zone can as well? The City is already changing the rules to encourage these massive developments. Please allow reason to win, and mitigate the negative impacts on current residents. Please Grandfather-In a Carve-Out.

Response Q.5: See Response Q.2 The applicant is voluntarily restricting tenants from applying for an RPP permit in their lease agreement. The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment Q.6: Standard Setting

Our understanding is that this project is being looked at as a case which may determine future standards including another current project being considered right next door of similar scale also in the SUN RPP. Then please set the standard to mitigate the negative impacts on one of the oldest neighborhoods in the City.

Response Q.6: All private development within San José is analyzed on its own merits and not based on previous or potential future development proposals. For projects within the Downtown Strategy 2040 plan area, projects are assessed based on their consistency with the General Plan, the Downtown Strategy 2040, and all applicable City polices. The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment Q.7: Practical Daily Impacts

At a Diridon Development Project the presenter asked attendees to imagine a time in 20 years that a young person is amazed there was ever a time that anyone needed or wanted a car to get to or travel around in Downtown. It seemed as though I may have been one of the only current Downtown residents. When I brought up the concerns listed above about the SUN RPP the answer was, "Unfortunately, there will be an "Awkward Transitional Phase." This gave me the distinct impression that I was among many recent graduates who were simply doing an academic exercise. It seemed as though the group had not had to apply theory and work through practical negative implications to

real people's lives. This is not an academic exercise for us. Our daily experience will be negatively impacted in SUN if the Project is not Carved-out of the SUN RPP.

Response Q.7: See Response J.3, above. The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

Comment Q.8: Development History & Future

Development in Downtown has had a troubled history. Grocery Stores & other businesses have not survived. Albertson's, Zanato's, & Safeway have all left. Too many restaurants to name and Movie Theatres even a Shopping Mall have opened and then closed over the years.

Public Transportation Infrastructure does not currently exist at an adequate level. VTA before the Pandemic was cutting Routes & Service rather than increasing. In addition, major new investments in Transportation Infrastructure are needed to get around in Santa Clara County as well as surrounding counties and further. How long will it be before this Infrastructure is built? Other than Micro Mobility is it being planned and paid for currently?

Response Q.8: The comment does not raise any specific project specific or environmental issues under CEQA; therefore, no further response is required.

Comment Q.9: The City's current development strategy of Hubs (Jobs, Housing, All Resources within a 15 minute bike ride) seems that it has been around for a long time, and we hope for it's eventual success. But until that time, if the City's strategy is to discourage cars, then have the residents of these new Hubs move in without them. Please treat the SUN RPP as it's own Hub and carve-out these new huge developments.

Conclusion

Yes, San Jose was built around the assumption of the automobile. And Climate Change points to a need to change. We are not anti-development. Instead, we ask that the City ensure that the required Infrastructure is here from transportation to grocery stores before impeding our daily lives by, in essence, taking away parking.

We hope that these discussions with the Developer and the City are not just provided as opportunities to vent, but instead that you will hear the need in our neighborhood. And, most importantly, act to mitigate this "Awkward Transitional Phase". Please stop this impending flood of vehicles into the SUN RPP.

Response Q.9: The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

R. Walter Soellner (June 14, 2021)

Comment R.1: Both Raul and Sam have projected a policy of reducing car ownership/use in San Jose, by promoting developers and public policy for new apartment buildings to have few if any parking spaces for the tenants of these high rises.

This is a wrong and hurtful policy as it defies the very nature of the relationship between people and cars.

First: A car is so much more than good transportation, although that is essential for city dwellers in San José today.

Second: The Car represents Freedom to Americans. We can get in our car and go anywhere any time. We are not going to give up that freedom, in a city that has a poor public transportation system and few public resources downtown like food stores, drug stores, cleaners, etc.

Third: The car is also a sanctuary of sorts. We can get in our car, safe and secure, with music, temperature control, mobility...in our own space, away from everything. Do you really think people are going to give that up?

I challenge anyone who proposes that citizens give up their cars to this: (Are you listening Sam and Raul?)

Try this: Give up your car right now, for one week. Nobody in your family can drive a car to work, to the doctor, dentist, food shopping, kids to school, visiting family or friends, no driving to restaurants, the beach, or Napa. Will you do this??? Of course you won't, because you can't!!! You need your car. So do I and most everyone else in San Jose, including most tenants in apartments! So stop imposing your Social Engineering Policies on everyone, with an elitist policy of 'we get our cars, but they can't have theirs'. Demand developers provide a proper number of parking spaces in every project or don't build it.

Response R.1: See Response Q2. The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

S. Shiela McGann-Tiedt (June 15, 2021)

Comment S.1: Thanks Alice and Walter. We will not get out of cars until we have adequate public transportation and safe alternatives. What are our leaders thinking as parking gets tougher? Do they think people will want to drive downtown from other areas only to find no available parking? Do they think that after an evening out people want to hop the #23 bus at 11.00 pm? Really, businesses need practical parking solutions as do residents and visitors.

I'm all for reducing the carbon footprint and support bicycles but the plan for parking must be realistic. I'm afraid that the city is well on its way to making the problem of a thriving downtown even worse.

Response S.1: The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

T. Steve Cohen (July 4, 2021)

Comment T.1: I: 3-story parking garage surrounded on 3 sides by residential properties.

1- There are no visuals of the outside of the parking structure.

Response T.1: While renderings of the building were included in Appendix C, renderings were not included as individual figures in the Draft SEIR. See Section 5.0 for the renderings of the proposed project which show the design and materials of the four facades.

The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment T.2: 2- There are no evaluations of the impact of the structure concerning aesthetics, sound from cars moving, alarms going off, headlights at all hours beaming into neighboring apartments.

- a. Any garage structure must be open aired because of car fumes. Without an enclosed structure, it is impossible to mitigate any of these issues.
- b. The existing properties are all structures that do not have air conditioning so windows are open a night increasing all negative impacts.

2040 General Plan "Ensure that garage lighting does not impact adjacent uses...avoid impacts of headlights on adjacent land uses" (p.13).

Response T.2: The aesthetic impacts of the proposed project were addressed in Section 4.1 of Appendix A of the Draft SEIR. As shown in Figure 2.2-6 and 2.2-7, the garage will not have openings on the south, west, or north sides of the building. As a result, noise and lighting from the garage will not be noticeable at adjacent residences.

The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment T.3: II: Parking alternative not thoroughly addressed.

1- The DEIR does not address whether the off-site parking proposal fulfills the city requirement adequately.

- a. The city requirement is 192 off-street parking (p.3). The project proposal is 172 parking spaces, below the requirement.
- b. The proposed off-site location on San Fernando Street is .5 miles from the project site (google maps).
- c. The San Fernando location property is not owned by the developer and there is no guarantee that the San Fernando parking spaces will be available for the lifespan of the proposed project.
- d. There are limited hours when the San Fernando location is accessible for vehicles.

Response T.3: While not required under CEQA, parking is addressed in Section 4.17 of Appendix A (page 119) and Appendix H. . Per the City’s parking requirement in Section 20.70.100, the proposed project would be required to provide a total of 240 parking spaces and would automatically be eligible for at least a 20 percent reduction thus requiring 192 off-site parking spaces with the allowed parking reduction pursuant to Section 20.90.220. As discussed on pages 6 and 119 of Appendix A of the Draft SEIR, the City will allow the project to supplement its proposed on-site parking with off-site parking to meet the required 192 off-street parking space requirement pursuant to Section 20.70.330.D of the San José Municipal Code. The project proposes 95 parking spaces on-site and up to 172 parking spaces off site at the 88 East San Fernando Street parking garage (located 0.5 miles from the project site) for a total of up to 267 off-street parking spaces dedicated to the project.

Comment T.4: 3- The project proposes removing the property from the permit parking program so as not to increase the demand on already limited permit parking spaces available.

- a. The DEIR does not acknowledge this impact on the program.
 - i. Although the developer is agreeable to take the project out of the eligibility for permit parking, the city regulations do not allow them to do so.

Response T.4: Removal of any property from a permit parking program is not an impact under CEQA and, therefore, was not addressed in the Draft SEIR. See Response J.3 regarding the RPP program and governing state rules. See Response J.3 regarding the RPP program and governing state rules.

Comment T.5: III. Location alternative

Summary of alternatives (page x):

- 1- “since there are historic buildings throughout downtown, it is unlikely that a new location would avoid impacts to historic buildings”

This comment must be stricken from the DEIR. There are not historic buildings throughout downtown. The proposed project site has one of the highest concentrations of historic structures in the downtown core and the lowest profile as none are more than 3 stories high.

As has been shown by various studies of downtown buildings within the Downtown Strategy 2040 plan area, as well as the City’s Historic Resources Inventory, there are historic buildings throughout the downtown, including two designated historic districts. Most historic structures within the Downtown plan area, with a few notable exceptions, range from one to three stories in height. The statement in the Draft SEIR is accurate. The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Response T.5:

Comment T.6:

Comment T.7: III: Project Description, Amenity Spaces

Amenity Spaces for residents (section 2., p.3) is not properly addresses in the DEIR.

- 1- Proposed courtyards, there of which are on the third floor facing the surrounding residences. There is also one on the roof.
 - a. The third-floor courtyards area, like the parking garage, surround by existing residential units. The DEIR must address the noise and light issue for the existing properties.
 - b. There is also a privacy issue since the patrons on the courtyards would be looking into the windows of the existing residences. The existing properties are all structures that do not have air conditioning so windows are open at night increasing noise impacts.
 - c. Noise issues are relevant to the rooftop courtyard also.

Response T.7: There are no adopted thresholds which regulate the noise and lighting of private residential open space.

Loss of privacy, particularly in an urban environment with a variety of building heights allowed for residential buildings, is not a CEQA impact. Therefore, the issue was not analyzed in the Draft SEIR.

Comment T.8: IV: Mitigation Measures (p.87)

- 1- Construction noise on existing Tenants not addressed properly. “Code Enforcement should respond to neighborhood complaints”.
 - a. This is reactive and not proactive.
 - b. Planning and Code Enforcement is presently 23% understaffed and over 3,400 complaints behind
- 2- San José Municipal code (p. section 3.4.1, pg.80) allows for construction from 7am to 7pm Monday thru Friday.
 - a. There is no mention in the DEIR of reducing the hours to accommodate the residences on the South, North or West side of the project. The hours of operation are not presently required in the construction mitigation plan (p. 93-95, 97).
 - b. Work should be limited to 8am to 5pm Monday thru Friday with penalties and possible permit revocation for violations as part of the construction mitigation section of any work permit.
 - i. This should also include construction worker parking.

Response T.8: Construction noise impacts on adjacent and nearby sensitive receptors are addressed on pages 86-89 of the Draft SEIR. Table 3.4-3 on page 87 specifically quantifies the noise levels of each phase of construction at residential and commercial properties within 150 feet of the project site and from that data a significant impact was identified. Mitigation Measure NOI-1.1 is identified which reduces the impact to a less than significant level.

Pursuant to San José Municipal Code Section 20.100.450, and as noted by the commenter above, construction activities are allowed between 7:00 AM and 7:00

PM, Monday through Friday. No construction activities are permitted on the weekends at sites within 500 feet of a residence.

The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment T.9: V: Shading Analysis section 4.11.2, p, 88. 9 (figure 4.11-1).

- 1- The DEIR states that there are no solar collectors that would be affected by the project. This is incorrect as there are solar collectors on the carport of 470 S 3rd Street that would be shaded March/September, Equinox, 9am to noon, June 21st Summer Solstice 9am to noon, Dec 21st Winter Solstice 9am to noon.
- 2- The DEIR should consider shading with the impact of the surrounding residences and not just in relation to public parks and open spaces. Shading extends the entire block length on the North, East and West at different permits of the year for extended intervals.

Response T.9: The commenter is correct that there are four solar panels on the northern end of the carport of 470 S. 3rd Street. See Section 5.0 of this First Amendment for the proposed text revision.

The proposed project would shade the solar panels in the morning hours throughout the year. As shown in Figure 4.11-1, the existing apartment building on the project site currently shades the solar panels in the spring, fall, and winter in the AM hours. The project would result in new shading in the summer AM hours only. The California Solar Rights Act (AB 3250, 1978) and the Solar Shade Act (AB 2321, 1978) only protect existing solar panels and solar easements from trees and shrubs planted after installation of the solar panels. There is no guaranteed solar access as it pertains to new building construction. Therefore, the proposed project would not impact any existing or future solar systems on nearby properties.

The City has no adopted thresholds for increased shading through most of the City (the exception being development in downtown San José that would increase shade on public parks) and does not recognize the shading of private residences as a significant land use impact. Furthermore, the courts have determined that “California landowners do not have a right of access to air, light and view over adjoining property.”¹⁰

Consistent with City policy and the CEQA Guidelines, since there is no adopted quantifiable threshold, the impact was determined to be less than significant. The text amendment does not change the findings of the Draft SEIR and recirculation of the Draft SEIR is not required.

Comment T.10: VI: Historic Evaluation Appendix C:

- 1- The Griffith Apartments at 405 South 4th Street is missing from the historic analysis.

¹⁰ *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal. App. 4th 492

- 2- It should also be considered with the shading analysis concerning negative impacts on the property.

Response T.10: The Griffith Apartments were assessed along with other surrounding properties in the Historic Evaluation (pages 30 and 33 of Appendix C of the Draft SEIR) and in Section 3.2.2.1 (pages 56-57) of the Draft SEIR.

Comment T.11: VII: Downtown Historic Design Guidelines (p. 57-62).

Analysis (p.62). by Treanor HL (consultants)

- 1- “The proposed project would not impact the integrity of the adjacent historic resources and the resources would continue to convey their significance”.
 - a. This conclusion was made without complete information of the projects impact to the existing historic neighborhood.
 - i. There are no designs showing the view from William Street looking north or South 2nd or 3rd Street looking east. These streets are historic bldgs. That are primarily 2 stories tall which will have a backdrop of a glass, stucco and concrete building 23 stories tall.
 - ii. No reasonable person could conclude that there is not an impact on the integrity of the buildings in context of the historic intensity of the neighborhood as outlined in the DEIR. As an example, look at the negative impact the Graduate bldg.. on S 3rd Street and San Carlos Street has on the Victorians across the street which are left in total darkness in the middle of the day most of the year.

Response T.11: An analysis of the project design was completed by a qualified historic consultant in consultation with City staff (Section 3.2.2 of the Draft SEIR), and the City concluded that the proposed design of the building is in substantial conformance with the City’s historic adjacency standard from the 2019 Downtown Design Guidelines and the 2004 San Jose Downtown Historic Design Guidelines and does not result in a substantial adverse change to the integrity of any nearby historic structure. The design guidelines were used to provide a framework for architectural analysis of the proposed project and were used to inform the analysis of the seven aspects of historic integrity, as indicated by the National Register and State of California’s definition of authenticity of resources.

Based on the findings of the analysis, the project does not result in a significant impact on historic resources.

The comment does not provide new information that would change the project’s impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment T.12: 2004 San José Downtown Historic Design Guidelines (p. 57-62).

There are four applicable historic guidelines. The DEIR claims the project conforms to two of the four. Actually, it does not comply with any of them.

1-Lot Pattern: “Not compatible with the lot pattern guidelines”

2-Massing: “The building design would not be consistent with the massing element of the Historic guidelines”.

3-Entries: “metal awning at the front façade which would provide a compatible pedestrian scale”
Analysis claims it is consistent with the guidelines, I STRONGLY Disagree.”

4-Exterior Material: “new building materials should match historic materials...be compatible in scale, proportion, design, color finish, texture, durability.”

“analysis claims the proposed building complies” but this is impossible since there are not structures in scale or proportion to what is being proposed.

Response T.12: See Responses I.3 and T.11.

In accordance with the 2019 Downtown Design Guidelines, the project is requesting exceptions to certain guidelines provisions including the building’s rear transition, skyline level massing, and active frontage requirement.

The comment does not provide new information that would change the project’s impact or provide new information that would result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices.

Comment T.13: VIII: Project Objectives

1- This project does NOT conform with the Envision San José 2040 General Plan as claimed in item 7.2 (p. 102).(Comments are below)

Envision San José 2040 General Plan

- “protect the quality of existing neighborhoods, while also enabling the development of new urban village areas” (P. 16).”
 - Proposed project has serious negative effects on the neighborhood which can only be mitigated with the 6-story alternative as stated in the DEIR.

Response T.13: Section 7.2 of the Draft SEIR does not state that the project conforms to the 2040 General Plan. Section 7.2 outlines the project applicant’s objectives for the proposed project.

Major Strategy 3 – Focused Growth of the 2040 General Plan, as quoted by the commenter, is intended to focus growth in specific areas of the City while limiting new residential development through neighborhood infill outside the identified growth areas. In December 2018, the City of San José approved the Downtown Strategy 2040 which is a plan that outlines the intensification of jobs and housing within the downtown consistent the with General Plan. The General Plan designation for the project site is Downtown which allows a maximum floor area ratio (FAR) of 30.0 and up to 800 dwelling units per acre. The Downtown Strategy 2040 plan area, where the project site is located, is within an identified growth area.

Comment T.14: “protect residential neighborhoods from the encroachment of incompatible activities or land uses which may have a negative impact on the living environment”. (VN1.11, p.5).

- This project encroaches on the existing neighborhood by its scale and scope.
- Design new public and private development to build upon the vital character and desirable qualities of existing neighborhoods” (VN1.12, 9.5).
 - This project does not conform to this requirement.

Response T.14: As discussed throughout the Draft SEIR, the proposed project is consistent with the General Plan land use designation for the site and proposes residential development within a residential/commercial area of downtown. The proposed land use and associated activity is compatible with the surrounding land uses.

The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment T.15: Apply strong design controls for all development projects.....for all development and enhancement of community character and for the proper transition between areas with different types of land uses” (CD1.1 p.11).

- The controls need to be applied through this DEIR with a more thorough review and more than one zoom meeting with the neighborhood and more reliable community outreach and communication.

Response T.15: Controls are not applied to projects through the CEQA process or community meetings. An EIR is intended to provide decision-makers and the public with information of the environmental effects of proposed development projects. If impacts are identified, based on adopted thresholds and regulations, mitigation measures are included to reduce the impact. While CEQA does not have a mandatory requirement for public meetings during preparation of an EIR, a scoping meeting is recommended. The scoping meeting for the proposed project was held on September 17, 2020. Due to pandemic, the meeting was held online.

Pursuant to City requirements, the project was assessed under all applicable design guidelines and found to have a less than significant impact.

The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment T.16: “...creation of economically, culturally, and demographically diverse and integrated communities” (H-1.1, 9.29).

- This area is already saturated with student housing.

Response T.16: The comment does not raise any specific environmental issues under CEQA; therefore, no further response is required.

U. Preservation Action Council San José (July 7, 2021)

Comment U.1: Thank you for extending the opportunity to comment on the DSEIR for the Mark Residential tower project proposed for 459-485 S. 4th Street. PAC* SJ provided previous comments during the NOP scoping period, and unfortunately, many of the concerns expressed in those comments are still applicable and unanswered (letter attached for reference, and excerpted below). Within the last few weeks, PAC* SJ has also been contacted by numerous members and neighbors with concerns about the project's siting, scale, public outreach process, adjacency to historic resources, and failure to comply with applicable Downtown Historic Design Guidelines (2004) and Downtown Design Guidelines (2019). Despite the DSEIR's clear admission that the project is incompatible with its surrounding historic context, the document nevertheless concludes that the project will have no adverse impact to historic resources and no obligation to mitigate adverse impacts. This is perplexing conclusion and demands a clear justification.

Response U.1: CEQA does not require direct responses to NOP comments; however, comments regarding historic adjacency were addressed in Section 3.2 of the Draft SEIR. As stated on page 62 of the Draft SEIR, "For a project to cause a substantial adverse change in the significance of a historical resource, it must demolish or materially alter in an adverse manner those physical characteristics that convey the resources' historic significance and accounts for its identification as a City Landmark Structure, Candidate City Landmark, or Landmark District. The project would not comply with the lot patterns and massing elements of the 2004 Historic Guidelines, and would not be consistent with Standard 4.2.2 (a) Height Transition, Standard 4.2.2 (c) Rear Transition, Standard 4.2.4 (d) streetwall continuity, and Standard 4.2.4 Standard (g) window placement under the 2019 Downtown Design and Standards. While not in full compliance with the applicable 2004 and 2019 guidelines and standards, on balance the project was found to be in substantial compliance and would not materially damage those features which define the historic significance of nearby structures. As a result, the proposed project would not impact the integrity of the adjacent historic resources and the resources would continue to convey their significance.

The Draft SEIR is specific in what guidelines the project does and does not comply with and explains why the City found the project to be in substantial compliance. Full compliance is not required for the impact to be less than significant.

The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment U.2: Equally troubling is the description of the project as an “infill site,” given that it proposes the demolition of three existing structures, one of which is an acknowledged Structure of Merit on the City’s Historic Resources Inventory. Our understanding of the term “infill” more accurately applies to development on vacant or undeveloped parcels within otherwise developed areas, such as vacant lots, surface parking areas, or developed parcels containing large open areas, and not a development that both demolishes existing historic structures, consolidates multiple lots, and is massively out-of-scale with its surrounding historic context. As all parties acknowledge, numerous other high-rise developments have been or will soon be proposed in the immediate neighborhood, which stands today as a transitional downtown gateway of low-rise residential and mixed-use structures representing a variety of scales and building types, including numerous designated and potential City Landmarks and one established City Landmark District. In this context, a forthright definition of “infill” development vs “teardown” development is of paramount importance.

Response U.2: The Envision 2040 General Plan Appendix 1, page 6, defines infill as “...development on land within areas which are largely developed, as opposed to largely undeveloped areas at the periphery of the City where development would constitute outward expansion.” The City does not limit the definition of infill to undeveloped land.

The comment does not provide new information that would change the project’s impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment U.3: Thank you and we look forward to the project’s continued review.

Previous DSEIR Scoping Comments (9/30/20) attached to July 7, 2021 comment:

If constructed as proposed, the Mark Project would have profound impacts on the development patterns, demographic makeup, visual characteristics, and functionality of the surrounding neighborhood. These myriad impacts—both positive and negative, intended and unintended, immediate and cumulative—must be weighed against the project’s own stated objectives and the objectives of the Envision San José 2040 General Plan.

In this context, PAC*SJ has identified three areas of concern that warrant detailed analysis in the DSEIR and subsequent project review by the Planning Commission and City Council. First is the applicant’s claim that the height of the project—acknowledged by all parties to be vastly out of scale with its current surroundings—is a necessary to address the City’s housing crisis. Given that the proposed design is very specifically tailored to a dormitory-style student housing market, with correspondingly minimal parking, common areas, or other amenities, it is important to acknowledge that the project is not designed to accommodate the needs of families, senior citizens, low or moderate income workers, or any other citizens disproportionately affected by the current housing crisis. While high-rise student housing may be viable from a strict financing perspective under current market conditions, this does not guarantee that long-term demand exists for such a narrowly-tailored housing product. The building’s massive scale is an acknowledged point of public

controversy with potentially significant negative impacts on the surrounding neighborhood. Any potential benefits of this increased density would be forfeited if the building proved chronically underoccupied. The DSEIR and subsequent City review should therefore independently verify the project's market viability and explore feasible alternatives that would 1) reduce the project's height, and/or 2) increase the project's suitability for a broader range of tenants.

Response U.3: CEQA does not require specific responses to comments on the NOP or scoping, only that they are acknowledged in the environmental document. As stated on page 3 of the Draft SEIR, "The intent of the building is to provide student housing for San José State University (SJSU). The 240 dwelling units would have a total of 750 beds. By law there cannot, however, be restrictions on who may occupy the building. As such, the building may be rented by unit or by bed. The analysis in this document assumes standard occupancy for high-rise apartments. The development shall comply with all applicable Fair Housing laws, regulations, and requirements." As a result, the housing proposed would be available to a broad range of tenants.

Consistent with CEQA Guidelines Section 15131, the Draft SEIR does not address the economic viability of the proposed project.

Comment U.4: Second, the applicant claims that the project will benefit the preservation of surrounding historic resources by concentrating development on the project site and reducing development pressure elsewhere. This is an aspirational claim at best and disingenuous at worst. Common sense would suggest that the project will just as likely increase development pressure on surrounding historic resources, the majority of which (as identified in TreanorHL's June 20, 2020 Draft Historic Resources Assessment) are currently unprotected from demolition and redevelopment. If preservation of these resources is truly a priority, as PAC*SJ believes it should be, the DSEIR and subsequent City review should include analysis of the potential cumulative effects of continued high-rise development in the vicinity and a proactive strategy for mitigating its impacts. This strategy might include the establishment of new or expanded historic districts or conservation areas, coordinated multi-project mitigation action plans, and strategic limits on parcel consolidations. Because the Mark Project proposes and requires approval for the consolidation of two existing parcels, decision-makers and the general public would benefit from a comparative DSEIR analysis of feasible project alternatives where such discretionary approval is not granted.

Response U.4: The project applicant did not identify the preservation of surrounding historic resources as an objective of the project.

In December 2018, the City of San José approved the Downtown Strategy 2040 which is a plan that outlines the intensification of jobs and housing within the downtown consistent with the General Plan. The General Plan designation for the project site is Downtown which allows a maximum floor area ratio (FAR) of 30.0 and up to 800 dwelling units per acre. The Downtown Strategy 2040 EIR (State Clearinghouse No. 2003042127) addressed the impacts of the full build out of the Downtown Strategy plan and identified that future development could have a significant and unavoidable impact to historic resources in the plan area (Impact C-CUL-1). This SEIR tiers from the Downtown Strategy 2040 FEIR because the project

site and type of development was included in the analysis for that document at a program level.

It is beyond the scope of any single project's environmental analysis within the plan area to assess the potential and speculative cumulative effects of continued high-rise development in the vicinity and identify a proactive strategy for mitigating its impacts. Cumulative impacts from past, present, and reasonably foreseeable projects (meaning projects on-file with the City) were assessed. Pursuant to CEQA Guidelines Section 15145, the Draft SEIR cannot speculate on other possible future development.

Comment U.5: Finally, PAC*SJ is concerned by the proposed demolition of the existing buildings on the project site, particularly the Doerr/Hollister House (c. 1900, 459 S. 4th) and the Spanish Colonial Revival apartments at 467 S. 4th (1939), listed on the City's Historic Resources Inventory as a Structure of Merit and an Identified Structure, respectively. While we generally concur with TreanorHL's assessment that none of the existing structures are likely eligible for historic designation at the local, state, or federal level, we nevertheless encourage the project applicant to explore all feasible options for their preservation, relocation or salvage.

Response U.5: For the purposes of CEQA, Structures of Merit and Identified Structures are not considered historic resources. As such, the demolition of these structures would not constitute a significant impact under CEQA. If there is no identified impact, there is no nexus to require mitigation which could include preservation, relocation, or salvage. Nevertheless, as discussed on pages 55-56 of the Draft SEIR, the City's General Plan includes land use policies that address structures of lesser historic significance. Consistent with General Plan Policy LU-16.4 and the Downtown Strategy 2040 EIR, the project will be required to implement Standard Permit Conditions including documentation and relocation or salvage.

Comment U.6: We are also concerned by potential adverse impacts to the immediately adjacent City Landmark Rucker Mansion (418 S. Third Street) and the City Landmark Mojmir Apartments (470 S. Third Street). We insist that the proposed project conform to all applicable City standards and guidelines for new construction adjacent to historic resources, including relevant setback requirements. We do not believe the current design conforms to these standards.

Response U.6: Nearby historic structures were assessed in the Historic Evaluation (Appendix C of the Draft SEIR) and in Section 3.2.2.1 (pages 56-57) of the Draft SEIR. The analysis concluded that the proposed project would not significantly impact the historic significance of any nearby historic resources. See Response T.11 and U.1.

V. Steve Cohen (July 7, 2021)

Comment V.1: Please add these comments to the DEIR in response to your e-mail to me. also, Please send me any other exemptions that have been requested by the developer.

Summary: It is clear in your exemption analysis that, as you state, there are several issues due to the land and lot location that, to make this building fit the project needs several exemptions. How many exemptions are too many where we reach the point that there is no need for any guidelines in the first place. It is obvious that the developer is trying to fit a circle in a square at the expense of the existing neighborhood.

The proposed concrete wall around the parking garage is not acceptable. Either it is 3 stories high which would be aesthetically disgusting or it is not 3 stories high and would not mitigate the sound, gas fumes and headlight issues.

Response V.1: As discussed in the Aesthetics Section 4.1 of Appendix A of the Draft SEIR and the Cultural Resources Section 3.2, the project is subject to the City's design review guidelines and process. The building's podium level, which is two stories above grade along the east, west, and south property lines would be constructed of concrete masonry units (cmu).

The project is subject to the 2019 Downtown Design Guidelines as well as the 2004 San José Downtown Historic Design Guidelines. In accordance with the 2019 Downtown Design Guidelines, the project is requesting exceptions to certain guidelines provisions including the building's rear transition, skyline level massing, and active frontage requirement.

One of the three stories on the parking garage is underground. Per the building elevations on Sheet AP.30 and AP.31 of the project plans, the concrete masonry wall will be two stories (approximately 26 feet). Although the surrounding properties are residential, this property is not within a residential zoning district. It is in the DC Downtown Primary Commercial Zoning District, and the residential fence regulations do not apply. Approximately five feet of the wall would be visible above the existing adjacent structures, and that portion of the wall would be decorative.

The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment V.2: Site and Architectural Design exemption

This exemption is not acceptable because you are not recognizing 141 East William Street which, as noted in your historic analysis, is eligible for San Jose Landmark status due to the architect and the architecture.

Response V.2: The commenter is correct that the property located at 141 East William Street is eligible for listing under the California Register of Historic Resources (CRHR) and as a City Landmark structure. The Design Guidelines exemption is part of the city's design guidelines review process and is not an environmental issue under CEQA.

The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment V.3: Standard and Active Frontage exemption

This exemption is not acceptable. The guidelines and the DEIR not the reduced set-back in the front of the project in relation to the existing properties. The distancing issue is cause due to the projects size not fitting the lot or neighborhood. With a 5 foot setback and parking garages this dramatiacally impacts the consistent frontage of the oher bldgs. along 4th street and impedes the activity level on the street.

Response V.3: See Response I.3 above. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft SEIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

SECTION 5.0 DRAFT EIR TEXT REVISIONS

This section contains revisions to the text of the The Mark Residential Project Draft SEIR dated April 2021. Revised or new language is underlined. All deletions are shown with a ~~line through the text~~.

SEIR Section 2.0, Project Description, Pages 13-14

Figures 2.2-6 and 2.2-7 will be **ADDED** to the Draft SEIR. See Appendix B of this document for the new figures.

SEIR, Section 3.2.2.1, Page 63

The Standard Permit Conditions listed under checklist question b have been **REPLACED** with the following conditions:

- 1. Supplemental Reviews/Subsurface Testing:** Sites in Downtown San José that are archaeological sensitive should in addition to the above conducted literature search, conduct exploratory trenching and borings on site/s to determine the extent of potential resources onsite. Subsurface testing methodologies and reporting will be based on the methodologies and best practices as described in the Secretary of Interior's Standards for Archaeological Documentation and conducted by a qualified archaeologist. A Native American Monitor, registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall also be present during the exploratory trenching and boring onsite.
- 2. Determine Regulatory Status of Resources:** A qualified archaeologist should determine the status of known resources and potential resources known through the measures (1) and (2) above. The above steps (1) through (3) will be formalized as the Archaeological Resources Assessment Report.
- 3. Stop Work and Evaluate Unanticipated Finds:** If buried cultural deposits are encountered during project activities, all work within 50 feet of the find should be halted and redirected. A qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall: (1) evaluate the find to determine if it meets the CEQA definition of a historical or archaeological resource; and (2) provide project-specific recommendations for data recovery and evaluation. The

results of any archaeological investigation will be submitted to the NWIC. The results of the archaeological investigation may:

- Results in findings that does not meet the definition of a historical or archaeological resource, then no further study or protection is necessary prior to project implementation.
- Results in findings that meets the definition of a historical or archaeological resource. In which case avoidance and preservation of the resources in place shall be examined. Avoidance may be accomplished through redesign, conservation easements for in situ burial, or site capping.

4. Dignified and Respectful Treatment. Prior to issuance of the Grading Permit, the project applicant shall be required to submit evidence that an Archaeological Monitoring Contractor Awareness Training was held prior to ground disturbance. The training shall be facilitated by the project archaeologist in coordination with a Native American representative registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.

5. Determine Feasible Avoidance and Alternatives: When an archaeological site meets the CEQA definition of a historical or archaeological resource and will be impacted by the proposed project, make reasonable efforts to feasibly avoid project impacts (e.g., project redesign, conservation easements, or site capping). The archeologist and Native American representative registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall review the project elements to determine ways to protect the cultural and natural context of the resources or to incorporate the resources with culturally appropriate protection and management criteria based on PRC Section 21084.3.

6. Determine Mitigation Measures: When avoidance is not feasible, adverse effects to such resources shall be mitigated in accordance with the recommendations of the evaluating archaeologist and Native American representative registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Upon completion of the archaeological

evaluation, a report documenting the methods, results, and recommendations of the archaeologist shall be prepared and submitted to the NWIC.

7. **Authorize Data Recovery and Curation:** To mitigate potential impacts to the buried resources and as part of (6 and) above, a data recovery program or a Tribal Cultural Resources Treatment Plan should be prepared by an approved archaeologist in consultation with the Native American representative registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 for review by the City. The data recovery shall involve implementation of surface collection and curation/repatriation of artifacts to prevent looting. To the extent feasible, and in consultation with the Native American representative, all recovered Native American artifacts shall be reburied on-site in an area that is unlikely to be disturbed again. All archaeological materials recovered during the data recovery efforts shall be cleaned, sorted, catalogued, and analyzed following standard archaeological procedures, and shall be documented in a report submitted to the Director of Planning, Building and Code Enforcement and the NWIC.
8. **Stop Work/Follow Statutory Procedures when Human Remains are Encountered:** In the event of the discovery of human remains during ground disturbance activities, all activities within a 50-foot radius of the find shall be stopped. Pursuant to Health and Safety Code § 7050.5 and Public Resources Code § 5097.94 of the State of California, there shall be no further excavation or disturbance of the site 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 origin or whether an investigation into the cause of death is required. • If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours of the identification. The NAHC shall identify the descendants of the deceased Native American, also known and designated as the most likely descendent (MLD). • The MLD will inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. The archaeologist should recover scientifically valuable information, as appropriate and in accordance with the recommendations of the Native Americans in accordance with CEQA Guidelines

Section 15064.5 (e). • The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. A report of findings documenting data recovery, methodologies, and results shall be submitted to Director of Planning, Building and Code Enforcement and the NWIC. • If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner/project applicant 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.

Appendix A, Section 4.10.1.2,
Page 75

The sentence under the Dam Failure heading will be **REVISED** as follows:

The downtown area, including the project site, is located within the Anderson Dam and ~~Lexington~~ dam failure inundation hazard zones.^{41,42}

Appendix A, Section 4.10.2,
Page 83

The second paragraph under checklist question d will be **REVISED** as follows:

As mentioned in *Section 4.10.1.2*, the project site is located in Flood Zone D. Zone D is an area of undetermined but possible flood hazard that is outside the 100-year floodplain. There are no floodplain requirements for Zone D. The project site is also located within the Anderson dam and ~~Lexington dam~~ dam-failure inundation zones. The California Division of Safety of Dams (DSOD) inspects dam on an annual basis and Valley Water routinely monitors the 10 dams, including the Anderson and ~~Lexington~~ dams. Therefore, the likelihood of flooding from dam failure is low and the project would not release pollutants due to dam inundation. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Appendix A, Section 4.11.2,
Page 88

The last paragraph on page 88 will be **REVISED** as follows:

Nevertheless, a shade and shadow analysis was completed for the project. Shade and shadow analyses are typically prepared for March 21, June 21, and December 21. This provides an analysis of each season as well as the longest and shortest days of the year, covering the full spectrum of possible shade and shadow issues. The analysis provides data for 9:00 AM, noon, and 3:00 PM. As shown on Figure 4.11-1 the maximum shading from the project would occur in the winter months during morning and afternoon hours. In the winter morning

hours, the project would cast shadows to the northwest, extending onto existing residential and commercial development. In the afternoon, the project would cast shadows to the northeast, extending onto the existing residences. As of August 2020, there were ~~no~~ existing solar collectors on the north end of the carport at 470 S. 3rd Street. No existing solar collectors were seen on the roofs of any of the other adjacent properties that would be affected by shading from the project. Shading from the project would not occur year-round on any of the adjacent properties and would not substantially impair the use of adjacent land uses. While the proposed project would shade the adjacent residences and commercial uses, it would not shade any existing public parks or open space areas in proximity to the site. As a result, the proposed project would have a less than significant shade and shadow impact. **[Same Impact as Approved Project (Less than Significant Impact)]**

Appendix A, Section 5.0,
Page 140

The reference under Section 5.0 References will be **REMOVED** as follows:

~~Santa Clara Valley Water District. "Lexington Dam Flood Inundation Maps." Accessed March 24, 2020. <https://www.valleywater.org/sites/default/files/Lexington%20Dam%20Inundation%20Map%20202016.pdf>.~~

Appendix A: Draft SEIR Comment Letters

From: [Blanco, Maira](#)
To: [Fiona Phung](#)
Subject: FW: Notice of Availability (NOA) of a DSEIR for The Mark Residential Project and Public Comment Period
Date: Thursday, May 13, 2021 9:30:36 AM
Attachments: [image001.png](#)

From: Lisa Brancatelli <LBrancatelli@valleywater.org>
Sent: Thursday, May 13, 2021 9:14 AM
To: Blanco, Maira <Maira.Blanco@sanjoseca.gov>
Cc: Colleen Haggerty <CHaggerty@valleywater.org>
Subject: RE: Notice of Availability (NOA) of a DSEIR for The Mark Residential Project and Public Comment Period

[External Email]

Hello Ms. Blanco,

The Santa Clara Valley Water District (Valley Water) has reviewed the Notice of Availability of a Draft Supplemental Environmental Impact Report (SEIR) for the Mark Residential Project received on April 29, 2021. Valley Water has the following comments to be taken into consideration when developing the Final SEIR for this project:

Pages 75 and 83 of the Initial Study incorrectly state that the project area is within the Lexington Dam inundation area; however, according to the Lexington Dam Inundation Map the project area is located just outside of the area subject to inundation from the James J. Lenihan Dam on Lexington Reservoir. The document should be revised to correctly state the associated inundation area is only within the Leroy Anderson Dam inundation area.

Valley Water records don't show any wells located on the project site. To protect groundwater quality and in accordance with District Ordinance 90-1, all existing wells affected by the redevelopment of the site need to be identified and properly registered with Valley Water and either be maintained or destroyed in accordance with Valley Water's standards. Destruction of any well and the construction of any new wells proposed, including monitoring wells, requires a permit from Valley Water prior to construction. Property owners or their representatives should contact Valley Water's Wells and Water Measurement Unit at (408) 630-2660, for more information.

The proposed project location is not located adjacent to any Valley Water facility or right of way. Therefore, according to Valley Water's Water Resources Protection Ordinance, a Valley Water permit is not required for the proposed project.

We appreciate the opportunity to review this document. If you have any questions, you may reach me at (408) 630-2479, or by e-mail at LBrancatelli@valleywater.org. Please reference Valley Water File No. 34232 on future correspondence regarding this project.

Thank you,

LISA BRANCATELLI

ASSISTANT ENGINEER II (CIVIL)
Community Projects Review Unit
lbrancatelli@valleywater.org
Tel. (408) 630-2479 / Cell. (408) 691-1247
CPRU Hotline: (408) 630-2650

Santa Clara Valley Water District is now known as:



Clean Water • Healthy Environment • Flood Protection

5750 Almaden Expressway, San Jose CA 95118
www.valleywater.org

From: Blanco, Maira <Maira.Blanco@sanjoseca.gov>
Sent: Thursday, April 29, 2021 12:02 PM
Cc: Blanco, Maira <Maira.Blanco@sanjoseca.gov>
Subject: Notice of Availability (NOA) of a draft Supplemental Environmental Impact Report for The Mark Residential Project and Public Comment Period

**NOTICE OF AVAILABILITY (NOA) OF
A DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR) FOR THE MARK RESIDENTIAL
PROJECT
AND PUBLIC COMMENT PERIOD**

Project Description: A Special Use Permit to allow the demolition of existing residential structures including two multifamily residential buildings and one single-family residential structure totaling approximately 7,427 square feet, consolidation of four parcels, and construction of a 23-story multifamily residential tower with a maximum height of 274 feet comprised of 240 residential units, communal space, a rooftop deck, a four-level automated parking system, including one basement level (additional parking to be provided in off-site), and removal of six trees on an approximately 0.45-gross acre site.

Location: 459, 465-469, and 475 South Fourth Street, Downtown San José

Council District: 3

File No.: SP20-021

The proposed project will have potentially significant environmental effects on Air Quality, Biological Resources, Hazardous Materials, and Noise. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present at the project location. The site is not listed as a toxic site and it is not listed on the Cortese List. The Draft EIR and documents referenced in the Draft EIR are available for review online at the City of San José's "Active EIRs" website at www.sanjoseca.gov/activeeirs.

Due to current situation under the COVID-19 and related Shelter-in-Place policy, hard copies are not available at City Hall or the Dr. MLK Jr. Main Library. **Therefore, if requested, a hard copy will be**

mailed to you. Please allow time for printing and delivery.

The public review period for this Public Review Draft EIR begins on **April 29, 2021 and ends on June 14, 2021**. Written comments must be received at the Planning Department by **5:00 p.m. on June 14, 2021** to be addressed as part of the formal EIR review process. Comments and questions should be referred to Maira Blanco in the Department of Planning, Building and Code Enforcement via e-mail: Maira.Blanco@sanjoseca.gov, or by regular mail to:

Department of Planning, Building, and Code Enforcement

Attn: Maira Blanco

200 East Santa Clara Street, 3rd Floor

San José, CA 5113

For the official record, please your written comment letter and reference **File No. SP20-021**. Following the close of the public review period, the Director of Planning, Building, and Code Enforcement will prepare a Final Environmental Impact Report that will include responses to comments received during the review period. At least ten days prior to the public hearing on the EIR, the City's responses to comments received during the public review period will be available for review and will be sent to those who have commented in writing on the EIR during the public review period.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.



April 29, 2021

Maira Blanco
City of San Jose
200 E Santa Clara St, 3rd Flr
San Jose, CA 95113

Ref: Gas and Electric Transmission and Distribution

Dear Maira Blanco,

Thank you for submitting the SP20-021 plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page.
2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.
3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

Sincerely,

Plan Review Team
Land Management



Attachment 1 – Gas Facilities

There could be gas transmission pipelines in this area which would be considered critical facilities for PG&E and a high priority subsurface installation under California law. Care must be taken to ensure safety and accessibility. So, please ensure that if PG&E approves work near gas transmission pipelines it is done in adherence with the below stipulations. Additionally, the following link provides additional information regarding legal requirements under California excavation laws: <https://www.usanorth811.org/images/pdfs/CA-LAW-2018.pdf>

1. **Standby Inspection:** A PG&E Gas Transmission Standby Inspector must be present during any demolition or construction activity that comes within 10 feet of the gas pipeline. This includes all grading, trenching, substructure depth verifications (potholes), asphalt or concrete demolition/removal, removal of trees, signs, light poles, etc. This inspection can be coordinated through the Underground Service Alert (USA) service at 811. A minimum notice of 48 hours is required. Ensure the USA markings and notifications are maintained throughout the duration of your work.
2. **Access:** At any time, PG&E may need to access, excavate, and perform work on the gas pipeline. Any construction equipment, materials, or spoils may need to be removed upon notice. Any temporary construction fencing installed within PG&E's easement would also need to be capable of being removed at any time upon notice. Any plans to cut temporary slopes exceeding a 1:4 grade within 10 feet of a gas transmission pipeline need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.
3. **Wheel Loads:** To prevent damage to the buried gas pipeline, there are weight limits that must be enforced whenever any equipment gets within 10 feet of traversing the pipe.

Ensure a list of the axle weights of all equipment being used is available for PG&E's Standby Inspector. To confirm the depth of cover, the pipeline may need to be potholed by hand in a few areas.

Due to the complex variability of tracked equipment, vibratory compaction equipment, and cranes, PG&E must evaluate those items on a case-by-case basis prior to use over the gas pipeline (provide a list of any proposed equipment of this type noting model numbers and specific attachments).

No equipment may be set up over the gas pipeline while operating. Ensure crane outriggers are at least 10 feet from the centerline of the gas pipeline. Transport trucks must not be parked over the gas pipeline while being loaded or unloaded.

4. **Grading:** PG&E requires a minimum of 36 inches of cover over gas pipelines (or existing grade if less) and a maximum of 7 feet of cover at all locations. The graded surface cannot exceed a cross slope of 1:4.
5. **Excavating:** Any digging within 2 feet of a gas pipeline must be dug by hand. Note that while the minimum clearance is only 12 inches, any excavation work within 24 inches of the edge of a pipeline must be done with hand tools. So to avoid having to dig a trench entirely with hand tools, the edge of the trench must be over 24 inches away. (Doing the math for a 24 inch



wide trench being dug along a 36 inch pipeline, the centerline of the trench would need to be at least 54 inches [$24/2 + 24 + 36/2 = 54$] away, or be entirely dug by hand.)

Water jetting to assist vacuum excavating must be limited to 1000 psig and directed at a 40° angle to the pipe. All pile driving must be kept a minimum of 3 feet away.

Any plans to expose and support a PG&E gas transmission pipeline across an open excavation need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

6. Boring/Trenchless Installations: PG&E Pipeline Services must review and approve all plans to bore across or parallel to (within 10 feet) a gas transmission pipeline. There are stringent criteria to pothole the gas transmission facility at regular intervals for all parallel bore installations.

For bore paths that cross gas transmission pipelines perpendicularly, the pipeline must be potholed a minimum of 2 feet in the horizontal direction of the bore path and a minimum of 12 inches in the vertical direction from the bottom of the pipe with minimum clearances measured from the edge of the pipe in both directions. Standby personnel must watch the locator trace (and every ream pass) the path of the bore as it approaches the pipeline and visually monitor the pothole (with the exposed transmission pipe) as the bore traverses the pipeline to ensure adequate clearance with the pipeline. The pothole width must account for the inaccuracy of the locating equipment.

7. Substructures: All utility crossings of a gas pipeline should be made as close to perpendicular as feasible ($90^\circ \pm 15^\circ$). All utility lines crossing the gas pipeline must have a minimum of 12 inches of separation from the gas pipeline. Parallel utilities, pole bases, water line 'kicker blocks', storm drain inlets, water meters, valves, back pressure devices or other utility substructures are not allowed in the PG&E gas pipeline easement.

If previously retired PG&E facilities are in conflict with proposed substructures, PG&E must verify they are safe prior to removal. This includes verification testing of the contents of the facilities, as well as environmental testing of the coating and internal surfaces. Timelines for PG&E completion of this verification will vary depending on the type and location of facilities in conflict.

8. Structures: No structures are to be built within the PG&E gas pipeline easement. This includes buildings, retaining walls, fences, decks, patios, carports, septic tanks, storage sheds, tanks, loading ramps, or any structure that could limit PG&E's ability to access its facilities.

9. Fencing: Permanent fencing is not allowed within PG&E easements except for perpendicular crossings which must include a 16 foot wide gate for vehicular access. Gates will be secured with PG&E corporation locks.

10. Landscaping: Landscaping must be designed to allow PG&E to access the pipeline for maintenance and not interfere with pipeline coatings or other cathodic protection systems. No trees, shrubs, brush, vines, and other vegetation may be planted within the easement area. Only those plants, ground covers, grasses, flowers, and low-growing plants that grow unsupported to a maximum of four feet (4') in height at maturity may be planted within the easement area.



11. Cathodic Protection: PG&E pipelines are protected from corrosion with an “Impressed Current” cathodic protection system. Any proposed facilities, such as metal conduit, pipes, service lines, ground rods, anodes, wires, etc. that might affect the pipeline cathodic protection system must be reviewed and approved by PG&E Corrosion Engineering.

12. Pipeline Marker Signs: PG&E needs to maintain pipeline marker signs for gas transmission pipelines in order to ensure public awareness of the presence of the pipelines. With prior written approval from PG&E Pipeline Services, an existing PG&E pipeline marker sign that is in direct conflict with proposed developments may be temporarily relocated to accommodate construction work. The pipeline marker must be moved back once construction is complete.

13. PG&E is also the provider of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E’s facilities must be reviewed and approved by PG&E to ensure that no impact occurs which may endanger the safe operation of its facilities.

Attachment 2 – Electric Facilities

It is PG&E's policy to permit certain uses on a case by case basis within its electric transmission fee strip(s) and/or easement(s) provided such uses and manner in which they are exercised, will not interfere with PG&E's rights or endanger its facilities. Some examples/restrictions are as follows:

1. Buildings and Other Structures: No buildings or other structures including the foot print and eave of any buildings, swimming pools, wells or similar structures will be permitted within fee strip(s) and/or easement(s) areas. PG&E's transmission easement shall be designated on subdivision/parcel maps as **"RESTRICTED USE AREA – NO BUILDING."**
2. Grading: Cuts, trenches or excavations may not be made within 25 feet of our towers. Developers must submit grading plans and site development plans (including geotechnical reports if applicable), signed and dated, for PG&E's review. PG&E engineers must review grade changes in the vicinity of our towers. No fills will be allowed which would impair ground-to-conductor clearances. Towers shall not be left on mounds without adequate road access to base of tower or structure.
3. Fences: Walls, fences, and other structures must be installed at locations that do not affect the safe operation of PG&E's facilities. Heavy equipment access to our facilities must be maintained at all times. Metal fences are to be grounded to PG&E specifications. No wall, fence or other like structure is to be installed within 10 feet of tower footings and unrestricted access must be maintained from a tower structure to the nearest street. Walls, fences and other structures proposed along or within the fee strip(s) and/or easement(s) will require PG&E review; submit plans to PG&E Centralized Review Team for review and comment.
4. Landscaping: Vegetation may be allowed; subject to review of plans. On overhead electric transmission fee strip(s) and/or easement(s), trees and shrubs are limited to those varieties that do not exceed 15 feet in height at maturity. PG&E must have access to its facilities at all times, including access by heavy equipment. No planting is to occur within the footprint of the tower legs. Greenbelts are encouraged.
5. Reservoirs, Sumps, Drainage Basins, and Ponds: Prohibited within PG&E's fee strip(s) and/or easement(s) for electric transmission lines.
6. Automobile Parking: Short term parking of movable passenger vehicles and light trucks (pickups, vans, etc.) is allowed. The lighting within these parking areas will need to be reviewed by PG&E; approval will be on a case by case basis. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications. Blocked-up vehicles are not allowed. Carports, canopies, or awnings are not allowed.
7. Storage of Flammable, Explosive or Corrosive Materials: There shall be no storage of fuel or combustibles and no fueling of vehicles within PG&E's easement. No trash bins or incinerators are allowed.



8. Streets and Roads: Access to facilities must be maintained at all times. Street lights may be allowed in the fee strip(s) and/or easement(s) but in all cases must be reviewed by PG&E for proper clearance. Roads and utilities should cross the transmission easement as nearly at right angles as possible. Road intersections will not be allowed within the transmission easement.

9. Pipelines: Pipelines may be allowed provided crossings are held to a minimum and to be as nearly perpendicular as possible. Pipelines within 25 feet of PG&E structures require review by PG&E. Sprinklers systems may be allowed; subject to review. Leach fields and septic tanks are not allowed. Construction plans must be submitted to PG&E for review and approval prior to the commencement of any construction.

10. Signs: Signs are not allowed except in rare cases subject to individual review by PG&E.

11. Recreation Areas: Playgrounds, parks, tennis courts, basketball courts, barbecue and light trucks (pickups, vans, etc.) may be allowed; subject to review of plans. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications.

12. Construction Activity: Since construction activity will take place near PG&E's overhead electric lines, please be advised it is the contractor's responsibility to be aware of, and observe the minimum clearances for both workers and equipment operating near high voltage electric lines set out in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety (<https://www.dir.ca.gov/Title8/sb5g2.html>), as well as any other safety regulations. Contractors shall comply with California Public Utilities Commission General Order 95 (http://www.cpuc.ca.gov/gos/GO95/go_95_startup_page.html) and all other safety rules. No construction may occur within 25 feet of PG&E's towers. All excavation activities may only commence after 811 protocols has been followed.

Contractor shall ensure the protection of PG&E's towers and poles from vehicular damage by (installing protective barriers) Plans for protection barriers must be approved by PG&E prior to construction.

13. PG&E is also the owner of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs that may endanger the safe and reliable operation of its facilities.

From: [Penny Martell](#)
To: [Blanco, Maira](#)
Cc: [Penny Martell](#)
Subject: Mark Residential Project on South Fourth Street
Date: Friday, April 30, 2021 8:22:51 PM

[External Email]

Hi there,

How many parking spaces will be available to go with the 240 residential units?

Penelope Martell
1024 Thornton Way, San Jose, CA 95128

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: KKLLC Admin

To: Blanco, Maira

Subject: File No. SP20-021.

Date: Monday, May 3, 2021 8:21:34 AM

To Whom it may concern,

My name is Canyon Sayers-Roods. I am writing this on behalf of the Indian Canyon Band of Costanoan Ohlone People as requested, responding to your letter dated : April 29,2021

As this project's Area of Potential Effect (APE) overlaps or is near the management boundary of a recorded and potentially eligible cultural site, we recommend that a Native American Monitor and an Archaeologist be present on-site at all times. The presence of a monitor and archaeologist will help the project minimize potential effects on the cultural site and mitigate inadvertent issues.

Kanyon Consulting, LLC has numerous Native Monitors available for projects such as this, if applicable, along with Cultural Sensitivity Training at the beginning of each project. This service is offered to aid those involved in the project to become more familiar with the indigenous history of the peoples of this land that is being worked on.

Kanyon Consulting, LLC believes in having a strong proponent of honoring truth in history, when it comes to impacting cultural resources and potential ancestral remains. We have seen that projects like these tend to come into an area to consult/mitigate and move on shortly after. Doing so has the strong potential to impact cultural resources and disturb ancestral remains. Because of these possibilities, we highly recommend that you receive a specialized consultation provided by our company as the project commences.

As previously stated, our goal is to **Honor Truth in History**. And as such we want to ensure that there is an effort from the project organizer to take strategic steps in ways that **#HonorTruthinHistory**. This will make all involved aware of the history of the indigenous communities whom we acknowledge as the first stewards and land managers of these territories.

Potential Approaches to Ingenious Culture Awareness/History:

--Signs or messages to the audience or community of the territory being developed. (ex. A commerable plaque or as advantageous as an Educational/Cultural Center with information about the history of the land)

-- Commitment to consultation with the native peoples of the territory in regards to presenting messaging about the natives/Indigenous history of the land (Land Acknowledgement on website, written material about the space/org/building/business/etc)

-- Advocation of supporting indigenous lead movements and efforts. (informing one's audience and/or community about local present Indigenous community)

We look forward to working with you.

Best Regards,

Kanyon Sayers-Roods

Creative Director/Tribal Monitor

Kanyon Konsulting, LLC

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TAMIEN NATION
OF THE GREATER SANTA CLARA COUNTY
P.O. BOX 8053, SAN JOSE, CALIFORNIA 95155
(707) 295-4011 TAMIEN@TAMIEN.ORG

May25,2021

City of San Jose
Chu Chang, Acting Director
Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113
(408) 535-3500

Sent Via Email to: Maira.Blanco@sanjoseca.gov

RE: SEIR -MARK RESIDENTIAL PROJECT, File No. SP20-021

Dear Mr. Chang:

Thank you for the notice of availability of the draft SEIR via email dated April 29, 2021 regarding the proposed housing project located at 459, 465-469, and 475 South Fourth Street, Downtown San José, California. We appreciate your effort to contact us and wish to respond.

The Tamien Nation Cultural Resources Department has reviewed the project and concluded that it is within the aboriginal territory of Tamien Nation. Therefore, we have a cultural interest and authority in the proposed project area.

Based on the information provided, the Tribe has concerns that the project could impact known cultural resources. Therefore, we have a cultural interest and authority in the proposed project area. At your earliest convenience, please send us the most recent cultural resource study and detailed ground disturbance plan.

Please refer to identification number TN-20210429-01 in any correspondence concerning this project.

Thank you for providing us with this notice and the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Quirina Geary".

Quirina Geary
Chairwomen



TAMIEN NATION
OF THE GREATER SANTA CLARA COUNTY
P.O. BOX 8053, SAN JOSE, CALIFORNIA 95155
(707) 295-4011 TAMIEN@TAMIEN.ORG

June 1, 2021

City of San Jose
Chu Chang, Acting Director
Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113
(408) 535-3500

Sent Via Email to: Maira.Blanco@sanjoseca.gov

RE: SEIR -MARK RESIDENTIAL PROJECT, File No. SP20-021

Dear Mr. Chang:

Thank you for the cultural resource report received May 28, 2021 regarding the proposed housing project located at 459, 465-469, and 475 South Fourth Street, Downtown San José, California. We appreciate your effort and wish to respond.

Based on the information provided in the cultural resource study, the Tribe has concerns that the project could impact known cultural resources. Therefore, we have a cultural interest and authority in the proposed project area and would like to initiate a formal consultation with the lead agency. At the time of consultation, please provide a project timeline and detailed ground disturbance plan.

Please contact the following individual to coordinate a date and time for the consultation meeting:

Quirina Geary, Chairwoman
Tamien Nation
Phone: (707) 295-4011
Email: qgeary@tamien.org

Please refer to identification number TN-20210429-01 in any correspondence concerning this project. Thank you for providing us with this notice and the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Quirina Geary".

Quirina Geary
Chairwomen

From: [Blanco, Maira](#)
To: [Fiona Phung](#)
Cc: [Van Der Zweep, Cassandra](#)
Subject: FW: The Mark Residential Project (FILE NO: SP20-021)
Date: Thursday, June 10, 2021 10:16:17 AM
Attachments: [image001.png](#)

Hi Fiona,

Please see comment from Nadia below. I've discussed this internally with Cassandra and our Planning Housing team and I don't believe it is a CEQA issue or a discussion that should be part of the document, but just want to forward it because it was received during the comment period.

Thanks,

Maira

From: Nadia Aziz <Nadia.Aziz@lawfoundation.org>
Sent: Tuesday, June 8, 2021 2:22 PM
To: Blanco, Maira <Maira.Blanco@sanjoseca.gov>
Subject: RE: The Mark Residential Project (FILE NO: SP20-021)

[External Email]

Hi Maira:

I am following up on this property. Do you have a contact at Housing for the property? I wanted to ensure that this property is in compliance with SB 330, the Housing Accountability Act. SB 330 requires a right to return for tenants who have lived there, as well as affordable housing *on site* for buildings which were affordable to low-income tenants. It sounds like the buildings were rent-controlled, and thus would be subject to the requirements that require affordable housing on site. Please let me know if you have any further information about the City's requirements to enforce SB 330 or who I might contact to get more information.

Thank you,

Nadia Aziz | Directing Attorney | Housing
Pronoun: she/her
nadia.aziz@lawfoundation.org | p 408-280-2453 | f 408-296-0103

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From: Blanco, Maira <Maira.Blanco@sanjoseca.gov>
Sent: Wednesday, May 5, 2021 5:57 PM
To: Nadia Aziz <Nadia.Aziz@lawfoundation.org>
Subject: RE: The Mark Residential Project (FILE NO: SP20-021)

Ms. Aziz,

Thanks for your comment.

Per the Housing memo prepared for this project, the development is subject to the City's Inclusionary Housing Ordinance (IHO) and each of the conditions below:

- a. The permittee must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any contiguous property under common ownership and control prior to earliest of: issuance of any building permits, or approval of any parcel or final map.
- b. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.

c. No building permit may be issued until the Affordable Housing Agreement is recorded against the property. No building permit may be issued except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.

d. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO and Affordable Housing Agreement are met.

The permittee has also indicated the intent to demolish or remove from the market existing multi-family housing. The developer must comply with the Tenant Protection Ordinance, and, if applicable, the Ellis Act.

It does not appear that any affordable units will be included on-site; however, current residents would be offered relocation assistance in compliance TPO/ Ellis Act.

From: Nadia Aziz <Nadia.Aziz@lawfoundation.org>
Sent: Monday, May 3, 2021 2:55 PM
To: Blanco, Maira <Maira.Blanco@sanjoseca.gov>
Subject: The Mark Residential Project (FILE NO: SP20-021)

[External Email]

Hello:

I hope you are doing well. I am writing about the Mark Residential Project.

1. Will any units at the development be affordable units?
2. Will any of the current residents be offered relocation assistance or replacement housing?

Thank you,

Nadia Aziz | Directing Attorney | Housing

Pronoun: she/her

nadia.aziz@lawfoundation.org | p 408-280-2453| f 408-296-0103

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From: [Blanco, Maira](#)
To: [Fiona Phung](#)
Subject: FW: The Mark Project South Fourth Street
Date: Monday, June 14, 2021 8:38:51 AM

Hi Fiona,

Please find below additional comments on The Mark.

Thank you,

Maira

From: CHARLES CLIFFORD <bikexpres@aol.com>
Sent: Sunday, June 13, 2021 7:17 PM
To: Blanco, Maira <Maira.Blanco@sanjoseca.gov>
Subject: The Mark Project South Fourth Street

[External Email]

Dear Maira,

I wanted to express our concerns in writing to the City of San Jose in regards to the proposed project development on South 4th Street.

First, I would like to express my concern that this project is being conducted during a pandemic. My husband has had six surgeries during this time and most people in the neighborhood have been dealing with real life issues during this time. Charles and I have meet with Alex, and his main structural engineer, along with Noah (our tenant) and Steve Cohen from the neighborhood.

We received a phone call from Alex in regards to wanting to drill on our property to do an evaluation. It was at this time, that we were made aware of the project ,next to our building, was going forward.

We opened our basement and invited them in to take a look at our foundation , but we did not agree to drilling on our property. We then had an extensive conversation about what was being proposed for this project. (since we had no idea of scale or production) Noah, is a professor and expressed that teaching during construction would be of concern and also informed them that students have cars. Most of his students attending San Jose State currently do. He gave them a percentage of his students who drove cars. The percentage did not take in consideration of their visitors. Noah is not the only professor residing at our location. They know, first hand ,student behavior.

We are not against development or change, but expressed in details our concerns of the structure being TOO BIG and NOT enough parking. They did state that they leased a parking structure several blocks away from the proposed development. We have been in business and part of the downtown community for many years and know that having parking several blocks away from where one would live will not work. We gave the developer examples of current structures and parking issues with them. We invited them to come take a look at the parking around 7:00pm and see for themselves the situation.

When I asked how many onsite parking spaces would be available, we were shocked at the ratio. Alex informed us that the parking proposal was when in the city's guidelines.

Second, We expressed concerns for The Spartan Barber Shop (Frank Annino) was has been in business at 485 S. 4th Streetsince the 50's. We wanted to know how the streets were going to be affected for his customers , as well as Bicycle Express at 131 E. William Street (Our business location)

With all of our concerns that were expressed to Urban development, only one was really addressed, that they could get commercial spacing for Noah to teach.

Meeting during a pandemic via Zoom is not a fair or vital way to hear from the community or neighborhood. We have never done or used Zoom, and I am sure there are many our folks, like myself who have not. It feels to me, that this project is being pushed forward without really addressing the concerns of people or the neighborhood.

I really hope this letter does not fall on deaf ears and that the City of San Jose really takes a better look at the scale and impact of this proposal.

Sincerely,

Charles and Karen Clifford
(408) 693-10229 Cell number for Charles

Sent from my iPhone

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From: [Blanco, Maira](#)
To: [Fiona Phung](#)
Subject: FW: comments on The Mark project
Date: Monday, June 14, 2021 8:51:22 AM

Additional comment for The Mark.

From: Mark Williams <markrw@sprynet.com>
Sent: Sunday, June 13, 2021 7:54 PM
To: Blanco, Maira <Maira.Blanco@sanjoseca.gov>; Ceja, Patricia <Patricia.Ceja@sanjoseca.gov>
Subject: comments on The Mark project

[External Email]

Dear Maira,

We would like to register our objections to The Mark tower project as currently proposed.

1. When this project was introduced to the neighborhood back in 2020, the height and density were given on the overview post card sent out. Now, with no additional correspondence, significant increases have been made.

>>> We need you to explain why the Planning Department is not properly notifying nearby neighbors of major changes to a project.

2. Back in the 2008-2009 time frame, a smaller re-purposing project on the same property was promoted. Our neighborhood organization was united in opposition because of the density of that project and the effects it would have on the residential neighborhood to which it would have belonged. The Planning Commission at that time wisely **agreed** with us and correctly **rejected** the plan. Now an even **larger** and more inappropriate project is being forced into that location, with even worse repercussions for the surrounding residences.

>>> We need you to explain fully why the previous project was considered too dense, yet one many times more dense is now somehow considered acceptable.

3. A wise plan would be to step down the building heights into the residential neighborhoods. This was done in Market Almaden, and is being done with the Google project.

>>> We need you to explain why our neighborhood does not merit the considerations that Planning provided to other projects near downtown.

4. The decision to reduce on-site parking to force the tower residents to abandon their cars is yet another huge embarrassment to the credibility of the Planning Department. Clearly, the new residents will all be flooding the streets of the nearby neighborhood, and you know this will be the case. The San Jose downtown core is now so hostile to new businesses that it is nearly empty. Residents move in downtown, realize that there are no national chain grocery stores, drug stores, or fast food restaurants within walking distance. So they have to **drive**

everywhere. The Planning Department has created even **more** of a need for downtown residents to own and drive a car!

>>> Why would the project not start with adequate parking for the next 15 years (the realistic timeline for BART), and then allow the parking areas to be converted to habitable space or commercial use at that time, when BART has been made available to the area?

We would request that this project be delayed until these issues can be properly addressed.

Regards,

Mark Williams

Russell Kriegel

682 S 7th St

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Blanco, Maira

From: yogosak@aol.com
Sent: Monday, June 14, 2021 7:14 PM
To: waltersoellner@gmail.com; Blanco, Maira; Ceja, Patricia; sam@liccardoformayor.com; admin@sjsun.org; board@preservation.org
Cc: garyrhubbard@comcast.net; gilda98@comcast.net; eckstone@gmail.com; linda_eckstone@yahoo.com; david@webdogs.com; annasoellner@gmail.com; sysoellner@gmail.com; alanamerian@aol.com; LAmes@aol.com; markrw@sprynet.com; winslowfuerst@yahoo.com; rousbk@sbcglobal.net; reddeb1@pacbell.net; klifeson@pacbell.net; mtersini@aol.com; craig@yeutterville.com; susan@yuendesigins.com; alan.gouig@gmail.com; homes@shannadesai.com; cshep77@gmail.com; Paul.Fong@evc.edu; ronlevesqu@aol.com; mjh@me.com; chaplainkathey@gmail.com; jessica.zenk@gmail.com
Subject: Re: Cars in San Jose

[External Email]

Walter--You have touched on a problem that has given me a good deal of concern. Some 102 parking spaces were removed from use on San Salvador around the university in the interest of installing bike lanes. This practice has not taken the lives of students into consideration. Not every student lives in the dorms; some live at a distance in their family homes and drive to part-time jobs after classes. The distances are often too great to undertake on a bicycle.

Every time I am driving around San Jose, I count the bicyclists and skateboarders I see using the bike lanes. On a good day, I see 5. How long before "if you build it, they will come" kicks in? Don't count me in that "they." Early on, Sam Liccardo (and others I know) were in collisions with drivers while riding their bikes. While I don't wish that pain on Sam or anyone else, I shudder at the thought that it could have been me as such a collision would have ended the independent life I currently enjoy.

This is not a city with adequate public transportation. San Francisco, by contrast, is and an apartment dweller can live without a car, taking public transport and renting a car for occasional trips out of the city. I don't foresee that lifestyle developing in San Jose in the near future.

Minimally, developers should be required to provide adequate parking spaces in the buildings they construct. Also, I would like to see some consideration given to the ideas that Kathey Crowe has mentioned in providing transportation for seniors. Lastly, I would like to see attention given to providing affordable food stores, drugstores, and other services within walkable distance downtown. One of my elderly friends who lived downtown was indignant that the Walgreen's on 2nd Street was closed while the administration crowed about the abundance of bars and restaurants downtown.

The city's priorities need to be brought in line with reality not dreams of the future.

Alice Gosak

-----Original Message-----

From: walter soellner <waltersoellner@gmail.com>
To: Maira.Blanco@sanjoseca.gov; Ceja, Patricia <Patricia.Ceja@sanjoseca.gov>; Sam Liccardo for Mayor of San Jose <sam@liccardoformayor.com>; SUN Admin <admin@sjsun.org>; PACSJ Board <board@preservation.org>
Cc: Gary Hubbard <garyrhubbard@comcast.net>; Gilda Forrester <gilda98@comcast.net>; Dr Stephen Eckstone <eckstone@gmail.com>; Linda Eckstone <linda_eckstone@yahoo.com>; David Savage <david@webdogs.com>; Anna Soellner <annasoellner@gmail.com>; Sandra Soellner <sysoellner@gmail.com>; Alan Amerian <alanamerian@aol.com>; Larry Ames <LAmes@aol.com>; Mark Williams <markrw@sprynet.com>; greg winslow <winslowfuerst@yahoo.com>; Russell Kriegel <rousbk@sbcglobal.net>; Deborah Hudson <reddeb1@pacbell.net>; Thompson Cristin <klifeson@pacbell.net>; Mark Tersini <mtersini@aol.com>; Craig Yeutter <craig@yeutterville.com>; Susan Yuen <susan@yuendesigins.com>; Gosak, Alice <yogosak@aol.com>; Alan Gouig <alan.gouig@gmail.com>; Shanna Desai

<homes@shannadesai.com>; Clarice Shephard <cshep77@gmail.com>; Fong, Paul J. <Paul.Fong@evc.edu>; Ron Levesque <ronlevesqu@aol.com>; Michael hoffinger <mjh@me.com>; Kathleen Crowe <chaplainkathey@gmail.com>; Jessica Zenk <jessica.zenk@gmail.com>
Sent: Mon, Jun 14, 2021 4:07 pm
Subject: Cars in San Jose

Greetings:

Both Raul and Sam have projected a policy of reducing car ownership/use in San Jose, by promoting developers and public policy for new apartment buildings to have few if any parking spaces for the tenants of these high rises.

This is a wrong and hurtful policy as it defies the very nature of the relationship between people and cars.

First: A car is so much more than good transportation, although that is essential for city dwellers in San Jose today.

Second: The Car represents Freedom to Americans. We can get in our car and go anywhere any time. We are not going to give up that freedom, in a city that has a poor public transportation system and few public resources downtown like food stores, drug stores, cleaners, etc.

Third: The car is also a sanctuary of sorts. We can get in our car, safe and secure, with music, temperature control, mobility...in our own space, away from everything. Do you really think people are going to give that up?

I challenge anyone who proposes that citizens give up their cars to this: (Are you listening Sam and Raul?)

Try this:

Give up your car right now, for one week.

Nobody in your family can drive a car to work, to the doctor, dentist, food shopping, kids to school, visiting family or friends, no driving to restaurants, the beach, or Napa.

Will you do this??? Of course you won't, because you can't!!!

You need your car. So do I and most everyone else in San Jose, including most tenants in apartments!

So stop imposing your Social Engineering Policies on everyone, with an elitist policy of 'we get our cars, but they can't have theirs'. Demand developers provide a proper number of parking spaces in every project or don't build it.

Walter Soellner
South University Neighborhood Association Board Member

--

Remember: A good book is a friend forever!

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From: [Blanco, Maira](#)
To: [Fiona Phung](#)
Cc: [Meiners, Laura](#)
Subject: FW: SUN Parking Permit Vs New Development
Date: Monday, June 14, 2021 4:06:11 PM

Hi Fiona,

Please find below an additional comment.

Thank you

From: Charlene Schmidt <charleneschmidt@gmail.com>
Sent: Monday, June 14, 2021 4:02 PM
To: Blanco, Maira <Maira.Blanco@sanjoseca.gov>
Subject: SUN Parking Permit Vs New Development

[External Email]

Hello,

I am writing to you as a resident of the SUN neighborhood here in Downtown San Jose. News has come to light that there will be several new developments planned for my area, which are in turn raising concerns about already impacted parking spaces in our direct area. As there will be 750 new rooms opening in one proposed building on the next block, many of our neighbors are fearful that our parking situation will become far more dire.

As the parking permits that were highly argued for by our area did not include the addition of new developments, I would implore you to rethink about carving these large new developments out of the area that would allow the use and distribution of such parking permits. Developments should be forced to make arrangements for their own tenants that do not highly impact the surrounding areas, as the residents of these buildings will likely try to park in the surrounding streets adjacent to their new homes.

As these new developments are planning on catering to SJSU students, I am sure that many of the residents will have cars. Many of these developments do not give the option to park nearly enough cars vs the amount of people that are moving into the area. As we are at the tail end of an unprecedented time for our world with the pandemic, many of my neighbors have decreased the use of personal cars or staying at home due to work from home situations. Even with this, parking has become increasingly difficult in the last several months.

Our neighborhood does implore that these developments be excluded from gaining parking permits. Further more, a stipulation that all ongoing developments be excluded, as the permits were not

agreed upon with the inclusion of possibly 1000+ additional residents.

Thank you for your time, and consideration.

Charlene Schmidt

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Blanco, Maira

From: Clarice Shephard <cshep77@gmail.com>
Sent: Monday, June 14, 2021 5:21 PM
To: Blanco, Maira; Ceja, Patricia; Peralez, Raul; Pereira, Paul
Subject: The Mark Residential Tower - SUN Public Comment (June 14th 2021)

[External Email]

June 14th, 2021

Concerning The Proposed Mark Residential Project,

This project is wrong for the historic neighborhood. It is too tall, too many units and very little onsite parking. The project is completely out of scale to our low rise neighborhood and I expect it may even cast a shadow over my property.

The neighborhood has not been included or notified of any public meetings even those of us who live very close to the project area has ever received public mailing. A real failure of the planning department. The information required to properly make comments is not available to the neighborhood to even properly write this letter. At the moment we no longer have enforced parking and we do not know when or if we will get this back or what it will look like if it returns.

This project is being shoved down our throats with no opportunity to be heard and even if we speak up the city council will not even be reviewing this project since the city does not care about the individual resident just the business and large developers. Shame on the city and its leadership.

The city believes we can live without cars but the infrastructure to support this does not exist for this to happen. VTA does not run near our neighborhood or with any frequency or direction for it to be of use. Light rail takes 45 min to travel from downtown to Kaiser San Jose and less than 30 minutes to drive, we do not have bart to take us to other locations and trains run too infrequently. This project is going to create a huge nightmare of traffic in and around a neighborhood that can ill afford it, and we just do not have enough street parking for those who already live here.

I am firmly against this project.

Clarice Shephard
512 S 5th

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

From: [Blanco, Maira](#)
To: [Fiona Phung](#)
Subject: FW: The Mark Residential Tower - Public Comment enclosed
Date: Monday, June 14, 2021 5:08:42 PM

Comment for The Mark

From: Deb Hudson <reddeb1@pacbell.net>
Sent: Monday, June 14, 2021 4:14 PM
To: Blanco, Maira <Maira.Blanco@sanjoseca.gov>; Ceja, Patricia <Patricia.Ceja@sanjoseca.gov>
Cc: Mike Schmidt <schmidt1mh@att.net>
Subject: The Mark Residential Tower - Public Comment enclosed

[External Email]

Re: The Mark Residential Tower
I am writing to object to the Mark Tower Project as Currently Proposed. Specifically : Impact on parking for adjoining streets within the SUN RPP

History: SUN was developed in the early 1900s when there was not even one car on the street for each street address. Most properties still don't have garages. In the 1950s much of the wood frame housing stock was bulldozed and mid-century utilitarian apartment units were built to accommodate the growing attendance at San Jose State. As that housing aged and the individual automobile gained supremacy, a third influx into the neighborhood saw multiple families take up residence in single apartments and rental houses and ever more cars had to be parked. In the early 2000s The SUN RPP was created at the urging of the South University Neighborhood Association to alleviate extreme pressure on parking for residents due to increasing density, SROs, ARCFs, SJSU students & overflow from the Entertainment District. SUN residents walked the entire neighborhood block by block to get the required 50% +1 signatures on each and every block to create the RPP.

The Mark: This building creates 240 Units & 750 Bedrooms. Parking plans currently call for providing 192 total parking spaces with the target renter being adult SJSU Students. How does this even make sense? Students looking to manage costs "double up" in living spaces and nearly all come with cars. We know. We have dealt with parking impact even since the RPP was created. Even if it turns out that 'only' 300 or less than half of the 750 bedrooms own one car each that is still an extraordinary number of additional vehicles competing for an impacted parking zone.

We urge you in the strongest terms to "Carve" this building out of the SUN Parking Permit Zone. It will add hundreds and potentially thousands of extra cars to the daily competition on the already completely over-parked SUN streets.

I'm told that the Developer is planning on writing a restriction into the lease agreements that forbids the residents from obtaining SUN Permits. Does the City have any control over leasing agreements between private management and residents? Has this been reviewed by the City Attorney? Does DOT agree to not issue permits?

A neighbor reminded me that back in the 2008-2009 time frame, a smaller re-purposing project was proposed. Our neighborhood association was united in opposition because of the density of that project and the effects it would have on the surrounding neighborhood. The Planning Commission at that time agreed with us and rejected the plan on basis of density. Now an even larger and more inappropriate project is being forced into the neighborhood, with even graver impact on the surrounding residences.

I am distressed & discouraged by a massive development again being pushed thru onto a low-income neighborhood seemingly without proper public outreach or concern for the impact it will have on neighborhood parking and quality of life.

We understand the desire for fewer automobiles and walkable neighborhoods in downtown. That was the reality when this neighborhood was first developed. There was extensive public transport downtown in the form of trolley cars and then later busses. But those were done away with in favor of individual transport for half-a-century. The City's current 'Micro Mobility' push does not address the overall larger need. Even before the Pandemic, the VTA Routes & Frequencies were being cut within the City/County. Bart will not be downtown for at least a decade. There is no adequate infrastructure to support the aspirational goal of moving about the city and/or county without a car.

Please stop this impending flood of vehicles into SUN by carving this development out of the existing RPP.
Deborah Hudson - 396 Margaret St.

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Blanco, Maira

From: John Mitchell <jrkmitchel@sbcglobal.net>
Sent: Monday, June 14, 2021 7:37 PM
To: 'Kathleen Crowe'; 'walter soellner'
Cc: Blanco, Maira; Ceja, Patricia; 'Sam Liccardo for Mayor of San Jose'; 'SUN Admin'; 'PAC SJ Board'; 'Gary Hubbard'; 'Gilda Forrester'; 'Dr Stephen Eckstone'; 'Linda Eckstone'; 'David Savage'; 'Anna Soellner'; 'Sandra Soellner'; 'Alan Amerian'; 'Larry Ames'; 'Mark Williams'; 'greg winslow'; 'Russell Kriegel'; 'Deborah Hudson'; 'Thompson Cristin'; 'Mark Tersini'; 'Craig Yeutter'; 'Susan Yuen'; 'Gosak, Alice'; 'Alan Gouig'; 'Shanna Desai'; 'Clarice Shephard'; 'Fong, Paul J.'; 'Ron Levesque'; 'Michael hoffinger'; 'Jessica Zenk'
Subject: RE: Cars in San Jose

[External Email]

Walter makes sound and practical observations. It has gotten to the point where automobiles for the sake of quick profit, political ambition and greed are being pushed out with no foresight or consideration of the transportation needs of our poor, underserved, minority and elderly populations.

Right now we are in the middle of a severe water shortage – again! Yet the relentless push for more housing increases ever more. Housing and transportation are politically linked. However, like other “quality of life” issues such as public safety and blight, water and transportation are not the primary concerns of the up and coming new San Jose. If you don’t believe me, look around.

John in Naglee Park

From: Kathleen Crowe <chaplainkathey@gmail.com>
Sent: Monday, June 14, 2021 5:56 PM
To: walter soellner <waltersoellner@gmail.com>
Cc: Maira.Blanco@sanjoseca.gov; Ceja, Patricia <Patricia.Ceja@sanjoseca.gov>; Sam Liccardo for Mayor of San Jose <sam@liccardoformayor.com>; SUN Admin <admin@sjsun.org>; PACSJ Board <board@preservation.org>; Gary Hubbard <garyrhubbard@comcast.net>; Gilda Forrester <gilda98@comcast.net>; Dr Stephen Eckstone <eckstone@gmail.com>; Linda Eckstone <linda_eckstone@yahoo.com>; David Savage <david@webdogs.com>; Anna Soellner <annasoellner@gmail.com>; Sandra Soellner <sysoellner@gmail.com>; Alan Amerian <alanamerian@aol.com>; Larry Ames <LAmes@aol.com>; Mark Williams <markrw@sprynet.com>; greg winslow <winslowfuerst@yahoo.com>; Russell Kriegel <rousbk@sbcglobal.net>; Deborah Hudson <reddeb1@pacbell.net>; Thompson Cristin <klifeson@pacbell.net>; Mark Tersini <mtersini@aol.com>; Craig Yeutter <craig@yeutterville.com>; Susan Yuen <susan@yuendesigins.com>; Gosak, Alice <yogosak@aol.com>; Alan Gouig <alan.gouig@gmail.com>; Shanna Desai <homes@shannadesai.com>; Clarice Shephard <cshep77@gmail.com>; Fong, Paul J. <Paul.Fong@evc.edu>; Ron Levesque <ronlevesqu@aol.com>; Michael hoffinger <mjh@me.com>; Jessica Zenk <jessica.zenk@gmail.com>
Subject: Re: Cars in San Jose

Dear Walter,

As a more senior person, I know that the ability to drive has indeed been my freedom. It is especially important for those of us who live alone. As a volunteer treasurer on a local senior center board, I am very proud of Saratoga for the Ryde program. This program provides cost effective rides to literally hundreds of seniors each month who are no longer able to drive and need support to get to doctor's appointments and so forth. What those folk do that don't live in Saratoga or Los Gatos, I find it difficult to consider if they can't afford Uber or Lyft.

Parking downtown is very difficult especially for students with the university at the center of the city. Students who can't afford food and housing have an especially challenging dilemma trying to pay for parking and so they often take up space that people who live downtown need. And I agree that developers definitely need to provide adequate parking for the huge number of people they are planning to house. What about underground parking...too expensive? How about those people who likely will work at Google, take public transportation. What a concept that might be.

I know IBM when a big employer in South San Jose, offered us free passes to the VTA to inspire us back in the 90's to free up congested freeways. It was a Sunday afternoon drive compared to what it is now. We have some societal issues and more crazy drivers than I have ever seen in the 57 years I have lived in San Jose..... from the Valley of the Hearts Delight to mayhem.

We need sound third alternatives to congestion that is affecting us all. Not everyone can bike or take public transportation. Perhaps a cost effective Ryde program might help some of our more fragile and isolated citizens and a ride share for our students who live downtown ...Safety Partners maybe?

My two cents,

On Mon, Jun 14, 2021 at 4:08 PM walter soellner <waltersoellner@gmail.com> wrote:

Greetings:

Both Raul and Sam have projected a policy of reducing car ownership/use in San Jose, by promoting developers and public policy for new apartment buildings to have few if any parking spaces for the tenants of these high rises.

This is a wrong and hurtful policy as it defies the very nature of the relationship between people and cars.

First: A car is so much more than good transportation, although that is essential for city dwellers in San Jose today.

Second: The Car represents Freedom to Americans. We can get in our car and go anywhere any time. We are not going to give up that freedom, in a city that has a poor public transportation system and few public resources downtown like food stores, drug stores, cleaners, etc.

Third: The car is also a sanctuary of sorts. We can get in our car, safe and secure, with music, temperature control, mobility...in our own space, away from everything. Do you really think people are going to give that up?

I challenge anyone who proposes that citizens give up their cars to this: (Are you listening Sam and Raul?)

Try this:

Give up your car right now, for one week.

Nobody in your family can drive a car to work, to the doctor, dentist, food shopping, kids to school, visiting family or friends, no driving to restaurants, the beach, or Napa.

Will you do this??? Of course you won't, because you can't!!!

You need your car. So do I and most everyone else in San Jose, including most tenants in apartments!

So stop imposing your Social Engineering Policies on everyone, with an elitist policy of 'we get our cars, but they can't have theirs'. Demand developers provide a proper number of parking spaces in every project or don't build it.

Walter Soellner

South University Neighborhood Association Board Member

--

Remember: A good book is a friend forever!

--

The Rev. Kathleen Crowe

Episcopal Chaplain at San Jose State University

Saratoga Area Senior Coordinating Council - Board Treasurer

Diocesan Safeguarding Online Systems

Deacon in Residence at Saint Andrew's (Retired)

www.canterburybridge.org

"We are called not only to shelter, but to be shelter to others."

Debra Smith Douglas

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Blanco, Maira

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Sent: Monday, June 14, 2021 5:56 PM
To: walter soellner
Cc: Blanco, Maira; Ceja, Patricia; Sam Liccardo for Mayor of San Jose; SUN Admin; PACSJ Board; Gary Hubbard; Gilda Forrester; Dr Stephen Eckstone; Linda Eckstone; David Savage; Anna Soellner; Sandra Soellner; Alan Amerian; Larry Ames; Mark Williams; greg winslow; Russell Kriegel; Deborah Hudson; Thompson Cristin; Mark Tersini; Craig Yeutter; Susan Yuen; Gosak, Alice; Alan Gouig; Shanna Desai; Clarice Shephard; Fong, Paul J.; Ron Levesque; Michael hoffinger; Jessica Zenk
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South University Neighborhood Association Board Member

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Debra Smith Douglas

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Advancing Justice
Housing | Health | Children & Youth

June 14, 2021

via Email

Maira Blanco
Department of Planning, Building, and Code Enforcement
200 East Santa Clara Street, 3rd Floor
San José, CA 95113
Maira.Blanco@sanjoseca.gov

RE: Public Comment for Public Review Draft EIR for the Mark Residential Project (File No.: SP20-21)

Dear Ms. Blanco:

The Law Foundation of Silicon Valley writes to provide comment on the Public Review Draft EIR for the Mark Residential Project (File No.: SP20-021) in San José, CA. The City of San Jose must require that the project comply with the Housing Crisis Act of 2019, by requiring the replacement of any lost affordable units on-site and a first right to return for any displaced tenants.

I. The Mark Residential Project Must Replace All Protected Units with On-Site Affordable Units under The Housing Crisis Act of 2019

The Housing Crisis Act of 2019 established a statewide housing emergency for the subsequent five years and requires new housing development projects to comply with specific anti-displacement provisions. The law established replacement requirements for developers with projects that would demolish particular types of “Protected Units,” as well as ensure displaced tenants would be guaranteed rights to relocation assistance and a right to return.¹ “Protected Units” include any units that are subject to local rent control ordinances, deed-restricted affordable rental units, units withdrawn from the rental market under the state Ellis Act within the past ten years, and any units that were occupied by a low- or very-low-income renter within the past five years.²

The Mark Residential Project takes places at a project site that has three residential structures, all of which are intended to be demolished and include several Protected Units. The existing residential structures include 465 South Fourth Street, an apartment building constructed

¹ Cal. Gov. Code § 66300(d)(2)(A)(ii - iii)

² Id.

in 1939, and 475 South Fourth Street, an apartment complex constructed in 1960.³ Both of these residential buildings are covered under San José's Apartment Rent Ordinance (ARO) and contain Protected Units because they have more than two rental units and were issued a certificate of occupancy prior to 1979.⁴ The project site also includes 459 South Fourth Street, which may include Protected Units if it was occupied by a low- or very-low-income renter within the past five years.⁵ Therefore, by demolishing these apartment complexes, the Mark Residential Project would be removing a number of Protected Units from the rental market.

The Housing Crisis Act of 2019 requires that all demolished Protected Units must be replaced **in-site** the Mark Residential Project.⁶ The replacement units must match the number and size of units lost, lease at the same level of affordability, and find occupants of the same or lower income level than the families who were displaced.⁷ The replacement units must remain affordable for at least 55 years or comply with San José Apartment Rent Ordinance.⁸ The Housing Crisis Act of 2019 has no provision that would allow a developer to pay fees in lieu of building units on-site.

Currently, the Project does not include any affordable units on-site. The City must require that the Project change its plan to include at least as many deed-restricted or rent-stabilized units as the number of Protected Units it will demolish in order to comply with the Housing Crisis Act of 2019. While we understand that the developer has elected to pay in-lieu fees to comply with San Jose's Inclusionary Housing Ordinance, these fees are not an option under the Housing Crisis Act of 2019.

Furthermore, the City has an obligation to ensure the Project complies with state law and to document the impact of displacement in its Final Environmental Impact Report. We urge the Department of Planning, Building, and Code Enforcement to investigate the rental history of 459, 465, and 479 South Fourth Street to ensure the proper number of Protected Units is identified.

II. The Mark Residential Project Must Offer Relocation Assistance and a Right of First Refusal to any Tenants Displaced from the Project Site under the Housing Crisis Act of 2019

The Housing Crisis Act also requires the developer to provide both relocation assistance and a right of first refusal to all displaced tenants. Tenants must be permitted to occupy their units until six months before construction.⁹ The current draft of the City's Environmental Impact Report does not provide any information regarding tenants who were or are expected to be displaced from the existing residential units. Information on the displaced tenants should be provided, including

³ Draft Supplemental Environmental Impact Report: The Mark Residential SP20-021, CITY OF SAN JOSE & DAVID J. POWERS & ASSOCIATES INC. (April 2021) 49, *available at* <https://www.sanjoseca.gov/home/showpublisheddocument/72001/637552205414500000>

⁴ San José Mun. Code Sec. 17.23.167.

⁵ This information may be available from the San José Housing Department's Rent Registry, the Project developer, or other means.

⁶ Cal. Gov. Code § 66300(d)(2)(A)(i)

⁷ Cal. Gov. Code § 66300(d)(2)(A)(i - ii)

⁸ Cal. Gov. Code § 66300(d)(2)(A)(iii)

⁹ Cal. Gov. Code § 66300(d)(2)(C)

the approximate income levels of the household, as is available through data from San José's Rent Registry and other means. There is no information about whether the tenants received relocation assistance.

All tenants who were or are to be displaced by the Project are also entitled to a right of first refusal for a comparable unit available at the final completed development for an affordable rent.¹⁰ In other words, a tenant who was displaced from their two-bedroom apartment for this project has a right to return to an affordable two-bedroom apartment at the final residential complex.

The City's Environmental Impact Report must provide information regarding any tenants displaced from 459, 465, and 479 South Fourth Street to ensure the Project developer complied with the Housing Crisis Act of 2019 by informing tenants displaced by this project of their right to return and paying adequate relocation benefits.

We thank you for your attention to implementing the Housing Crisis Act of 2019 and welcome the opportunity to discuss these comments with you further. You can contact us at Nadia.aziz@lawfoundation.org or at (408) 280-2453.

Sincerely,



Nadia Aziz, Directing Attorney

Nassim Moallem, Staff Attorney

Michael Trujillo, Staff Attorney

¹⁰ Cal Gov Code § 66300(d)(2)(D)(ii)(citing to HSC § 50053 for a definition of affordable rent).

June 14th, 2021

Concerning The Proposed Mark Residential Project,

At a maximum listed height of 250ft, this building would not only dwarf anything else in the South University Neighborhood, it would be the 9th tallest in San Jose. At 23 Stories, 240 Units & 750 Beds with a proposed roof deck and lounge & a target renter base of SJSU Students the enormity of the project related to noise, traffic & pollution is hard to put in context. There is nothing comparable nearby.

Specifically on Parking

Many South University Neighborhood residents work outside of Downtown. The area is already highly overparked. So, adding more competition to the limited amount of Street Parking is of great concern.

For 240 Units & 750 Beds they plan to provide 192 total parking spaces both on-site, but the majority are planned to be off-site. The current plan is to provide as many as **95 but as few as 20 new on-site spaces**. If it is 20 on-site spaces, then the other 172 would be provided blocks away at 88 E San Fernando, and the contract for these Off-Site Spaces will end. So, these off-site spaces will disappear in the future - perhaps in as little as 5 years. To be clear, the proposal is to provide 192 total spaces for 750 beds with the target renter being unrelated, adult SJSU Students not families. Thus, the percentage of the building's residents who own cars is sure to be high. In addition, to reach the Off-site Parking they'll have to walk **Half a Mile**. So, even the students with Off-Site Parking will have a large incentive to park closer to home in the SUN RPP. They'll also have to pay extra to lease a parking space.

Unless this massive structure is Carved-Out of the SUN Parking Permit Zone, it will add hundreds (up to 1000) extra cars to the daily competition on the already completely overparked SUN streets. Even if it turns out that 'only' 60% (or 450) of the 750 residents own cars, that is still 258 (450-192) additional vehicles competing in an already impacted parking zone.

Lease Restrictions

Per the Developer, "lease agreements for residents of the proposed project will prohibit residents from applying for a SUN RPP permit. In addition, the project will not pursue a Condition of Approval from Planning that would allow the project to make a permit

amendment in the future if on-site parking reductions occur.” To this we say, good. And we do not argue against including the lease restriction. However, we ask what practical impact will this lease restriction have? How will this restriction be enforced? How will they find violators & how frequently will they look? The Developer stated they have a commitment to manage the property for 5 years only - what happens after that? And finally, the City states that if the address is in the current SUN RPP then it will sell the permits to the residents. Per the City Project Manager on Oct 20th, “The applicants are also proposing to restrict the residents from obtaining permits via the lease agreement. However, please note that the City has no control over leasing agreements between private management and residents.” So, are there any ‘teeth’ to this solution? Doesn’t the City have a responsibility to protect the daily experience of residents in one of the oldest neighborhoods in the City?

SUN RPP Creation

The SUN RPP was created to alleviate some pressure on parking for residents due to SJSU Students who drive to campus from other areas & overflow from the Entertainment District. Many SUN volunteers contributed numerous hours to get the required signatures. Please support the prior effort to improve our daily lives.

Process

As a neighborhood, we were surprised at how this massive Development started, seemingly without proper notice, in the middle of a worldwide Pandemic which none of us have ever experienced. We hope that it’s not being pushed through no matter what the needs of the current residents are. For example, on Noticing for the Sept 17th, 2020 meeting - was it done? I, as SUN President, received an email from the D3 Office with only one days notice on Sept 16th about the “online joint community and environmental public scoping meeting”. Were Postcards sent out as occurred for the Bike Lanes? A few of us who live a block away did not receive a Notice in the mail. When I asked if a 2nd “Public Scoping Meeting” would occur, the answer from the City Project Manager was, “We do have a Public Outreach policy that states that if there is significant community attendance during the first Community Meeting, then a second Community Meeting is required. However, the meeting was only attended by about 30 people. Therefore, there will not be a second Community Meeting scheduled.” Hopefully, our concern is obvious - if notification was not given with enough time during an unprecedented time in recent world history then it appears to us that the City’s process is frustratingly flawed. The Project Manager does state later that “there are several more chances for community participation”. However, we are now further

down the line and decisions have already been & are being made. In addition, the meeting was supposed to be recorded but, per Planning, there was a “glitch” & no recording was made. So, the neighborhood has not been able to watch the meeting after the fact. For SUN, in-person communication thru door knocking is by far the most effective method that we have found through decades of experience. The Pandemic has not allowed us to do so (as we did when creating the RPP), and Public Comment officially ends one day before California opens up. We request more time to discuss before decisions are made.

State Opinion

Urban Catalyst states that the City interprets a State opinion to mean that the Code, “does not authorize local authorities, in issuing long-term residential parking permits, to distinguish among residents based on the type of dwelling in which they live.” What about the obvious need to modify laws as societal circumstances change? This immense structure does not yet even exist. At the time the RPP was established it did not exist. It’s enormous size is completely out-of-scale compared to anything else in SUN & the RPP zone. This Code can’t be immutable. Even the US Constitution can be changed. - perhaps then the boundaries of a Residential Permit Parking Zone can as well? The City is already changing the rules to encourage these massive developments. Please allow reason to win, and mitigate the negative impacts on current residents. Please Grandfather-In a Carve-Out.

Standard Setting

Our understanding is that this project is being looked at as a case which may determine future standards including another current project being considered right next door of similar scale also in the SUN RPP. Then please set the standard to mitigate the negative impacts on one of the oldest neighborhoods in the City.

Practical Daily Impacts

At a Diridon Development Project the presenter asked attendees to imagine a time in 20 years that a young person is amazed there was ever a time that anyone needed or wanted a car to get to or travel around in Downtown. It seemed as though I may have been one of the only current Downtown residents. When I brought up the concerns listed above about the SUN RPP the answer was, “Unfortunately, there will be an “Awkward Transitional Phase.” This gave me the distinct impression that I was among many recent graduates who were simply doing an academic exercise. It seemed as though the group had not had to apply theory and work through practical negative

implications to real people's lives. This is not an academic exercise for us. Our daily experience will be negatively impacted in SUN if the Project is not Carved-out of the SUN RPP.

Development History & Future

Development in Downtown has had a troubled history. Grocery Stores & other businesses have not survived. Albertson's, Zanato's, & Safeway have all left. Too many restaurants to name and Movie Theatres even a Shopping Mall have opened and then closed over the years.

Public Transportation Infrastructure does not currently exist at an adequate level. VTA before the Pandemic was cutting Routes & Service rather than increasing. In addition, major new investments in Transportation Infrastructure are needed to get around in Santa Clara County as well as surrounding counties and further. How long will it be before this Infrastructure is built? Other than Micro Mobility is it being planned and paid for currently?

The City's current development strategy of Hubs (Jobs, Housing, All Resources within a 15 minute bike ride) seems that it has been around for a long time, and we hope for it's eventual success. But until that time, if the City's strategy is to discourage cars, then have the residents of these new Hubs move in without them. Please treat the SUN RPP as it's own Hub and carve-out these new huge developments.

Conclusion

Yes, San Jose was built around the assumption of the automobile. And Climate Change points to a need to change. We are not anti-development. Instead, we ask that the City ensure that the required Infrastructure is here from transportation to grocery stores before impeding our daily lives by, in essence, taking away parking.

We hope that these discussions with the Developer and the City are not just provided as opportunities to vent, but instead that you will hear the need in our neighborhood. And, most importantly, act to mitigate this "Awkward Transitional Phase". Please stop this impending flood of vehicles into the SUN RPP.

Michael Schmidt
South University Neighborhood President

Blanco, Maira

From: walter soellner <waltersoellner@gmail.com>
Sent: Monday, June 14, 2021 4:08 PM
To: Blanco, Maira; Ceja, Patricia; Sam Liccardo for Mayor of San Jose; SUN Admin; PACSJ Board
Cc: Gary Hubbard; Gilda Forrester; Dr Stephen Eckstone; Linda Eckstone; David Savage; Anna Soellner; Sandra Soellner; Alan Amerian; Larry Ames; Mark Williams; greg winslow; Russell Kriegel; Deborah Hudson; Thompson Cristin; Mark Tersini; Craig Yeutter; Susan Yuen; Gosak, Alice; Alan Gouig; Shanna Desai; Clarice Shephard; Fong, Paul J.; Ron Levesque; Michael hoffinger; Kathleen Crowe; Jessica Zenk
Subject: Cars in San Jose

[External Email]

Greetings:

Both Raul and Sam have projected a policy of reducing car ownership/use in San Jose, by promoting developers and public policy for new apartment buildings to have few if any parking spaces for the tenants of these high rises.

This is a wrong and hurtful policy as it defies the very nature of the relationship between people and cars.

First: A car is so much more than good transportation, although that is essential for city dwellers in San Jose today.

Second: The Car represents Freedom to Americans. We can get in our car and go anywhere any time. We are not going to give up that freedom, in a city that has a poor public transportation system and few public resources downtown like food stores, drug stores, cleaners, etc.

Third: The car is also a sanctuary of sorts. We can get in our car, safe and secure, with music, temperature control, mobility...in our own space, away from everything. Do you really think people are going to give that up?

I challenge anyone who proposes that citizens give up their cars to this: (Are you listening Sam and Raul?)

Try this:

Give up your car right now, for one week.

Nobody in your family can drive a car to work, to the doctor, dentist, food shopping, kids to school, visiting family or friends, no driving to restaurants, the beach, or Napa.

Will you do this??? Of course you won't, because you can't!!!

You need your car. So do I and most everyone else in San Jose, including most tenants in apartments!

So stop imposing your Social Engineering Policies on everyone, with an elitist policy of 'we get our cars, but they can't have theirs'. Demand developers provide a proper number of parking spaces in every project or don't build it.

Walter Soellner
South University Neighborhood Association Board Member

--

Remember: A good book is a friend forever!

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Blanco, Maira

From: Sheila McGann-Tiedt <smcgantiedt@yahoo.com>
Sent: Tuesday, June 15, 2021 9:06 AM
To: yogosak@aol.com
Cc: waltersoellner@gmail.com; Blanco, Maira; Ceja, Patricia; sam@liccardoformayor.com; admin@sjsun.org; board@preservation.org; garyrhubbard@comcast.net; gilda98@comcast.net; eckstone@gmail.com; linda_eckstone@yahoo.com; david@webdogs.com; annasoellner@gmail.com; sysoellner@gmail.com; alanamerian@aol.com; LAmes@aol.com; markrw@sprynet.com; winslowfuerst@yahoo.com; rousbk@sbcglobal.net; reddeb1@pacbell.net; klifeson@pacbell.net; mtersini@aol.com; craig@yeutterville.com; susan@yuendesigins.com; alan.gouig@gmail.com; homes@shannadesai.com; cshep77@gmail.com; Paul.Fong@evc.edu; ronlevesqu@aol.com; mjh@me.com; chaplainkathey@gmail.com; jessica.zenk@gmail.com
Subject: Re: Cars in San Jose

[External Email]

Thanks Alice and Walter. We will not get out of cars until we have adequate public transportation and safe alternatives. What are our leaders thinking as parking gets tougher? Do they think people will want to drive downtown from other areas only to find no available parking? Do they think that after an evening out people want to hop the #23 bus at 11.00 pm? Really, businesses need practical parking solutions as do residents and visitors. I'm all for reducing the carbon footprint and support bicycles but the plan for parking must be realistic. I'm afraid that the city is well on its way to making the problem of a thriving downtown even worse.

Sheila McGann-Tiedt

On Jun 14, 2021, at 7:13 PM, yogosak@aol.com wrote:

Walter--You have touched on a problem that has given me a good deal of concern. Some 102 parking spaces were removed from use on San Salvador around the university in the interest of installing bike lanes. This practice has not taken the lives of students into consideration. Not every student lives in the dorms; some live at a distance in their family homes and drive to part-time jobs after classes. The distances are often too great to undertake on a bicycle.

Every time I am driving around San Jose, I count the bicyclists and skateboarders I see using the bike lanes. On a good day, I see 5. How long before "if you build it, they will come" kicks in? Don't count me in that "they." Early on, Sam Liccardo (and others I know) were in collisions with drivers while riding their bikes. While I don't wish that pain on Sam or anyone else, I shudder at the thought that it could have been me as such a collision would have ended the independent life I currently enjoy.

This is not a city with adequate public transportation. San Francisco, by contrast, is and an apartment dweller can live without a car, taking public transport and renting a car for occasional trips out of the city. I don't foresee that lifestyle developing in San Jose in the near future.

Minimally, developers should be required to provide adequate parking spaces in the buildings they construct.

Also, I would like to see some consideration given to the ideas that Kathey Crowe has mentioned in providing transportation for seniors. Lastly, I would like to see attention given to providing affordable food stores, drugstores, and other services within walkable distance downtown. One of my elderly friends who lived downtown was indignant that the Walgreen's on 2nd Street was closed while the administration crowed about the abundance of bars and restaurants downtown.

The city's priorities need to be brought in line with reality not dreams of the future.

Alice Gosak

-----Original Message-----

From: walter soellner <waltersoellner@gmail.com>

To: Maira.Blanco@sanjoseca.gov; Ceja, Patricia <Patricia.Ceja@sanjoseca.gov>; Sam Liccardo for Mayor of San Jose <sam@liccardoformayor.com>; SUN Admin <admin@sjsun.org>; PACSJ Board <board@preservation.org>

Cc: Gary Hubbard <garyrhubbard@comcast.net>; Gilda Forrester <gilda98@comcast.net>; Dr Stephen Eckstone <eckstone@gmail.com>; Linda Eckstone <linda_eckstone@yahoo.com>; David Savage <david@webdogs.com>; Anna Soellner <annasoellner@gmail.com>; Sandra Soellner <sysoellner@gmail.com>; Alan Amerian <alanamerian@aol.com>; Larry Ames <LAmes@aol.com>; Mark Williams <markrw@sprynet.com>; greg winslow <winslowfuerst@yahoo.com>; Russell Kriegel <rousbk@sbcglobal.net>; Deborah Hudson <reddeb1@pacbell.net>; Thompson Cristin <klifeson@pacbell.net>; Mark Tersini <mtersini@aol.com>; Craig Yeutter <craig@yeutterville.com>; Susan Yuen <susan@yuendesigns.com>; Gosak, Alice <yogosak@aol.com>; Alan Gouig <alan.gouig@gmail.com>; Shanna Desai <homes@shannadesai.com>; Clarice Shephard <cshep77@gmail.com>; Fong, Paul J. <Paul.Fong@evc.edu>; Ron Levesque <ronlevesqu@aol.com>; Michael hoffinger <mjh@me.com>; Kathleen Crowe <chaplainkathey@gmail.com>; Jessica Zenk <jessica.zenk@gmail.com>

Sent: Mon, Jun 14, 2021 4:07 pm

Subject: Cars in San Jose

Greetings:

Both Raul and Sam have projected a policy of reducing car ownership/use in San Jose, by promoting developers and public policy for new apartment buildings to have few if any parking spaces for the tenants of these high rises.

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You need your car. So do I and most everyone else in San Jose, including most tenants in apartments!

So stop imposing your Social Engineering Policies on everyone, with an elitist policy of 'we get our cars, but they can't have theirs'. Demand developers provide a proper number of parking spaces in every project or don't build it.

Walter Soellner

South University Neighborhood Association Board Member

--

Remember: A good book is a friend forever!

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

July 4, 2021

Steve Cohen
Mojmir Properties LLC
470 S 3rd Street #1
San Jose, CA 95112
slc91@yahoo.com

(This document is a cumulation of feedback from other stakeholders affected by this project)

**Problems with the DEIR
The Mark Residential
SP20-021**

I: 3-story parking garage surrounded on 3 sides by residential properties.

- 1- There are no visuals of the outside of the parking structure.
- 2- There are no evaluations of the impact of the structure concerning aesthetics, sound from cars moving, alarms going off, headlights at all hours beaming into neighboring apartments.
 - a. Any garage structure must be open aired because of car fumes. Without an enclosed structure, it is impossible to mitigate any of these issues.
 - b. The existing properties are all structures that do not have air conditioning so windows are open at night increasing all negative impacts.

2040 General Plan "Ensure that garage lighting does not impact adjacent uses....avoid impacts of headlights on adjacent land uses" (p.13).

II: Parking alternative not thoroughly addressed.

- 1-The DEIR does not address whether the off-site parking proposal fulfills the city requirement adequately.
 - a. The city requirement of 192 off-street parking (p.3). The project proposal is 172 parking spaces, below the requirement.
 - b. The proposed off-site location on San Fernando Street is .5 miles from the project site (google maps).
 - c. The San Fernando location property is not owned by the developer and there is no guarantee that the San Fernando parking spaces will be available for the lifespan of the proposed project
 - d. There are limited hours when the San Fernando location is accessible for vehicles.
- 3- The project proposes removing the property from the permit parking program so as not to increase the demand on already limited permit parking space availability.
 - a. The DEIR does not acknowledge this impact on the program.
 - i. Although the developer is agreeable to take the project out of the eligibility for permit parking, the city regulations do not allow them to do so.

III: Location alternative

Summary of alternatives (page x):

1- “since there are historic buildings throughout downtown, it is unlikely that a new location would avoid impacts to historic buildings”

This comment must be stricken from the DEIR. There are not historic buildings throughout downtown. The proposed project site has one of the highest concentration of historic structures in the downtown core and the lowest profile as none are more than 3 stories high.

III: Project Description, Amenity Spaces

Amenity Space for residents (section 2.2, p. 3) is not properly addressed in the DEIR.

1-Proposed courtyards, three of which are on the third floor facing the surrounding residences. There is also one on the roof.

- a. The third-floor courtyards are, like the parking garage, surrounded by existing residential units. The DEIR must address the noise and light issue for the existing properties.
- b. There is also a privacy issue since the patrons on the courtyards would be looking into the windows of the existing residences. The existing properties are all structures that do not have air conditioning so windows are open at night increasing noise impacts.
- c. Noise issues are relevant to the rooftop courtyard also.

IV: Mitigation Measures (p. 87)

1-Construction noise on existing Tenants not addressed properly. “Code Enforcement should respond to neighborhood complaints”.

- a. This is reactive and not proactive.
- b. Planning and Code Enforcement is presently 23 % understaffed and over 3,400 complaints behind

2-San Jose Municipal code (p. section 3.4.1, p.80) allows for construction from 7am to 7pm Monday thru Friday.

- a. There is no mention in the DEIR of reducing the hours to accommodate the residences on the South, North or West side of the project. The hours of operation are not presently required in the construction mitigation plan (p. 93-95, 97).
- b. Work should be limited to 8am to 5pm Monday thru Friday with penalties and possible permit revocation for violations as part of the construction mitigation section of any work permit.
 - i. This should also include construction worker parking.

V: Shading Analysis section 4.11.2, p, 88. 9 (figure 4.11-1).

1-The DEIR states that there are no solar collectors that would be affected by the project. This is incorrect as there are solar collectors on the carport of 470 S 3rd Street that would be shaded March/September, Equinox, 9am to noon, June 21st Summer Solstice 9am to noon, Dec 21st Winter Solstice 9am to noon.

2-The DEIR should consider shading with the impact of the surrounding residences and not just in relation to public parks and open spaces. Shading extends the entire block length on the North, East and West at different periods of the year for extended intervals.

VI: Historic Evaluation Appendix C:

- 1- The Griffith Apartments at 405 South 4th street is missing from the historic analysis.
- 2- It should also be considered with the shading analysis concerning negative impacts on the property.

VII: Downtown Historic Design Guidelines (p. 57-62).

Analysis (p.62). by Treanor HL (consultants)

- 1- “The proposed project would not impact the integrity of the adjacent historic resources and the resources would continue to convey their significance”.
 - a. This conclusion was made without complete information of the projects impact to the existing historic neighborhood.
 - i. There are no designs showing the view from William Street looking north or South 2nd or 3rd Street looking east. These streets are historic bldgs. That are primarily 2 stories tall which will have a backdrop of a glass, stucco and concrete building 23 stories tall.
 - ii. No reasonable person could conclude that there is not an impact on the integrity of the buildings in context of the historic intensity of the neighborhood as outlined in the DEIR. As an example, look at the negative impact the Graduate bldg. on S 3rd Street and San Carlos Street has on the Victorians across the street which are left in total darkness in the middle of the day most of the year.

2004 San Jose Downtown Historic Design Guidelines (p. 57 -62).

There are four applicable historic guidelines. The DEIR claims the project conforms to two of the four. Actually, it does not comply with any of them.

1-Lot Pattern : “Not compatible with the lot pattern guidelines”

2-Massing: “The building design would not be consistent with the massing element of the Historic guidelines”.

3-Entries: “metal awnings at the front façade which would provide a compatible pedestrian scale”

Analysis claims it is consistent with the guidelines, I STRONGLY Disagree.”

4-Exterior Material: ”new building materials should match historic materials....be compatible in scale, proportion, design, color finish, texture, durability.”

“ analysis claims the proposed building complies” but this is impossible since there are not structures in scale or proportion to what is being proposed.

VIII: Project Objectives

1-This project does NOT conform with the Envision San Jose 2040 General Plan as claimed in item 7.2 (p. 102).(Comments are below)

Envision San Jose 2040 General Plan

- “protect the quality of existing neighborhoods, while also enabling the development of new urban village areas” (P. 16).”
 - Proposed project has serious negative effects on the neighborhood which can only be mitigated with the 6-story alternative as stated in the DEIR.
- “protect residential neighborhoods from the encroachment of incompatible activities or land uses which may have a negative impact on the living environment”. (VN1.11, p.5).
 - This project encroaches on the existing neighborhood by it’s scale and scope.
- Design new public and private development to build upon the vital character and desirable qualities of existing neighborhoods” (VN1.12, p.5).
 - This project does not conform to this requirement.
- “Apply strong design controls for all development projects.....for the development and enhancement of community character and for the proper transition between areas with different types of land uses” (CD1.1 p. 11).
 - The controls need to be applied through this DEIR with a more thorough review and more than one zoom meeting with the neighborhood and more reliable community outreach and communication.
- “..... creation of economically, culturally, and demographically diverse and integrated communities” (H-1.1, p. 29).
 - This area is already saturated with student housing.

From: [Blanco, Maira](#)
To: [Fiona Phung](#)
Subject: FW: Mark Towers DSEIR SP20-021 Comments
Date: Wednesday, July 7, 2021 1:26:57 PM
Attachments: [Mark Project NOP 9-30-20.pdf](#)

From PAC*SJ.

From: Ben Leech <ben@preservation.org>
Sent: Wednesday, July 7, 2021 12:41 PM
To: Blanco, Maira <Maira.Blanco@sanjoseca.gov>
Cc: Meiners, Laura <Laura.Meiners@sanjoseca.gov>
Subject: Mark Towers DSEIR SP20-021 Comments

[External Email]

Dear Ms. Blanco,

Thank you for extending the opportunity to comment on the DSEIR for the Mark Residential tower project proposed for 459-485 S. 4th Street. PAC*SJ provided previous comments during the NOP scoping period, and unfortunately, many of the concerns expressed in those comments are still applicable and unanswered (letter attached for reference, and excerpted below). Within the last few weeks, PAC*SJ has also been contacted by numerous members and neighbors with concerns about the project's siting, scale, public outreach process, adjacency to historic resources, and failure to comply with applicable Downtown Historic Design Guidelines (2004) and Downtown Design Guidelines (2019). Despite the DSEIR's clear admission that the project is incompatible with its surrounding historic context, the document nevertheless concludes that the project will have no adverse impact to historic resources and no obligation to mitigate adverse impacts. This is perplexing conclusion and demands a clear justification.

Equally troubling is the description of the project as an "infill site," given that it proposes the demolition of three existing structures, one of which is an acknowledged Structure of Merit on the City's Historic Resources Inventory. Our understanding of the term "infill" more accurately applies to development on vacant or undeveloped parcels within otherwise developed areas, such as vacant lots, surface parking areas, or developed parcels containing large open areas, and *not* a development that both demolishes existing historic structures, consolidates multiple lots, and is massively out-of-scale with its surrounding historic context. As all parties acknowledge, numerous other high-rise developments have been or will soon be proposed in the immediate neighborhood, which stands today as a transitional downtown gateway of low-rise residential and mixed-use structures representing a variety of scales and building types, including numerous designated and potential City Landmarks and one established City Landmark District. In this context, a forthright definition of "infill" development vs "teardown" development is of paramount importance.

Thank you and we look forward to the project's continued review.

Previous DSEIR Scoping Comments (9/30/20):

If constructed as proposed, the Mark Project would have profound impacts on the development patterns, demographic makeup, visual characteristics, and functionality of the surrounding neighborhood. These myriad impacts—both positive and negative, intended and unintended, immediate and cumulative—must be weighed against the project's own stated objectives and the objectives of the Envision San José 2040 General Plan.

*In this context, PAC*SJ has identified three areas of concern that warrant detailed analysis in the DSEIR and subsequent project review by the Planning Commission and City Council. First is the applicant's claim that the height of the project—acknowledged by all parties to be vastly out of scale with its current surroundings—is a necessary to address the City's housing crisis. Given that the proposed design is very specifically tailored to a dormitory-style student housing market, with correspondingly minimal parking, common areas, or other amenities, it is important to acknowledge that the project is not designed to accommodate the needs of families, senior citizens, low or moderate income workers, or any other citizens disproportionately affected by the current housing crisis. While high-rise student housing may be viable from a strict financing perspective under current market conditions, this does not guarantee that long-term demand exists for such a narrowly-tailored housing product. The building's massive scale is an acknowledged point of public controversy with potentially significant negative impacts on the surrounding neighborhood. Any potential benefits of this increased density would be forfeited if the building proved chronically underoccupied. The DSEIR and subsequent City review should therefore independently verify the project's market viability and explore feasible alternatives that would 1) reduce the project's height, and/or 2) increase the project's suitability for a broader range of tenants.*

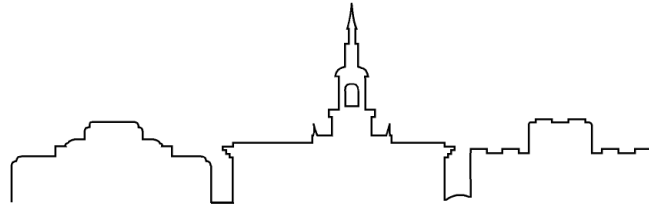
*Second, the applicant claims that the project will benefit the preservation of surrounding historic resources by concentrating development on the project site and reducing development pressure elsewhere. This is an aspirational claim at best and disingenuous at worst. Common sense would suggest that the project will just as likely increase development pressure on surrounding historic resources, the majority of which (as identified in TreanorHL's June 20, 2020 Draft Historic Resources Assessment) are currently unprotected from demolition and redevelopment. If preservation of these resources is truly a priority, as PAC*SJ believes it should be, the DSEIR and subsequent City review should include analysis of the potential cumulative effects of continued high-rise development in the vicinity and a proactive strategy for mitigating its impacts. This strategy might include the establishment of new or expanded historic districts or conservation areas, coordinated multi-project mitigation action plans, and strategic limits on parcel consolidations. Because the Mark Project proposes and requires approval for the consolidation of two existing parcels, decision-makers and the general public would benefit from a comparative DSEIR analysis of feasible project alternatives where such discretionary approval is not granted.*

*Finally, PAC*SJ is concerned by the proposed demolition of the existing buildings on the project site, particularly the Doerr/Hollister House (c. 1900, 459 S. 4th) and the Spanish Colonial Revival apartments at 467 S. 4th (1939), listed on the City's Historic Resources Inventory as a Structure of Merit and an Identified Structure, respectively. While we generally concur with TreanorHL's assessment that none of the existing structures are likely eligible for historic designation at the local, state, or federal level, we nevertheless encourage the project applicant to explore all feasible options*

for their preservation, relocation or salvage. We are also concerned by potential adverse impacts to the immediately adjacent City Landmark Rucker Mansion (418 S. Third Street) and the City Landmark Mojmir Apartments (470 S. Third Street). We insist that the proposed project conform to all applicable City standards and guidelines for new construction adjacent to historic resources, including relevant setback requirements. We do not believe the current design conforms to these standards.

Ben Leech
Executive Director
Preservation Action Council of San Jose

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PRESERVATION ACTION COUNCIL OF SAN JOSE

Dedicated to Preserving San Jose's Architectural Heritage

September 30, 2020

Transmitted via e-mail: Maira.Blanco@sanjoseca.gov

Maira Blanco

Environmental Project Manager

City of San José Department of Planning, Building and Code Enforcement

200 East Santa Clara Street, 3rd Floor Tower

San José CA 95113-1905

Re: The Mark Project (SP20-021) DSEIR Scoping Comments

Dear Ms. Blanco,

The Preservation Action Council of San Jose (PAC*SJ) appreciates this opportunity to provide DSEIR scoping comments for the Mark Project at 459-475 S. Fourth Street, which proposes to replace three existing residential buildings constructed between 1900 and 1960 with a 21-story, 222-unit privately-operated student housing tower. Located south of the SJSU campus and southeast of the commercial downtown core, this area of the city represents an established and valued gateway neighborhood of low-rise residential and mixed-use structures representing a variety of scales and building types, including numerous designated and potential City Landmarks and one established City Landmark District. This diversity of building types should be recognized as an asset to the City and its correspondingly diverse composition of its residents. If constructed as proposed, the Mark Project would have profound impacts on the development patterns, demographic makeup, visual characteristics, and functionality of the surrounding neighborhood. These myriad impacts—both positive and negative, intended and

History Park, 1650 Senter Road, San Jose, CA. 95112

www.preservation.org • Tel: (408) 998-8105 • info@preservation.org

PACSJ is a 501 (c) 3 non-profit organization. EIN: 77-0254542

unintended, immediate and cumulative—must be weighed against the project’s own stated objectives and the objectives of the Envision San José 2040 General Plan.

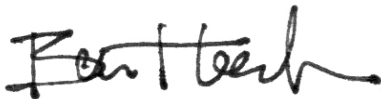
In this context, PAC*SJ has identified three areas of concern that warrant detailed analysis in the DSEIR and subsequent project review by the Planning Commission and City Council. First is the applicant’s claim that the height of the project—acknowledged by all parties to be vastly out of scale with its current surroundings—is a necessary to address the City’s housing crisis. Given that the proposed design is very specifically tailored to a dormitory-style student housing market, with correspondingly minimal parking, common areas, or other amenities, it is important to acknowledge that the project is not designed to accommodate the needs of families, senior citizens, low or moderate income workers, or any other citizens disproportionately affected by the current housing crisis. While high-rise student housing may be viable from a strict financing perspective under current market conditions, this does not guarantee that long-term demand exists for such a narrowly-tailored housing product. The building’s massive scale is an acknowledged point of public controversy with potentially significant negative impacts on the surrounding neighborhood. Any potential benefits of this increased density would be forfeited if the building proved chronically underoccupied. The DSEIR and subsequent City review should therefore independently verify the project’s market viability and explore feasible alternatives that would 1) reduce the project’s height, and/or 2) increase the project’s suitability for a broader range of tenants.

Second, the applicant claims that the project will benefit the preservation of surrounding historic resources by concentrating development on the project site and reducing development pressure elsewhere. This is an aspirational claim at best and disingenuous at worst. Common sense would suggest that the project will just as likely increase development pressure on surrounding historic resources, the majority of which (as identified in TreanorHL’s June 20, 2020 Draft Historic Resources Assessment) are currently unprotected from demolition and redevelopment. If preservation of these resources is truly a priority, as PAC*SJ believes it should be, the DSEIR and subsequent City review should include analysis of the potential cumulative effects of continued high-rise development in the vicinity and a proactive strategy for mitigating its impacts. This strategy might include the establishment of new or expanded historic districts or conservation areas, coordinated multi-project mitigation action plans, and strategic limits on parcel consolidations. Because the Mark Project proposes and requires

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Sincerely,

A handwritten signature in black ink, appearing to read "Ben Leech". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ben Leech
Executive Director
Preservation Action Council of San Jose

From: [Blanco, Maira](#)
To: [Fiona Phung](#)
Subject: FW: Response to DEIR and city exemptions
Date: Wednesday, July 7, 2021 3:50:32 PM

Hi Fiona,

Steve's adding on to his letter, please see below.

Thanks,

Maira

From: Steve Cohen <slc91@yahoo.com>
Sent: Wednesday, July 7, 2021 3:42 PM
To: Meiners, Laura <Laura.Meiners@sanjoseca.gov>; Blanco, Maira <Maira.Blanco@sanjoseca.gov>; Van Der Zweep, Cassandra <Cassandra.VanDerZweep@sanjoseca.gov>
Subject: Response to DEIR and city exemptions

[External Email]

Hi Laura,

Please add these comments to the DEIR in response to your e-mail to me. also, Please send me any other exemptions that have been requested by the developer.

Summary: It is clear in your exemption analysis that, as you state, there are several issues due to the land and lot location that, to make this building fit the project needs several exemptions. How many exemptions are too many where we reach the point that there is no need for any guidelines in the first place. It is obvious that the developer is trying to fit a circle in a square at the expense of the existing neighborhood.

The proposed concrete wall around the parking garage is not acceptable. Either it is 3 stories high which would be aesthetically disgusting or it is not 3 stories high and would not mitigate the sound, gas fumes and headlight issues.

Site and Architectural Design exemption

This exemption is not acceptable because you are not recognizing 141 East William Street which, as noted in your historic analysis, is eligible for San Jose Landmark status due to the architect and the architecture.

Standard and Active Frontage exemption

This exemption is not acceptable. The guidelines and the DEIR not the reduced set-back in the front of the project in relation to the existing properties. The distancing issue is caused due to the project's size not fitting the lot or neighborhood. With a 5 foot setback and parking garages this dramatically impacts the consistent frontage of the other bldgs. along 4th street and impedes the activity level on the street.

Thank you,

Steve Cohen
Mojmir Properties LLC

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Appendix B: Figures 2.2-6 and 2.2-7



Source: BDE Architecture, November 4, 2020.

RENDERING 1 - NORTH AND EAST ELEVATIONS

FIGURE 2.2-6



SOUTH ELEVATION



WEST ELEVATION

Source: BDE Architecture, November 4, 2020.

RENDERING 2 - SOUTH AND WEST ELEVATIONS

FIGURE 2.2-7