Draft Supplemental Environmental Impact Report

Icon-Echo Mixed-Use Project

File Nos.: SP21-031, T21-033, & ER21-134

SCH No.: 2021090554

Prepared by

CITY OF SAN JOSE

CAPITAL OF SILICON VALLEY

In Consultation with

50 YEARS EST. 1972 DAVID J. POWERS & ASSOCIATES, INC.

ENVIRONMENTAL CONSULTANTS & PLANNERS

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SUMMARY

The site is currently developed with a gas station, church, surface parking lot, and three commercial buildings. The project proposes to construct two towers (an office tower and a residential tower) connected via a podium on floors one to four and would include commercial condominiums. The following is a summary of the significant impacts and mitigation measures addressed within this Draft SEIR. The project description and full discussion of impacts and mitigation measures can be found in *Section 2.0 Project Description* and *Section 3.0 Environmental Setting, Impacts, and Mitigation*, including impacts determined to be significant and unavoidable for Cultural Resources (*Section 3.3*) and Land Use and Planning (*Section 3.5*).

Significant Impacts	Mitigation Measures
Air Quality	
Impact AIR-1: Construction activities associated with the proposed project would expose the maximum exposed individual (MEI) to a cancer risk of 42.39 cases per one million for infants which exceeds the Bay Area Air Quality Management District (BAAQMD) significance threshold of 10 cases per one million. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**	**MM AIR-1.1:** Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan to the Director of Planning or Director's designee of the City of San José Department of Planning, Building and Code Enforcement that includes information in sufficient detail as to how the project applicant and/or its contractor shall meet the following engine requirements and enhanced just control measures. The plan shall be accompanied by a letter signed by an air quality specialist. **Engine Requirements:** Verification that the equipment included in the plan meets the standards set forth below: • All construction equipment (larger than 25 horsepower) operating on-site for more than two days continuously (or 20 hours total) shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 final or interim emission standards for particulate matter (PM_{10} and $PM_{2.5}$). • If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieves a 77

Significant Impacts	Mitigation Measures
	percent reduction in particulate matter exhaust. • Use of alternatively fueled or electric equipment. • Stationary cranes and construction generator sets shall be powered by electricity. As an alternative to the measures above, the project applicant could request a plan from a qualified air quality specialist that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 77 percent or greater. The plan shall be submitted to the City of San José Director of Planning, Building and Code Enforcement ort the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest). **Enhanced Dust Control Measures**: The project applicant shall implement the following BAAQMD enhanced dust control requirements during construction of the project: • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 miles-per-hour (mph). • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

Significant Impacts	Mitigation Measures
	• All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. • Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph. • Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity. • Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established. • The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time. • All trucks and equipment, including their tires, shall be washed off prior to leaving the site. • Site accesses to a distance of 100 feet from the paved road shall be treated with a six to 12-inch compacted layer of wood chips, mulch, or gravel. • Sandbags or other erosion control measures shall be installed to prevent silt runoff to

Significant Impacts	Mitigation Measures
	public roadways from sites with a slope greater than one percent. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes. Clear signage shall be provided for construction workers at all access points.
Biological Resources	
Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**	**MM BIO-1.1:** Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive. If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/ construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest. The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction. Prior to any tree removal, or approval of any demolition or grading permits (whichever

Significant Impacts	Mitigation Measures
	occurs first), the applicant shall submit the ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.
Cultural Resources	
Impact CUL-1: Construction activities on-site could uncover historic-era archaeological resources associated with pre-1906 earthquake residential and commercial activities. **[Same Impact as Approved Project (Less than Significant Impact)]**	**MM CUL-1.1: Preliminary Investigation.** After demolition of existing above-ground structures and prior to below-grade demolition/excavation activities, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology, in collaboration with a Native American representative registered with the Native American Heritage Commission (NAHC) 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 complete subsurface exploration at the site, to determine if there are any indications of discrete Native American or historic-era subsurface archaeological features. Exploration of historic-era features shall consist of at least one trench mechanically excavated below existing stratigraphic layers to evaluate the potential for Native American and historic-era resources. If any archaeological resources are exposed, these should be briefly documented, tarped for protection, and left in place. The results of the presence/absence exploration, including any treatment recommendations if any, shall be submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement or Director's designee for review and approval prior to issuance of any grading permit. **MM CUL-1.2: Treatment Plan.** Based on the findings of the subsurface testing (MM CUL-1.1), an archaeological resources treatment plan shall be prepared by a qualified archaeologist in collaboration with a Native American

Significant Impacts	Mitigation Measures
	representative, registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, if necessary. The treatment plan shall consist of permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement or Director's designee prior to approval of any grading permits. The treatment plan shall contain, at a minimum: • Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations. • Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found). • Monitoring schedules and individuals. • Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information). • Detailed field strategy to record, recover, or avoid the finds and address research goals. • Analytical methods. • Report structure and outline of document contents. • Disposition of the artifacts. • Security approaches or protocols for finds. All Native American and historic-era features identified during exploration shall be evaluated by the qualified archaeologist. After completion of the field work, all artifacts shall be cataloged and the appropriate forms shall be completed and filed with the Northwest Information Center

Significant Impacts	Mitigation Measures
	of the California Archaeological Inventory at Sonoma State University. A final report verifying completion of the archaeological resources treatment plan and mitigation program shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for approval prior to issuance of any certificate of occupancy. This report shall contain a description of the mitigation programs and results of the mitigation, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.
Hazards and Hazardous Materials	
Impact HAZ-1: Construction activities associated with the proposed project could expose the public and/or the environment to hazardous materials and/or soil, soil vapor, and/or groundwater contamination from existing and former uses of the site (existing gas station and former automobile repair and service, gas station, drycleaner, and lumber businesses). **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**	**MM HAZ-1.1:** Prior to the issuance of any demolition, grading, or building permits, whichever occurs first, a geophysical survey shall be prepared by an environmental professional to identify the potential presence of underground storage tanks (USTs) below East Santa Clara Street. Additionally, the two UST vent pipes at the southern corner of the project site shall also be analyzed. Any identified objects or structures (e.g., the existing USTs, dispensers, and associated piping) shall be removed in coordination with the San José Fire Department and the Santa Clara County Department of Environmental Health (SCCDEH). As part of the removal, a qualified environmental professional shall collect soil samples below the existing USTs, dispensers, and associated piping, as directed under regulatory oversight by the SCCDEH and/or San José Fire Department, to determine if leaks have occurred. The geophysical survey, soil samples, evidence of regulatory oversight, and confirmation that identified objects have been removed in accordance with San José Fire Department and SCCDEH requirements shall

Significant Impacts	Mitigation Measures
	be provided to the City of San José Director of Planning, Building, and Code Enforcement, or Director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department. **MM HAZ-1.2:** Prior to issuance of any grading permit, the project applicant shall enroll in the SCCDEH Site Cleanup Program. The project applicant shall work under regulatory oversight to determine if additional Phase II soil, soil vapor and groundwater investigations and remediation are required. The project applicant shall provide documents such as a Site Management Plan, Removal Action Plan or equivalent plans as required by the DEH. The Plan(s) and evidence of regulatory oversight shall be provided to the City of San José Director of Planning, Building, and Code Enforcement, or director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department. **MM HAZ-1.3:** As part of the facility closure process for occupants that use and/or store hazardous materials, the project applicant shall ensure that the occupants submit a closure plan that describes required closure activities, such as removal of remaining hazardous materials, cleaning of hazardous material handling equipment, decontamination of building surfaces, and waste disposal practices. The facility closure plans shall be submitted to the San José Fire Department and SCCDEH for review and approval to ensure that the required closure and any necessary site cleanup activities are completed prior to the issuance of demolition, grading, or building permits, whichever occurs first. Evidence of regulatory oversight and documentation of facility closure in compliance with San José Fire Department and SCCDEH requirements shall be submitted to the City of San José Director of Planning, Building, and Code Enforcement, or director's

Significant Impacts	Mitigation Measures
	designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department. **MM HAZ-1.4:** The facility at 147 East Santa Clara Street previously contained three vehicle service bays which contained below-grade hydraulic lifts. Prior to issuance of a grading or building permit, whichever occurs first, a qualified environmental professional shall document that the lifts and oil-water separator have been removed from the site. In addition, the qualified environmental professional shall analyze the soils for potential contamination. Documentation of removal shall be provided to the City of San José Director of Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.
Noise and Vibration	
Impact NOI-1: Mechanical equipment noise levels would exceed the City's 55 dBA DNL threshold defined in General Plan Policy EC-1.3 at the future residential building located across North Fourth Street to the east of the site (Miro Towers/Res-3). **[Less Impact than Approved Project with Mitigation Incorporated (Significant Unavoidable Impact)]**	**MM NOI-1.1:** Prior to the issuance of any building permits, mechanical equipment shall be selected and designed to meet the City's 55 dBA DNL noise level requirement at the nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building façades farthest from the nearest residences), where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning, Building and Code

Significant Impacts	Mitigation Measures
	Enforcement or Director's designee for review and approval prior to the issuance of any building permits.
Impact NOI-2: Construction noise would exceed ambient levels by five dBA for a period of more than one year within 500 feet of residential uses or 200 feet of commercial or office uses, which exceeds the City thresholds defined in General Plan Policy EC-1.7. **[Less Impact than Approved Project with Mitigation Incorporated (Significant Unavoidable Impact)]**	**MM NOI-2.1:** Prior to the issuance of any grading or demolition permits, whichever occurs first, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits for review and approval, whichever occurs first. Consistent with the Downtown Strategy 2040 FEIR, the construction noise logistics plan shall include but is not limited to the following measures: • Construction shall be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses. • The project contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and

Significant Impacts	Mitigation Measures
	muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components. • The unnecessary idling of internal combustion engines shall be prohibited. • Staging areas and stationary noise-generating equipment shall be located as far as possible from noise-sensitive receptors such as residential uses (a minimum of 200 feet, where feasible). • The surrounding neighborhood within 500 feet shall be notified early and frequently of the construction activities. • A "noise disturbance coordinator" shall be designated to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.
Impact NOI-3: Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings within 61 feet of the project site. **[Same Impact as Approved Project (Less Than Significant Impact)]**	**MM NOI-3.1:** Prior to the issuance of any demolition, grading, or building permits, whichever occurs earliest, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The Plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earliest. The Plan

Significant Impacts	Mitigation Measures
	shall include, but not be limited to, the following measures: • A description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. • A list of all heavy construction equipment to be used for this project known to produce high vibration levels (e.g., clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning, Building or Code Enforcement or the Director's designee by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort for reducing vibration levels below the thresholds. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period. • Use of heavy vibration-generating construction equipment shall be prohibited within 61 feet of historic buildings and buildings eligible for listing as historic, if feasible. • Document conditions at all historic structures located within 61 feet of construction prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically: o Vibration limits shall be applied to vibration-sensitive structures located within 61 feet of any construction activities identified as sources of high vibration levels.

Significant Impacts	Mitigation Measures
	○ Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 61 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion. The surveys shall include internal and external crack monitoring in the structure, settlement, and distress, and shall document the condition of the foundation, walls and other structural elements in the interior and exterior of the structure. • Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits. • If vibration levels approach limits, construction shall be suspended and contingency measures shall be implemented to lower vibration or secure affect structures. • Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site. • Conduct a post-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs in accordance with the Secretary of the Interior's Standards where damage has occurred as a result of construction activities.

Significant Impacts	Mitigation Measures
Tribal Cultural Resources	
Impact TCR-1: Construction activities associated with the proposed project could result in the disturbance of previously undocumented tribal cultural resources due to a known village site in the immediate project vicinity. **[New Less Than Significant Impact with Mitigation (Less than Significant Impact)]**	**MM TCR-1.1: Sensitivity Training.** Prior to issuance of any grading permits, the project applicant shall submit evidence to the Director of Planning, Building and Code Enforcement or the Director's designee that an Archaeological Monitoring Contractor Awareness Training was held prior to ground disturbance. The training shall be facilitated by a qualified archaeologist in coordination with a Native American representative from a California Native American tribe that has consulted on the project, is registered with the Native American Heritage Commission (NAHC) for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. **MM TCR-1.2: Monitoring.** A qualified Native American monitor, registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, in collaboration with a qualified archeologist, shall also be present during all earthmoving activities such as, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.

Summary of Alternatives to the Proposed Project

CEQA requires that an EIR identify alternatives to the project as proposed. The CEQA Guidelines state that an EIR must identify alternatives that would feasibly attain the most basic objectives of the project, but avoid or substantially lessen significant environmental effects, or further reduce impacts that are considered less than significant with the incorporation of mitigation. A summary of project alternatives follows. A full analysis of project alternatives is provided in *Section 7.0 Alternatives Analysis*.

Location Alternative

It is reasonable to assume that there are other sites available within the downtown area that could be redeveloped to support the proposed development. To accommodate the project as proposed, it is likely that existing buildings would need to be demolished because of limited undeveloped parcels.

Other sites within downtown that are already owned by the applicant have similar pending development applications.

No Project – No Development Alternative

The No Project – No Development Alternative would retain the existing buildings and parking lot on-site.

Reduced Height of Northern and Southern Towers Alternative

Under this alternative, both towers would be 15 stories tall and connected via a podium on the basement floor to the eighth floor. This alternative would include up to 215 residential units (102 dwelling units per acre), approximately 320,000 square feet of office space, and approximately 8,500 square feet of retail space. The Northern Tower would be a maximum height of 155 feet while the Southern Tower would be a maximum height of 190 feet. Additionally, this alternative would include one level of below-grade parking and up to seven levels of above-grade parking. This alternative would have a construction period in excess of 12 months.[1]

Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback Alternative

This alternative analyzes a residential tower in the same location as the proposed Northern Tower with the height of the building reduced from 268 feet to 70 feet and a 20-foot setback from East St. John Street where a 10-foot street setback is currently proposed. The Northern Tower would be six stories high and connected via a podium on the basement floor to the fourth floor to the Southern Tower. This alternative also proposes a reduction in the width of the building along North Fifth Street facing St. James Park. This alternative would include approximately 36 residential units (17 dwelling units per acre) and would consist of one level of below-grade parking, four levels of above-grade parking, and residential and fitness space on the upper floors (floors five and six). The Southern Tower would remain as proposed. This alternative would have a construction period that exceeds 12 months.[2]

Reduced Height of Northern Tower to 160 Feet and 135 Feet Alternative

This alternative would develop a residential tower in the same location as the proposed Northern Tower with a height of up to 160 feet stepped down to 135 feet along East St. John Street and a 10-foot setback of the building along East St. John Street from a 40-foot podium height. This alternative also proposes a reduction in the width of the building along North Fifth Street facing St. James Park. Under this alternative, the Northern Tower would be approximately 13 and 15 stories high and connect to the Southern Tower via a podium on the basement floor to the fourth floor. This alternative would include approximately 225 residential units (107 dwelling units per acre) and would consist of one level of below-grade parking, four levels of above-grade parking, eight and ten floors of residential space, and one floor of fitness space. The Southern Tower would remain as proposed. This alternative would have a construction period in excess of 12 months.[3]

[1] Ring, Lisa. Urban Catalyst. Personal communication. June 8, 2022.
[2] Ibid.
[3] Ibid.

20-Foot Setback of Northern Tower Alternative

This alternative would propose a residential tower in the same location as the proposed Northern Tower with no height reduction along North Fourth Street and a minor reduction in height along East St. John Street, and a 20-foot setback of the building along East St. John Street from a 40-foot podium height. This alternative also proposes a reduction in the width of the building along North Fifth Street facing St. James Park. Under this alternative, the Northern Tower would be 23 and 25 stories tall and connected to the Southern Tower via a podium on the basement floor to the fourth floor. This alternative would include up to 345 residential units (164 dwelling units per acre) and consist of one level of below-grade parking, four levels of above-grade parking, 18 and 20 floors of residential space, and one floor of fitness space. The Northern Tower would be set back by approximately 20 feet along St. John Street. The Southern Tower would remain as proposed. This alternative would have a construction period in excess of 12 months.[4]

Areas of Public Controversy

Areas of public concern include:

- Potential impacts to previously undocumented tribal cultural resources
- Impacts to the St. James Square City Landmark and National Register Historic District
- Impacts to nearby/adjacent historic structures
- Concurrent construction and conflicts with BART Silicon Valley, Phase II
- Noise and construction dust generation
- Increase in water demand/necessity of a Water Supply Assessment
- Potential to encounter shallow groundwater

[4] Ring, Lisa. Urban Catalyst. Personal communication. June 8, 2022.

SECTION 1.0 INTRODUCTION

1.1 PURPOSE OF THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT

The City of San José, as the Lead Agency, has prepared this Draft Supplemental Environmental Impact Report (SEIR) for the Icon-Echo Mixed-Use Project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines.

As described in CEQA Guidelines Section 15121(a), an EIR is an informational document that assesses potential environmental impacts of a proposed project, as well as identifies mitigation measures and alternatives to the proposed project that could reduce or avoid adverse environmental impacts (CEQA Guidelines 15121(a)). As the CEQA Lead Agency for this project, the City of San José is required to consider the information in the EIR along with any other available information in deciding whether to approve the project. The basic requirements for an EIR include discussions of the environmental setting, significant environmental impacts including growth-inducing impacts, cumulative impacts, mitigation measures, and alternatives. It is not the intent of an EIR to recommend either approval or denial of a project.

In accordance with CEQA, this SEIR provides objective information regarding the environmental consequences of the proposed project to the decisions makers who will be considering and reviewing the proposed project. The CEQA Guidelines contain the following general information of the role of an SEIR and its contents:

> **§15145 – Speculation.** If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.
>
> **§15151 – Standards for Adequacy of an EIR.** An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information that enables them to make a decision that intelligently considers environmental consequences. An evaluation of the environmental effects of the proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection, but for adequacy, completeness, and a good-faith effort at full disclosure.

This SEIR tiers from the Downtown Strategy 2040 FEIR because the project was included in the overall development that was analyzed for that document at a program level. An SEIR is required for this project because project-specific information was not available at the time the Downtown Strategy 2040 FEIR was prepared. An Initial Study prepared for the proposed project (see Appendix A) identified potential significant impacts to air quality, biological resources, cultural resources, hazardous materials, land use, noise and vibration, and tribal cultural resources. Thus, this SEIR to the Downtown Strategy 2040 FEIR has been prepared to address these potential new significant impacts. The SEIR evaluation process is the same as the SEIR process as outlined below.

1.2 SEIR PROCESS

1.2.1 Notice of Preparation and Scoping

In accordance with Section 15082 of the CEQA Guidelines, the City of San José prepared a Notice of Preparation (NOP) for this SEIR. The NOP was circulated to local, state, and federal agencies on September 29, 2021. The standard 30-day comment period concluded on October 29, 2021. However, one agency (Valley Water) requested a one-week extension to provide their comments. In response, the City granted Valley Water's request and extended the deadline to provide their comments to November 5, 2021. The NOP provided a general description of the proposed project and identified possible environmental impacts that could result from implementation of the project. The City also held a public scoping meeting on October 21, 2021 to discuss the project and solicit public input on the scope and contents of this SEIR. The meeting was held virtually, via Zoom at 6:00 PM. Appendix K of this SEIR includes the NOP and comments received on the NOP.

1.2.2 Draft SEIR Public Review and Comment Period

Publication of this Draft SEIR will mark the beginning of a 45-day public review period. During this period, the Draft SEIR will be available to the public and local, state, and federal agencies for review and comment. Notice of the availability and completion of this Draft SEIR will be sent directly to every agency, person, and organization that commented on the NOP, as well as the Office of Planning and Research. Written comments concerning the environmental review contained in this Draft SEIR during the 45-day public review period should be sent via email or mail to:

City of San José, Department of Planning, Building and Code Enforcement
Attn: Shannon Hill, Environmental Project Manager
200 East Santa Clara Street, 3rd Floor Tower
San José, CA 95113-1905
E-mail: Shannon.Hill@sanjoseca.gov

1.3 FINAL SEIR/RESPONSES TO COMMENTS

Following the conclusion of the 45-day public review period, the City will prepare a Final SEIR in conformance with CEQA Guidelines Section 15132. The Final SEIR will consist of:

- Revisions to the Draft EIR text, as necessary;
- List of individuals and agencies commenting on the Draft SEIR;
- Responses to comments received on the Draft SEIR, in accordance with CEQA Guidelines (Section 15088);
- Copies of letters received on the Draft SEIR.

Section 15091(a) of the CEQA Guidelines stipulates that no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings. If the lead agency approves a project despite it resulting in significant adverse environmental impacts that cannot be mitigated to a less than significant level, the agency must state the reasons for its action in writing. This Statement of Overriding Considerations must be included in the record of project approval.

1.3.1 Document Availability

The Draft SEIR and supporting reports for the project can be found on the City's Active EIRs website at www.sanjoseca.gov/activeeirs. The documents are also available for review with an appointment during normal business hours at the City of San José Department of Planning, Building and Code Enforcement, located at City Hall, 200 East Santa Clara Street; or during normal business hours at Dr. Martin Luther King, Jr. Main Library, located at 150 East San Fernando Street. Please contact Shannon Hill, Environmental Project Manager at (408) 535-7872, or by e-mail at shannon.hill@sanjoseca.gov for an appointment request or additional questions, comments, or concerns.

1.3.2 Notice of Determination

If the project is approved, the City of San José will file a Notice of Determination (NOD), which will be available for public inspection and posted within 24 hours of receipt at the County Clerk's Office and Santa Clara County Clerk-Recorder online database and available for public inspection for 30 days. The filing of the NOD starts a 30-day statute of limitations on court challenges to the approval under CEQA (CEQA Guidelines Section 15094(g)).

SECTION 2.0 PROJECT INFORMATION AND DESCRIPTION

2.1 PROJECT LOCATION

The approximately 2.1-acre project site [Assessor Parcel Numbers (APNs) 467-20-079, -081, -060 and a portion of -080] is currently developed with a gas station, church, surface parking lot, and three commercial buildings in downtown San José. The site is bound by East St. John Street to the north, North Fourth Street to the east, East Santa Clara Street to the south, and commercial buildings and a senior apartments to the west. A portion of the project site (APN 467-20-060) is located within the St. James Square City Landmark and National Register Historic District (St. James Square City Landmark District).[5] The project site is also located north of the San José Downtown Commercial National Register Historic District (San José Downtown Commercial Historic District) and near contributing historic structures.[6]

Vehicular access to the project site is currently provided via two full access driveways along East Santa Clara Street, four full access driveways along North Fourth Street, and one full access driveway along East St. John Street. Additionally, one egress only and one ingress only driveway are located along North Fourth Street. Refer to Figures 2.1-1 to 2.1-3 for the Regional, Vicinity, and Aerial Maps.

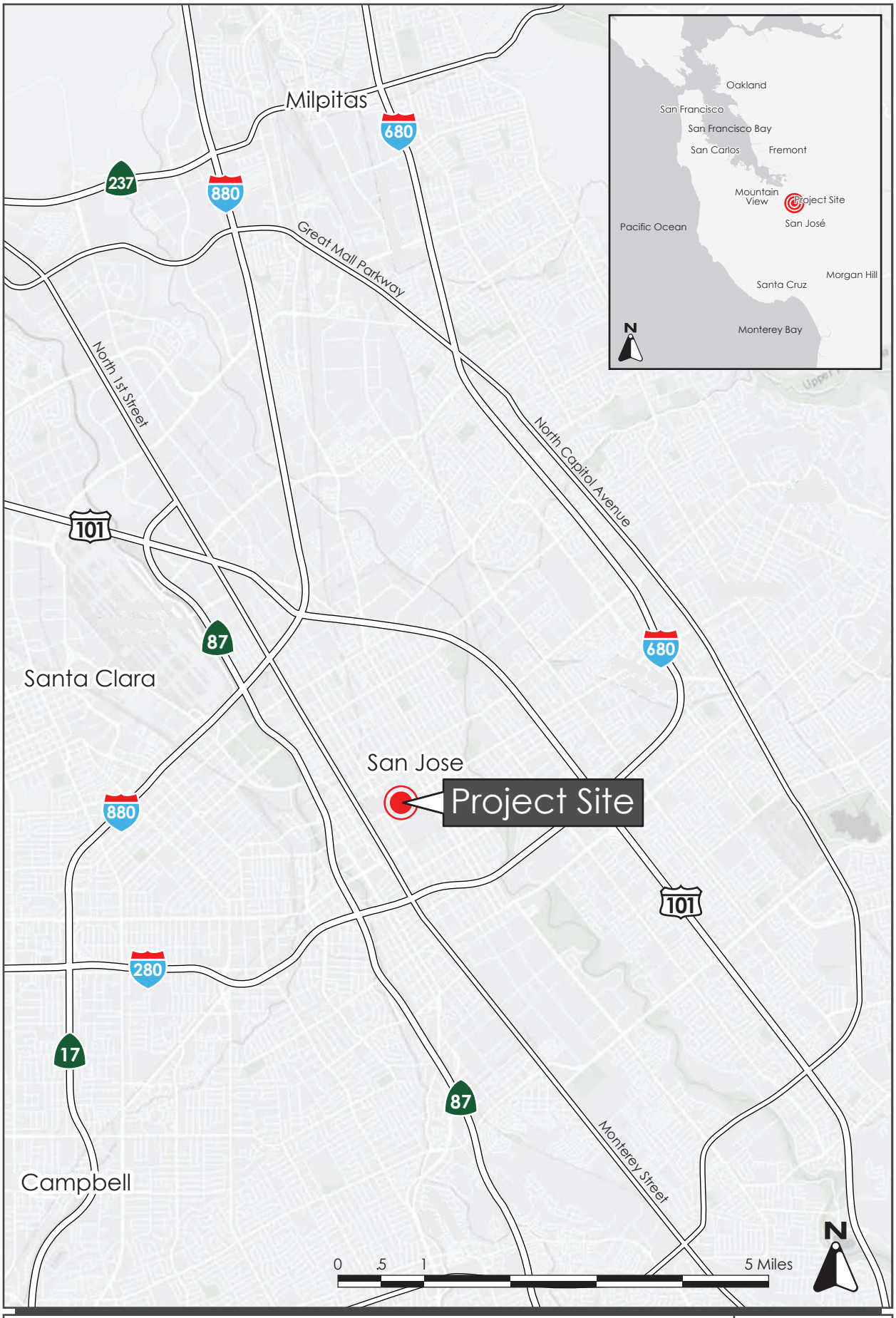
2.2 PROJECT DESCRIPTION

As proposed, the project would demolish the existing parking lot and buildings on-site (totaling approximately 22,527 square feet) and construct two towers (an office tower and a residential tower) connected via a podium on floors one to four and would include up to ten commercial condominiums. Refer to Figures 2.2-1 to 2.2-5 for the site plan and elevations. One level of below-grade parking is proposed across the project site. A total of 992 parking spaces is proposed (630 parking spaces for the office component, 69 parking spaces for the residences, and 263 parking spaces would be shared between the proposed residential and office uses). Of the 992 parking spaces proposed for office space, 30 parking spaces would be allocated for a shared parking agreement with the senior apartments located west of the site at 60 North Third Street. Vehicular access to the site would be provided via one driveway with one inbound lane and one outbound lane along North Fourth Street. Two additional driveways for the loading docks would also be provided along North Fourth Street. The proposed project would have an FAR of 10.9[7] and 198 dwelling units per acre (du/ac).

Northern Tower (Residential)

The Northern Tower would be located on the northern portion of the site at St. John Street and North Fourth Street. The Northern tower would have up to 415 residential units and would be 27-stories tall (25-stories with a two-story penthouse) with a maximum height of 268 feet, including rooftop

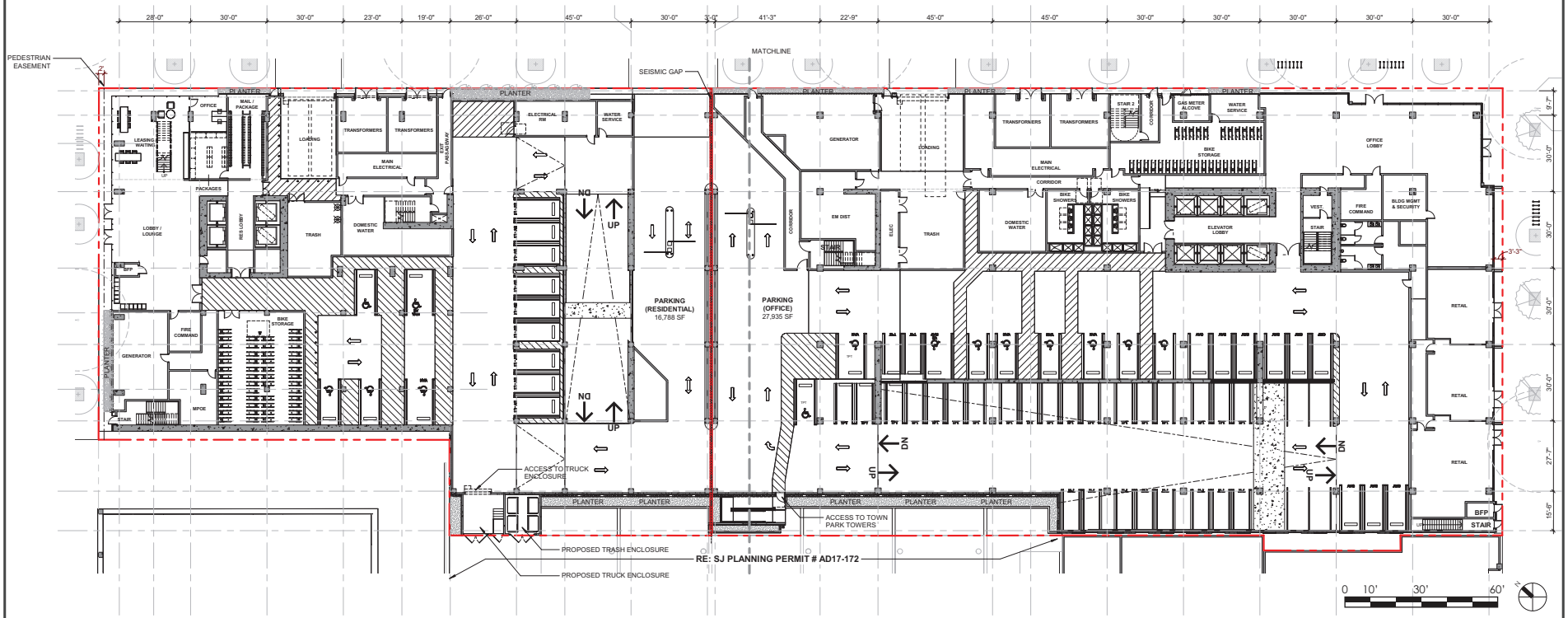
[5] The St. James Square City Landmark District area includes St. James Park and is bounded by North Market Street to the west, part of the North Fourth Street block to the east, and part of the block between North Second and North Third Streets.
[6] The San José Commercial District is comprised of 45 properties (27 contributing structures and 18 non-contributing properties) and is bounded by South First Street to the west, East Santa Clara Street to the north, South Third Street to the east, and East San Fernando Street to the north.
[7] 933,601 square feet proposed project / 91,476 square feet project site = 10.9 FAR



REGIONAL MAP | FIGURE 2.1-1

VICINITY MAP | FIGURE 2.1-2

AERIAL PHOTOGRAPH AND SURROUNDING LAND USES | FIGURE 2.1-3

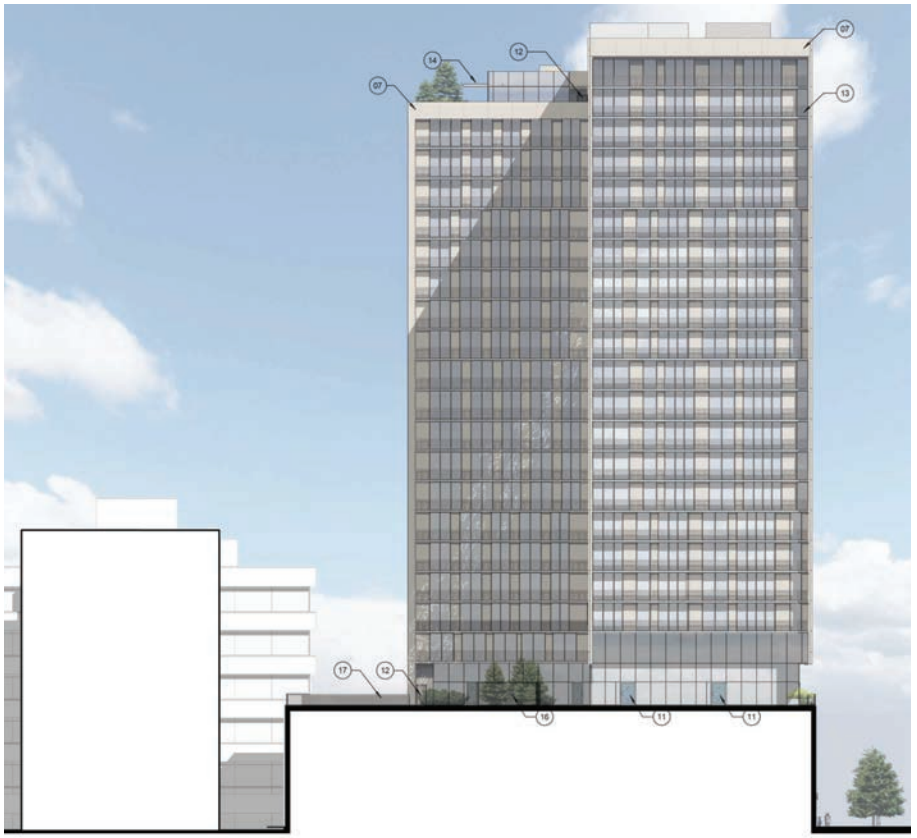


Source: WRNS Studio, March 18, 2022.

SITE PLAN - GROUND LEVEL

FIGURE 2.2-1

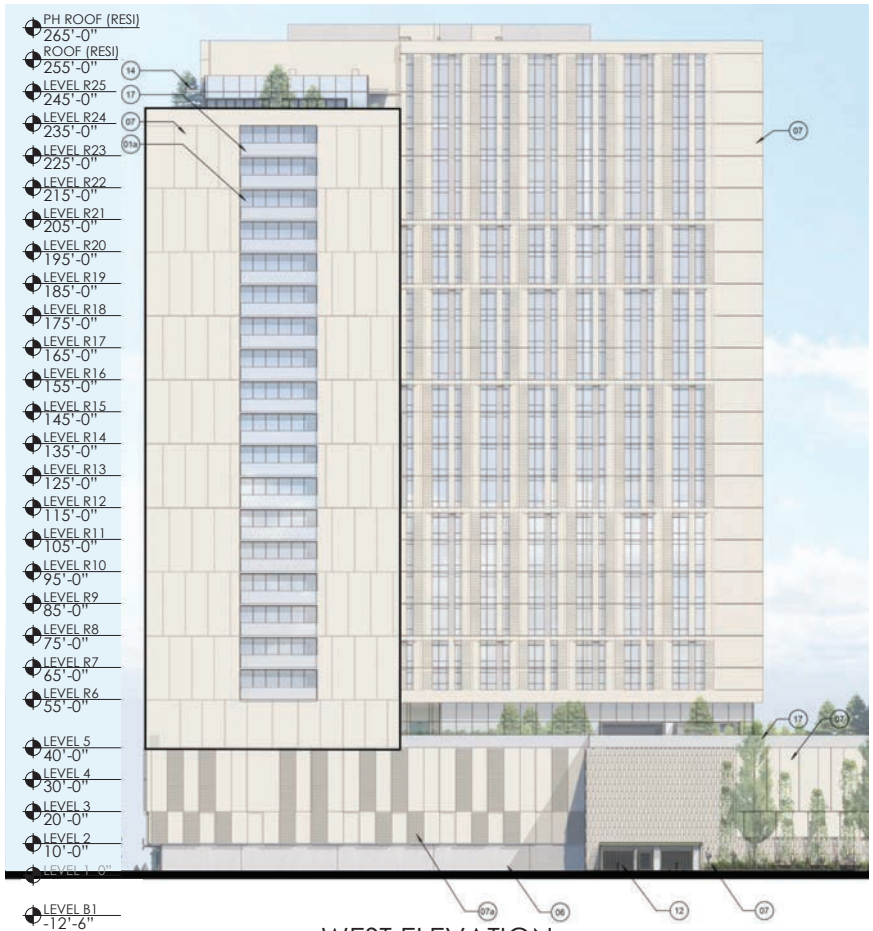
NORTH ELEVATION



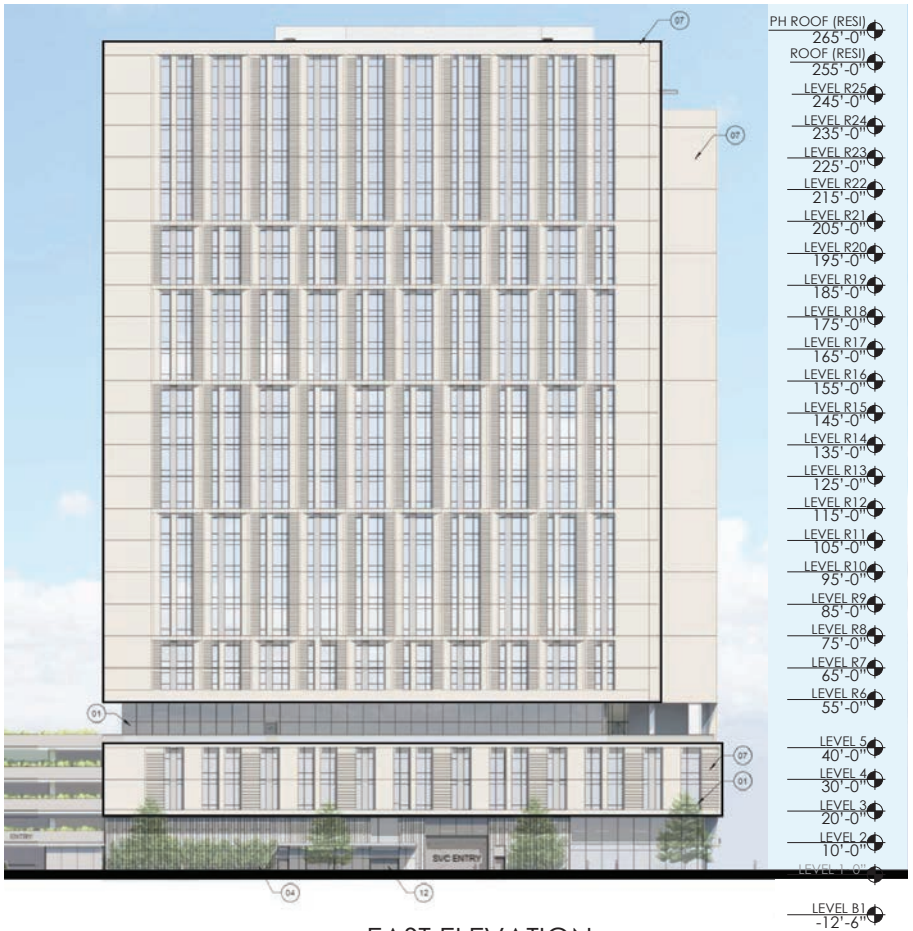
SOUTH ELEVATION

Source: WRNS Studio, January 31, 2022.

NORTHERN TOWER ELEVATIONS - NORTH AND SOUTH | FIGURE 2.2-2



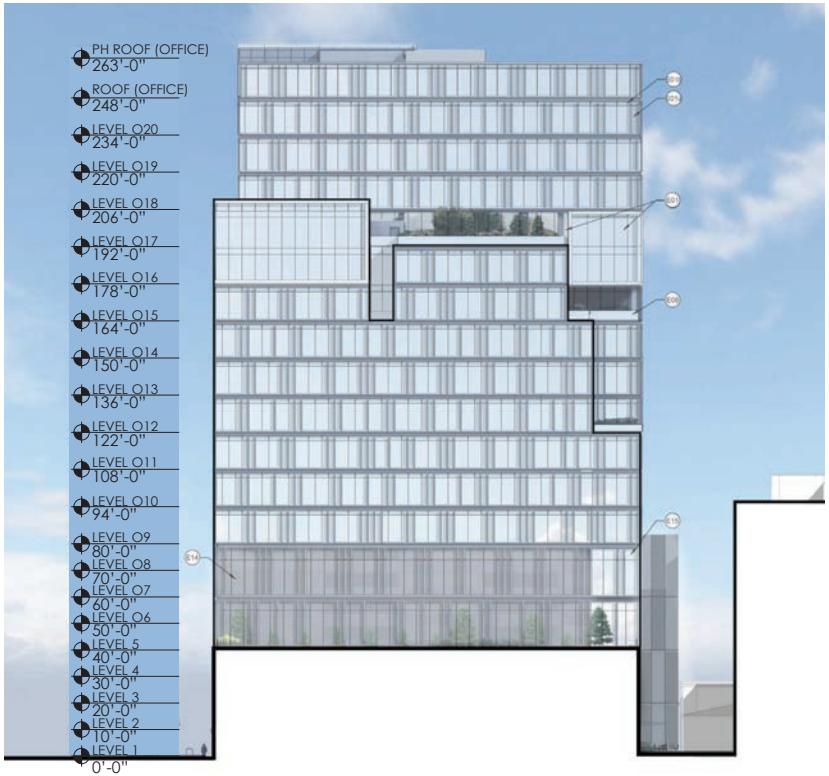
WEST ELEVATION



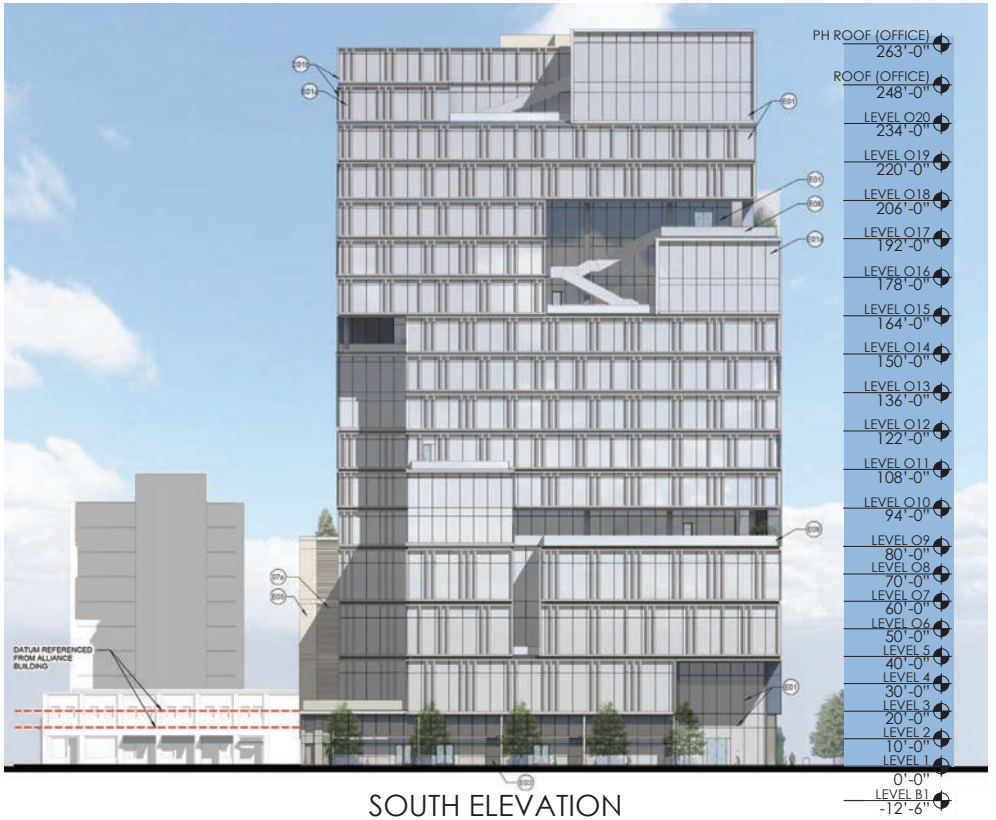
EAST ELEVATION

Source: WRNS Studio, January 31, 2022.

NORTHERN TOWER ELEVATIONS - EAST AND WEST | FIGURE 2.2-3



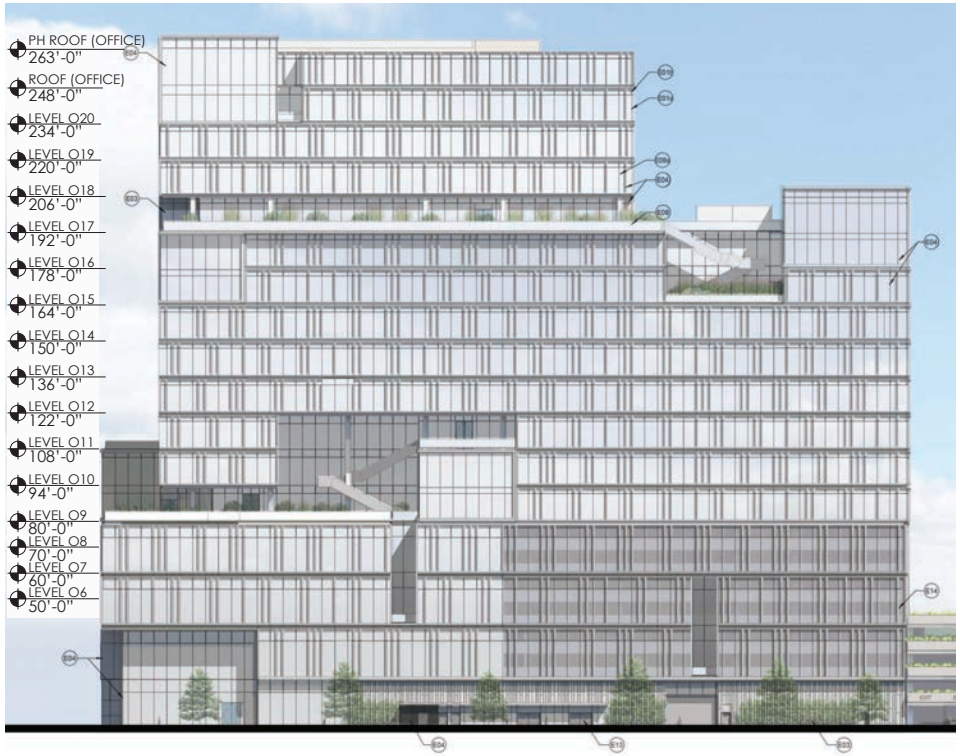
NORTH ELEVATION



SOUTH ELEVATION

Source: WRNS Studio, January 31, 2022.

SOUTHERN TOWER ELEVATIONS - NORTH AND SOUTH | FIGURE 2.2-4



EAST ELEVATION

WEST ELEVATION

Source: WRNS Studio, January 31, 2022.

SOUTHERN TOWER ELEVATIONS - EAST AND WEST | FIGURE 2.2-5

mechanical equipment. Four levels of above-grade parking partially occupied by residential units beneath one level of amenity space, and residential units on the upper floors are proposed. An indoor/outdoor fitness space, amenity deck, swimming pool, barbeque/fire pits, and other on-site amenities are proposed on the fifth floor.

Southern Tower (Office and Retail)

The approximately 525,000-square foot Southern Tower would be located on the southern portion of the site at East Santa Clara Street and North Fourth Street. The tower would be 21-stories tall with a maximum height of 268 feet, including rooftop mechanical equipment. The Southern Tower would consist of eight levels of above-grade parking and office space on the upper floors. Of the eight levels of above-grade parking, floors three, five, and seven would be partially occupied by office space. A total of 8,500 square feet of ground floor retail is proposed along East Santa Clara Street.

2.2.1 Mechanical Equipment

The residential component of the project would include transformers, electrical equipment, and an emergency generator on the ground floor. Solar panels, air cooled chillers, a cooling tower, and air source heat pumps are proposed on the roof of the residential building.

The office component of the project would include transformers, a generator, and electrical equipment on the ground floor. Solar panels, air cooled chillers, air handling units, a pump room, and air source heat pumps are proposed on the roof of the office building.

2.2.2 Green Building Measures

The project would be required to be built in accordance with the California Green Building Standards Code (CALGreen) requirements which includes design provisions intended to minimize wasteful energy consumption and the most recent California Building Code (CBC). Additionally, the project would be designed to achieve Leadership in Energy and Environmental Design (LEED) Silver certification consistent with San José City Council Policy 6-32 (Private Sector Green Building Policy), though no specific building measures have been identified at this time other than the solar panels noted above.

2.2.3 Envision San José 2040 General Plan and Zoning Designation

The site is designated *Downtown* under the City's General Plan and has a zoning designation of *DC – Downtown Primary Commercial*. The Downtown designation includes office, retail, service, residential, and entertainment uses in the downtown. All developments within this designation should enhance the "complete community" in downtown, support pedestrian and bicycle circulation, and increase transit ridership. Residential development within the Downtown designation should incorporate ground floor commercial uses. Under this designation, projects can have a maximum FAR of 30.0 and up to 800 dwelling units per acre.

Under the *DC* zoning designation, development shall only be subject to the height limitations necessary for the safe operation of Mineta San José International Airport. Developments located in this zoning district shall not be subject to any minimum setback requirements.

2.2.4 Construction

The project proposes Monday to Saturday construction on-site from 7:00 AM to 7:00 PM for a period of 36 months starting in January 2023.

2.3 PROJECT OBJECTIVES

Pursuant to CEQA Guidelines Section 15124, the SEIR must identify the objectives sought by the proposed project. The stated objectives of the project proponent are to:

1. Provide a project that meets the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 Plan of locating high density development on infill sites along transit corridors to foster transit use and the efficiency of urban services to strengthen downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José. Specifically, provide high density, high-rise housing in the downtown area in excess of 198 units per acre that is accessible to downtown jobs, retail and entertainment and various modes of public transit. The development of office and retail uses will provide for jobs at this infill location, which will in turn help to support transit use and existing amenities.

2. Support smart growth, and ideally reduce vehicle miles traveled, by adding housing units, office and retail space to a central transit location served by various modes of public transportation such as bikeways, VTA light rail and buses, and within 0.5 miles of a planned BART extension.

3. Create an attractive new building adding to the City's skyline and activating the ground floor with retail and a connected commercial complex.

4. Create a modern Class A office project with large open floor plates consisting of 20,000 to 40,000 square feet. These large floor plates are intended to attract tenants that are in the technology sector that are looking to increase their businesses and increase employment.

5. Provide bicycle parking in excess of City requirements for residents and employees to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community. The commercial building will provide for associated showers and lockers for employee bike commuters. In addition, a bike repair kitchen will be made available to both project residents and employees.

2.4 USES OF THE EIR

This SEIR is intended to provide the City of San José, other public agencies, and the general public with the relevant environmental information needed in considering the proposed project. The City of San José anticipates that discretionary approvals by the City, including but not limited to the following, will be required to implement the project addressed in this SEIR:

- Special Use Permit
- Vesting Tentative Map
- Historic Preservation Permit
- Demolition, Grading, and Building Permit(s)
- Department of Public Works Clearances
- Public Street Improvement Permit

SECTION 3.0 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION

The Initial Study (Appendix A) of this document discusses impacts associated with the following resource areas:

- Aesthetics
- Agricultural and Forestry Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hydrology and Water Quality
- Mineral Resources
- Population and Housing
- Public Services
- Recreation
- Transportation
- Utilities and Service Systems
- Wildfire

This section presents the discussion of impacts related to the following environmental subjects in their respective subsections:

3.1	Air Quality	3.5	Land Use and Planning
3.2	Biological Resources	3.6	Noise and Vibration
3.3	Cultural Resources	3.7	Tribal Cultural Resources
3.4	Hazards and Hazardous Materials		

The Initial Study prepared for the proposed project identified significant impacts to air quality, biological resources, cultural resources, hazards and hazardous materials, land use and planning, noise, and tribal cultural resources. Therefore, the air quality, biological resources, cultural resources, hazards and hazardous materials, land use and planning, noise and vibration, and tribal cultural resources sections are analyzed in detail in this Draft SEIR.

The discussion for each environmental subject includes the following subsections:

Environmental Setting – This subsection 1) provides a brief overview of relevant plans, policies, and regulations that compose the regulatory framework for the project and 2) describes the existing, physical environmental conditions at the project site and in the surrounding area, as relevant.

Impact Discussion – This subsection includes the recommended checklist questions from Appendix G of the CEQA Guidelines to assess impacts.

- **Project Impacts** – This subsection discusses the project's impact on the environmental subject as related to the checklist questions. For significant impacts, feasible mitigation measures are identified. "Mitigation measures" are measures that will minimize, avoid, or eliminate a significant impact (CEQA Guidelines Section 15370).
- **Impact Conclusions** – Because the analysis in this SEIR tiers from the Downtown Strategy 2040 FEIR, the level of impact in the project specific analysis is presented as it relates to the findings of the Downtown Strategy 2040 FEIR. For example, if the conclusion is "Same Impact as Approved Project/Less Than Significant Impact" the project level impact was

found to be less than significant consistent with the finding in the Downtown Strategy 2040 FEIR.

- **Cumulative Impacts** – This subsection discusses the project's cumulative impact on the environmental subject. Cumulative impacts, as defined by CEQA, refer to two or more individual effects, which when combined, compound or increase other environmental impacts. Cumulative impacts may result from individually minor, but collectively significant effects taking place over a period of time. CEQA Guideline Section 15130 states that an EIR should discuss cumulative impacts "when the project's incremental effect is cumulatively considerable." The discussion does not need to be in as great detail as is necessary for project impacts, but is to be "guided by the standards of practicality and reasonableness." The purpose of the cumulative analysis is to allow decision makers to better understand the impacts that might result from approval of past, present, and reasonably foreseeable future projects, in conjunction with the proposed project addressed in this SEIR.

  The CEQA Guidelines advise that a discussion of cumulative impacts should reflect both their severity and the likelihood of their occurrence (CEQA Guidelines Section 15130(b)). To accomplish these two objectives, the analysis should include either a list of past, present, and probable future projects or a summary of projections from an adopted general plan or similar document (CEQA Guidelines Section 15130(b)(1)). This SEIR uses the list of projects approach.

  The analysis must determine whether the project's contribution to any cumulatively significant impact is cumulatively considerable, as defined by CEQA Guideline Section 15065(a)(3). The cumulative impacts discussion for each environmental issue accordingly addresses the following issues: 1) would the effects of all of past, present, and probable future (pending) development result in a significant cumulative impact on the resource in question; and, if that cumulative impact is likely to be significant, 2) would the contribution from the proposed project to that significant cumulative impact be cumulatively considerable?

  Table 3.0-1 provides a summary of the approved but not yet constructed/occupied and pending projects within 0.5 miles radius of the project site.

Table 3.0-1: Summary Project List Within Half-Mile Radius

Name	Location	Description
Approved but Not Yet Constructed/Occupied		
Fountain Alley Office	26 South First Street	Construction of an approximately 91,992-square foot, six-story commercial building with office and retail uses.
Parkview Towers	Northeast corner of First Street and St. James Street intersection	Construction of two towers (up to 220 units) and up to 18,000 square feet of commercial space.
NSP3 Tower	201 West Julian Street	Construction of an 18-story residential tower with up to 314 residential units and retail space.

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Name	**Location**	**Description**
Starcity	199 Bassett Street	Construction of 803 co-living units with 3,800 square feet of retail space.
6th Street Project	73 North Sixth Street	Construction of a 10-story mixed-use building with up to 197 residential units and approximately 2,366 square feet of commercial space.
27 West	27 South First Street	Construction of a 22-story, 242 foot tall mixed-use building with up to 374 residential units and approximately 35,712 square feet of retail space, with an alternative parking arrangement (parking stackers).
Carlysle	51 Notre Dame Avenue	Construction of an 18-story mixed use building with 220 residential units, 4,000 sf of commercial space, and 70,000 sf of office space.
Fourth Street Housing	100 North Fourth Street	Construction a 23-story mixed-use building with approximately 10,733 square feet of commercial and up to 316 units of housing.
Hotel Clariana Addition[8]	10 South Third Street	Construction of a 46,290-square foot addition to an existing hotel (Hotel Clariana), including 60 hotel rooms, for a total of 104 rooms, three residential guest suites, with 1,525-square foot public eating establishment, a 1,106-square foot pool and spa and a 1,058-square foot fitness space on the ground floor.
Tribute Hotel	211 South First Street	Construction of a 24-story, 279 room hotel integrated into a historic building.
200 Park Avenue Office	200 Park Avenue	Construction of an approximately 1,055,000 square foot office building with 840,000 square feet of office space, and 229,200 square feet of above-grade parking.
CityView Plaza	150 Almaden Boulevard	Construction of three 19-story buildings with up to approximately 3.8 million square feet of office and commercial space.
Almaden Corner Hotel	8 North Almaden Boulevard	Construction of a 19-story hotel with up to 272 rooms and a restaurant and bar.
Miro Apartments	157 East Santa Clara Street	Construction of up to 630 residential units and approximately 21,000 square feet of ground floor retail.

[8] There is an entitlement for construction of Hotel Clariana that could move forward at any time. Modifications to the original project were proposed and have been approved.

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Name	**Location**	**Description**
Museum Place[9]	180 Park Avenue	Construction of a 24-story mixed-use building with approximately 214,000 square feet of office, 13,402 square feet of ground floor retail, 60,000 square feet of museum space, 184 hotel rooms, and 306 residential units.
Post & San Pedro Tower	171 Post Street	Construction of a 21-story mixed-use building with up to 230 residential units. And ground floor retail.
Greyhound Station	70 South Almaden Avenue	Construction of up to 781 residential units with approximately 20,000 square feet of ground floor retail in two high rise towers.
Pending		
Fountain Alley Mixed-Use	35 South Second Street	Construction of a 21-story mixed-use building with up to 194 residential dwelling units, approximately 31,959 square feet of ground floor retail, and approximately 405,924 square feet of office space.
Eterna Tower	17 East Santa Clara Street	Construction of a new mixed-use project with approximately 2,500 square feet of commercial space and 200 multi-family residential units (including 25% restricted affordable units for low-income residents) and no proposed parking
North Second Affordable Senior Housing	19 North Second Street	Construction of a 22-story mixed-use project with approximately 18,643 square feet of commercial space and up to 220 units of senior housing.
Dot and Bar	300 South First Street	Construction of a 20-story office mixed-use building with two towers and ground floor retail (totaling 1,397,321 square feet).
Davidson Towers	255 West Julian Street	Construction of a new 14-story office building with approximately 12,908 of ground floor retail and approximately 448,159 square feet of office space. In addition, modification of an existing six-story office building to change the existing office use to 6,317 square feet of retail use on the ground floor, retain 50,470 square feet of office use on the upper floors, and make changes to the exterior façade, with associated below-grade connection and a pedestrian bridge connection between the two buildings.

[9] There is an entitlement for construction of Museum Place that could move forward at any time. Modifications to the original project are currently under review.

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Name	**Location**	**Description**
SuZaCo Mixed-Use	150 East Santa Clara Street	Construction of a six-story mixed-use building (approximately 76,298 square feet). Retail/restaurant space is proposed at the ground level and the remaining floors would consist of office space. A portion of the 150 East Santa Clara Street building façade would be retained.

For each environmental issue, cumulative impacts may occur within different geographic areas. For example, the project effects on air quality would combine with the effects of projects in the entire air basin, whereas noise impacts would primarily be localized to the surrounding area.

3.1 AIR QUALITY

The following discussion is based upon an Air Quality Assessment[10] and an Air Quality Cumulative Memorandum prepared by Illingworth & Rodkin, Inc. in March 2022 and September 2021, respectively. The report and memorandum are attached in Appendix B of this document.

3.1.1 Environmental Setting

3.1.1.1 *Background Information*

Criteria Pollutants

Air quality in the Bay Area is assessed related to six common air pollutants (referred to as criteria pollutants), including ground-level ozone (O_3), nitrogen oxides (NO_x), particulate matter (PM), carbon monoxide (CO), sulfur oxides (SO_x), and lead.[11] Criteria pollutants are regulated because they result in health effects. An overview of the sources of criteria pollutants and their associated health are summarized in Table 3.1-1. The most commonly regulated criteria pollutants in the Bay Area are discussed further below.

Table 3.1-1: Health Effects of Air Pollutants

Pollutants	Sources	Primary Effects
O_3	Atmospheric reaction of organic gases with nitrogen oxides in sunlight	• Aggravation of respiratory and cardiovascular diseases • Irritation of eyes • Cardiopulmonary function impairment
Nitrogen Dioxide (NO_2)	Motor vehicle exhaust, high temperature stationary combustion, atmospheric reactions	• Aggravation of respiratory illness • Reduced visibility
Fine Particulate Matter ($PM_{2.5}$) and Coarse Particulate Matter (PM_{10})	Stationary combustion of solid fuels, construction activities, industrial processes, atmospheric chemical reactions	• Reduced lung function, especially in children • Aggravation of respiratory and cardiorespiratory diseases • Increased cough and chest discomfort • Reduced visibility
Toxic Air Contaminants (TACs)	Cars and trucks, especially diesel-fueled; industrial sources, such as chrome platers; dry cleaners and service stations; building materials and products	• Cancer • Chronic eye, lung, or skin irritation • Neurological and reproductive disorders

[10] The number of parking spaces have changed and 10 commercial condominium units have been added to the retail use since the air quality analysis was first completed. The change in the number of parking spaces and 10 commercial condominium units did not change the conclusions of the analysis. Since the Air Quality Assessment was updated in March 2022, the number of parking spaces has decreased from 1,146 to 992. Nevertheless, a decrease in the number of parking spaces would not change the conclusions of the analysis. Refer to the Air Quality Assessment (Appendix B) for additional explanation.

[11] The area has attained both state and federal ambient air quality standards for CO. The project does not include substantial new emissions of sulfur dioxide or lead. These criteria pollutants are not discussed further.

High O_3 levels are caused by the cumulative emissions of reactive organic gases (ROG) and NO_x. These precursor pollutants react under certain meteorological conditions to form high O_3 levels. Controlling the emissions of these precursor pollutants is the focus of the Bay Area's attempts to reduce O_3 levels. The highest O_3 levels in the Bay Area occur in the eastern and southern inland valleys that are downwind of air pollutant sources.

PM is a problematic air pollutant of the Bay Area. PM is assessed and measured in terms of respirable particulate matter or particles that have a diameter of 10 micrometers or less (PM_{10}) and fine particulate matter where particles have a diameter of 2.5 micrometers or less ($PM_{2.5}$). Elevated concentrations of PM_{10} and $PM_{2.5}$ are the result of both region-wide emissions and localized emissions.

Toxic Air Contaminants

TACs are a broad class of compounds known to have health effects. They include but are not limited to criteria pollutants. TACs are found in ambient air, especially in urban areas, and are caused by industry, agriculture, diesel fuel combustion, and commercial operations (e.g., dry cleaners). TACs are typically found in low concentrations, even near their source (e.g., diesel particulate matter [DPM] near a freeway).

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about three-quarters of the cancer risk from TACs. Diesel exhaust is a complex mixture of gases, vapors, and fine particles. Medium- and heavy-duty diesel trucks represent the bulk of DPM emissions from California highways. The majority of DPM is small enough to be inhaled into the lungs. Most inhaled particles are subsequently exhaled, but some deposit on the lung surface or are deposited in the deepest regions of the lungs (most susceptible to injury).[12] Chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the California Air Resources Board (CARB).

Sensitive Receptors

Some groups of people are more affected by air pollution than others. CARB has identified the following persons who are most likely to be affected by air pollution: children under 16, the elderly over 65, and people with cardiovascular and chronic respiratory diseases. These groups are classified as sensitive receptors. Locations that may contain a high concentration of these sensitive population groups include residential areas, hospitals, daycare facilities, elder care facilities, and elementary schools.

[12] California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed July 27, 2021. https://www.arb.ca.gov/research/diesel/diesel-health.htm.

3.1.1.2 *Regulatory Framework*

Federal and State

Clean Air Act

At the federal level, the United States Environmental Protection Agency (EPA) is responsible for overseeing implementation of the Clean Air Act and its subsequent amendments. The federal Clean Air Act requires the EPA to set national ambient air quality standards for the six common criteria pollutants (discussed previously), including PM, O_3, CO, SO_x, NO_x, and lead.

CARB is the state agency that regulates mobile sources throughout the state and oversees implementation of the state air quality laws and regulations, including the California Clean Air Act. The EPA and the CARB have adopted ambient air quality standards establishing permissible levels of these pollutants to protect public health and the climate. Violations of ambient air quality standards are based on air pollutant monitoring data and are determined for each air pollutant. Attainment status for a pollutant means that a given air district meets the standard set by the EPA and/or CARB.

Risk Reduction Plan

To address the issue of diesel emissions in the state, CARB developed the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles. In addition to requiring more stringent emission standards for new on-road and off-road mobile sources and stationary diesel-fueled engines to reduce particulate matter emissions by 90 percent, the plan involves application of emission control strategies to existing diesel vehicles and equipment to reduce DPM (in additional to other pollutants). Implementation of this plan, in conjunction with stringent federal and CARB-adopted emission limits for diesel fueled vehicles and equipment (including off-road equipment), will significantly reduce emissions of DPM and NO_X.

Regional

2017 Clean Air Plan

The Bay Area Air Quality Management District (BAAQMD) is the agency primarily responsible for assuring that the federal and state ambient air quality standards are maintained in the San Francisco Bay Area. Regional air quality management districts, such as BAAQMD, must prepare air quality plans specifying how state and federal air quality standards will be met. BAAQMD's most recently adopted plan is the Bay Area 2017 Clean Air Plan (2017 CAP). The 2017 CAP focuses on two related BAAQMD goals: protecting public health and protecting the climate. To protect public health, the 2017 CAP describes how BAAQMD will continue its progress toward attaining state and federal air quality standards and eliminating health risk disparities from exposure to air pollution among Bay Area communities. To protect the climate, the 2017 CAP includes control measures designed to reduce emissions of methane and other super-greenhouse gases (GHGs) that are potent climate pollutants in the near-term, and to decrease emissions of carbon dioxide by reducing fossil fuel combustion.[13]

[13] BAAQMD. *Final 2017 Clean Air Plan.* April 19, 2017. Accessed July 27, 2021. http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans.

CEQA Air Quality Guidelines

The BAAQMD CEQA Air Quality Guidelines are intended to serve as a guide for those who prepare or evaluate air quality impact analyses for projects and plans in the San Francisco Bay Area. Jurisdictions in the San Francisco Bay Area Air Basin utilize the thresholds and methodology for assessing air quality impacts developed by BAAQMD within their CEQA Air Quality Guidelines. The guidelines include information on legal requirements, BAAQMD rules, methods of analyzing impacts, and recommended mitigation measures.

City of San José

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to air quality and are applicable to the project and are applicable to the project. In addition, goals and policies throughout the 2040 General Plan encourage a reduction in vehicle miles traveled through land use, pedestrian, bicycle, and transit access improvements; parking strategies that reduce automobile travel through parking supply and pricing management; and requirements for Transportation Demand Management programs for large employers.

General Plan Policies - Air Quality	
MS-10.1	Assess projected air emissions from new development in conformance with the Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines and relative to state and federal standards. Identify and implement feasible air emission reduction measures.
MS-10.2	Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's Clean Air Plan and State law.
MS-10.5	In order to reduce vehicle miles traveled and traffic congestion, require new development within 2,000 feet of an existing or planned transit station to encourage the use of public transit and minimize the dependence on the automobile through the application of site design guidelines and transit incentives.
MS-11.1	Require completion of air quality modeling for sensitive land uses such as new residential developments that are located near sources of pollution such as freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs or be located an adequate distance from sources of toxic air contaminants (TACs) to avoid significant risks to health and safety.
MS-11.2	For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.
MS-11.3	Review projects generating significant heavy duty truck traffic to designate truck routes that minimize exposure of sensitive receptors to TACs and particulate matter.

General Plan Policies - Air Quality	
MS-11.4	Encourage the installation of air filtration, to be installed at existing schools, residences, and other sensitive receptor uses adversely affected by pollution sources.
MS-11.5	Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.
MS-12.2	Require new residential development projects and projects categorized as sensitive receptors to be located an adequate distance from facilities that are existing and potential sources of odor. An adequate separate distance will be determined based upon the type, size and operations of the facility.
MS-13.1	Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At a minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.
MS-13.2	Construction and/or demolition projects that have the potential to disturb asbestos (from soil or building material) shall comply with all the requirements of the California Air Resources Board's air toxic control measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.

3.1.1.3 *Existing Conditions*

Air quality is determined by the concentration of various pollutants in the atmosphere. The amount of a given pollutant in the atmosphere is determined by the amount of pollutants released within an area, transport of pollutants to and from surrounding areas, local and regional meteorological conditions, and the surrounding topography of the air basin.

BAAQMD is responsible for assuring that the national and state ambient air quality standards are attained and maintained in the Bay Area. Air quality studies generally focus on four criteria pollutants that are most commonly measured and regulated: CO, O_3, NO_2, and PM_{10} and $PM_{2.5}$. These pollutants are considered criteria pollutants by the U.S. Environmental Protection Agency (U.S. EPA) and CARB as they can result in health effects such as respiratory impairment and heart/lung disease symptoms. Table 3.1-2 shows violations of state and federal standards at the monitoring station in downtown San José (the nearest monitoring station to the project site) during the 2017-2019 period (the most recent years for which data is available).[14]

[14] PM refers to Particulate Matter. Particulate matter is referred to by size (i.e., 10 or 2.5) because the size of particles is directly linked to their potential for causing health problems.

Table 3.1-2: Ambient Air Quality Standards Violations and Highest Concentrations				
Pollutant	**Standard**	**Days Exceeding Standard**		
		2017	**2018**	**2019**
SAN JOSÉ STATION				
Ozone	State 1-hour	3	0	1
	Federal 8-hour	4	0	2
Carbon Monoxide	Federal 8-hour	0	0	0
	State 8-hour	0	0	0
Nitrogen Dioxide	State 1-hour	0	0	0
PM_{10}	Federal 24-hour	0	0	0
	State 24-hour	6	4	4
$PM_{2.5}$	Federal 24-hour	6	15	0

Source: Bay Area Air Quality Management District. "Annual Bay Area Air Quality Summaries." Accessed July 27, 2021. http://www.baaqmd.gov/about-air-quality/air-quality-summaries.

"Attainment" status for a pollutant means that a given air district meets the standard set by the EPA and/or CARB. The Bay Area, as a whole, does not meet state or federal ambient air quality standards for ground level O_3 and $PM_{2.5}$, nor does it meet state standards for PM_{10}. The Bay Area is considered in attainment or unclassified for all other pollutants.

The nearest sensitive receptors are the residents of the senior apartments located approximately 15 feet west from the property line and the new residential towers located approximately 80 feet east of the project site, respectively.[15] There are other residences located approximately 95 feet immediately south of East Santa Clara Street. Additionally, the students at Little Einstein's Montessori Preschool and Horace Mann Preschool and Elementary School, approximately 453 and 775 feet east of the project site, respectively, are considered sensitive receptors.

3.1.2 Impact Discussion

For the purpose of determining the significance of the project's impact on air quality, would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?
c) Expose sensitive receptors to substantial pollutant concentrations?
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would not result in a significant impact due to construction-related emissions of criteria pollutants or expose sensitive receptors to a significant risk associated with TACs or odors. The

[15] The distances were measured from the project's property line to the senior apartments and other residences.

Downtown Strategy 2040 FEIR did, however, identify a significant unavoidable cumulative regional air quality impact, as discussed below.

3.1.2.1 *Thresholds of Significance*

Impacts from the Project

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for judgment on the part of the lead agency and must be based to the extent possible on scientific and factual data. The City of San José has considered the air quality thresholds updated by BAAQMD in May 2017 and regards these thresholds to be based on the best information available for the San Francisco Bay Area Air Basin and conservative in terms of the assessment of health effects associated with TACs and $PM_{2.5}$. The BAAQMD CEQA Air Quality thresholds used in this analysis are identified in Table 3.1-3 below.

Table 3.1-3: BAAQMD Air Quality Significance Thresholds

Pollutant	Construction Thresholds	Operation Thresholds	
	Average Daily Emissions (pounds/day)	Annual Daily Emissions (pounds/year)	Annual Average Emissions (tons/year)
Criteria Air Pollutants			
ROG, NO_x	54	54	10
PM_{10}	82 (exhaust)	82	15
$PM_{2.5}$	54 (exhaust)	54	10
CO	Not Applicable	9.0 ppm (eight-hour) or 20.0 ppm (one-hour)	
Fugitive Dust	Dust Control Measures/Best Management Practices	Not Applicable	
Health Risks and Hazards for New Sources (within a 1,000-foot Zone of Influence)			
Health Hazard	**Single Source**	**Combined Cumulative Sources**	
Excess Cancer Risk	10 per one million	100 per one million	
Hazard Index	1.0	10.0	
Incremental Annual $PM_{2.5}$	0.3 $\mu g/m^3$	0.8 $\mu g/m^3$ (average)	

3.1.2.2 *Project Impacts*

a) Would the project conflict with or obstruct implementation of the applicable air quality plan?

The BAAQMD CEQA Air Quality Guidelines set forth criteria for determining consistency with the 2017 CAP. In general, a project is considered consistent if, a) the plan supports the primary goals of the 2017 CAP; b) it includes relevant control measures; and c) it does not interfere with implementation of 2017 CAP control measures. As shown in Table 3.1-4 below, the proposed project would be consistent with the 2017 CAP measures intended to reduce automobile trips, as well as energy and water usage and waste.

Table 3.1-4: Bay Area 2017 Clean Air Plan Applicable Control Measures		
Control Measures	**Description**	**Project Consistency**
Transportation Measures		
Trip Reduction Programs	Encourage trip reduction policies and programs in local plans, e.g., general and specific plans. Encourage local governments to require mitigation of vehicle travel as part of new development approval, to develop innovative ways to encourage rideshare, transit, cycling, and walking for work trips.	The project site is located in proximity to Caltrain, the Altamont Commuter Express (ACE) train, Amtrak, and VTA bus and light rail. The proposed project would provide 236 bicycle parking spaces which exceeds the City's bicycle parking requirement. Therefore, the project is consistent with this measure.
Bicycle and Pedestrian Access and Facilities	Encourage planning for bicycle and pedestrian facilities in local plans, e.g., general and specific plans, fund bike lanes, routes, paths and bicycle parking facilities.	As mentioned above, the project would include bicycle parking exceeding the City's minimum standards. In addition, the project proposes five on-site showers for bicycle commuters. The project area has adequate pedestrian facilities including sidewalks, crosswalks, and pedestrian signal heads. Therefore, the project is consistent with this measure.
Land Use Strategies	Support implementation of Plan Bay Area, maintain and disseminate information on current climate action plans and other local best practices.	As mentioned above, the project would be located in proximity to multiple transit services; therefore, the project is consistent with this measure (refer to *Section 4.17 Transportation* of Appendix A for more information).
Building Measures		
Green Buildings	Identify barriers to effective local implementation of CALGreen (Title 24) statewide building energy code; develop solutions to improve implementation/ enforcement. Engage with additional partners to target reducing emissions from specific types of buildings.	The project would comply with Building Energy Efficiency Standards (Title 24), the City's Green Building Ordinance, Reach Code Ordinance (Reach Code), and the most recent CALGreen requirements. In addition, the project would be designed to achieve LEED Silver certification. The project is consistent with this measure.
Urban Heat Island Mitigation	Develop and urge adoption of a model ordinance for "cool parking" that promotes the use of cool surface treatments for new parking facilities, as well existing surface lots undergoing resurfacing. Develop and promote adoption of model building code requirements for new construction or reroofing/	The project would be required to comply with the City's Green Building Ordinance and the most recent CALGreen requirements which would increase building efficiency over standard construction. In addition, the project would include solar panels on the rooftop areas.

Table 3.1-4: Bay Area 2017 Clean Air Plan Applicable Control Measures		
Control Measures	**Description**	**Project Consistency**
	roofing upgrades for commercial and residential multifamily housing.	Therefore, the project is consistent with this control measure.
Natural and Working Lands Measures		
Urban Tree Planting	Develop or identify an existing model municipal tree planting ordinance and encourage local governments to adopt such an ordinance. Include tree planting recommendations, the Air District's technical guidance, best management practices for local plans, and CEQA review.	Any trees removed would be required to be replaced in accordance with the City's tree replacement policy. Therefore, the project is consistent with this control measure.
Waste Management Measures		
Recycling and Waste Reduction	Develop or identify and promote model ordinances on community-wide zero waste goals and recycling of construction and demolition materials in commercial and public construction projects.	The City adopted the Zero Waste Strategic Plan which outlines policies to help the City foster a healthier community and achieve its Green Vision goals, including 75 percent diversion by 2013 and zero waste by 2022. In addition, the project would comply with the City's Construction and Demolition Diversion Program during construction which ensures that at least 75 percent of construction waste generated by the project is recovered and diverted from landfills. Therefore, the project is consistent with this control measure.

As discussed in the table above, the project would be consistent with the applicable control measures and would not conflict with or obstruct implementation of the 2017 CAP.

Construction Criteria Pollutant Emissions

The California Emissions Estimator model (CalEEMod) Version 2020.4.0 was used to estimate annual emissions from project construction. The following proposed land uses were input into CalEEMod, which included 415 dwelling units entered as "Apartments High-Rise", 525,000 square feet entered as "General Office Building", 8,500 square feet entered as "Strip Mall", and 1,146 parking spaces[16] entered as "Enclosed Parking Structure with Elevator". Demolition of existing buildings on-site and soil export were also input into CalEEMod (refer to Appendix B of this

[16] The number of parking spaces have changed and 10 commercial condominium units have been added to the retail use since the air quality analysis was first completed. The change in the number of parking spaces and 10 commercial condominium units did not change the conclusions of the analysis. Since the Air Quality Assessment was updated in March 2022, the number of parking spaces has decreased from 1,146 to 992. Nevertheless, a decrease in the number of parking spaces would not change the conclusions of the analysis. Refer to the Air Quality Assessment (Appendix B) for additional explanation.

document). The construction schedule assumes that the project would begin construction in January 2023. Construction would occur six days a week for a period of approximately 36 months (up to 939 construction workdays). Table 3.1-5 shows the estimated daily air emissions from construction of the proposed project.

Table 3.1-5: Construction Emissions from the Project[1]

Description	ROG	NO_x	PM_{10}	$PM_{2.5}$
Construction Emissions Per Year (Tons)				
2023	0.25	1.52	0.09	0.05
2024	0.37	2.62	0.14	0.10
2025	6.13	3.05	0.15	0.12
Average Daily Construction Emissions Per Year (Pounds Per Day)				
2023 (311 construction workdays)	1.61	9.75	0.57	0.35
2024 (314 construction workdays)	2.34	16.70	0.89	0.65
2025 (313 construction workdays)	39.17	19.45	0.97	0.75
BAAQMD Thresholds (pounds per day)	*54*	*54*	*82*	*54*
Threshold Exceeded?	**No**	**No**	**No**	**No**

Note: [1] Emission estimates do not include implementation of BAAQMD best management practices.

As shown in the table above, project construction period emissions would not exceed the BAAQMD significance thresholds. In addition, all proposed projects are required to implement BAAQMD's basic best management practices for fugitive dust control (PM_{10} and $PM_{2.5}$) from construction activities, which have been adopted by the City as Standard Permit Conditions. Implementation of the following Standard Permit Conditions would further reduce fugitive dust emissions from construction activity.

Standard Permit Conditions:

The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- Water active construction areas at least twice daily or as often as needed to control dust emissions.
- Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and property tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

Therefore, the project would have a less than significant criteria pollutant emissions impact and would not conflict with or obstruct implementation of the Bay Area 2017 CAP.

Operational Criteria Pollutant Emissions

Operational criteria pollutant emissions associated with the project would be generated primarily from project generators and vehicles driven by future residents, employees, and patrons of the site.[17] The project proposes two emergency diesel generators [1,000-kilowatters (kW) powered by a 1,340 horsepower (HP) diesel engine] on the ground floor of both towers. The generators would be tested periodically and would power the buildings in the event of a power failure. It was assumed that the generators would be operated primarily for testing and maintenance purposes. Vehicle trip generation rates, energy usage, and other default model assumptions for solid waste generation and water usage/wastewater disposal were input into CalEEMod to estimate the emissions from operation of the project (refer to Appendix B of this document). Table 3.1-6 below shows an estimate of emissions from operation of the proposed project using CalEEMod. Full operation of the site was assumed to occur in 2026.

Table 3.1-6: Operational Emissions for the Project

Description	ROG	NO_x	PM_{10}	$PM_{2.5}$
2026 Project Operational Emissions (tons/year)	6.46	1.92	3.16	0.82
2026 Existing Use Emissions (tons/year)	0.74	0.64	1.14	0.29
BAAQMD Thresholds (tons/year)	10	10	15	10
Threshold Exceeded?	**No**	**No**	**No**	**No**
2026 Project Operational Emissions (pounds/day)	31.34	7.03	11.06	2.90
BAAQMD Thresholds (pounds/year)	54	54	82	54
Threshold Exceeded?	**No**	**No**	**No**	**No**

Note: Assumes 365-day operation.

As shown in the table above, the operational criteria pollutant emissions would not exceed BAAQMD significance thresholds. Although the proposed project would not, by itself, result in any air pollutant emissions exceeding an established significance threshold, it would contribute to the previously identified significant air quality impacts resulting from full build out of the Downtown

[17] Ground floor equipment (such as HVAC systems) do not generate PM emissions; therefore, those types of equipment were not included in the analysis. Equipment that would generate diesel and other particulate matter emissions, such as generators, were included in the analysis.

Strategy 2040. The proposed project is located in the downtown area which has the lowest VMT of any plan area in the City and is located in proximity to public transit and other services and amenities which would reduce the project's VMT. Therefore, implementation of the project would not conflict with or obstruct implementation of the 2017 CAP.

The proposed project would not exceed the BAAQMD significance threshold for construction and operational criteria pollutant emissions. In addition, the project would be consistent with the applicable control measures of the 2017 CAP. Therefore, the proposed project would not conflict with or obstruct implementation of the 2017 CAP. **[Less Impact than Approved Project (Significant Unavoidable Impact)]**

b) Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?

Per the Downtown Strategy 2040 FEIR, build out of the Downtown Strategy 2040 would result in a significant increase in criteria pollutants in the Bay Area, contributing to existing violations of O_3 standards. Per the BAAQMD CEQA Air Quality Guidelines, air pollution by its nature is largely a cumulative impact. No single project is sufficient in size to, by itself, result in non-attainment of ambient air quality standards. If a project exceeds the identified significance thresholds, its emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions. As shown in the analysis above, the proposed project would not, by itself, result in any air pollutant emissions exceeding BAAQMD significance thresholds. As a result, the proposed project would not result in a cumulatively considerable net increase of any criteria pollutant for which the region is in non-attainment. **[Less Impact than Approved Project (Significant Unavoidable Impact)]**

c) Would the project expose sensitive receptors to substantial pollutant concentrations?

Project Construction - Dust Generation

Project construction would temporarily generate fugitive dust in the form of PM_{10} and $PM_{2.5.}$ As shown in Table 3.1 5, *Construction Emissions from the Project*, fugitive dust from construction activities would not exceed BAAQMD significance thresholds. In addition, the proposed project would be required to comply with the City's Standard Permit Condition listed under checklist question a, which would further reduce construction-related fugitive dust emissions.

Therefore, construction dust and other particulate matter would have a less than significant construction air quality impact.

Project Construction – Community Risk Impacts

Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC, and would pose as a health risk to nearby sensitive receptors. A health risk assessment was completed to evaluate potential health effects to nearby sensitive receptors (within 1,000 feet of

the project site) from construction emissions of DPM and $PM_{2.5}$.[18] The CalEEMod and EMFAC2021 models were used which provides total annual PM_{10} exhaust emissions (DPM) for the off-road construction equipment and on-road vehicles. Additionally, the U.S. EPA AERMOD dispersion model was used to predict construction-related DPM and $PM_{2.5}$ concentrations at existing sensitive receptors (e.g., residences and students) in the vicinity of the project construction area. The U.S. EPA AERMOD dispersion model, assumptions, and results are described further in Appendix B of this document.

The maximum-modeled annual DPM and $PM_{2.5}$ concentrations were identified at the residence located on the second floor approximately 95 feet south of the project site (refer to Figure 3.1-1). Sensitive receptors are designated in green and the maximum exposed individual (MEI) from construction is designated in red. As shown in Table 3.1-7 below, the construction MEI would have a cancer risk of 42.39 cases per one million for infants which exceeds the BAAQMD significance threshold of 10 cases per one million. The maximum residential cancer risk for adults would be 1.2 cases per one million which is below the BAAQMD threshold of 10 cases per million. The maximum-annual $PM_{2.5}$ concentration and maximum hazard index (HI) was calculated to be 0.26 $\mu g/m^3$ and 0.04, respectively, which would not exceed the BAAQMD significance threshold of 0.3 $\mu g/m^3$ for maximum-annual $PM_{2.5}$ and a HI of greater than 1.0.

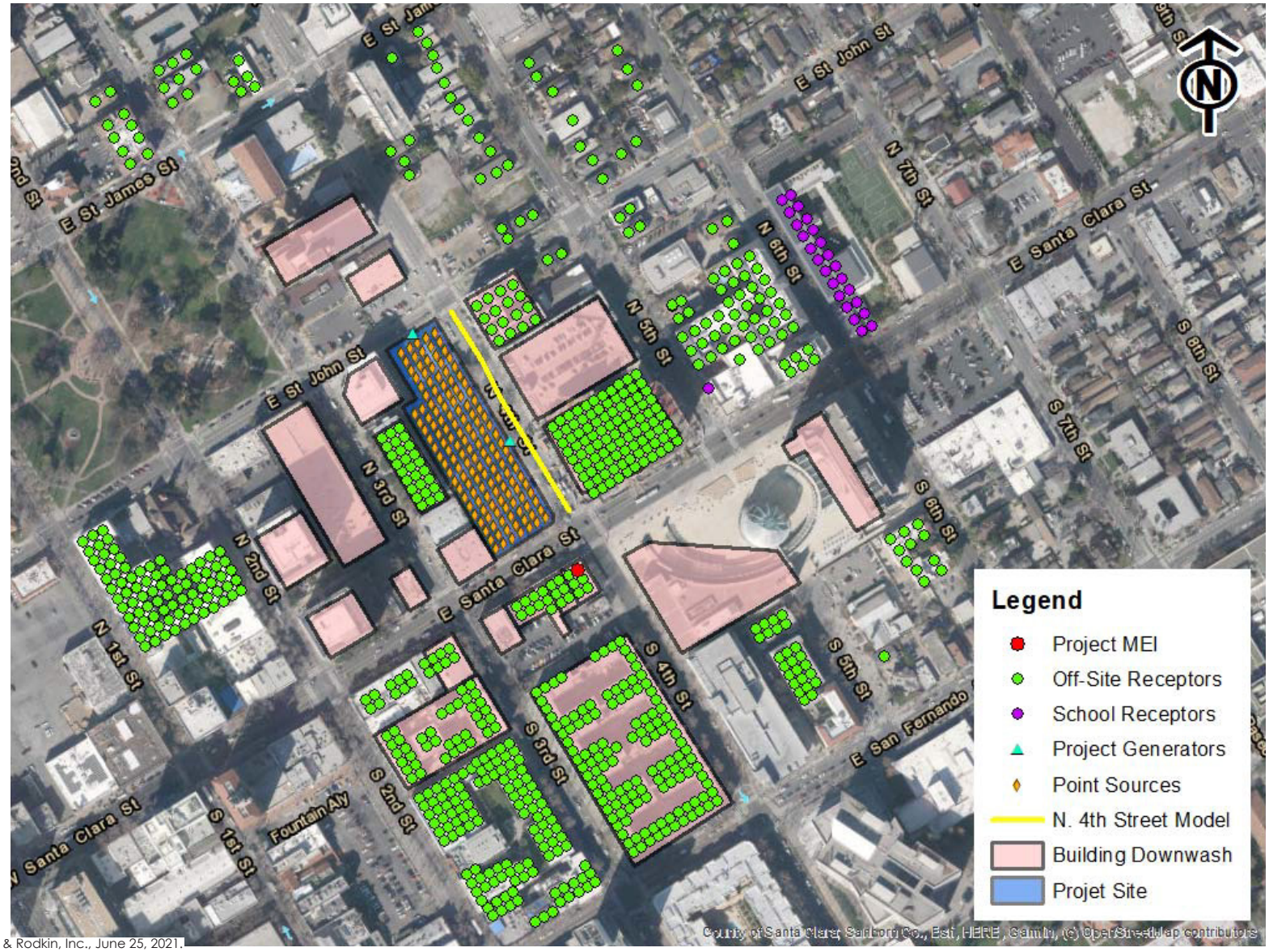
Additionally, modeling was used to predict the cancer risks, non-cancer health hazards, and maximum $PM_{2.5}$ concentrations associated with construction activities at the most affected nearby preschool and elementary school (Little Einstein's Montessori Preschool). The maximum increased cancer risk was adjusted using child exposure parameters. As summarized in Table 3.1-7 below, the unmitigated cancer risk at the off-site MEI would exceed the BAAQMD threshold of 10 cases per one million. However, the unmitigated $PM_{2.5}$ concentration and HI at the off-site MEI would not exceed BAAQMD thresholds, and the cancer risk, annual $PM_{2.5}$ concentration, and HI at the Little Einstein's Montessori Preschool would be below the BAAQMD significance thresholds of 10 cases per one million, 0.3 $\mu g/m^3$ for maximum-annual $PM_{2.5}$ and a HI of greater than 1.0.

Impact AIR-1: Construction activities associated with the proposed project would expose the maximum exposed individual (MEI) to a cancer risk of 42.39 cases per one million for infants which exceeds the Bay Area Air Quality Management District (BAAQMD) significance threshold of 10 cases per one million.

Mitigation Measure

MM AIR-1.1: Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan to the Director of Planning or Director's designee of the City of San José Department of Planning, Building and Code Enforcement that includes information in sufficient detail as to how the project applicant and/or its contractor shall meet the following engine requirements and enhanced just control measures. The plan shall be accompanied by a letter signed by an air quality specialist.

[18] DPM is identified by California as a TAC due to the potential to cause cancer.



Source: Illingworth & Rodkin, Inc., June 25, 2021.

PROJECT SITE AND LOCATIONS OF OFF-SITE RECEPTORS AND MEI | FIGURE 3.1-1

Engine Requirements: Verification that the equipment included in the plan meets the standards set forth below:

- All construction equipment (larger than 25 horsepower) operating on-site for more than two days continuously (or 20 hours total) shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 final or interim emission standards for particulate matter (PM_{10} and $PM_{2.5}$).
- If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieves a 77 percent reduction in particulate matter exhaust.
- Use of alternatively fueled or electric equipment.
- Stationary cranes and construction generator sets shall be powered by electricity.

As an alternative to the measures above, the project applicant could request a plan from a qualified air quality specialist that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 77 percent or greater. The plan shall be submitted to the City of San José Director of Planning, Building and Code Enforcement ort the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

Enhanced Dust Control Measures: The project applicant shall implement the following BAAQMD enhanced dust control requirements during construction of the project:

- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 miles-per-hour (mph).
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
- Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- Site accesses to a distance of 100 feet from the paved road shall be treated with a six to 12-inch compacted layer of wood chips, mulch, or gravel.
- Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes. Clear signage shall be provided for construction workers at all access points.

With implementation of the Standard Permit Conditions for dust control and Mitigation Measure AIR-1.1, the infant residential cancer risk would be reduced to 3.58 cases per one million for Tier 4 final engines or 7.31 cases per one million for Tier 4 interim engines which would be below the BAAQMD significance threshold of 10 per one million cases for cancer risk. The annual $PM_{2.5}$ concentration and HI would not exceed BAAQMD significance thresholds. Therefore, implementation of Mitigation Measure AIR-1.1 and identified Standard Permit Conditions would reduce the off-site community risk impact to less than significant.

Project Operation - Community Risk Impacts (Traffic and Generators)

Project traffic and generators could result in community risk impacts. Per BAAQMD, roadways with less than 10,000 total vehicles per day would have a less than significant TAC impact. East Santa

Clara Street exceeds 10,000 total vehicles per day and the proposed project would generate up to 3,489 net new daily trips (refer to *Section 4.17* of Appendix A of this document). On a project-level, the project trips are less than 10,000 trips which would not be enough to contribute as a TAC source by itself.

As mentioned previously, the project would include two emergency diesel generators on the ground floor of the residential and office towers. Based on the site plan provided by the applicant, the generator rooms would extend to the top of the second floor. The generators would be operated for testing and maintenance purposes, with a maximum of 50 hours per year of non-emergency operation under normal conditions. During testing periods, the engine would typically be run for less than one hour under light engine loads. The U.S. EPA AERMOD dispersion model was used to estimate the potential cancer risk and $PM_{2.5}$ concentration at off-site sensitive receptor locations (e.g., residences and schools) from the proposed generators. To estimate the increased cancer risk from the generators at the MEI, the cancer risk exposure duration was adjusted to account for the MEI being exposed to construction for the first three years of the 30-year period. Therefore, construction cancer risks would occur during the first three years and 27 years of operational cancer risks. Refer to Appendix B of this document for more information and Figure 3.1-1 above for the project generator, off-site receptor, and school receptor locations. Table 3.1-7 provides a summary of the construction and operation risk impacts at the off-site MEI.

Table 3.1-7: Construction and Operation Risk Impacts at Off-Site MEI and Little Einstein's Montessori Preschool

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Off-Site MEI Residential Sensitive Receptor			
Project Construction (Years 0-3)			
Unmitigated	**42.39 (infant)**	0.26	0.04
Mitigated*	3.58-7.31 (infant)	0.05	<0.01
Project Traffic on North Fourth Street (Years 4-30)	0.04	0.01	<0.01
Project Generators (Years 4-30)	0.11	<0.01	<0.01
Total/Maximum Project Impact (Years 0-30)			
Unmitigated	**42.54 (infant)**	0.26	0.04
Mitigated*	3.73-7.46 (infant)	0.05	<0.01
BAAQMD Single-Source threshold	***>10.0***	***>0.3***	***>1.0***
Exceed Threshold?			
Unmitigated	**Yes**	No	No
Mitigated*	No	No	No
Little Einstein's Montessori Preschool			
Project Construction (Years 0-3)			
Unmitigated	1.86 (student)	0.03	0.01
Project Traffic (Years 0-4)	0.01	<0.01	<0.01
Project Generators (Years 0-4)	0.03	<0.01	<0.01
Unmitigated Total/Maximum Project (Years 0-4)	1.90 (student)	0.06	0.01
BAAQMD Single-Source threshold	***>10.0***	***>0.3***	***>1.0***
Exceed Threshold?	No	No	No

Note: * Construction equipment with Tier 4 Final or Tier 4 interim engines, electric cranes and generators, and enhanced BMPs as mitigation (MM AIR-1.1).

As shown in the table above, the unmitigated maximum cancer risks at the MEI from construction and operation of the project would exceed BAAQMD's significance thresholds of 10 cases per one million. The annual $PM_{2.5}$ concentration and HI from construction and operation of the project would not exceed BAAQMD's significance threshold of 0.3 $\mu g/m^3$ and greater than 1.0, respectively. With implementation of the Standard Permit Conditions and Mitigation Measure AIR-1.1, the total maximum project cancer risk impact to infants would be reduced to 3.73 cases per one million for Tier 4 final engines or 7.46 cases per one million for Tier 4 interim engines which would be below the BAAQMD significance threshold of 10 per one million cases for cancer risk.

Additionally, the BAAQMD significance threshold for cancer risk, annual $PM_{2.5}$ concentration, and HI would not be exceeded at the Little Einstein's Montessori Preschool. Therefore, the project would result in a less than significant operational TAC impact to adjacent sensitive receptors.

Criteria Pollutant Emissions

In a 2018 decision (*Sierra Club v. County of Fresno*), the state Supreme Court determined that CEQA requires that when a project's criteria air pollutant emissions would exceed applicable thresholds and contribute a cumulatively considerable contribution to a significant cumulative regional criteria pollutant impact, the potential for the project's emissions to affect human health in the air basin must be disclosed. State and federal ambient air quality standards are health-based standards and exceedances of those standards result in continued unhealthy levels of air pollutants. As stated in the 2017 BAAQMD CEQA Air Quality Guidelines, air pollution by its nature is largely a cumulative impact. No single project is sufficient in size, by itself, to result in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. In developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project has a less than significant impact for criteria pollutants, it is assumed to have no adverse health effect.

As discussed under checklist question a above, the proposed project would result in a less than significant project-level operational and construction criteria pollutant impact. As a result, the project would result in a less than significant health impact to sensitive receptors.

The proposed project would implement the identified Standard Permit Conditions and Mitigation Measure AIR-1.1 to reduce construction dust and other particulate matter emissions and TAC emissions. Additionally, the project would have a less than significant impact for criteria pollutants and would not expose sensitive receptors to substantial pollutant concentrations. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

d) Would the project result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

The proposed project would generate localized emissions of diesel exhaust during construction equipment operation and truck activity. The odor emissions may be noticeable from time to time by adjacent receptors; however, the odors would be localized and temporary and are not likely to affect people off-site. While operation of the proposed project would result in exhaust odors from delivery

trucks and the use of cleaning supplies and maintenance chemicals, which would generate intermittent odors in the areas of use, these intermittent odors would not be considered significant and would not affect a substantial number of people off-site. **[Same Impact as Approved Project (Less Than Significant Impact)]**

3.1.2.3 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative air quality impact?

The geographic area for cumulative air quality impacts is the San Francisco Bay Area Air Basin. Past, present, and future development projects contribute to the region's adverse air quality impacts. No single project is sufficient in size, by itself, to result in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts.

The BAAQMD CEQA Air Quality Guidelines (2017) recommend that projects be evaluated for community risk when they are located within 1,000 feet of freeways, high traffic volume roadways (10,000 average annual daily trips or more), and/or stationary permitted sources of TACs.

Cumulative TAC Sources in the Project Area

Mobile Sources

The only substantial source of mobile TAC emissions within 1,000 feet of the project site is East Santa Clara Street which has an ADT of 16,978 vehicles.

Stationary Sources

Stationary sources are facilities that contain sources of TACs such as a generator or gas station. Nearby stationary sources were identified using BAAQMD's *Permitted Stationary Sources 2018* geographic information system map website which identifies the location of stationary sources and their estimated risk and hazard impacts. Three stationary sources were identified; two of which are diesel generators, and one is a gas station.

Construction Risk Impacts from Nearby Development

Within 1,000 feet of project site, there are 11 projects (Miro File Nos. SP17-009 and T16-056, Fourth Street Housing File No. H19-021, SuZaco Mixed-Use File No. H21-026, Hotel Clariana File No. H17-059, Fountain Alley Mixed-Use File No. H20-037, Fountain Alley Office File No. H19-041, 19 North Second Street File No. H20-040, Park View Towers File No. HA14-009-02, Sixth Street Project File No. H15-055, 27 West File No. SP18-016, and Eterna Tower File No. H20-026) that could have overlapping construction.[19] For the purposes of this analysis, it was conservatively

[19] The mitigated construction risks and hazard impact values for certain developments were available from their respective air quality reports or on the City's Environmental Review website. For developments that did not have available construction impact results at the time of this study, it was assumed the construction risks would be less

assumed the entire construction period from the proposed project would overlap with the nearby developments' construction schedule. This approach provides an overestimate of the community risk and hazard levels because it assumes that maximum impacts from the nearby development occurs concurrently with the proposed project at the proposed project's MEIs.

Table 3.1-8 below summarizes nearby mobile and stationary sources of TACs at the off-site MEI. Figure 3.1-2 shows the project site and the nearby TAC and $PM_{2.5}$ sources, as well as construction risks from the nearby development.

Table 3.1-8: Cumulative Sources at Project MEI

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Total/Maximum Project Impact			
Unmitigated	**42.54 (infant)**	0.26	0.04
Mitigated	3.73-7.46 (infant)	0.05	<0.01
East Santa Clara Street	1.45	0.10	<0.01
Facility ID#15267 (Generator), MEI at 400 feet	0.92	0.03	<0.01
Facility ID #23479 (Generator), MEI at 500 feet	0.33	--	--
Nearby Developments[1]			
Fourth Street Housing, 750 feet north	<4.30	<0.06	<0.01
SuZaCo Mixed-Use, same location as MEI	<5.00	<0.15	<0.50
Hotel Clariana, 100 feet north	<8.80	<0.07	<0.01
Fountain Alley Mixed-Use, 700 feet west	<5.11	<0.10	<0.01
Fountain Alley Office, 840 feet west	<4.50	<0.03	<0.01
19 North Second Street, 720 feet west	<5.00	<0.15	<0.50
Park View Towers, over 1,000 feet northwest	<5.00	<0.15	<0.50
Sixth Street Project, 800 feet northeast	<5.00	<0.15	<0.50
27 West, 1,000 feet west	<2.40	<0.15	<0.01
Eterna Tower, 800 feet west	<5.00	<0.15	<0.50
Combined Sources			
Unmitigated	**<**95.35	**<1.45**	<2.61
Mitigated	<56.54-<60.27	**<1.24**	<2.58
BAAQMD Cumulative Source threshold	***>100***	***>0.8***	***>10.0***
Exceed Threshold?			
Unmitigated	No	**Yes**	No
Mitigated	No	**Yes**	No

Note: [1] It was conservatively assumed that these nearby developments within 1,000 feet of the site would have overlapping construction. This approach provides an overestimate of the community risk and hazard levels because it assumes that maximum impacts from the nearby development occurs concurrently with the proposed project at the proposed project's MEIs.

BAAQMD CEQA Guidelines state that in instances where a pre-existing cumulative health risk impact exists, the project's individual contribution to that cumulative impact should be analyzed.[20] If project health risks would be reduced to below the single-source thresholds with best available

than the BAAQMD single-source thresholds for community risks and hazards. If the nearby developments were more than 500 feet from the project site, the construction risks were assumed to be half of the BAAQMD single source thresholds due to the distance and dispersion between the source and receptors.

[20] BAAQMD. 2017 CEQA Guidelines. May 2017. Page 5-16. https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en

Source: Illingworth & Rodkin, Inc., June 25, 2021.

PROJECT SITE AND NEARBY TAC AND $PM_{2.5}$ SOURCES | FIGURE 3.1-2

mitigation measures, the project's contribution to pre-existing cumulative impacts would not be cumulatively considerable. Refer to Appendix C for more information.

As shown in Table 3.1-8 above, the combined $PM_{2.5}$ concentration from existing sources and construction of nearby projects would be <1.19 $\mu g/m^3$ (unmitigated) and would exceed the BAAQMD significance cumulative threshold of 0.8 $\mu g/m^3$ for $PM_{2.5}$, resulting in a pre-existing cumulative health risk impact. When combined with the proposed project, the $PM_{2.5}$ concentration would be 1.24 $\mu g/m^3$, even after implementation of Mitigation Measure AIR-1.1 and the identified Standard Permit Conditions. However, as shown in Table 3.1-7, the project's annual $PM_{2.5}$ concentration would be 0.26 (without mitigation) which would be below BAAQMD single-source threshold of 0.3 $\mu g/m^3$. The required mitigation would further reduce the project-level annual $PM_{2.5}$ concentration from 0.26 $\mu g/m^3$ to 0.05 $\mu g/m^3$ which is well below the single-source threshold. Therefore, the project's contribution to existing cumulative impacts from cumulative construction sources would not be cumulatively considerable. **[Same Impact as Approved Project (Less Than Significant Cumulative Impact)]**

3.1.2.4 *Non-CEQA Effects*

Per *California Building Industry Association v. Bay Area Air Quality Management District,* 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes only because the City of San José has policies that address existing air quality conditions affecting a proposed project.

Pursuant to General Plan policies MS-10.1, MS-11.1, and MS-11.2, a health risk assessment was prepared to ensure that future sensitive receptors on-site are not exposed to substantial TAC emissions. The same TAC sources identified previously were used in this health risk assessment.

Operational Community Risk Impacts – New Residences

Figure 3.1-3 above shows the project site and the nearby TAC and $PM_{2.5}$ sources, as well as construction risks from the nearby development. Table 3.1-9 below provides a summary of nearby TAC and $PM_{2.5}$ sources of air pollution. Future project residences on-site would be exposed to a portion of the construction from the nearby developments.[21]

Table 3.1-9: Cumulative Sources to Future Project Residences

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
East Santa Clara Street	0.59	0.04	<0.01
Facility ID#15267 (Generator), MEI at 450 feet	0.80	0.03	<0.01
Facility ID #23479 (Generator), MEI at 315 feet	0.60	--	--
Nearby Developments (Temporary Construction Emissions)			
Fourth Street Housing, 100 feet northeast	<4.30	<0.06	<0.01
SuZaCo Mixed-Use, 100 feet south	<5.00	<0.15	<0.50
Hotel Clariana, 190 feet south	<8.80	<0.07	<0.01

[21] Construction risks from nearby developments to future project residences would be lower compared to construction risks from nearby developments to the project MEI since the project MEI could be exposed to the entire construction period of the nearby developments.

Table 3.1-9: Cumulative Sources to Future Project Residences			
Source	**Cancer Risk (per million)**	**Annual $PM_{2.5}$ ($\mu g/m^3$)**	**Hazard Index**
Fountain Alley Mixed-Use, 575 feet southwest	<5.11	<0.10	<0.01
Fountain Alley Office, 725 feet southwest	<4.50	<0.03	<0.01
19 North Second Street, 535 feet west	<5.00	<0.15	<0.50
Park View Towers, 875 feet northwest	<5.00	<0.15	<0.50
Sixth Street Project, 630 feet east	<5.00	<0.15	<0.50
27 West, 925 feet southwest	<2.40	<0.05	<0.01
Eterna Tower, 630 feet west	<5.00	<0.15	<0.50
Combined Total	**<52.10**	**<1.13**	**<2.57**
BAAQMD Combined Source Threshold	***>100***	***>0.8***	***>10.0***
Exceed Threshold?	No	**Yes**	No

The combined total for annual $PM_{2.5}$ concentration would exceed the BAAQMD significance threshold of 0.8 $\mu g/m^3$ while the combined effects of the identified TAC sources would be below the BAAQMD thresholds of significance for cancer risk and HI. No additional project design features are recommended to comply with General Plan Policy MS-11-1 because the maximum cancer risk, annual $PM_{2.5}$ concentrations, and HI from the nearby fixed sources (roadways and stationary sources) do not exceed the single-source thresholds and the combined fixed sources alone would not exceed the cumulative thresholds. Only temporary construction emissions associated with nearby projects would exceed BAAQMD's combined annual $PM_{2.5}$ threshold of 0.8 $\mu g/m^3$. In addition, the construction schedule for many of the nearby developments listed in Table 3.1-9 above are unknown and may not overlap with this project, which would reduce temporary impacts to future residents of the proposed project.

3.2 BIOLOGICAL RESOURCES

The following discussion is based, in part, on an Arborist Report prepared by *HortScience | Bartlett Consulting* in April 2021. The report is included as Appendix C in this document.

3.2.1 Environmental Setting

3.2.1.1 *Regulatory Framework*

Federal and State

Endangered Species Act

Individual plant and animal species listed as rare, threatened, or endangered under state and federal Endangered Species Acts are considered special-status species. Federal and state endangered species legislation has provided the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations. Permits may be required from both the USFWS and CDFW if activities associated with a proposed project would result in the take of a species listed as threatened or endangered. To "take" a listed species, as defined by the State of California, is "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" these species. Take is more broadly defined by the federal Endangered Species Act to include harm of a listed species.

In addition to species listed under state and federal Endangered Species Acts, Sections 15380(b) and (c) of the CEQA Guidelines provide that all potential rare or sensitive species, or habitats capable of supporting rare species, must be considered as part of the environmental review process. These may include plant species listed by the California Native Plant Society and CDFW-listed Species of Special Concern.

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. Hunting and poaching are also prohibited. The taking and killing of birds resulting from an activity is not prohibited by the MBTA when the underlying purpose of that activity is not to take birds. Nesting birds are considered special-status species and are protected by the USFWS. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

Sensitive Habitat Regulations

Wetland and riparian habitats are considered sensitive habitats under CEQA. They are also afforded protection under applicable federal, state, and local regulations, and are generally subject to regulation by the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), CDFW, and/or the USFWS under provisions of the federal Clean Water Act (e.g., Sections 303, 304, 404) and State of California Porter-Cologne Water Quality Control Act.

Fish and Game Code Section 1602

Streambeds and banks, as well as associated riparian habitat, are regulated by the CDFW per Section 1602 of the Fish and Game Code. Work within the bed or banks of a stream or the adjacent riparian habitat requires a Streambed Alteration Agreement from the CDFW.

Regional

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

The Santa Clara Valley Habitat Plan/Natural Community Conservation Plan (Habitat Plan) covers approximately 520,000 acres, or approximately 62 percent of Santa Clara County. It was developed and adopted through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, Santa Clara Valley Water District (Valley Water), Santa Clara Valley Transportation Authority (VTA), USFWS, and CDFW. The Habitat Plan is intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in southern Santa Clara County. The Santa Clara Valley Habitat Agency is responsible for implementing the plan.

City of San José

Tree Removal Ordinance

The City of San José Tree Removal Controls (San José Municipal Code, Sections 13.31.010 to 13.32.100) serve to protect all trees having a trunk that measures 38 inches or more in circumference (12.1 inches in diameter) at the height of 54 inches (4.5 feet) above the natural grade of slope. The ordinance protects both native and non-native tree species. On single-family residential properties, a tree removal permit is required from the City of San José for the removal of ordinance-sized trees. On multi-family, commercial, or industrial lots, a permit is required to remove a tree of any size. On private property, tree removal permits are issued by the Department of Planning, Building and Code Enforcement. Removal of or modifications to all trees on public property (e.g., street trees within a parking strip or the area between the curb and sidewalk) are handled by the City Arborist.

In addition, any tree found by the City Council to have special significance can be designated as a Heritage Tree, regardless of tree size or species. It is unlawful to vandalize, mutilate, remove, or destroy such Heritage Trees. Under the City's Tree Removal Ordinance, specific criteria or findings must be made before a permit for removal of a live or dead Heritage Tree would be granted.

Riparian Corridor and Bird-Safe Building Policy 6-34

The City of San José's Riparian Corridor and Bird Safe Building Policy, adopted in September 2016, provides guidance consistent with the goals, policies, and actions of the 2040 General Plan for: 1) protecting, preserving, or restoring riparian habitat; 2) limiting the creation of new impervious surface within Riparian Corridor setbacks to minimize flooding from urban runoff and control erosion; and 3) encouraging bird-safe design in baylands and riparian habitats of lower Coyote Creek, north of State Route 237. It supplements the regulations for riparian corridor protection in the Council-adopted Santa Clara Valley Habitat Plan, the Zoning Code (Title 20 of the San José

Municipal Code), and other existing City policies that may provide for riparian protection and bird-safe design. The general guidelines for setbacks and lighting apply to development projects within 300 feet of riparian corridors. Bird-safe design guidance for buildings and structures includes avoidance of large areas of reflective glass, transparent building corners, up-lighting, and spotlights.

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to biological resources and are applicable to the project.

General Plan Policies – Biological Resources	
ER-5.1	Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
MS-21.4	Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.
MS-21.5	As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
MS-21.6	As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies or guidelines.
MS-21.7	Manage infrastructure to ensure that the placement and maintenance of street trees, streetlights, signs and other infrastructure assets are integrated. Give priority to tree placement in designing or modifying streets.
MS-21.8	For Capital Improvement Plan or other public development projects, or through the entitlement process for private development projects, require landscaping including the selection and planting of new trees to achieve the following goals: 1. Avoid conflicts with nearby power lines. 2. Avoid potential conflicts between tree roots and developed areas. 3. Avoid use of invasive, non-native trees. 4. Remove existing invasive, non-native trees. 5. Incorporate native trees into urban plantings in order to provide food and cover for native wildlife species. Plant native oak trees and native sycamores on sites which have adequately sized landscape areas and which historically supported these species.

General Plan Policies – Biological Resources	
CD-1.24	Within new development projects, include preservation of ordinance-sized and other significant trees, particularly natives. Avoid any adverse effect on the health and longevity of such trees through design measures, construction, and best maintenance practices. When tree preservation is not feasible include replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest.

3.2.1.2 *Existing Conditions*

The project site is currently developed with a gas station, church, surface parking lot, and three commercial buildings. There are trees (on-site and street trees) and shrubs located on-site and along the North Fourth Street frontage.

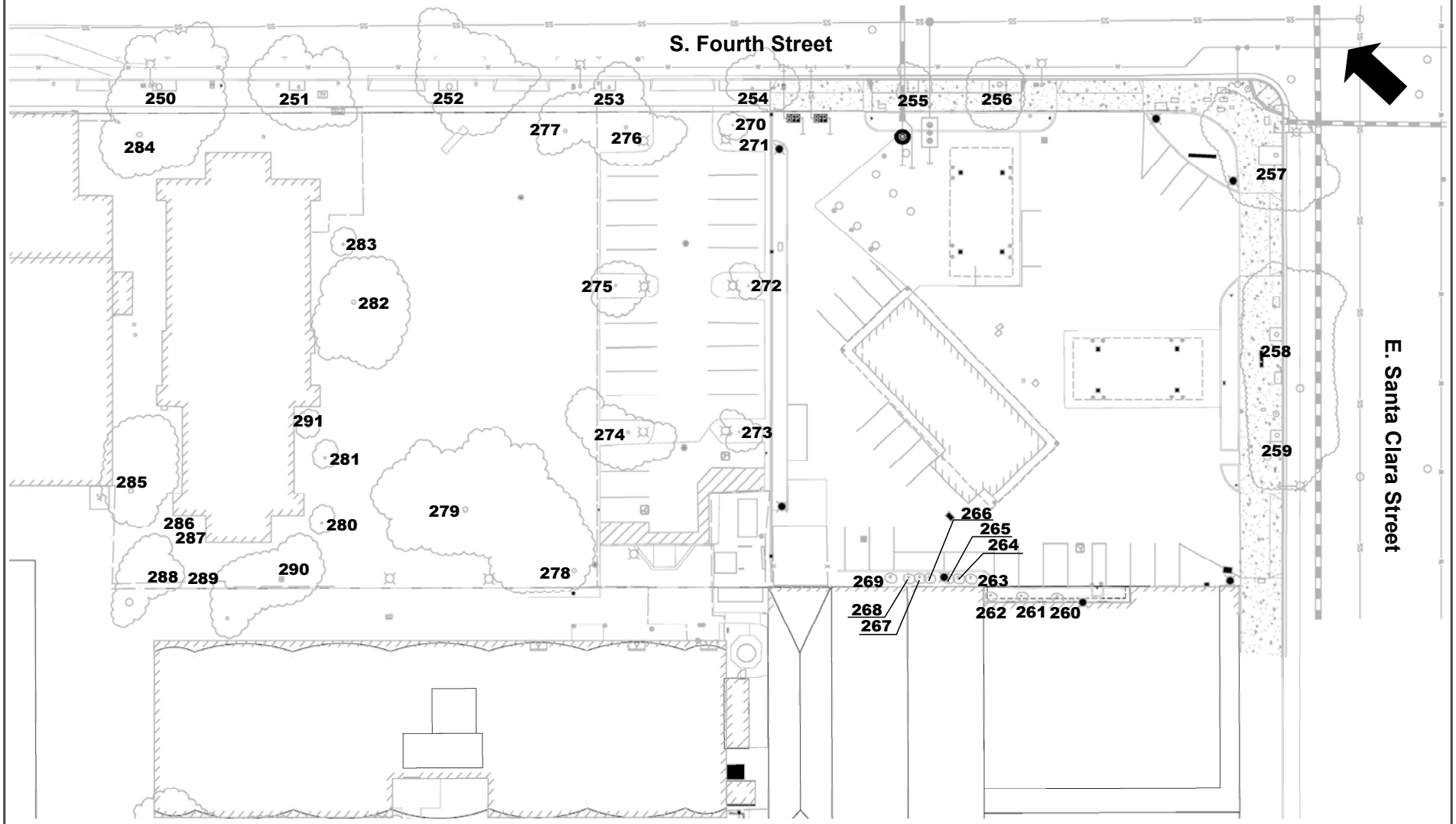
Special-Status Species

The project site is located in an urbanized area of San José. Habitats in developed areas, such as the project site, are low in species diversity and include predominately urban adapted birds and animals. Most special-status species occurring in the Bay Area use habitats that are not present on the project site, including salt marsh, freshwater marsh, and serpentine grassland habitats. Since the native vegetation of the area is no longer present on-site, native wildlife species have been supplanted by species that are more compatible with an urbanized area.

Trees

Trees (both native and non-native) are valuable to the human environment for the benefits they provide including resistance to global climate change (i.e., carbon dioxide adsorption), protection from weather, nesting and forging habitat for raptors and other migratory birds, and as a visual enhancement to the urban environment. In accordance with City policy, trees that are a minimum of 12.1 inches in diameter (38 inches in circumference) at 54 inches above the natural grade, as well as Heritage Trees, are protected. On multi-family, commercial, or industrial lots, a permit is required to remove a tree of any size.

A total of 42 trees (10 street trees and 32 on-site trees) were surveyed. There are two street trees (Western sycamore) which are native to the City of San José. The following table lists all trees identified on and adjacent to the site as part of a tree study completed by *HortScience | Bartlett Consulting*. The location of the trees is shown in Figure 3.2-1.



Source: Hort Science | Bartlett Consulting, December 2020.

TREE LOCATION MAP | FIGURE 3.2-1

Table 3.2-1: Tree Survey				
Tree No.	**Scientific Name**	**Common Name**	**Circumference (Inches)**	**Diameter (inches)**
***250**	***Platanus × acerifolia***	**London plane**	**69**	**22**
***251**	***Platanus × acerifolia***	**London plane**	**47**	**15**
****252**	***Platanus racemosa***	**Western sycamore**	**79**	**25**
*253	*Platanus × acerifolia*	London plane	31	10
*254	*Platanus × acerifolia*	London plane	31	10
*255	*Platanus × acerifolia*	London plane	22	7
****256**	***Platanus racemosa***	**Western sycamore**	**57**	**18**
***257**	***Platanus × acerifolia***	**London plane**	**60**	**19**
***258**	***Platanus × acerifolia***	**London plane**	**50**	**16**
***259**	***Platanus × acerifolia***	**London plane**	**57**	**18**
260	*Cupressus sempervirens*	Italian cypress	16	5
261	*Cupressus sempervirens*	Italian cypress	19	6
262	*Cupressus sempervirens*	Italian cypress	19	6
263	*Cupressus sempervirens*	Italian cypress	22	7
264	*Cupressus sempervirens*	Italian cypress	16	5
265	*Cupressus sempervirens*	Italian cypress	16	5
266	*Cupressus sempervirens*	Italian cypress	25	8
267	*Cupressus sempervirens*	Italian cypress	25	8
268	*Cupressus sempervirens*	Italian cypress	25	8
269	*Cupressus sempervirens*	Italian cypress	25	8
270	*Lagerstroemia*	Crape myrtle	19	6
271	*Prunus domestica*	Plum	19	6
272	*Lagerstroemia*	Crape myrtle	19	6
273	*Lagerstroemia*	Crape myrtle	22	7
274	***Ulmus parvifolia***	**Chinese elm**	**38**	**12**
275	*Lagerstroemia*	Crape myrtle	25	8
276	***Ulmus parvifolia***	**Chinese elm**	**41**	**13**
277	***Ulmus parvifolia***	**Chinese elm**	**47**	**15**
278	***Ulmus parvifolia***	**Chinese elm**	**57**	**18**
279	***Ulmus parvifolia***	**Chinese elm**	**66**	**21**

Table 3.2-1: Tree Survey				
Tree No.	**Scientific Name**	**Common Name**	**Circumference (Inches)**	**Diameter (inches)**
280	*Morus*	Mulberry	28	9
281	*Morus*	Mulberry	35	11
282	***Platanus × acerifolia***	**London plane**	**53**	**17**
283	*Morus*	Mulberry	35	11
284	***Geijera parviflora***	**Australian willow**	**148**	**47**
285	***Eucalyptus leucoxylon***	**White ironbark**	**69**	**22**
286	*Grevillea robusta*	Silk oak	9	3
287	*Grevillea robusta*	Silk oak	6	2
288	*Prunus dulcis*	Almond	6	2
289	*Prunus dulcis*	Almond	16	5
290	***Ligustrum lucidum***	**Glossy privet**	**151**	**48**
291	*Liquidambar styraciflua*	Sweetgum	31	10

Notes: Ordinance sized trees are 38+ inches in circumference
The arborist did not have tree tags 1-249; therefore, the tree survey started at 250 instead of 1.
* denotes street trees
** denotes street trees and native trees
Bold denotes ordinance-sized trees

3.2.2 Impact Discussion

For the purpose of determining the significance of the project's impact on biological resources, would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife (CDFW) or United States Fish and Wildlife Service (USFWS)?

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFW or USFWS?

c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant biological resources impacts, as described below.

3.2.2.1 *Project Impacts*

a) Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS?

The project site is located within a developed area in downtown San José. As mentioned in *Section 3.2.1.2*, habitats in developed areas, such as the project site, are low in species diversity and include predominately urban adapted birds and animals.

Migratory birds, like nesting raptors, are protected under the MBTA and CDFW Code Sections 3503, 3503.5, and 3800. The CDFW defines "taking" as causing abandonment and/or loss of reproductive efforts through disturbance. Any loss of fertile eggs, nesting raptors, or any activities resulting in nest abandonment would constitute a significant impact. All trees surveyed would be removed as part of the project which could provide nesting and/or foraging habitat for migratory birds including raptors.

Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.

Mitigation Measure

In accordance with the MBTA, CDFW, and General Plan Policies ER-5.1 and ER-5.2 and consistent with the Downtown Strategy 2040 FEIR, the following mitigation measure is included to reduce impacts to raptors and migratory birds during construction.

MM BIO-1.1: Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.

If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-

construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest. The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.

Prior to any tree removal, or approval of any demolition or grading permits (whichever occurs first), the applicant shall submit the ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.

With implementation of Mitigation Measure BIO-1.1, the project's impact to nesting birds and raptors would be less than significant. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

b) Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFW or USFWS?

Sensitive natural communities (i.e., riparian and aquatic habitat) in the vicinity of the downtown area are located within and adjacent to the Los Gatos Creek and Guadalupe River. The project site is located approximately one mile and 0.7 miles west of Los Gatos Creek and Guadalupe River, respectively, and would not infringe on the surrounding riparian corridor. For this reason, implementation of the proposed project would not result in a substantial adverse effect on any riparian habitat or sensitive natural community. **[Same Impact as Approved Project (Less Than Significant Impact)]**

c) Would the project have a substantial adverse effect on state or federally protected wetlands through direct removal, filling, hydrological interruption, or other means?

The project site is not located in or near any state or federally protected wetland areas.[22] Therefore, the project would have no impact on state or federally protected wetland areas. **[Same Impact as Approved Project (Less Than Significant Impact)]**

d) Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

[22] USFWS. National Wetlands Inventory: Surface Waters and Wetlands. Accessed July 27, 2021. https://www.fws.gov/wetlands/data/Mapper.html.

The project site is located within an urbanized area of downtown and would replace existing development. No natural habitat exists on-site and the site is not used as a wildlife corridor by any native resident or migratory fish or wildlife species. Therefore, implementation of the proposed project would have a less than significant impact on wildlife corridors or nursery sites. **[Same Impact as Approved Project (Less than Significant Impact)]**

e) Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Based on the plans provided by the applicant, a total of 39 trees (including seven street trees) would be removed as part of the project. Only three street trees (tree nos. 257-259) would be preserved. Two of the trees surveyed (Tree Nos. 252 and 256) are native trees. The project would be required to comply with the following Standard Permit Conditions.

Standard Permit Conditions:

The project shall be required to implement the following measures:

- **Tree Replacement.** Trees removed for the project shall be replaced at ratios required by the City, as provided in Table 3.2-2 below, as amended:

Table 3.2-2: Tree Replacement Ratios

Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon

x:x = tree replacement to tree loss ratio

Notes: Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-family residential, Commercial, and Industrial properties, a permit is required for removal of trees of any size.

A 38-inch tree equals 12.1 inches in diameter.

** A 24-inch box replacement tree = two 15-gallon replacement trees

Single Family and Two-dwelling properties may replace trees at a ratio of 1:1.

As mentioned above, 39 trees are proposed for removal, 11 trees would be replaced at a 4:1 ratio, 19 trees would be replaced at a 2:1 ratio, and five trees would be replaced at a 1:1 ratio with 15-gallon containers. Additionally, the two native trees would be replaced at a 5:1 ratio with 15-gallon containers. No tree replacement would be needed for the two orchard trees since they are less than 19 inches. The project would be required to plant a total of 97 trees per the City's tree replacement policy. The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

- If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment:
    - The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
    - Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

In addition to the required tree replacement measures, the proposed project would be required to comply with the following Standard Permit Condition for tree protection for any trees to remain that could be damaged by proposed project construction.

Standard Permit Condition:

- **Tree Protection Standards.** The applicant shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

In accordance with City policy, tree replacement would be implemented as shown in Table 3.2-2 and any tree damaged by project construction would be required to comply with the City's tree protection measures. With implementation of the identified Standard Permit Conditions, the proposed project would not conflict with any ordinance protecting biological resources and would not result in a significant impact to trees and the community forest. **[Same Impact as Approved Project (Less than Significant Impact)]**

f) Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

The project site is within the SCVHP and is designated as "Urban-Suburban" land. Private development in the plan area is subject to the SCVHP if it meets the following criteria:

- The activity is subject to either ministerial or discretionary approval by the County or one of the cities;
- The activity is described in *Section 2.3.2 Urban Development* or in *Section 2.3.7 Rural Development*;[23]
- In Figure 2-5 of the SCVHP, the activity is located in an area identified as "Private Development is Covered," or the activity is equal to or greater than two acres and;
    - The project is located in an area identified as "Rural Development Equal to or Greater than Two Acres is Covered," or "Urban Development Equal to or Greater than Two Acres is Covered" or,
    - The activity is located in an area identified as "Rural Development is not Covered" but, based on land cover verification of the parcel (inside the Urban Service Area) or development area, the project is found to impact serpentine, wetland, stream, riparian, or pond land cover types; or the project is located in occupied or occupied nesting habitat for western burrowing owl.

The project site is 2.1-acres in size and would require discretionary approval by the City and is consistent with the activity described in *Section 2.3.2* of the SCVHP. Consistent with the SCVHP, the project applicant shall implement the following Standard Permit Condition.

Standard Permit Condition:

- The project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan.

With implementation of the identified Standard Permit Condition, the project would not conflict with the provisions of the SCVHP. **[Same Impact as Approved Project (Less Than Significant Impact)]**

3.2.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative biological resources impact?

[23] Covered activities in urban areas include residential, commercial, and other types of urban development within the Cities of Gilroy, Morgan Hill, and San José planning limits of urban growth in areas designated for urban or rural development, including areas that are currently in the unincorporated County (i.e., in "pockets" of unincorporated land inside the cities' urban growth boundaries).

The geographic area for cumulative biological resources impacts includes the project site and nearby parcels (e.g., Miro Apartments, under construction, and Hotel Clariana Addition). The project site does not contain sensitive, wetland, or riparian habitat and, therefore, the project's impact to biological resources would not be cumulatively considerable.

Implementation of the proposed project and adjacent developments could result in combined impacts to nesting raptors, migratory birds, and trees. All projects would be subject to federal and state regulations and required mitigation measures that protect nesting birds and the City's tree placement ratio which would avoid and/or reduce the cumulative impact to nesting birds and trees. For these reasons, the proposed project and adjacent developments would not result in a significant cumulative impact to biological resources. **[Same Impact as Approved Project (Less Than Significant Cumulative Impact)]**

3.3 CULTURAL RESOURCES

The following information is also based on three separate reports prepared by TreanorHL in April 2022: (1) Historic Resources Evaluation, (2) Downtown Design Guidelines and Standards Compliance Review, and (3) St. James Square Historic Design Guidelines and the Secretary of the Interiors Standards Compliance Review.[24] The reports can be found in Appendix D of this document, and the purpose of each report is summarized below

The Historic Resources Evaluation evaluates the existing properties' eligibility for listing in the National Register of Historic Places (NRHP), California Register of Historical Resources (CRHR), and San José Historic Resources Inventory (HRI) as a Candidate City Landmark. The Downtown Design Guidelines and Standards Compliance Review evaluates the proposed design of the Southern Tower with the San José Downtown Design Guidelines and Standards (2019 Design Guidelines and Standards). The St. James Square Historic Design Guidelines and the Secretary of the Interiors Standards Compliance Review report includes a compliance analysis with the Secretary of Interior's Standards for Rehabilitation, an evaluation of the proposed design of the Northern Tower, and an evaluation of the construction of the Northern Tower within the St. James Square City Landmark District.

The archaeological discussion is based upon Literature Searches completed for two nearby projects (Hotel Clariana Expansion Project File No. H17-059 and Donner Lofts Project File No. H09-004). Copies of the Literature Searches are on file at the Department of Planning, Building and Code Enforcement and available for review with appropriate credentials.

3.3.1 Environmental Setting

3.3.1.1 *Regulatory Framework*

Federal and State

National Historic Preservation Act

Federal protection is legislated by the National Historic Preservation Act of 1966 (NHPA) and the Archaeological Resource Protection Act of 1979. These laws maintain processes for determination of the effects on historical properties eligible for listing in the NRHP. Section 106 of the NHPA and related regulations (36 Code of Federal Regulations [CFR] Part 800) constitute the primary federal regulatory framework guiding cultural resources investigations and require consideration of effects on properties that are listed or eligible for listing in the NRHP. Impacts to properties listed in the NRHP must be evaluated under CEQA.

California Register of Historical Resources

The CRHR is administered by the State Office of Historic Preservation and encourages protection of resources of architectural, historical, archeological, and cultural significance. The CRHR identifies

[24] Note that the project description provided in the reports are incorrect. The project applicant has clarified that the Northern Tower would be 27 stories which is correctly stated in the reports; however, the Southern Tower (office and retail) would be 21-stories tall. Both buildings would have a maximum height of 268 feet. The conclusions of the analyses would not change.

historic resources for state and local planning purposes and affords protections under CEQA. Under Public Resources Code Section 5024.1(c), a resource may be eligible for listing in the CRHR if it meets any of the NRHP criteria.[25]

Historical resources eligible for listing in the CRHR must meet the significance criteria described previously and retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance. A resource that has lost its historic character or appearance may still have sufficient integrity for the CRHR if it maintains the potential to yield significant scientific or historical information or specific data.

The concept of integrity is essential to identifying the important physical characteristics of historical resources and, therefore, in evaluating adverse changes to them. Integrity is defined as "the authenticity of a historical resource's physical identity evidenced by the survival of characteristics that existed during the resource's period of significance." The processes of determining integrity are similar for both the CRHR and NRHP and use the same seven variables or aspects to define integrity that are used to evaluate a resource's eligibility for listing. These seven characteristics include 1) location, 2) design, 3) setting, 4) materials, 5) workmanship, 6) feeling, and 7) association.

California Native American Historical, Cultural, and Sacred Sites Act

The California Native American Historical, Cultural, and Sacred Sites Act applies to both state and private lands. The act requires that upon discovery of human remains, construction or excavation activity must cease, and the county coroner be notified.

Public Resources Code Sections 5097 and 5097.98

Section 15064.5 of the CEQA Guidelines specifies procedures to be used in the event of an unexpected discovery of Native American human remains on non-federal land. These procedures are outlined in Public Resources Code Sections 5097 and 5097.98. These codes protect such remains from disturbance, vandalism, and inadvertent destruction, establish procedures to be implemented if Native American skeletal remains are discovered during construction of a project, and establish the Native American Heritage Commission (NAHC) as the authority to resolve disputes regarding disposition of such remains.

Pursuant to Public Resources Code Section 5097.98, in the event of human remains discovery, no further disturbance is allowed until the county coroner has made the necessary findings regarding the origin and disposition of the remains. If the remains are of a Native American, the county coroner must notify the NAHC. The NAHC then notifies those persons most likely to be related to the Native American remains. The code section also stipulates the procedures that the descendants may follow for treating or disposing of the remains and associated grave goods.

[25] California Office of Historic Preservation. "CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6." March 14, 2006.

City of San José

Historic Preservation Ordinance

The City of San José Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code) is designed to identify, protect, and encourage the preservation of significant resources and foster civic pride in the City's cultural resources. The Historic Preservation Ordinance requires the City to establish a Historic Landmarks Commission, maintain a HRI, preserve historic properties using a Landmark Designation process, require Historic Preservation Permits for alterations of properties designated as a Landmark or within a City historic district, and provide financial incentives through a Mills Act Historical Property Contract.

City Council's Development Policy on the Preservation of Historic Landmarks

The City Council's Development Policy on the Preservation of Historic Landmarks (as amended May 23, 2006) calls for preservation of candidate or designated landmark structures, sites, or districts wherever possible. The City also has various historic design guidelines that suggest various methods for the restoration or rehabilitation of older/historic structures and establish a general framework for the evaluation of applications involving historic preservation issues. The City offers a number of historic preservation incentives, including use of the State Historic Building Code, Mills Act/Historical Property Contracts, and various land use and zoning incentives.

St. James Square Historic District Design Guidelines

The St. James Square Historic District Design Guidelines, adopted by the City in October 1989, provide direction and design considerations for the rehabilitation of existing and new buildings within the St. James Square Area of Historic Sensitivity.

San José Downtown Design Guidelines and Standards

The City's Downtown Design Guidelines and Standards (updated in 2020) provide guidance for the form and design of buildings in the downtown area, appearance in the larger cityscape, and their interface with the pedestrian level. The Downtown Design Guidelines and Standards also set requirements for new buildings and external alterations to non-historic buildings being built near and adjacent to historic buildings and other key structures within the City's Downtown Design Guidelines and Standards boundary.

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to cultural resources and are applicable to the project.

General Plan Policies - Cultural Resource	
LU-13.1	Preserve the integrity and fabric of candidate or designated Historic Districts.
LU-13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
LU-13.7	Design new development, alterations, and rehabilitation/remodels within a designated or candidate Historic District to be compatible with the character of the Historic District and conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties, appropriate State of California requirements regarding historic buildings and/or structures (including the California Historic Building Code) and to applicable historic design guidelines adopted by the City Council.
LU-13.8	Require that new development, alterations, and rehabilitation/remodels adjacent to a designated or candidate landmark or Historic District be designed to be sensitive to its character.
LU-13.15	Implement City, State, and Federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.
ER-9.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon their discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

3.3.1.2 *Existing Conditions*

Site History

Prehistoric

Native Americans occupied Santa Clara Valley and the greater Bay Area for more than 5,000 years. The exact time period of the Ohlone (originally referred to as Costanoan) migration into the Bay Area is debated by scholars. Dates of the migration range between 3,000 B.C. and 500 A.D. Regardless of the actual time frame of their initial occupation of the Bay Area and, in particular, Santa Clara Valley, it is known that the Ohlone had a well-established population of approximately 7,000 to 11,000 people with a territory that ranged from the San Francisco Peninsula and the East Bay, south through the Santa Clara Valley and down to Monterey and San Juan Bautista.

The Ohlone people were hunter/gatherers focused on hunting, fishing, and collecting seasonal plant and animal resources, including tidal and marine resources from San Francisco Bay. The customary

way of living, or lifeway, of the Costanoan/Ohlone people disappeared by about 1810 due to disruption by introduced diseases, a declining birth rate, and the impact of the California mission system established by the Spanish in the area beginning in 1777.

Artifacts pertaining to the Ohlone occupation of San José have been found throughout the downtown area, particularly near the Guadalupe River. The nearest waterway to the project site is Guadalupe River, located approximately 0.7 miles west.

Historic – Mission Period

Spanish explorers began coming to Santa Clara Valley in 1769. From 1769 to 1776 several expeditions were made to the area during which explorers encountered the Native American tribes who had occupied the area since prehistoric times. Expeditions in the Bay Area and throughout California led to the establishment of the California Missions and, in 1777, the Pueblo de San José de Guadalupe.

The pueblo was originally near the old San José City Hall. Because the location was prone to flooding, the pueblo was relocated in the late 1780's or early 1790's south to what is now downtown San José. The current intersection of Santa Clara Street and Market Street in downtown San José was the center of the second pueblo. The second pueblo is located approximately 0.3 miles west of the project site.

Historic – Post-Mission Period to Mid-20th Century

In the mid-1800's the project area began to be redeveloped as America took over the territory from Mexico and new settlers began to arrive in California as a result of the gold rush and the expansion of business opportunities in the west. As shown in an 1891 Sanborn Map, the project area was developed with one- to two-story dwellings, animal husbandry, and industrial businesses. By 1908, dwellings located along North Third Street were replaced by the First Presbyterian Church and the project area remained the same until 1915. By 1932, the business at the intersection of East St. John Street and North Fourth Street was demolished. The garage at 128 East St. John Street and the business at 77 North Fourth Street was constructed circa 1922 and 1927, respectively. By 1922, a two-story building was constructed south of the church. By 1915, the land uses on the southern half of the block were replaced by warehouses and retail by 1915. By the 1950s, auto-related businesses and garages were constructed along East Santa Clara Street. The last dwellings on the block were removed by 1958.

During the mid-1950s, retail in the downtown area began to decline and the project area began to change by the late 1960s to 1970s. The service station structures at 147 East Santa Clara Street were constructed in 1969. The First Presbyterian Church on North Third Street was demolished in 1968 and the new church at 49 North Fourth Street was constructed in 1972. By 1971, the senior apartments to the west of the project site was constructed. An office building was constructed in 1985 at the northwest corner of the St. John Street and North Third Street intersection. The First Presbyterian Church was used as a church until 2019. It is now used to provide services for the disadvantaged.

Based on literature searches[26,27] prepared for nearby projects, there is a potential for historic-era buried deposits to be uncovered during construction activities. Due to the distance between the project site and two major waterways (Guadalupe River and Coyote Creek), the project site would have low to moderate potential Native American resources.

3.3.1.3 *Existing Conditions - Historic Resources*

Portion of Project Site Within the St. James Square City Landmark District

128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street (APN 467-20-060)

Building Descriptions

Three one-story commercial buildings are located at 128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street. These buildings are located within the boundary of the St. James Square City Landmark District, but they are identified a non-contributing buildings.

The building at 128 East St. John Street (constructed circa 1922) is of utilitarian architecture with no definitive architectural style. The building has a flat roof and the northern façade consists of stucco cladding with a metal roll-up door.

The building at 95 North Fourth Street (constructed in 1948) was formerly a gas station and is set back from East St. John Street and North Fourth Street by a surface parking lot. The concrete building has a flat roof and was influenced by the commercial modern architectural style. The eastern façade is partially clad with sheet metal and consist of three metal-sash storefronts with glazed doors. There are two openings at the center that are boarded up.

The one-story commercial building at 77 North Fourth Street was constructed circa 1927 with rear additions from 1947 and circa 1960 and is an example of a 20th century commercial building. The building is of concrete masonry unit construction and has a flat roof. The eastern façade consists of a boarded-up door surrounded by windows on each side. Three multi-lite steel-sash windows are located along the northern façade. Two sets of wood-sash, two-part rectangular windows facing the driveway are located along the southern façade. In addition, a single wood panel door and a window is located along the northern façade. All the windows on the northern and southern façades have security bars.

[26] Holman & Associates, Inc. *Archaeological Survey Report for Donner Lofts*. May 2012.
[27] Holman & Associates, Inc. *Archaeological Literature Search (Hotel Clariana)*. October 2018.

St. James Square City Landmark District

The proposed Northern Tower is located within the St. James Square City Landmark District (HD84-36), listed in the Historic Resource Inventory under the theme Social, Arts, and Recreation for the Early American Period (1846-1870). St. James Park is the only public square in the Downtown Core Area and is surrounded by buildings significant for their civic design and uses from the 1860s through 1930s. The St. James Square City Landmark District includes the park, the block west to North Market Street and part of the block east to North Fourth Street and part of the block south between North Second and North Third Streets.

The character-defining features of the St. James Square City Landmark District include buildings with monumental designs surrounding the park; massive buildings (two- to four-stories and rectangular in plan); building setback on platforms above street grade, hipped or gabled roofs; vertical building orientation through pilasters, columns, window shapes, and corner towers; use of brick, plaster, wood, stone, terra cotta, and clay roof tiles; entries and punches windows with architectural detailing; decorative cornices; use of white, grey, earth tones, red clay roof tiles, brown asphalt shingles; and signage cut into the wall surface.

The buildings located at 128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street are non-contributing buildings to the St. James Square City Landmark District and do not contain any of the district's character-defining features consisting of monumental massing, vertical orientation, architectural detailing, and associated materials.

NRHP/CRHR Evaluation

The buildings at 128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street were evaluated for individual potential significance and eligibility for listing in the NRHP and CRHR.

The documentation and evaluation of the buildings concluded that they are not representative of any important patterns of development within the City. Therefore, the buildings would not be eligible under Criterion A of the NRHP or Criterion 1 of the CRHR. The buildings are not associated with persons of local significance; therefore, the buildings would not be eligible under Criterion B of the NRHP or Criterion 2 of the CRHR. None of the buildings identified are distinguished examples of their respective architectural styles or are architect designed; therefore, none of the buildings are eligible under Criterion C of the NRHP or Criterion 3 of the CRHR. The buildings do not have the potential to yield any prehistory or history of the area; therefore, the buildings would not be eligible under Criterion D of the NRHP or Criterion 4 of the CRHR.

City of San José City Landmark Evaluation

The buildings located at 128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street were also evaluated for potential individual significance and eligibility as Candidate City Landmarks under San José Municipal Code Section 13.48.100.H. The documentation and assessment of the buildings concluded that they do not meet any of the City of San José's criteria for individual designation as a Candidate City Landmark as discussed below.

1. Its character, interest or value as part of the local, regional, state or national history, heritage or culture;

   The buildings do not possess special character, interest, or value to the local, regional, state, or national history, trends in history, or cultural of the community. While the property was developed during the inter-war and industrialization and urbanization periods of San José, none of the buildings are individually representative of important patterns of development. Therefore, the buildings are not individually eligible under this criterion.

2. Its location as a site of a significant historic event;

   The buildings are not located at the site of a significant historic event and are not individually eligible under this criterion.

3. Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;

   The buildings are not associated with any person(s) who significantly contributed to the local, regional, state, or national history. Therefore, the buildings are not individually eligible under this criterion.

4. Its exemplification of the cultural, economic, social or historic heritage of the City of San José;

   While the buildings are associated with early 20th century commercial structures in the downtown area, they do not exemplify cultural, economic, social, or historic heritage of San José. Therefore, the buildings are not individually eligible under this criterion.

5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;

   The architectural design of the buildings do not portray a group of people in history and are not individually eligible under this criterion.

6. Its embodiment of distinguishing characteristics of an architectural type or specimen;

   The commercial building at 128 East St. John Street is of utilitarian architectural style with no notable features. While the former gas station at 95 North Fourth Street was influenced by the Commercial Modern style, it has been altered over time. Additionally, while the 77 North Fourth Street reflects some features of the 20th century commercial architecture it has no distinguishing characteristics of an architectural type. All buildings on-site are of common construction with no notable features. Therefore, the buildings are not individually eligible under this criterion.

7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the City of San José;

   The buildings at 128 East St. John Street and 77 North Fourth Street were not built by a notable architect or master building and is not eligible under this criterion. While the former gas station at 95 North Fourth Street was constructed by Bridges Construction Company, which worked on prominent buildings in the City, the gas station is not among their influential works. Therefore, the buildings are not individually eligible under this criterion.

8. Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.

The buildings do not contain any unique or architectural innovations and are not individually eligible under this criterion.

In summary, the buildings at 128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street are not individually eligible for listing in the NRHP or CRHR and are not individually eligible for listing as a Candidate City Landmark.

Portion of Project Site Outside the St. James Square City Landmark District

49 North Fourth Street (APN 467-20-081)

Building Description

The one-story First Presbyterian Church was constructed in 1972 and is of modern architectural style. The church occupies the northern part of the parcel while the southern part is used for surface parking. The main entrance to the church is on the southern façade. A metal fence surrounds the building. This building is located outside the St. James Square City Landmark District and is not listed in the San José HRI

NRHP/CRHR Evaluation

The building located at 49 North Fourth Street was evaluated for eligibility for listing against the criteria for the NRHP and the CRHR.

The documentation and assessment of the building concluded that the building is not representative of any important patterns of development within the City. Therefore, it would not be eligible under Criterion A of the NRHP or Criterion 1 of the CRHR. No persons of known historical significance have been associated with the building; therefore, the building would not be eligible under Criterion

B of the NRHP or Criterion 2 of the CRHR. While the building is of Modern style and contains character-defining features of the International style (e.g., strong right angles and cubic forms, exterior walls of brick, flat roofs, walls of glass, asymmetrical façades, and minimal applied ornamentation), it is not a distinguished example among church buildings from this period. Therefore, the building would not be eligible under Criterion C of the NRHP or Criterion 3 of the CRHR. The building does not have the potential to yield any prehistory or history of the area; therefore, the building would not be eligible under Criterion D of the NRHP or Criterion 4 of the CRHR.

City of San José City Landmark Evaluation

The building located at 49 North Fourth Street was evaluated for potential individual significance as a Candidate City Landmark under San José Municipal Code Section 13.48.100.H. The documentation and assessment of the building concluded that it does not meet any of the City of San José's Historic Landmark Designation criteria as discussed below.

1. Its character, interest or value as part of the local, regional, state or national history, heritage or culture;

   The building does not possess special character, interest, or value to the local, regional, state, or national history, trends in history, or cultural of the community. While the building is associated with the post-World War II and mid-century growth of the City, the building is not individually representative of important patterns of development. Therefore, the building is not eligible under this criterion.

2. Its location as a site of a significant historic event;

   The building was constructed in 1972 during the industrialization and urbanization period which followed an already established trend in the downtown area during the 20th century. The building is not located at the site of a significant historic event and is not eligible under this criterion.

3. Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;

   The building is not associated with any person(s) who significantly contributed to the local, regional, state, or national history. Therefore, the building is not eligible under this criterion.

4. Its exemplification of the cultural, economic, social or historic heritage of the City of San José;

   While the building is associated with post-World War II development in downtown, it does not exemplify cultural, economic, social, or historic heritage of San José. Therefore, the building is not eligible under this criterion.

5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;

   The architectural design of the building does not portray a group of people in history and is not eligible under this criterion.

6. Its embodiment of distinguishing characteristics of an architectural type or specimen;

   The church contains characteristics from the International architectural style (e.g., strong right angles and cubic forms, brick exterior walls, flat roofs, glass walls, asymmetrical façades, and minimal applied ornamentation). Compared to other post-World War II Modernist churches in the City, the church at 49 North Fourth Street is not architecturally significant or a distinguished example among other church buildings from this period. Therefore, the building is not eligible under this criterion.

7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the City of San José;

   While the church was designed by a master architect, Goodwin Steinberg, and constructed by master builders, Hathaway & Company, they have designed and constructed more influential projects. Therefore, the building is not eligible under this criterion.

8. Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.

   The building does not contain any unique or architectural innovations. The church consists of typical building materials used during the post-World War II time period and is not eligible under this criterion.

In summary, the building located at 49 North Fourth Street is not eligible for listing in the NRHP or CRHR and is not eligible for listing in the San José HRI as a Candidate City Landmark.

147 East Santa Clara Street (APN 467-20-079)

Building Description

The gas station (constructed in 1969) is located at the East Santa Clara Street and North Fourth Street intersection and consists of two canopies covering the gas pumps and a one-story commercial building. The gas station was influenced by the commercial modern architectural style. The canopies have clay tile-clad hipped

roofs[28] supported by four brick columns. The commercial building also has a clay tile-clad hipped roof. The exterior of the commercial building is primarily stucco-clad with brick veneer. Fixed windows are located along the southeastern and northeastern façades. Two aluminum-sash double glazed doors are located along the southern façade. A roll-up garage door and a single door is located along the northern façade. This building is located outside the St. James Square City Landmark District and is not listed in the San José HRI

NRHP/CRHR Evaluation

The gas station and accessory structures located at 147 East Santa Clara Street were evaluated for individual eligibility for listing against the criteria for the NRHP and the CRHR.

The documentation and assessment of the property concluded that the gas station and accessory structures are not representative of any important patterns of development within the City. Therefore, the property would not be eligible under Criterion A of the NRHP or Criterion 1 of the CRHR. The site has been occupied by gas stations since 1971[29] and no persons of known historical significance have been associated with the gas station; therefore, it would not be eligible under Criterion B of the NRHP or Criterion 2 of the CRHR. While the structures associated with the gas station are built in the Commercial Modern style (e.g., horizontal massing, low-pitched roofs, and extensive use of glass within metal frames), they are not distinguished examples of this style. Therefore, the property would not be eligible under Criterion C of the NRHP or Criterion 3 of the CRHR. The property does not have the potential to yield any prehistory or history of the area; therefore, they would not be eligible under Criterion D of the NRHP or Criterion 4 of the CRHR.

City of San José City Landmark Evaluation

The gas station and accessory structures at 147 East Santa Clara Street were evaluated for potential individual significance as a Candidate City Landmark under San José Municipal Code Section 13.48.100.H. The documentation and assessment of the property concluded that the gas station and accessory structures at 147 East Santa Clara Street do not meet any of the City of San José's Historic Landmark designation criteria as discussed below.

1. Its character, interest or value as part of the local, regional, state or national history, heritage or culture;

   The gas station and accessory structures at 147 East Santa Clara Street do not possess special character, interest, or value to the local, regional, state, or national history, trends in history, or cultural of the community. While the site was constructed during the industrialization and urbanization period, it is not individually representative of important patterns of development. Therefore, the property is not eligible under this criterion.

[28] A hipped roof is a roof where all sides slope downwards.
[29] While the gas station was constructed in 1969, the address first appeared in the City directory in 1971.

2. Its location as a site of a significant historic event;

   As mentioned previously, the gas station was constructed in 1969 during the post-World War II and mid-century growth of the City. The project area changed drastically in the late 1960s and 1970s as most of the late 19th and early 20th century buildings were replaced with new development. The property is not individually representative of any important development patterns nor is it located at the site of a significant historic event. Therefore, it is not eligible under this criterion.

3. Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;

   The property has been occupied by gas stations since 1971 and is not associated with any person(s) who significantly contributed to the local, regional, state, or national history. Therefore, it is not eligible under this criterion.

4. Its exemplification of the cultural, economic, social or historic heritage of the City of San José;

   The gas station and accessory structures at 147 East Santa Clara Street are among several late 20th century commercial/utilitarian structures in downtown. The property does not exemplify cultural, economic, social, or historic heritage of San José and, as a result, it is not eligible under this criterion.

5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;

   The architectural design of the gas station and accessory structures do not portray a group of people in history and the property is not eligible under this criterion.

6. Its embodiment of distinguishing characteristics of an architectural type or specimen;

   None of the structures at 147 East Santa Clara Street are architecturally significant or considered a distinguished example of the Modern Commercial architecture. All structures on-site utilize common construction and building materials with no notable characteristics. Therefore, the property is not eligible under this criterion.

7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the City of San José;

   No architect has been identified for the property. Therefore, the gas station and accessory structures are not eligible under this criterion.

8. Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.

   The gas station and accessory structures do not contain any unique or architectural innovations. The structures consists of typical building materials and the property is not eligible under this criterion.

In summary, the gas station and accessory structures at 147 East Santa Clara Street are not eligible for listing in the NRHP or CRHR and are not eligible for listing in the San José HRI as a Candidate City Landmark.

Off-Site Structures

There are 22 properties within 200 feet of the project site that were analyzed for potential eligibility as historical resources under CEQA. A detailed assessment of the Town Park Towers building (60 North Third Street) was completed because a portion of the Town Park Towers parking lot is located within the project boundary and is discussed below. The remaining 21 properties were assessed in a reconnaissance-level survey. Fifteen properties are listed in the City's HRI. These buildings are shown on Figure 3.3-1 with assigned numbers for reference. Table 3.3-1 provides a summary of the buildings within 200 feet of the project site.

Table 3.3-1: Buildings Within 200 Feet of the Site

Building No.	Building Name	Address	Year Built	Significance
1	--	110 North Third Street	1965	National Register District, City Landmark District, Non-contributing Site/Structure
2	--	115 North Fourth Street	1956	Not eligible
3	--	100 North Fourth Street	--	Not eligible
4	--	East St. John Street	--	Not eligible
5*	Donner/Houghton Residence	156 East St. John Street	Circa 1881	National Register Site/Structure, City Landmark Site/Structure, Contributing Site/Structure
6	--	70 North Fourth Street	Circa 2006	Not eligible
7*	--	21 North Fifth Street	--	Identified Site/Structure
8	--	18 South Fourth Street	--	Not eligible
9	State Meat Market	150 East Santa Clara Street	Circa 1913	National Register District, City Landmark Site/Structure, Contributing Site/Structure
10	Recycle Bookstore	144 East Santa Clara Street	Circa 1910	National Register District, Contributing Site/Structure
11	--	134 East Santa Clara Street	Pre-1915	National Register District, Identified Site/Structure

Source: TreanorHL, May 7, 2021.

ADJACENT STRUCTURES WITHIN 200 FEET | FIGURE 3.3-1

Table 3.3-1: Buildings Within 200 Feet of the Site				
Building No.	**Building Name**	**Address**	**Year Built**	**Significance**
12	--	126 East Santa Clara Street	Circa 1910	National Register District, Contributing Site/Structure
13	Fox Building	118 East Santa Clara Street	Circa 1910	National Register District, Contributing Site/Structure
14	YMCA Building	100 East Santa Clara Street	Circa 1913	National Register District, Contributing Site/Structure
15	--	10 South Third Street	--	National Register District, Identified Site/Structure
16	--	97 East Santa Clara Street	Pre-1915	Not eligible
17	--	75 East Santa Clara Street	1972-1974	Not eligible
18	--	95 North Third Street	1972	National Register District, City Landmark District, Non-contributing Site/Structure
19	--	96 North Third Street	1984	National Register District, City Landmark District, Non-contributing Site/Structure
20	Sperry Flour Co.	30 North Third Street	1917	Eligible for National Register, Eligible for California Register, City Landmark Site/Structure
21	Alliance Building	109 East Santa Clara Street	1908	Eligible for National Register, Eligible for California Register, Structure of Merit
22	Town Park Towers	60 North Third Street	1971	Eligible for National Register, Eligible for California Register Eligible as City Landmark

Notes: * denotes buildings that are no longer extant
The rows shaded in grey are currently listed in the City's Historic Resources Inventory.
Several buildings listed the City's HRI do not have the date of construction listed. TreanorHL conducted further research to identify approximate dates of construction and these dates are reflected in this table.

The 21 properties in the reconnaissance-level survey include four vacant lots and six properties that are currently not age-eligible for potential significance as a historical resource. The remaining 11 properties contain buildings that are age-eligible (over 50 years old), including nine properties constructed between circa 1900-1917 and two properties constructed between 1956-1965. Architectural styles identified include Edwardian, Modern Renaissance Revival, Mission, Commercial, Modern, utilitarian, and contemporary. None of these architectural styles are predominant within the area. Table 3.3-2 below provides a summary of the reconnaissance-level survey findings.

Of the 11 age-eligible properties, 150 East Santa Clara Street (Building No. 9) and 30 North Third Street (Building No. 20) are designated City Landmarks. The properties located at 30 North Third Street (Building No. 20) and 101 East Santa Clara Street (Building No. 21) are individually eligible

for listing in the NRHP and CRHR. Five of the properties (e.g., 150 East Santa Clara Street – Building No. 9, 144 East Santa Clara Street – Building No. 10, 126 East Santa Clara Street – Building No. 12, 118 East Santa Clara Street – Building No. 13, and 100 East Santa Clara Street – Building No. 14) are contributing site/structures to the San José Downtown Commercial National Register Historic District. Additionally, the former YMCA building at 100 East Santa Clara Street (Building No. 14) is individually eligible for listing in the NRHP. Based on TreanorHL's visual assessment, none of the remaining five buildings have individual historic architectural significance. Refer to Appendix D for a photograph and description of each property.

Table 3.3-2: Reconnaissance Survey Summary Table

Number of Properties/Buildings	Construction Date	Architectural Style	Previously Identified Historic Resources	Significantly Altered	Notes
4 properties	N/A	N/A	0	N/A	Vacant lots
6 properties	1972 – present	Modern (2), Contemporary (4)	2 (Building Nos. 18 and 19)	0	Not age-eligible
2 properties	1956 – 1965	Modern (1), utilitarian (1)	1 (Building No. 1)	0	--
9 buildings	Circa 1900 – 1917	Edwardian (3), Modern Renaissance (1), Renaissance Revival (1), Commercial (2), Mission (1), utilitarian (1)	8 (Building Nos. 9-14, 20, and 21)	2 (Building Nos. 11 and 16)	--

60 North Third Street (APN 467-20-080)

A detailed assessment of the 60 North Third Street was completed because the project boundary includes the parking lot of this property. The property also contains Town Park Towers, an apartment building that is adjacent to the project site. The property is not located in the St. James Square National Register or City Landmark District, nor is it listed in the San José HRI. Therefore, Town Park Towers was evaluated for individual potential significance and eligibility for listing in the NRHP, CRHR, and the HRI as a Candidate City Landmark. The building description and evaluations are presented below.

Building Description

The 10-story apartment building for senior citizens known as Town Park Towers. The building is located along North Third Street and was constructed in 1971 in the modern architectural style. A surface parking lot associated with the building is located on the North Fourth Street side of the property. Along the eastern and western façades of the Town Park Towers building, each unit consists of windows and scalloped balconies with metal railings and divided into seven bays. The northern and southern sides are flat and divided into three bays. The ground floor of the western façade consists of a recessed main entrance.

NRHP/CRHR Evaluation

The building at 60 North Third Street was evaluated for eligibility for listing against the criteria for the National Register of Historic Places and the California Register of Historical Resources. The documentation and assessment of the building concluded that it is not representative of any important patterns of development within the City. Therefore, the property would not be eligible under Criterion A of the NRHP or Criterion 1 of the CRHR.

No persons of known historical significance have been associated with the building; therefore, the property would not be eligible under Criterion B of the NRHP or Criterion 2 of the CRHR.

The building at 60 North Third Street is considered individually significant under Criterion C of the NRHP and Criterion 3 of the CRHR because it is a rare example of a Modern apartment building for senior citizens in downtown San José. The building is designed in the Modern architectural style (e.g., large massing, flat roof, expressed concrete construction, expansive use of glass, and overall absence of ornamentation). The curvilinear balconies are similar to the Organic architectural style. In San José, Modern residential buildings are typically present outside the commercial core. Within the boundaries of downtown, this building is one of the only extant examples of its type. Additionally, the building was designed and constructed by Goodwin Steinberg and Hathway & Company, respectively. Goodwin Steinberg was a master architect who was associated with the post-World War II development of Santa Clara Valley. The general contractors Hathaway & Company are considered master builders. Therefore, the property is considered individually eligible for listing under Criterion C of the NRHP and Criterion 3 of the CRHR.

The property does not have the potential to yield any prehistory or history of the area; therefore, it would not be eligible under Criterion D of the NRHP or Criterion 4 of the CRHR.

Aspects of Integrity

The building retains its integrity of location, association, and feeling since it has not been moved and it has been used as a senior housing facility since its construction. The building has not been altered and retains its integrity of design, materials, and workmanship. The physical environment of this site has been compromised since the 1970s by nearby commercial and mixed-use developments. Overall, the property has retained sufficient integrity to convey its historic significance.

City of San José City Landmark Evaluation

The building at 60 North Third Street was evaluated for potential significance as a Candidate City Landmark under San Jose Municipal Code Section 13.48.100.H. The documentation and assessment of the building concluded that the property meets criterion 6 and 7 of the City of San José's Historic Landmark Designation Criteria as discussed below.

1. Its character, interest or value as part of the local, regional, state or national history, heritage or culture;

   The building does not possess special character, interest, or value to the local, regional, state, or national history, trends in history, or cultural of the community. While the building is associated with the post-World War II and to mid-to-late 20th century growth of the City, it is not individually representative of important patterns of development. Therefore, the property is not eligible under this criterion.

2. Its location as a site of a significant historic event;

   The building was constructed in 1971 during the industrialization and urbanization period following World War II and midcentury growth of the City. The building is not associated with the City's mid-20th century growth nor is it located at the site of a significant historic event. Therefore, the property is not eligible under this criterion.

3. Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;

   The building is not associated with any person(s) who significantly contributed to the local, regional, state, or national history. Therefore, the property is not eligible under this criterion.

4. Its exemplification of the cultural, economic, social or historic heritage of the City of San José;

   While the building is associated with post-World War II development in downtown, it does not exemplify cultural, economic, social, or historic heritage of San José. Therefore, the property is not eligible under this criterion.

5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;

   The architectural design of the building does not portray a group of people in history. Therefore, the property is not eligible under this criterion.

6. Its embodiment of distinguishing characteristics of an architectural type or specimen;

   The building at 60 North Third Street consists of Modern architectural characteristics and is a rare example of a Modern apartment building for senior citizens in the downtown. In San José, Modern residential buildings are typically found outside the commercial core. Within the boundaries of downtown, this building is one of the only extant examples of its type. For these reasons, the property is eligible under Criterion 6.

7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the City of San José;

   The building was designed by master architect Goodwin Steinberg and constructed by master builders Hathaway & Company. It stands out as a distinctive work and was one of the earliest residential towers in the area. Goodwin Steinberg and Hathway & Company were active in San José and associated with the post-World War II development of San José, the Santa Clara Valley, and the Bay Area. Therefore, the property is eligible under Criterion 7.

8. Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.

   The building does not contain any unique or architectural innovations and uses typical building materials. Therefore, it is not eligible under this criterion.

In summary, the building at 60 North Third Street is eligible for listing in the NRHP and CRHR and is eligible for listing in the San José HRI as a Candidate City Landmark.

3.3.2 Impact Discussion

For the purpose of determining the significance of the project's impact on cultural resources, would the project:

a) Cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5?
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?
c) Disturb any human remains, including those interred outside of dedicated cemeteries?

In addition to the thresholds listed above, a significant impact would occur in the City of San José if the project would demolish or cause a substantial adverse change to one or more properties identified as a City Landmark or a Candidate City Landmark in the City's HRI or a structure that is an eligible City Landmark.

The proposed project would result in new significant cultural resources impacts as described below.

3.3.2.1 *Project Impacts*

a) Would the project cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5?

On-Site Impacts Analysis

Proposed Demolition

The proposed project includes the demolition of all buildings and structures on site including 128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street on APN 467-20-060, 49 North Fourth Street on APN 467-20-081 and 147 East Santa Clara Street on APN 467-20-079.

The buildings at 128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street are located within the boundary of the St. James Square City Landmark District; however, they are not contributors to the locally designated historic district. Exhibit B of Resolution 57147 adopted by the City Council on October 11, 1983 (recorded January 10, 1984) designating the St. James Square City Landmark District does not identify the buildings and the St. James Square Historic District Design Guidelines adopted by the City Council on October 17, 1989 identify them as non-contributing buildings to the local historic district. The building located at 95 North Fourth Street was constructed in 1948, outside the St. James Square City Landmark District period of significance of 1848 to the 1930s. The buildings located at 128 East St. John Street and 77 North Fourth Street do not contribute to the significance of the St. James Square City Landmark District because they do not embody the character-defining features of the district including monumental massing, vertical orientation, architectural detailing and materials. Because the buildings do not contribute to the significance of the St. James Square City Landmark District, their demolition would not result in a significant impact to the district, a historical resource under CEQA.

All the buildings and structures on the project site were evaluated for individual potential significance and eligibility for listing in the NRHP, CRHR, and the City's HRI as a Candidate City Landmark under San José Municipal Code Section 13.48.100.H. The buildings were determined to be ineligible for listing in the NRHP and CRHR and ineligible for listing as a Candidate City Landmark. Therefore, the buildings and structures on-site are not considered to be historical resources under CEQA and their demolition will not result in a significant impact.

Proposed Construction of the Northern Tower

The proposed project includes the construction of the Northern Tower within the St. James Square City Landmark District. The tower would have up to 415 residential units and would be 27-stories

tall with a maximum height of 268 feet. To assess whether the project may cause a substantial adverse effect on the significance of a historical resource (St. James Square City Landmark District) under CEQA, the design of the Northern Tower was evaluated for conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards), St. James Square Historic District Design Guidelines, and the National Register historic integrity aspects. The project's conformance with these standards and guidelines and integrity analysis are discussed below.

Secretary of the Interior's Standards Analysis

The Standards are a series of concepts about maintaining, repairing, and replacing historic materials, as well as designing new additions or making alterations. Since a portion of the project site (e.g., Northern Tower) is located within the St. James Square City Landmark District, the project requires a Historic Preservation Permit and conformance with the Standards. The proposed building should be designed to be compatible with the historic character of the district. The applicable treatment for the proposed project is Rehabilitation, which include ten standards. Standards 1-7 are not applicable to the proposed project since construction of the Northern Tower does not propose any direct alterations or additions to historical resources within the project site. Standards 9 and 10 are relevant to the proposed project and are discussed in detail below.

Standard 9 – *New additions, exterior alterations or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.*

Analysis: Contributing buildings in the St. James Square City Landmark District are constructed of a variety of materials including brick, plaster, stone, wood, and terra cotta. The proposed Northern Tower would consist of aluminum-framed glazing system, metal cladding, concrete, cementitious panels, and glass which would be compatible with the historic district.

Contributing buildings in the St. James Square City Landmark District have hipped or gabled roofs visible from the street. The Northern Tower would have a flat roof which is not compatible with the historic district. The proposed Northern Tower would have vertical recessed windows on the third and fourth floors of the northern and eastern façades. Additionally, the northern façade (above the fifth floor) would consist of full-height window/door assemblies that are not typical features of the historic district. Entrances and windows with architectural elements and decorative cornices are among the characteristics of contributing buildings in the historic district. The Northern Tower would include metal cladding and ribbed cementitious panels around the north facing windows on the third and fourth floors, but the entrance (or the windows of the lower levels of the northern façade) would not include any architectural features of the historic district. Overall, the proposed design would not be compatible with the architectural features of the St. James Square City Landmark Historic District.

Additionally, the Northern Tower would not be compatible with the St. James Square City Landmark District in terms of size, scale, proportion, and massing. The historic district consists of two- to four-story buildings that are rectangular in plan and large in mass. The district contributors within the St. James Square City Landmark District are set back on platforms above the street level from the sidewalk. The Northern Tower would be set back less than four feet at the northeast corner of the

podium while upper floors would have no set back. Additionally, the proposed Northern Tower would step down two stories in height at the district-facing northern façade. For these reasons, the Northern Tower is not consistent with Standard 9.

Standard 10 – *New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.*

Analysis: If the Northern Tower were removed in the future, the St. James Square City Landmark District and its environment would be unimpaired. Any future removal of the new construction would restore the integrity of the historic district and its environment given that the Northern Tower is not compatible with the historical resource in terms of features, size, scale, proportion, and massing. Therefore, the Northern Tower is consistent with Standard 10.

Standards Summary: The proposed Northern Tower would not be compatible with the historic district in terms of features, size, scale, proportion, and massing (Standard 9). The proposed Northern Tower would comply with Standard 10.

St. James Square Historic District Design Guidelines Analysis

The project proposes the construction of the Northern Tower in the St. James Square City Landmark District. The "New Building Guidelines" in the St. James Square Historic District Design Guidelines apply to the Northern Tower because this portion of the project is located in the Area of Historic Sensitivity (within the district boundaries). The purpose of the guidelines is to provide design direction and elements to be incorporated into new building proposals to integrate and complement the historic district.

General Character

Analysis: The proposed Northern Tower is large and bulky in scale and would occupy the eastern half of the block within the St. James Square City Landmark District. The new building has two street-facing façades; however, only the northern façade facing East St. John Street is part of the historic district streetscape. The northern façade would comply with this guideline as the façade is well balanced. The eastern façade is not part of the historic district's streetscape; therefore, the front symmetry requirement is not applicable. The architectural features of the Northern Tower include two-story high storefronts at the podium level, vertically oriented double-height windows with textured panels in-between on the third and fourth floors which are compatible with the proportions of the historic district. The openings on the upper floors would not be compatible with the historic district. Overall, the proposed Northern Tower complies with this guideline even though it does not meet the General Character guideline (i.e., the front symmetry requirement).

Site Layout/Setbacks

Analysis: The proposed Northern Tower is not directly adjacent to a contributing building in the St. James Square City Landmark District; therefore, the recommendations regarding adjacent historic structures are not applicable. The surrounding contributing buildings within the district boundaries are setback 10 to 30 feet on platforms above street grade and utilize steps as a main entrance feature.

At the northern property line, the Northern Tower is set back five feet at the street level while the upper floors are built out to the property line which does not comply with the guideline. Off-street parking is provided within the new development on the basement level through the fourth floor of the Northern Tower which would not have any frontage onto St. James Park. The proposed Northern Tower complies with the parking recommendations of this guideline. As for the service function recommendations, the generator room would be accessed from North Fourth Street and not directly from East St. John Street. The service facilities would be located behind cementitious panel or metal-clad walls, metal doors, and concrete planters. The proposed Northern Tower would comply with the service function recommendations. Overall, the proposed Northern Tower would not comply with the Site Layout/Setbacks guideline.

Building Form and Scale

Analysis: The Northern Tower does not front directly on St. James Park or on diagonal corners; therefore, the height recommendation is not applicable. The Northern Tower is not adjacent to any contributing buildings to the St. James Square City Landmark District; therefore, the massing recommendation is not applicable. The proposed Northern Tower would have flat roofs at various levels and would comply with the roof recommendation. The pedestrian entrance to the residential tower is from East St. John Street at the northeast corner of the building. While a typical courtyard is not proposed, the project proposes multiple landscaped open space area (e.g., fifth floor of the Northern Tower). Overall, the proposed Northern Tower complies with the Building Form and Scale guideline.

Surface Treatment

Analysis: The Northern Tower has a solid appearance with cementitious panel cladding and vertically oriented, rectangular windows on the eastern façade and floors three and four of the northern façade. The northern façade of the Northern Tower above the fifth floor consist of full-height window/door assemblies framed by cementitious panels. None of the windows appear to be tinted, dark, or mirrored. The 80-foot-wide western façade is clad in cementitious panels with 22-foot wide balconies at the center which break up the monolithic appearance of this façade. The residential lobby and office area at the northeast corner of the northern façade would be fully glazed; however, the western part of this façade (as well as most of the east façade) at street level would have no windows. Overall, the proposed Northern Tower does not comply with the Fenestration guideline since the wall-to-window ratio does not meet the recommendation and the western wall facing the park would have monolithic appearance.

Materials

Analysis: The proposed materials of the Northern Tower would be compatible with the historic materials in scale, proportion, design, finish, texture, and durability. Therefore, the proposed Northern Tower complies with the Materials guideline.

Detailing

Analysis: At the podium level, the northeast corner of the Northern Tower would be fully glazed; however, the rest of the podium level would be solid with doors or vehicular entries providing access

to the parking or service areas behind. The historic structures within the St. James Square City Landmark District have architectural elements and/or detailing at the entrances and windows, and highly decorative cornices. The Northern Tower is contemporary in style and it does not incorporate any typical historic detailing. While the roof mounted mechanical equipment is not incorporated within the overall design, it would not be visible from the streets and sidewalks surrounding the park due to its height. Overall, the proposed Northern Tower does not comply with the Detailing guideline due to the articulation of the lower levels.

Colors

Analysis: The contributing buildings in the St. James Square City Landmark District share a neutral color palette including white, grey, and earth tones. The neutral colors proposed for the Northern Tower would complement the district. The proposed Northern Tower complies with the Colors guideline.

Signs

Analysis: Based on the latest plans provided by the applicant, no signage is shown for the Northern Tower. The signage shall be reviewed for compatibility with the Signs guideline once it is available.

Landscaping

Analysis: The proposed Northern Tower would not have deep setbacks similar to the district contributors. The site plan and renderings show street trees along East St. John Street and North Fourth Street, as well as planters along parts of the East St. John Street and North Fourth Street façades. The proposed Northern Tower would not comply with the Landscaping guideline since it does not have any landscaped setbacks within the area of historic sensitivity.

St. James Square Historic District Design Guidelines Summary: The proposed Northern Tower does not conform with the Site Layout/Setbacks, Surface Treatment (fenestration and detailing), Detailing, and Landscaping guidelines. The signage shall be reviewed for compatibility with the Signs guideline once it is available.

National Register Historic Integrity Analysis

The proposed Northern Tower would be partially located within the St. James Square City Landmark District which could affect the historic integrity of the district. The National Register defines integrity as the ability of a historic resource to convey its significance. To determine if a historic resource retains the physical characteristics corresponding to its historic context, the NRHP has identified seven aspects of integrity: location, design, setting, materials, workmanship, feeling, and association. Integrity is assessed with reference to the particular significance criteria for which the resource is listed or eligible for listing. The St. James Square City Landmark District is locally significant as the only public square in the downtown core area surrounded by buildings “significant for their civic design and uses from the 1860s through 1930s.”

The potential impact of the proposed Northern Tower to the historic integrity of the St. James Square City Landmark District is discussed below.

Location *is the place where the historic property was constructed or the place where the historic event occurred. The relationship between the property and its location is often important to understanding why the property was created or why something happened. The actual location of a historic property, complemented by its setting, is particularly important in recapturing the sense of historic events and persons.*

Analysis: The location of the St. James Square City Landmark District would not change with the proposed construction of the Northern Tower; the historic district would continue to retain integrity of location.

Design *is the combination of elements that create the form, plan, space, structure, and style of a property. […] Design includes such elements as organization of space, proportion, scale, technology, ornamentation, and materials. […] Design can also apply to districts, whether they are important primarily for historic association, architectural value, information potential, or a combination thereof. For districts significant primarily for historic association or architectural value, design concerns more than just the individual buildings or structures located within the boundaries. It also applies to the way in which buildings, sites, or structures are related.*

Analysis: Design alterations have occurred in the St. James Square City Landmark District since it was designated in 1984. The district originally included 25 parcels, 11 of which were contributing (St. James Park is comprised of two separate parcels). Two of the contributors have been demolished (Four-Wheel Brake Building/Letcher Garage at 200 North First Street and Eagles Hall at 152 North Third Street), and three new buildings were constructed (St. James Plaza at 152 North Third Street, the office building at 96 North Third Street, and The James Apartments at 98 North First Street). The proposed Northern Tower would not comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties and is significantly taller than the contributing buildings in the district; therefore, the integrity of design would be diminished.

Additionally, the proposed Northern Tower would not be consistent with the St. James Square City Landmark District in terms of setbacks, surface treatment, and landscaping. The new building would disrupt the existing spatial relationship between buildings and visual rhythms in the streetscape.

Setting *is the physical environment of a historic property. It refers to the character of the place in which the property played its historical role.*

Analysis: The setting of the St. James Square City Landmark District has changed since its designation in 1984. New commercial and multi-family residential buildings were constructed on East St. John and North Fourth Streets, one replacing a contributing property. These buildings are five- to ten-stories tall, stucco or masonry clad, and large and bulk in scale. While the late 19th and early 20th century setting of the St. James Square City Landmark District has been altered over time, the proposed Northern Tower is consistent with the character-defining features of the district. The proposed Northern Tower is not compatible with the district in terms of setbacks, surface treatment, and landscaping; however, it is located at the southeast edge of the St. James Square City Landmark District and does not directly face St. James Square. Therefore, the integrity of setting for the district would remain.

Materials *are the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property.*

> **Analysis**: The proposed construction of the Northern Tower would not alter any existing district contributors. The proposed Northern Tower would consist of aluminum-framed glazing system, metal cladding, concrete, cementitious panels, and glass which are compatible with the district. The integrity of materials would not be affected.

Workmanship *is the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory.*

> **Analysis:** The proposed Northern Tower would not alter any contributing buildings to the St. James Square City Landmark District; therefore, the integrity of workmanship would not be affected.

Feeling *is a property's expression of the aesthetic or historic sense of a particular period of time. It results from the presence of physical features that, taken together, convey the property's historic character.*

> **Analysis:** The St. James Square City Landmark District's original design, materials, workmanship, and setting relates to the feeling of civic life in the late 19th and early 20th centuries. Overall, the feeling of the historic district would remain since the focal park and majority of the contributing historic buildings would remain. The proposed Northern Tower would be located at the southeast edge of the St. James Square City Landmark District; therefore, construction of the building would not impact the feeling and aesthetic sense of the district. The overall integrity of feeling would be retained.

Association *is the direct link between an important historic event or person and a historic property. A property retains association if it is the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer. Like feeling, association requires the presence of physical features that convey a property's character. […] Because feeling and association depend on individual perceptions, their retention alone is never sufficient to support eligibility of a property for the National Register.*

> **Analysis:** The St. James Square City Landmark District is significant as a public square in the downtown core surrounded by late 19th and early 20th century civic buildings. The proposed Northern Tower would be a contemporary residential building; therefore, the integrity of association would be diminished.

Historic Integrity Summary: The proposed Northern Tower would impact the design, feeling, and association of the St. James Square City Landmark District. The district would retain integrity of location, materials, workmanship, and setting.

<u>On-site Impacts Analysis Conclusions</u>

The evaluation of the design of the proposed Northern Tower in relation to the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards), St. James Square Historic

District Design Guidelines, and the National Register historic integrity aspects resulted in different conclusions of the potential impact of the new construction on the St. James Square City Landmark District by the City of San José and TreanorHL. Per Section 15151 of CEQA Guidelines, disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of the disagreement as provided below.

TreanorHL concluded that while the Northern Tower would partially diminish the integrity of design, setting, feeling, and association of the St. James Square City Landmark District, the district would still retain the overall historic character that qualifies it for listing as a historic resource. While the proposed Northern Tower would not fully comply with the St. James Square Historic District Design Guidelines, TreanorHL concluded that the Northern Tower would not impair the significance and integrity of the St. James Square City Landmark District because the Northern Tower would be located on a non-contributing parcel at the southeast edge of the district, would not front directly on St. James Square and would not be directly adjacent to any district contributors.

The City of San José concluded that construction of the Northern Tower in the St. James Square City Landmark District would not comply with Secretary of the Interior's Standard 9, which is the primary standard applicable to the project (Standards 1-8 do not apply). The design of the proposed Northern Tower would not be compatible with the St. James Square City Landmark District in features, size, scale, proportion, and massing. As a result, the proposed Northern Tower would impact the design, feeling, and association of the St. James Square City Landmark District and impair the historic integrity of the district. Since Standard 10 addresses reversibility and there is no historic resource on site, this standard is less germane to the discussion. The conclusion that the Northern Tower would comply with Standard 10 if it were removed conversely implies that its construction would cause impairment. Moreover, the proposed Northern Tower would not comply with the Site Layout/Setbacks, Surface Treatment, Detailing, and Landscaping guidelines of the St. James Square Historic District Design Guidelines which were adopted by the City Council to provide design direction and elements to be incorporated into new building proposals to integrate and complement the historic district.

The St. James Square City Landmark District contains only nine contributing resources (including St. James Park) and 16 non-contributing structures and vacant lots. Section 2 of Resolution 57147 adopted by the City Council on October 11, 1983 (recorded January 10, 1984) found that the historic district designation would ensure the preservation and/or thoughtful modification of structures in this area would be compatible with the historic character of this area. This finding addresses the importance of ensuring the compatibility of future new construction which is supported by the fact that the district contains vacant lots and nearly twice as many non-contributing properties than contributing properties. It is apparent that the intent of the City Council was to carry out design review in a manner that would result in compatible infill. Because the proposed Northern Tower would not substantially comply with the Standards or relevant local historic preservation regulations and would impair the overall historic integrity of the St. James Square City Landmark District, the City of San José concluded the new construction in the district would have a significant unavoidable impact on a historical resource under CEQA.

Off-Site Historic Resource Impacts

As previously discussed, the project assessment included a reconnaissance-level survey of properties within 200 feet of the project site. The 21 off-site properties in the reconnaissance-level survey include four vacant lots and six properties that are currently not age-eligible for potential significance l as a historical resource. The remaining 11 properties contain buildings that are age-eligible (over 50 years old). This information informed the need for a historic adjacency analysis of the project as outlined below.

2019 Downtown Design Guidelines and Standards Analysis

The proposed Southern Tower was evaluated for conformance with the 2019 Design Guidelines and Standards because it is located in the General Plan Downtown Growth Area and has Historic Adjacency because 1) approximately 60 percent of the properties within 200 feet of the project site are listed in the City's HRI, 2) the site is within 100 feet of a Designated City Landmark (e.g., 30 North Third Street), and the site is adjacent to two historic buildings listed on the HRI (e.g., 30 North Third Street and 109 East Santa Clara Street). Therefore, the project was evaluated for conformance with Standards 4.2.2 Massing Relationship to Context, 4.2.3 - Civic Icon Adjacency and 4.2.4 Historic Adjacency apply.[30]

Standard 4.2.2 – Massing Relationship to Context. Pertains to the height transition, width transition, and rear transition standards.

Height Transition Standard: New development, 100 feet tall or greater, located adjacent to a historic building that is up to 45 feet in height must step back at least five feet from the front parcel or setback line at a height between 25 to 50 feet.

Standard Analysis: The proposed Southern Tower would be up to 268 feet tall and would be adjacent to Building No. 21 at 101 East Santa Clara Street and across from several historic buildings located along East Santa Clara Street. All historic buildings are up to 45 feet tall except for Building No. 14 at 100 East Santa Clara Street. The proposed Southern Tower would step back at least 30 feet partially above the third floor (20 feet) at the southwest corner next to Building No. 21. The rest of the façade would not step back from the front parcel at a height between 25 to 50 feet. The Southern Tower would step back 22 feet at and above the ninth floor (80 feet); therefore, the Southern Tower does not comply with this standard.

Width Transition Standard: New development located adjacent to a historic building must include gaps in the podium level above the ground floor to divide its street-facing massing into segments of no more than 30 feet wider than the widest part of the historic building. The gap must be five feet minimum in width and depth.

Standard Analysis: The Southern Tower façade facing East Santa Clara Street on floors three and four would be broken up into multiple segments. From the west to east, an approximately 40-foot

[30] While Building Nos. 1 and 19 are listed in the City's HRI and are within the boundaries of the St. James Square City Landmark District, they are identified as non-contributing structures. In addition, Building Nos. 5 and 7 are no longer extant and have been replaced by contemporary developments. Therefore, the Northern Tower does not have any adjacent historic context buildings.

wide segment would be set back 30 feet from the property line, an approximately 90-foot wide segment at the property line, and an approximately 39-foot wide segment set back approximately 10 feet from the property line. On floors five to eight, the eastern section would be divided into two segments divided by a 10-foot wide gap. This division is further articulated with vertical aluminum dividers. Overall, the proposed Southern Tower does not comply with this standard.

Rear Transition Standard: New development, 100 feet tall or greater, located adjacent to a historic building 45 feet tall or short must maintain a transitional height of 70 feet or less within the first 20 feet from the property line.

Standard Analysis: The proposed Southern Tower would be up to 268 feet tall and is located across a parcel line interior to a block from the building at 30 North Third Street (Building No. 20) which is less than 45 feet tall. The rear portion of the proposed Southern Tower would be up to 80 feet in height at the property line, exceeding the transitional height of 70 feet or less. Therefore, the design does not conform with this standard.

***Standard 4.2.4 – Historic Adjacency*.** Pertains to massing, façade, elements, and ground floor level.

Massing

Standard a) Relate *Podium Level*[31] building massing to the scale of *Historic Context*[32] buildings.

Standard a) Analysis: The historic context buildings along East Santa Clara Street and North Third Street have widths ranging from approximately 30 to 90 feet. The podium of the proposed Southern Tower would be broken up into smaller, similar scale massing elements by use of glazed retail and lobby spaces, glass fiber reinforced concrete for garage and service walls, use of vertical columns and storefront divisions, and the protrusion and regression of the façade surface. Overall, the proposed Southern Tower design complies with this standard.

Standard b) Design buildings with rectilinear rather than curved and diagonal forms.

Standard b) Analysis: The proposed Southern Tower design complies with this standard (refer to previous discussion).

Standard c) Use cornice articulation at the *Podium Level* at a height comparable to the heights of *Historic Context* buildings.

Standard c) Analysis: The proposed podium level of the Southern Tower would be 20 feet tall which is comparable to the height of the historic context buildings. At the podium level, the two-story storefronts and glazed curtainwalls along East Sana Clara Street. At the street intersections, the podium level would be more opaque than the upper floors. Therefore, the Southern Tower does not fully comply with this standard, but it is consistent with its surroundings.

[31] The podium level is below 70 feet in height.
[32] The building(s) that cause the proposed building to have historic adjacency are the proposed building's historic context.

Standard d) Use *Streetwall* continuity with *Historic Context* buildings.

Standard d) Analysis: The historic context building at 101 East Santa Clara Street (Building No. 21) is built out to the property line which creates a continuous streetwall. The proposed Southern Tower would be set back three feet and three inches from the property line on East Santa Clara Street (except for an almost eight foot setback at the southeast corner). The proposed Southern Tower complies with this standard.

Façade

Standard e) Use articulation that creates façade divisions with widths similar to *Historic Context* buildings on the same side of the street.

Standard e) Analysis: The proposed Southern Tower would be wider than the Building No. 21 which is located on the same side of the street. At the first two levels of the podium, the southern façade would be divided into two main sections: the storefronts to the west and the recessed office lobby to the east. The proposed storefronts would be further divided by the columns which would be placed at 30 feet intervals and the aluminum-framed glazing system. Above the ground floor, the façade would be broken up into multiple segments with setbacks and gaps to create façade divisions. The proposed divisions at the building's southern façade would be comparable to the overall width of Building No. 21. Therefore, the Southern Tower complies with this standard.

Standard f) Do not simulate historic architecture to achieve these guidelines.

Standard f) Analysis: The proposed Southern Tower is contemporary and would not simulate historic architecture. The Southern Tower complies with this standard.

Standard g) Place windows on façades visible from the windows of the adjacent *Historic Context* buildings.

Standard g) Analysis: Building No. 21 has multiple windows facing east towards the proposed Southern Tower. On the western façade, the first eight floors of the Southern Tower would not have any windows. The existing rear windows of Building No. 21 would face five false windows would be located on the first floor of the western façade. Therefore, the Southern Tower complies with this standard.

Elements

Standard h) Use some building materials that respond to *Historic Context* buildings.

Standard h) Analysis: As mentioned previously, the proposed Southern Tower would use building materials that are compatible with the historic context buildings. Therefore, the Southern Tower complies with this standard.

Standard i) The new materials should be compatible with historic materials in scale, proportion, design, finish, texture, and durability.

Standard i) Analysis: Overall, the new materials would be compatible with the historic materials in terms of scale, proportion, design, finish, texture, and durability. The proposed Southern Tower complies with this standard.

Ground Floor

Standard j) Space pedestrian entries at similar distance *Historic Context* building entries.

Standard j) Analysis: The proposed Southern Tower would have three pedestrian entries spaced at approximately 15 to 30 feet on the southern façade for the retail spaces and one pedestrian entry for the office lobby (at the east end). At the podium level, the eastern façade would have one pedestrian entry for the residential lobby; the rest of the façade is mostly blind and only interrupted by the vehicular garage entries and exit and multiple service entries. As proposed, the Southern Tower does not comply with this standard, particularly on the North Fourth Street façade.

Standard k) Create a ground floor with a similar floor to ceiling height as nearby *Historic Context* buildings.

Standard k) Analysis: At 20 feet, the podium level of the proposed Southern Tower would be similar in height to the historic context buildings. As proposed, the Southern Tower complies with this standard.

2019 Downtown Design Guidelines and Standards Summary: The proposed Southern Tower does not fully comply with the 2019 Guidelines and Standards (e.g., height transition and rear transition of Standard 4.2.2 and massing, façade, and ground floor of Standard 4.2.4).

Off-Site Impacts Analysis Conclusion

For a project to cause a substantial adverse change in the significance of the identified historic resources near the project, it must demolish or materially alter in an adverse manner those physical characteristics that convey the resources' historic significance and accounts for their identification as San José City Landmarks or Candidate City landmarks, or eligibility for listing on the CRHR or NRHP. TreanorHL concluded that while the proposed Southern Tower would not fully comply with the 2019 Guidelines and Standards, it would not demolish or materially alter in an adverse manner those physical characteristics that convey the historic significance and integrity of the historic context buildings or adjacent properties listed in the City's HRI and they could continue to be listed in the HRI.

The project site is located across Santa Clara Street, north of the San José Downtown Commercial Historic District and near contributing historic structures. As a result, the construction of the proposed project would have the potential to generate vibration levels of 0.08 in/sec PPV or more at the site of historic buildings within 60 feet of the project site, including Building Nos. 20, 21, and 22 depicted on Figure 3.3.-1. Potential vibration impacts to historic resources are further analyzed in *Section 3.6*, *Noise and Vibration*. With implementation of Mitigation Measures NOI-2.1 and the Standard Permit Conditions, groundborne vibration impacts associated with project construction would be less than significant. **[New Significant Unavoidable Impact (Less than Significant Impact)]**

b) Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?

The following discussion is based on Literature Searches prepared for the Hotel Clariana Expansion Project (File No. H17-059) and Donner Lofts Project (File No. H09-004). Each of these projects are within blocks of the proposed project.

Subsurface Archaeological Resources

The project would be excavated to a depth of 10 feet below the ground surface (bgs) for the parking garage. As noted in the referenced report, there is high potential in the project area for historic-era archaeological deposits associated with pre-1906 earthquake residential and commercial activities and recommends monitoring of all proposed subsurface earthmoving activities including foundation construction and utility trenching. A monitor trained in historical archaeology should be present for earth disturbing activities. Although the area is considered highly sensitive for historic-era archaeological deposits, NAHC's review of the Sacred Lands File did not identify any pre-historic Native American cultural resources in the immediate vicinity of the project at the time of report preparation. Refer to Section 3.7, *Tribal Cultural Resources*, for additional discussion of potential impacts to previously unidentified Tribal Cultural Resources. In accordance with General Plan Policies ER-10.1 and ER-10.3, the proposed project would implement the following Standard Permit Condition and mitigation measures to reduce or avoid impacts to historic-era and prehistoric archaeological resources.

Impact CUL-1: Construction activities on-site could uncover historic-era archaeological resources associated with pre-1906 earthquake residential and commercial activities.

The project would be required to implement the following Standard Permit Condition and mitigation measure to avoid impacts to prehistoric and/or historic resources.

Standard Permit Condition:

- If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission 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 examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or

move any cultural materials.

Mitigation Measures

MM CUL-1.1: **Preliminary Investigation.** After demolition of existing above-ground structures and prior to below-grade demolition/excavation activities, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology, in collaboration with a Native American representative registered with the Native American Heritage Commission (NAHC) 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 complete subsurface exploration at the site, to determine if there are any indications of discrete Native American or historic-era subsurface archaeological features. Exploration of historic-era features shall consist of at least one trench mechanically excavated below existing stratigraphic layers to evaluate the potential for Native American and historic-era resources. If any archaeological resources are exposed, these should be briefly documented, tarped for protection, and left in place. The results of the presence/absence exploration, including any treatment recommendations if any, shall be submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement or Director's designee for review and approval prior to issuance of any grading permit.

MM CUL-1.2: **Treatment Plan.** Based on the findings of the subsurface testing (MM CUL-1.1), an archaeological resources treatment plan shall be prepared by a qualified archaeologist in collaboration with a Native American representative, registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, if necessary. The treatment plan shall consist of permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement or Director's designee prior to approval of any grading permits. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
- Monitoring schedules and individuals.
- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).

- Detailed field strategy to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Security approaches or protocols for finds.

All Native American and historic-era features identified during exploration shall be evaluated by the qualified archaeologist. After completion of the field work, all artifacts shall be cataloged and the appropriate forms shall be completed and filed with the Northwest Information Center of the California Archaeological Inventory at Sonoma State University.

A final report verifying completion of the archaeological resources treatment plan and mitigation program shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for approval prior to issuance of any certificate of occupancy. This report shall contain a description of the mitigation programs and results of the mitigation, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.

With implementation of the identified Standard Permit Condition and Mitigation Measures CUL-1.1 to CUL-1.2, the proposed project would result in a less than significant impact to subsurface archaeological resources. **[Same Impact as Approved Project (Less than Significant Impact)]**

c) Would the project disturb any human remains, including those interred outside of dedicated cemeteries?

The project would include demolition, grading, and excavation activities on-site which could result the accidental discovery of human remains. Consistent with General Plan policy ER-10.2, the proposed project would be required to comply with the following Standard Permit Conditions to ensure human remains would not be disturbed.

Standard Permit Condition:

- If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American

Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- The MLD identified fails to make a recommendation; or
- The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

By following these measures, impacts to human remains would be less than significant. **[Same Impact as Approved Project (Less than Significant Impact)]**

3.3.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative cultural resources impact?

The geographic area for cultural resources is dependent on the location and potential impacts to designated cultural resources and can vary by the type of cultural resource to be impacted (e.g., historic districts, City Landmarks, etc.). For this project, the geographic study area is the project site, the surrounding area, and St. James Square City Landmark District. Therefore, a 1,500 foot radius surrounding the project site was considered for the cultural resources cumulative impact analysis.

Historic Resources

The St. James Square City Landmark District has undergone several alterations since it was locally designated in 1984. When the historic district was designated, the boundaries originally included 25 parcels, 11 of which were contributing (St. James Park is comprised of two separate parcels). Two of the contributors were demolished (Four-Wheel Brake Building/Letcher Garage at 200 North First Street and Eagles Hall at 152 North Third Street), and three new buildings were constructed (St. James Plaza at 152 North Third Street, the office building at 96 North Third Street, and The James Apartments at 98 North First Street) which are five- to ten-stories tall, stucco or masonry clad, and large and bulk in scale.

As discussed above, the proposed Northern Tower would not be compatible with the St. James Square City Landmark District in terms of features, size, scale, proportion, massing, setbacks, surface treatment, and landscaping. The boundaries of the St. James Square City Landmark District were intentionally drawn to include 16 non-contributing properties and vacant lots. The resolution adopted by the San José City Council to create the historic district (Resolution No. 57147 states that it was established to a large degree because of the City's concern for the protection of the St. James Park area which contains a large number of historically significant buildings. The purpose of the historic district designation is to assure that the preservation and thoughtful modification of structures in this

area will be compatible with the historic character of the area. The design of the proposed Northern Tower does not fulfill the purpose of the inclusion of the non-contributing property/properties in the historic district to provide compatible development. The proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984.

Subsurface Resources

With implementation of the Standard Permit Conditions, impacts to subsurface resources would be less than significant. Consistent with the findings of the Downtown Strategy 2040 FEIR, the project would not a have cumulatively considerable impact on subsurface archaeological resources.

As discussed above, construction of the Northern Tower would have a cumulatively considerable contribution to the St. James Square City Landmark District. As for subsurface resources, implementation of the identified Standard Permit Condition would reduce impacts to subsurface resources. **[Same Impact as Approved Project (Significant Unavoidable Cumulative Impact)]**

3.4 HAZARDS AND HAZARDOUS MATERIALS

The following discussion is based on a Phase I Environmental Site Assessment (ESA) prepared by *AEI Consultants* in June 2020. The report is included as Appendix E of this document.

3.4.1 Environmental Setting

3.4.1.1 *Regulatory Framework*

Overview

The storage, use, generation, transport, and disposal of hazardous materials and waste are highly regulated under federal and state laws. Federal regulations and policies related to development include the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund, and the Resource Conservation and Recovery Act. In California, the EPA has granted most enforcement authority over federal hazardous materials regulations to the California Environmental Protection Agency (CalEPA). In turn, local agencies have been granted responsibility for implementation and enforcement of many hazardous materials regulations under the Certified Unified Program Agency (CUPA) program.

Worker health and safety and public safety are key issues when dealing with hazardous materials. Proper handling and disposal of hazardous material is vital if it is disturbed during project construction. Cal/OSHA enforces state worker health and safety regulations related to construction activities. Regulations include exposure limits, requirements for protective clothing, and training requirements to prevent exposure to hazardous materials. Cal/OSHA also enforces occupational health and safety regulations specific to lead and asbestos investigations and abatement.

Federal and State

Federal Aviation Regulations Part 77

Federal Aviation Regulations, Part 77 Objects Affecting Navigable Airspace (FAR Part 77) sets forth standards and review requirements for protecting the airspace for safe aircraft operation, particularly by restricting the height of potential structures and minimizing other potential hazards (such as reflective surfaces, flashing lights, and electronic interference) to aircraft in flight. These regulations require that the Federal Aviation Administration (FAA) be notified of certain proposed construction projects located within an extended zone defined by an imaginary slope radiating outward for several miles from an airport's runways, or which would otherwise stand at least 200 feet in height above the ground.

Government Code Section 65962.5

Section 65962.5 of the Government Code requires CalEPA to develop and update a list of hazardous waste and substances sites, known as the Cortese List. The Cortese List is used by state and local agencies and developers to comply with CEQA requirements. The Cortese List includes hazardous substance release sites identified by the Department of Toxic Substances Control (DTSC) and State Water Resources Control Board (SWRCB). The project site is listed in the Cortese List.[33]

[33] CalEPA. "Cortese List Data Resources." Accessed July 29, 2021. https://calepa.ca.gov/sitecleanup/corteselist.

California Accidental Release Prevention Program

The California Accidental Release Prevention (CalARP) Program aims to prevent accidental releases of regulated hazardous materials that represent a potential hazard beyond the boundaries of a property. Facilities that are required to participate in the CalARP Program use or store specified quantities of toxic and flammable substances (hazardous materials) that can have off-site consequences if accidentally released. The Santa Clara County Department of Environmental Health (SCCDEH) reviews CalARP risk management plans as the CUPA.

Asbestos-Containing Materials

Friable asbestos is any asbestos containing material (ACM) that, when dry, can easily be crumbled or pulverized to a powder by hand, allowing the asbestos particles to become airborne. Common examples of products that have been found to contain friable asbestos include acoustical ceilings, plaster, wallboard, and thermal insulation for water heaters and pipes. Common examples of non-friable ACMs are asphalt roofing shingles, vinyl floor tiles, and transite siding made with cement. The EPA phased out use of friable asbestos products between 1973 and 1978. National Emission Standards for Hazardous Air Pollutants guidelines require that potentially friable ACMs be removed prior to building demolition or remodeling that may disturb the ACMs.

CCR Title 8, Section 1532.1

The United States Consumer Product Safety Commission banned the use of lead-based paint in 1978. Removal of older structures with lead-based paint is subject to requirements outlined by Cal/OSHA Lead in Construction Standard, CCR Title 8, Section 1532.1 during demolition activities. Requirements include employee training, employee air monitoring, and dust control. If lead-based paint is peeling, flaking, or blistered, it is required to be removed prior to demolition.

Regional

Municipal Regional Permit Provision C.12.f

Polychlorinated biphenyls (PCBs) were produced in the United States between 1955 and 1978 and used in hundreds of industrial and commercial applications, including building and structure materials such as plasticizers, paints, sealants, caulk, and wood floor finishes. In 1979, the EPA banned the production and use of PCBs due to their potential harmful health effects and persistence in the environment. PCBs can still be released to the environment today during demolition of buildings that contain legacy caulks, sealants, or other PCB-containing materials.

With the adoption of the San Francisco Bay Region Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (MRP) by the San Francisco Bay Regional Water Quality Control Board on November 19, 2015, Provision C.12.f requires that permittees develop an assessment methodology for applicable structures planned for demolition to ensure PCBs do not enter municipal storm drain systems.[34] Beginning July 1, 2019, all applicants for a demolition

[34] California Regional Water Quality Control Board. *San Francisco Bay Region Municipal Regional Stormwater NPDES Permit.* November 2015.

permit or any other permit that involves the demolition of a building shall submit a Screen Assessment Form with their building permit application in San José.

City of San José

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to hazards and hazardous materials and are applicable to the project.

General Plan Policies - Hazards and Hazardous Materials	
EC-6.1	Require all users and producers of hazardous materials and wastes to clearly identify and inventory the hazardous materials that they store, use or transport in conformance with local, state and federal laws, regulations and guidelines.
EC-6.2	Require proper storage and use of hazardous materials and wastes to prevent leakage, potential explosions, fires, or the escape of harmful gases, and to prevent individually innocuous materials from combining to form hazardous substances, especially at the time of disposal by businesses and residences. Require~~s~~ proper disposal of hazardous materials and wastes at licensed facilities.
EC-6.6	Address through environmental review all proposals for new residential, park and recreation, school, day care, hospital, church or other uses that would place a sensitive population in close proximity to sites on which hazardous materials are or are likely to be located, the likelihood of an accidental release, the risks posed to human health and for sensitive populations, and mitigation measures, if needed, to protect human health.
EC-6.7	Do not approve land uses and development that use hazardous materials that could impact existing residences, schools, day care facilities, community or recreation centers, senior residences, or other sensitive receptors if accidentally released without the incorporation of adequate mitigation or separation buffers between uses.
EC-7.1	For development and redevelopment projects, require evaluation of the proposed site's historical and present uses to determine if any potential environmental conditions exist that could adversely impact the community or environment.
EC-7.2	Identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for identified human health and environmental hazards to future users and provide as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and groundwater contamination shall be designed to avoid adverse human health or environmental risk, in conformance with regional, state and federal laws, regulations, guidelines and standards.
EC-7.3	Where a property is located in proximity to known groundwater contamination with volatile organic compounds or within 1,000 feet of an active or inactive landfill, evaluate and mitigate the potential for indoor air intrusion of hazardous compounds to the satisfaction of the City's Environmental Compliance Officer and appropriate regional, state and federal agencies prior to approval of a development or redevelopment project.
EC-7.4	On redevelopment sites, determine the presence of hazardous building materials during the environmental review process or prior to project approval. Mitigation and remediation

General Plan Policies - Hazards and Hazardous Materials	
	of hazardous building materials, such as lead-paint and asbestos-containing materials, shall be implemented in accordance with state and federal laws and regulations.
EC-7.5	On development and redevelopment sites, require all sources of imported fill to have adequate documentation that it is clean and free of contamination and/or acceptable for the proposed land use considering appropriate environmental screening levels for contaminants. Disposal of groundwater from excavations on construction sites shall comply with local, regional, and state requirements.
TR-14.2	Regulate development in the vicinity of airports in accordance with Federal Aviation Administration regulations to maintain the airspace required for the safe operation of these facilities and avoid potential hazards to navigation.
TR-14.3	For development in the Airport Influence Area overlays, ensure that land uses and development are consistent with the height, safety and noise policies identified in the Santa Clara County Airport Land Use Commission (ALUC) comprehensive land use plans for Mineta San José International and Reid-Hillview airports, or find, by a two-thirds vote of the governing body, that the proposed action is consistent with the purposes of Article 3.5 of Chapter 4 of the State Aeronautics Act, Public Utilities Code Section 21670 et seq.
TR-14.4	Require avigation and "no build" easement dedications, setting forth maximum elevation limits as well as for acceptance of noise or other aircraft related effects, as needed, as a condition of approval of development in the vicinity of airports.
CD-5.8	Comply with applicable Federal Aviation Administration regulations identifying maximum heights for obstructions to promote air safety.

3.4.1.2 *Existing Conditions*

The 2.1-acre project site is currently developed with a gas station, church, surface parking lot, and three commercial buildings. Groundwater has been encountered on-site at a depth ranging from nine to 27 feet bgs.[35] Fluctuations in the groundwater level may occur due to seasonal changes, variations in rainfall, and underground drainage patterns. Groundwater in the project area flows in a northwesterly direction.

3.4.1.3 *History of Project Site*

A land use history of the project site has been compiled based on a review of historical sources including Sanborn fire insurance maps, topographic maps, aerial photographs, City directory listings, and the Historic Resource Evaluation prepared by TreanorHL. Based on an 1884 Sanborn map, the site was developed with warehouses, a carriage house, stables, and commercial and residential buildings. From 1891 to 1969, the warehouses remained on-site. In 1939, a commercial building was constructed at the northeastern corner of the project site. Between 1891 and 1915, commercial businesses were constructed on the eastern corner of the site. The existing buildings located at 126 and 128 East St. John Street and 77 and 95 North Fourth Street have been present on-site since 1922. A portion of a church was located near the center of the site from 1939 until 1968. From 1950 to

[35] AEI Consultants. *Phase I Environmental Site Assessment*. June 16, 2020.

1969, the southeast portion of the site was developed with a structure used for automobile sales and service. From 1950 to the present, the center of the site was developed with a parking lot. By 1969, the existing gasoline station and fuel dispenser islands were present on-site. By 1972, the existing church on-site was constructed. By 2012, the building was remodeled and the two southernmost service bays were converted into a convenience store.

3.4.1.4 *On-Site Sources of Contamination*

The Phase I ESA identified 11 recognized environmental condition (REC) on-site. A REC refers to the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property; due to release into the environment; under conditions indicative of a release into the environment; or under conditions that pose a material threat of a future release into the environment. The discussion below provides a summary of all 11 RECs.

- An automobile repair business occupied the 128 East St. John Street from 1930 to 2005. The site contains an oil/water separator system which can act as preferential pathways for contaminants (e.g., oil, grease, fuel, or cleaning solvents) discharged or released during on-site activities. Based on the Phase I ESA, the historical operation of the on-site oil water separator and the associated auto repair/painting activities may have impacted the subsurface of the project site.

- The building located at 95 North Fourth Street was formerly utilized as a gas station and an auto repair shop, along with a dry cleaner. By 2015, the building was occupied by a dry-cleaning business. It is unknown, however, whether the dry cleaning operations occurred on-site. It is reasonable to assume that hazardous substances and/or petroleum products were used on-site. Based on the duration/nature of occupancy, the former site operations may have resulted in subsurface contamination. Additionally, there is potential for vapor-phase migration[36] due to the former uses of the site.

- The building at 77 North Fourth Street was formerly occupied by a laundry business from 1930 to 1945. Additionally, a laundry and baby diaper cleaning service business were present in Sanborn maps and City directories from 1950 through 1970. No other information could be found regarding this business; therefore, it is unknown whether the dry cleaner was a pickup and drop-off location or if dry cleaning was performed on-site. Additionally, there is potential for vapor-phase migration.

- The gas station at 147 East Santa Clara Street site currently contains three fuel underground storage tanks (USTs) and one waste oil UST which were installed in 1985. Based on the age of the USTs and lack of consistent documentation regarding historical testing results and operational status of the system/noted violations, a release from the USTs may have affected the site. Additionally, a recurring violation was issued to the site by the Santa Clara County Department of Environmental Health (SCCDEH) in 2019 due to the lack of a proper leak detection system for the waste oil UST and sensor tampering for many years.

[36] Vapor migration is the movement of a contaminant.

- The previous 2019 Phase I ESA (refer to Appendix E of this document for more information) included a preliminary Phase II soil vapor and groundwater quality evaluation for 147 East Santa Clara Street. Four soil vapor and groundwater samples were collected and identified contamination above residential Environmental Screening Levels (ESLs) for Total Petroleum Hydrocarbons as Gasoline (TPH-g), 1,2-Dichloroethane (1,2-DCA), and Chlorobenzene at one of the groundwater sample locations. Methyl Tertiary Butyl Ether (MTBE) and Ethyl t-butyl were detected at concentrations below ESLs. TPH-g, Toluene, Ethyl Benzene, m,p-xylene and 0-xylene were identified in soil vapor samples, but below July 2019 San Francisco Bay RWQCB Tier 1 ESLs. Benzene was detected in all four soil vapor samples at levels exceeding residential ESLs. The presence of petroleum hydrocarbons and volatile organic compounds (VOCs) in groundwater and soil vapor above residential ESLs represents an REC.

- The gas station at 147 East Santa Clara Street has been developed with a gas station since at least 1969. No information in regard to the removal of the former USTs was identified during regulatory agency document review. Based on the duration of occupancy, multiple generations of USTs may have likely been present and remain unaccounted for.

- Three underground lifts and an oil/water separator were formerly located at 147 East Santa Clara Street. The installation date(s) are unknown; however, it is presumed they would have been installed in 1969 (during building construction). No information related to the removal/sampling of these underground features was on file with the regulatory agencies. It is unknown if they remain present on-site or were removed. During a site visit, AEI Consultants observed a metal plate adjacent to the southwestern exterior of the gas station building.

  As mentioned previously, oil/water separators can act as preferential pathways for contaminants (e.g., oil, grease, fuel, or cleaning solvents) discharged or released during on-site activities. As such, it is possible that operation of the oil/water separator may have impacted the project site. Based on the potential pre-1977 installation of the lifts, the hydraulic fluid within the lift systems may have previously contained PCBs. Due to the age of the equipment, the integrity of the equipment is unknown; therefore, a release of hydraulic fluid which could have contained PCBs may have occurred on-site, impacting the soil and/or. groundwater.

- From 1915 to 1960, the southern half of the 147 East Santa Clara Street site was formerly developed with an automobile dealership/service business. Based on the nature of operations, the former businesses may have used hazardous substances/petroleum products and operated features of concern such as USTs, clarifiers, drains and/or lifts. Due to the long-term duration of use, nature of use, time period of operation (when regulatory oversight with respect to hazardous substance storage/disposal practices would have been non-existent), these former operations may have resulted in impacts to the subsurface.

- Based on a previous report and Sanborn maps, a gas tank UST was present along East Santa Clara Street, south of the 147 East Santa Clara Street site. During the prior report site visit,

two UST vent pipes were observed in the vicinity of this UST. No information regarding the removal of the UST(s) and no sampling was found.

- Based on a review of historical records, a dry-cleaning facility was identified at the eastern corner of 149 East Santa Clara Street from 1915 to 1929. Dry cleaning operations typically use chlorinated solvents, particularly Tetrachloroethylene (PCE). These solvents, even when properly stored and handled, can readily migrate into the subsurface as a result of small releases associated with on-site operations. Chlorinated solvents are highly mobile chemicals that can easily accumulate in soil and soil gas, and migrate to groundwater beneath a facility. Additionally, there is potential for vapor-phase migration.

- The entire project site was previously occupied by a lumber company from 1891 to 1915. Lumber mills pose a potential environmental concern due to the storage of treated wood. The most common chemical used in wood treating is creosote. Other Resource Conservation and Recovery Act (RCRA) Wastes commonly related to lumber mills include Pentachlorophenol and Copper Napthenate.

The Phase I ESA also identified two closed LUST cases that represent controlled recognized environmental conditions (CRECs).

Asbestos and Lead-Based Paint

Based on the age of the existing buildings on-site, it is reasonable to assume that ACMs and LBP are present in the buildings.

3.4.1.5 *Off-Site Sources of Contamination*

Based on the Phase I ESA, there are no open cases in proximity to the project site. Within one-eighth of a mile, off-site facilities were identified in the EDR Hist Cleaner, HAZMAT, EDR Hist Auto, Hist Cortese, LUST, HIST LUST, Statewide Environmental Evaluation and Planning System (SWEEPS) UST, Certified Unified Program Agency (CUPA) Listing, California Environmental Reporting System (CERS), Spills, Leaks, Investigation & Cleanup (SLIC), Hazardous Waste Tracking System (HWTS), Emergency Management Institute (EMI), Resource Conservation and Recovery Act Non Generators (RCRA Nongen/NLR), and Cleanup Program Sites (CPS) SLIC database. These off-site facilities were determined to not represent a significant environmental concern for the project site because either the site completion report did not identify contamination migration towards the site, regulatory status, the distance of the facility from the project site, the site is listed as a closed case, lack of a documented release, and/or the direction of groundwater flow.

3.4.1.6 *Other Hazards*

Airports

Norman Y. Mineta San José International Airport is located approximately 1.7 miles northwest of the project site. Based on the Airport Comprehensive Land Use Plan (CLUP), the project site is not

located within the Airport Influence Area (AIA). The proposed project is not located within a CLUP-defined safety zone[37] nor is it located in the vicinity of a private airstrip.

Federal Aviation Regulations, Part 77, "Objects Affecting Navigable Airspace" (FAR Part 77) sets forth standards and review requirements for protecting the airspace for safe aircraft operation, particularly by restricting the height of potential structures and minimizing other potential hazards (such as reflective surfaces, flashing lights, and electronic interference) to aircraft in flight. These regulations require that the Federal Aviation Administration (FAA) be notified of certain proposed construction projects located within an extended zone defined by an imaginary slope radiating outward for several miles from an airport's runways, or which would otherwise stand at least 200 feet in height above ground. For the project site, any proposed structure of a height greater than approximately 75 feet above the ground surface is required to be submitted to the FAA for review (under FAR Part 77).

3.4.2 Impact Discussion

For the purpose of determining the significance of the project's impact on hazards and hazardous materials, would the project:

a) Create a significant hazard to the public or the environment through routine transport, use, or disposal of hazardous materials?
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, result in a safety hazard or excessive noise for people residing or working in the project area?
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?
g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires?

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant hazards and hazardous impacts, as described below.

[37] Walter B. Windus, PE. Aviation Consultant. "Comprehensive Land Use Plan: Norman Y. Mineta San José International Airport." May 2011. Accessed July 30, 2021. https://www.sccgov.org/sites/dpd/DocsForms/Documents/ALUC_SJC_CLUP.pdf.

3.4.2.1 *Project Impacts*

a) Would the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

Construction

The proposed project would demolish the existing structures on-site and construct a mixed-use development. Any hazardous materials (e.g., debris or soil containing LBP or coatings) that would be removed from the site during project construction would be properly disposed of. In addition, the proposed project would be subject to the City's Standard Permit Conditions listed under checklist b below. In addition, due to the RECs discussed in *Section 3.4.1.4* and potential contamination for existing and former uses of the site, the project applicant shall implement Mitigation Measures HAZ-1.1 through HAZ-1.4 listed under checklist question b below, which would reduce potential impacts associated with transporting and disposing of contaminated soil and other hazardous material, as necessary, to less than significant.

Operation

Additionally, the project would likely include the use and storage of cleaning supplies and maintenance chemicals in small quantities similar to operation of the existing buildings on-site. The small quantities of cleaning supplies and maintenance chemicals used on-site would not pose a risk to adjacent land uses. As a result, compliance with existing regulations and implementation of the Standard Permit Conditions and Mitigation Measures HAZ-1.1 through HAZ-1.4 identified under checklist question b below, the proposed project would not create a significant hazard to the public or environment from the use, transport, or disposal of hazardous materials. **[Same Impact as Approved Project (Less than Significant Impact)]**

b) Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

On-Site Contamination

As mentioned in *Section 3.4.1.4*, a total of 11 RECs were identified in the Phase I ESA. The historical operation of the project site may have resulted in soil and groundwater contamination, as well as the potential for vapor-phase migration.

Impact HAZ-1: Construction activities associated with the proposed project could expose the public and/or the environment to hazardous materials and/or soil, soil vapor, and/or groundwater contamination from existing and former uses of the site (existing gas station and former automobile repair and service, gas station, drycleaner, and lumber businesses).

Mitigation Measures

MM HAZ-1.1: Prior to the issuance of any demolition, grading, or building permits, whichever occurs first, a geophysical survey shall be prepared by an environmental professional to identify the potential presence of underground storage tanks (USTs) below East Santa Clara Street. Additionally, the two UST vent pipes at the southern corner of the project site shall also be analyzed.

Any identified objects or structures (e.g., the existing USTs, dispensers, and associated piping) shall be removed in coordination with the San José Fire Department and the Santa Clara County Department of Environmental Health (SCCDEH). As part of the removal, a qualified environmental professional shall collect soil samples below the existing USTs, dispensers, and associated piping, as directed under regulatory oversight by the SCCDEH and/or San José Fire Department, to determine if leaks have occurred.

The geophysical survey, soil samples, evidence of regulatory oversight, and confirmation that identified objects have been removed in accordance with San José Fire Department and SCCDEH requirements shall be provided to the City of San José Director of Planning, Building, and Code Enforcement, or Director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

MM HAZ-1.2: Prior to issuance of any grading permit, the project applicant shall enroll in the SCCDEH Site Cleanup Program. The project applicant shall work under regulatory oversight to determine if additional Phase II soil, soil vapor and groundwater investigations and remediation are required. The project applicant shall provide documents such as a Site Management Plan, Removal Action Plan or equivalent plans as required by the DEH. The Plan(s) and evidence of regulatory oversight shall be provided to the City of San José Director of Planning, Building, and Code Enforcement, or director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

MM HAZ-1.3: As part of the facility closure process for occupants that use and/or store hazardous materials, the project applicant shall ensure that the occupants submit a closure plan that describes required closure activities, such as removal of remaining hazardous materials, cleaning of hazardous material handling equipment, decontamination of building surfaces, and waste disposal practices. The facility closure plans shall be submitted to the San José Fire Department and SCCDEH for review and approval to ensure that the required closure and any necessary site cleanup activities are completed prior to the issuance of demolition, grading, or building permits, whichever occurs first. Evidence of regulatory oversight and documentation of facility closure in compliance with San José Fire Department and SCCDEH requirements shall be submitted to the City of San José Director of Planning,

Building, and Code Enforcement, or director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

MM HAZ-1.4: The facility at 147 East Santa Clara Street previously contained three vehicle service bays which contained below-grade hydraulic lifts. Prior to issuance of a grading or building permit, whichever occurs first, a qualified environmental professional shall document that the lifts and oil-water separator have been removed from the site. In addition, the qualified environmental professional shall analyze the soils for potential contamination. Documentation of removal shall be provided to the City of San José Director of Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

With implementation of the identified mitigation measures, redevelopment of the project site would not significantly impact the public or the environment due to exposure to any hazards or contamination sources.

Asbestos-Containing Materials and Lead-Based Paint

Due to the age of the buildings on-site, it is reasonable to assume that ACMs and LBP materials are present on-site. When the existing structures are demolished, asbestos particles could be released and expose construction workers and nearby building occupants to harmful levels of asbestos. If LBP is still bonded to the building materials, its removal is not required prior to demolition. If the LBP is flaking, peeling, or blistering, it shall be removed prior to demolition. It would be necessary to follow applicable Occupational Safety and Health Administration (OSHA) regulations and any debris containing lead must be disposed of appropriately.

Disturbance of these materials during demolition and construction of the proposed project could expose construction workers to harmful levels of lead. Demolition of the existing structures on-site could expose construction workers or occupants of adjacent buildings to harmful levels of ACMs or lead. The project would be required to implement the following Standard Permit Conditions to reduce impacts due to the presence of ACMs and/or LBP:

Standard Permit Conditions:

- In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
- During demolition activities, all building materials containing LBP shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing LBP or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.

- All potentially friable ACMs shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

With implementation of the identified Standard Permit Conditions, demolition of the buildings containing ACMs and LBP would reduce potential hazardous materials impacts to construction workers, adjacent uses, and nearby residences to a less than significant level.

Polychlorinated Biphenyls

The buildings on-site were constructed between 1950 and 1980 and may contain PCBs in the building materials. Demolition of the buildings on-site could release PCBs in the environment. Therefore, the proposed project would be required to be comply with the following Standard Permit Condition to reduce impacts due to the presence PCBs.

Standard Permit Condition:

- In conformance with City of San José permitting requirements, consistent with Regional Water Quality Control Board (RWQCB) regulations, the project applicant shall be required to submit a polychlorinated biphenyls (PCB) Screening Assessment Form when applying for a demolition permit to demolish the existing building(s) on the project site, and shall comply with any resulting sampling and abatement procedures as directed by federal and state agencies.

With implementation of the identified Standard Permit Conditions, demolition of the buildings containing PCBs would reduce potential hazardous materials impacts to construction workers, adjacent uses, and nearby residences to a less than significant level.

Off-Site Contamination

As mentioned previously, no off-site facilities were determined to represent a significant environmental concern to the project site. Therefore, implementation of the project would not exacerbate an existing soil or groundwater contamination source and would not impact persons or properties off-site.

With implementation of the identified Standard Permit Conditions and mitigation, the proposed project would result in a less than significant hazard to the public and/or the environment. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

c) Would the project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

The proposed project is located within one-quarter mile of San José State University, Horace Mann Elementary School, and Little Einstein's Montessori Preschool. Based on the proposed uses of the site, the proposed project would not result in hazardous emissions or hazardous materials being transported to and from the site, nor would hazardous waste be produced or disposed of with implementation of the project. The proposed project would utilize small quantities of cleaning chemicals and would not use or store hazardous materials in sufficient quantities to pose a health risk to any nearby school. Implementation of the Standard Permit Conditions to reduce impacts from ACMs, LBP, and PCBs, as well as implementation of Mitigation Measures HAZ-1.1 to HAZ-1.4, would ensure that potentially contaminated materials are properly handled to avoid chemical releases into the environment. Therefore, the proposed project would not present a risk to any nearby school. **[Same Impact as Approved Project (Less than Significant Impact)]**

d) Would the project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

While the project site is listed as a LUST cleanup site, the status of the case is "closed" in the Cortese List.[38,39] In addition, the proposed project would be required to comply with the previously identified Standard Permit Conditions and mitigation measures to address potential impacts. Therefore, construction of the project would not create a significant hazard to the public or the environment. **[Same Impact as Approved Project (Less than Significant Impact)]**

e) If located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?

FAR Part 77 sets forth standards and review requirements for protecting the airspace for safe aircraft operation, particularly by restricting the height of potential structures and minimizing reflective surfaces, flashing lights, electronic interference and other potential hazards to aircraft in flight. These regulations require that the FAA be notified of certain proposed construction projects located within an extended zone defined by a set of imaginary surfaces radiating outward for several miles from an airport's runways, or which would otherwise stand at least 200 feet in height above ground.

The Norman Y. Mineta San José International Airport is located approximately 1.7 miles northwest of the project site. As mentioned previously, the project site is not within the AIA. For the project site, any structure exceeding 75 feet in height above grade would require submittal to the FAA for airspace safety review. The maximum building height proposed by the project is 268 feet, which is

[38] CalEPA. "Cortese List Data Resources." Accessed March 11, 2020. https://calepa.ca.gov/sitecleanup/corteselist.
[39] CalEPA. *List of "active" CDO and CAO from Water Board*." Accessed March 11, 2020. https://calepa.ca.gov/wp-content/uploads/sites/6/2016/10/SiteCleanup-CorteseList-CDOCAOList.xlsx

above the height limit for objects constituting a potential obstruction to navigation, per FAR Part 77. The project would be subject to FAA review under FAR Part 77.

The project would be required to follow all applicable General Plan policies (including General Plan Policies TR-14.2 and TR-14.3). Additionally, the project would be subject to the following Standard Permit Condition to ensure that the project does not result in a safety hazard or excessive noise due to airport activities.

Standard Permit Condition:

- Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration a "Determination of No Hazard to Air Navigation" for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and "No Hazard Determination" expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.

Implementation of the Standard Permit Condition above would ensure that the project does not result in a safety hazard due to activities of the Norman Y. Mineta San José International Airport. **[Same Impact as Approved Project (Less than Significant Impact)]**

f) Would the project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

The project would be constructed in accordance with current building and fire codes and would be required to be maintained in accordance with applicable City policies identified in the Downtown Strategy 2040 FEIR to avoid unsafe building conditions. The proposed project would not impair or interfere with the implementation of the City's Emergency Operations Plan or any statewide emergency response or evacuation plans. **[Same Impact as Approved Project (Less Than Significant Impact)]**

g) Would the project expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires?

The project site is located within an urbanized area and it is not adjacent to any wildland areas that would be susceptible to wildland fires. Implementation of the proposed project would not expose any people or structures to risk from wildland fires. **[Same Impact as Approved Project (Less Than Significant Impact)]**

3.4.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative hazards and hazardous materials impact?

The geographic area for hazards and hazardous materials is defined as locations within 1,000 feet of the project site. The project would be required to implement the identified Standard Permit Conditions to reduce impacts due to the presence of ACMs, LBP, and PCBs and Mitigation Measures HAZ-1.1 to HAZ-1.4 to reduce construction workers' and adjacent uses exposure to potential contaminated soil, soil vapor, and/or groundwater during construction. As a result, the project would not result in a cumulatively considerable contribution to cumulative hazards and hazardous materials impacts. **[Same Impact as Approved Project (Less Than Significant Cumulative Impact)]**

3.4.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District,* 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes only because the City of San José has policies that address existing hazards and hazardous materials conditions affecting a proposed project. General Plan Policy EC-7.2 requires redevelopment projects to identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for the health of future users and to provide this information as part of the environmental review process.

As discussed previously, the project shall implement Mitigation Measures HAZ-1.1 to HAZ-1.4 and the identified Standard Permit Conditions which would ensure that construction workers and future site users would not be exposed to any soil, soil vapor, and/or groundwater contamination from former uses of the site. As a result, the proposed project would not result in human health and environmental hazards to construction workers and future site users consistent with Policy EC-7.2.

3.5 LAND USE AND PLANNING

3.5.1 Environmental Setting

3.5.1.1 *Regulatory Framework*

City of San José

Historic Preservation Ordinance

The City of San José Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code) is designed to identify, protect, and encourage the preservation of significant resources and foster civic pride in the City's cultural resources. The Historic Preservation Ordinance requires the City to establish a Historic Landmarks Commission, maintain a HRI, preserve historic properties using a Landmark Designation process, require Historic Preservation Permits for alterations of properties designated as a Landmark or within a City historic district, and provide financial incentives through a Mills Act Historical Property Contract.

San José Downtown Design Guidelines and Standards

The City's Downtown Design Guidelines and Standards (updated in 2020) provide guidance for the form and design of buildings in the downtown area, appearance in the larger cityscape, and their interface with the pedestrian level. The Downtown Design Guidelines and Standards also set rules for new buildings and external alterations to non-historic buildings being built near and adjacent to historic and other key structures within the City's Downtown Design Guidelines and Standards boundary.

Comprehensive Land Use Plan for Norman Y. Mineta San José International Airport

The Comprehensive Land Use Plan (CLUP) for Mineta San José International Airport, adopted by the Santa Clara County Airport Land Use Commission (ALUC) on May 25, 2011 and amended on November 16, 2016, is intended to safeguard the general welfare of the inhabitants within the vicinity of the airport and the aircraft occupants. The CLUP is also intended to ensure that surrounding new land uses do not affect the airport's continued operation.

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to land use and are applicable to the project.

General Plan Policies - Land Use	
CD-1.1	Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities

General Plan Policies - Land Use	
	where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
CD-1.17	Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm. Ensure that garage lighting does not impact adjacent uses, and to the extent feasible, avoid impacts of headlights on adjacent land uses.
CD-2.3	Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate. 1. Include attractive and interesting pedestrian-oriented streetscape features such as street furniture, pedestrian scale lighting, pedestrian oriented way-finding signage, clocks, fountains, landscaping, and street trees that provide shade, with improvements to sidewalks and other pedestrian ways. 2. Strongly discourage drive-up services and other commercial uses oriented to occupants of vehicles in pedestrian-oriented areas. Uses that serve the vehicle, such as car washes and service stations, may be considered appropriate in these areas when they do not disrupt pedestrian flow, are not concentrated in one area, do not break up the building mass of the streetscape, are consistent with other policies in this Plan, and are compatible with the planned uses of the area. 3. Provide pedestrian connections as outlined in the Community Design Connections Goal and Policies. 4. Locate retail and other active uses at the street level. 5. Create easily identifiable and accessible building entrances located on street frontages or paseos. 6. Accommodate the physical needs of elderly populations and persons with disabilities. 7. Integrate existing or proposed transit stops into project designs.
CD-2.11	Within the Downtown and Urban Village Area Boundaries, consistent with the minimum density requirements of the pertaining Land Use/Transportation Diagram designation, avoid the construction of surface parking lots except as an interim use, so that long-term development of the site will result in a cohesive urban form. In these areas, whenever possible, use structured parking, rather than surface parking, to fulfill parking requirements. Encourage the incorporation of alternative uses, such as parks, above parking structures.
CD-3.4	Facilitate development of retail and service establishments in Downtown, and support regional- and local-serving businesses to further primary objectives of this Plan.
CD-4.5	For new development in transition areas between identified growth areas and non-growth areas, use a combination of building setbacks, building step-backs, materials, building orientation, landscaping, and other design techniques to provide a consistent streetscape that buffers lower-intensity areas from higher-intensity areas and that reduces potential shade, shadow, massing, viewshed, or other land use compatibility concerns.

General Plan Policies - Land Use	
CD-4.9	For development subject to design review, the design of new or remodeled structures will be consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).
CD-5.8	Comply with applicable Federal Aviation Administration regulations identifying maximum heights for obstructions to promote air safety.
LU-3.5	Balance the need for parking to support a thriving Downtown with the need to minimize impacts of parking upon a vibrant pedestrian and transit-oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.
LU-5.4	Require new commercial development to facilitate pedestrian and bicycle access through techniques such as minimizing building separation from public sidewalks; providing safe, accessible, convenient, and pleasant pedestrian connections; and including secure and convenient bike storage.
LU-13.1	Preserve the integrity and fabric of candidate or designated Historic Districts.
LU-13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
LU-13.7	Design new development, alterations, and rehabilitation/remodels within a designated or candidate Historic District to be compatible with the character of the Historic District and conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties, appropriate State of California requirements regarding historic buildings and/or structures (including the California Historic Building Code) and to applicable historic design guidelines adopted by the City Council.
LU-13.8	Require that new development, alterations, and rehabilitation/remodels adjacent to a designated or candidate landmark or Historic District be designed to be sensitive to its character.
TR-14.2	Regulate development in the vicinity of airports in accordance with Federal Aviation Administration regulations to maintain the airspace required for the safe operation of these facilities and avoid potential hazards to navigation.
TR-14.3	For development in the Airport Influence Area overlays, ensure that land uses and development are consistent with the height, safety and noise policies identified in the Santa Clara County Airport Land Use Commission (ALUC) comprehensive land use plans for Mineta San José International and Reid-Hillview airports, or find, by a two-thirds vote of the governing body, that the proposed action is consistent with the purposes of Article 3.5 of Chapter 4 of the State Aeronautics Act, Public Utilities Code Section 21670 et seq.
TR-14.4	Require avigation and "no build" easement dedications, setting forth maximum elevation limits as well as for acceptable of noise or other aircraft related effects, as needed, as a condition of approval of development in the vicinity of airports.
IP-1.5	Maintain a Zoning Ordinance and Subdivision Ordinance that aligns with and supports the Land Use/Transportation Diagram and the 2040 General Plan goals and policies. Develop new Zoning Districts which enumerate uses and establish development standards

General Plan Policies - Land Use	
	including heights to achieve vital mixed-use complete communities and facilitate their implementation.
IP-1.7	Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics which require special consideration due to those constraints.

San José Zoning Ordinance

The Zoning Ordinance serves as an implementing tool for the General Plan by establishing detailed, parcel-specific development regulations and standards. The Zoning Ordinance divides the City of San José into zoning districts to guide future land uses.

Zoning Code Section 20.70.110 states that new structures exceeding one hundred fifty feet and an FAR of 6:1 which are constructed within one hundred feet of a city landmark or contributing structure in a designated landmark district shall be reviewed by the historic landmarks commission prior to consideration or approval of a development permit for new construction. The comments of the historic landmarks commission shall be included in any development permit staff report subsequently presented to the executive director of the redevelopment agency, director of planning, planning commission or City Council.

3.5.1.2 *Existing Conditions*

Existing Land Uses

The 2.1-acre project site is comprised of three parcels (APNs 467-20-079, -081, -060) and a portion of one parcel (APN 467-20-080) located along North Fourth Street, between East Santa Clara Street and East St. John Street. The site is currently developed with a gas station, church, surface parking lot, and three commercial buildings.

As mentioned in *Section 2.2.3*, the project site is designated *Downtown* under the City's General Plan and is zoned *DC*. The *Downtown* land use designation allows for office, retail, service, residential, and entertainment uses in the downtown with building heights of three to 30 stories, an FAR of up to 30.0, and residential densities up to 800 dwelling units per acre.

Permitted land uses under the *DC* zoning district are consistent with the Downtown General Plan land use designation. Based on the *DC* zoning, development shall only be subject to the height limitations necessary for the safe operation of Norman Y. Mineta San José International Airport. There are no minimum setback requirements.

Surrounding Land Uses

Development in the project area consists of commercial businesses, apartments, and mixed-use development. Building heights vary by land uses ranging from one- to 28-stories. The project site is

located north of the San José Downtown Commercial Historic District and a portion of the site (APN 467-20-060) is located within the St. James Square City Landmark District.

Located north of the project site is East St. John Street, a two-lane street that extends from Autumn Street to 18th Street. North of East St. John Street is a one-story commercial building. East of the project site is North Fourth Street, a two-lane, one-way street. A six-story multi-family apartment complex, a five-story parking garage, and a 28-story mixed-use development that is currently under construction (File Nos. SP17-009 and T16-056) is located east of North Fourth Street. Located south of the project site is East Santa Clara Street, a four-lane street, and a cluster of five two- to three-story commercial businesses, some of which have residential on the upper floors. West of the project site are two one- to two-story commercial buildings, a 10-story senior apartment building, and a six-story office building.

3.5.2 Impact Discussion

For the purpose of determining the significance of the project's impact on land use and planning, would the project:

a) Physically divide an established community?
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

The proposed project would result in new significant land use impacts as described below.

3.5.2.1 *Project Impacts*

a) Would the project physically divide an established community?

The project site is located in downtown San José in a fully urbanized area surrounded by a variety of development types. The project proposes to demolish the existing buildings on-site and construct two towers (an office tower and a residential tower). The project layout and design does not include any physical features that would physically divide the community (e.g., roadway, railway, or highway). Therefore, implementation of the proposed project would not divide an established community. **[Same Impact as Approved Project (Less Than Significant Impact)]**

b) Would the project cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

As described within the individual sections of this SEIR and Appendix A of this document (with the exception of impacts to historic resources, which are discussed in Section 3.3, *Cultural Resources*), with incorporation of the Standard Permit Conditions, mitigation measures, and regulatory requirements the project would not cause a significant environmental impact due to a conflict with plans, policies or regulations adopted for the purpose of avoiding or mitigating an environmental effect.

As discussed in *Section 3.3*, *Cultural Resources*, the proposed Southern Tower does not fully comply with the 2019 Guidelines and Standards (e.g., height transition and rear transition of Standard 4.2.2 and massing, façade, and ground floor of Standard 4.2.4). However, it would not demolish or materially alter in an adverse manner those physical characteristics that convey the historic significance and integrity of the historic context buildings or adjacent properties listed in the City's HRI. However, the City concluded that the proposed Northern Tower would impair the overall historic integrity of the St. James Square City Landmark District as it does not comply with: the Secretary of the Interior's Standard 9 for Rehabilitation, the Site Layout/Setbacks, Surface Treatment, Detailing, and Landscaping guidelines of the St. James Square Historic District Design Guidelines, and the design, feeling, and association integrity of the St. James Square City Landmark District. The project proponent's submittal of hardship information for non-compliance with the Standards and St. James Square Historic District Guidelines associated with the Historic Preservation Permit proposed for the project will be accepted by the City. With acceptance of the hardship findings, the proposed project would be compliant with the City's Historic Preservation Ordinance. However, the proposed Northern Tower would not comply with General Plan Policies LU-13.1, LU-13.7, and LU-13.8 summarized in the General Plan Policy table above, which were adopted for the purpose of avoiding or mitigating impacts to historic resources. Therefore, the Northern Tower of the proposed project would conflict with applicable General Plan policies, resulting in a significant unavoidable impact. **[New Significant Unavoidable Impact (Less than Significant Impact)]**

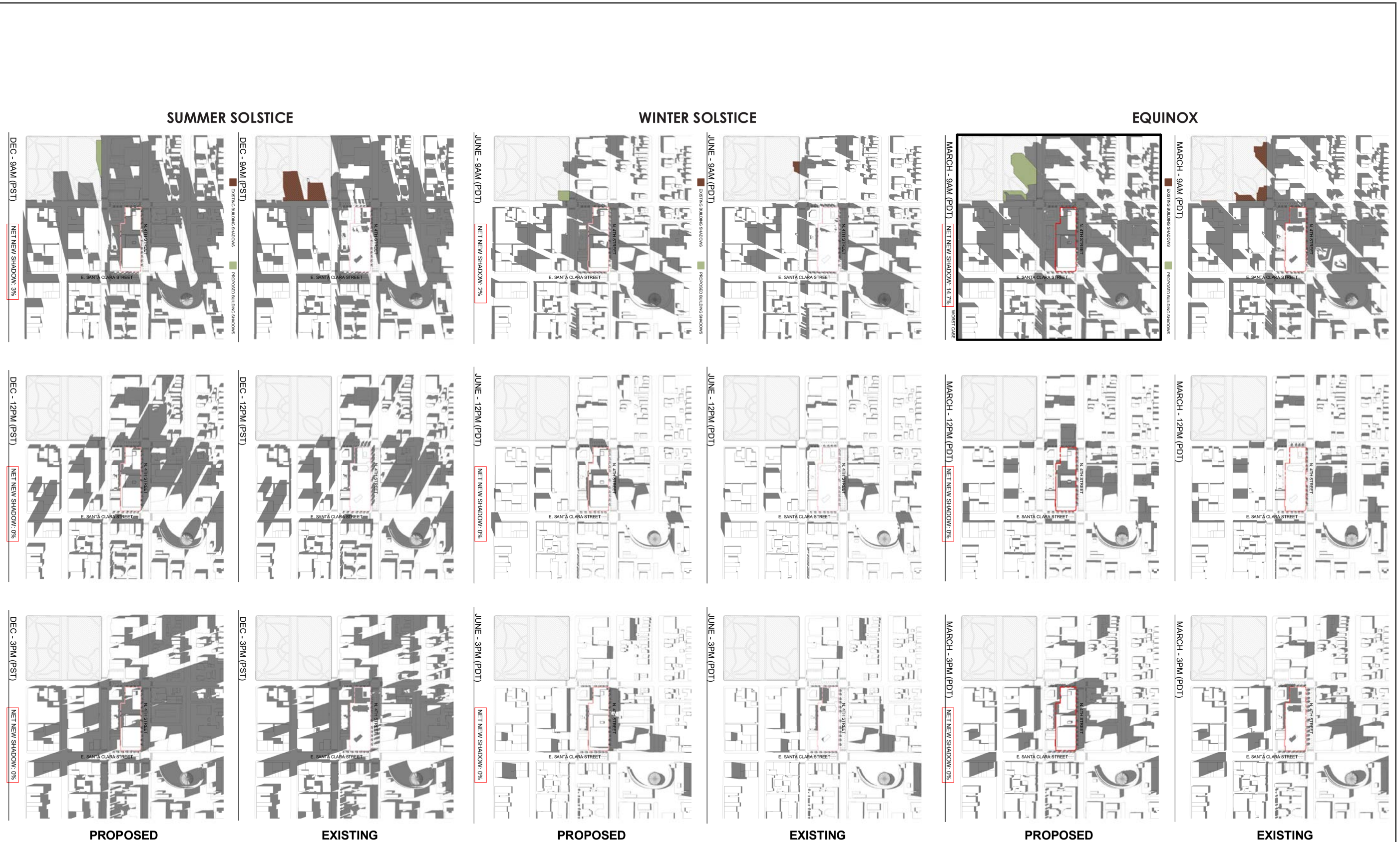
c) Would the project result in a 10 percent or greater increase in the shadow cast onto any one of the six major open space areas in the Downtown San José area (St. James Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park, and McEnery Park)?

The project proposes to construct a 21-story office tower and a 27-story residential tower connected via a podium with a maximum height of 268 feet. To determine the specific shading of the proposed development on the surrounding land uses, a shade and shadow analysis was completed by the project architect. 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. Consistent with standard practices, Figure 3.5-1 below provides data for 9:00 AM, noon, and 3:00 PM for March 21, June 21, and December 21.[40]

As discussed in the Downtown Strategy 2040 FEIR, the City identifies significant shade and shadow impacts as occurring when a building or other structure located in the downtown area substantially reduces natural sunlight on certain public open spaces, measured on winter solstice when the sun is lowest in the sky (December 21st); the spring equinox, when day and night are approximately equal in length (March 21st); and summer solstice when the sun is at its highest point in the sky (June 21st). Therefore, a significant shade and shadow impact would occur if a 10 percent or greater shadow is cast onto any of the six major open space areas in the downtown San José area (St James

[40] The shade and shadow cast would be the same for spring and fall since the sun follows the same arc across the sky during March and September. Therefore, the hours of day and night would be equal during the spring and fall equinox. Source: Karl Boeing. *Shade Angles*. Accessed May 9, 2022. https://www.boeingconsult.com/Environment/shade-angle.htm.

SHADE AND SHADOW STUDY - EXISTING AND PROPOSED PROJECT CONDITIONS



Source: WRNS Studio, July 8, 2021.

FIGURE 3.5-1

Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park, McEnery Park). As shown in Figure 3.5-1, the proposed project would cast shadows on St. James Park for limited hours during the spring, summer, and winter months. During the summer and winter months, the project would result in a two and three percent net new increase in shadow at the park. However, the proposed project would shade St. James Park in the spring AM hours resulting in a net new increase shadow of 14.7 percent, which exceeds the 10 percent threshold defined in the Downtown Strategy 2040 FEIR.

As a result, the project, as proposed would result in a new significant unavoidable shade and shadow impact. **[New Significant Unavoidable Impact (Less than Significant Impact)]**

3.5.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative land use and planning impact?

The geographic area for cumulative land use impacts is the St. James Square Landmark Historic District and the broader downtown area. As discussed above under checklist question b, the proposed Northern Tower would not comply with General Plan Policies LU-13.1, LU-13.7, and LU-13.8, the Standards, or the St. James Square Historic District Guidelines. As discussed in *Section 3.3, Cultural Resources*, under Cumulative Impacts (sub-section 3.5.2.2), the design of the proposed Northern Tower does not fulfill the purpose of the inclusion of the non-contributing property/properties in the historic district to provide compatible development. The proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984, which is considered a cumulatively considerable impact. Additionally, the proposed Southern Tower does not fully comply with the 2019 Guidelines and Standards (e.g., height transition and rear transition of Standard 4.2.2 and massing, façade, and ground floor of Standard 4.2.4). However, the Southern Tower would not demolish or materially alter in an adverse manner those physical characteristics that convey the historic significance and integrity of the historic context buildings or adjacent properties listed in the City's HRI. Therefore, when considered with other projects, construction of the Southern Tower would not conflict with any land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect. In addition, there are no other newly constructed or proposed buildings in the vicinity of St. James Park that have exceeded or would exceed the 10 percent shade and shadow threshold.

While the increases shade and shadows on St James Park and the proposed Southern Tower would not have a cumulatively considerable impact, the impact to the St. James Square City Landmark District from the Northern Towers is cumulatively considerable. Therefore, the Northern Tower would result in a cumulatively considerable contribution to a significant cumulative land use impact. **[New Significant Unavoidable Impact (Less than Significant Cumulative Impact)]**

3.6 NOISE AND VIBRATION

The following discussion is based on a Noise and Vibration Assessment prepared by Illingworth & Rodkin, Inc. in May 2022.[41] A copy of this report is included as Appendix F of this document.

3.6.1 Environmental Setting

3.6.1.1 *Background Information*

Noise

Factors that influence sound as it is perceived by the human ear, include the actual level of sound, period of exposure, frequencies involved, and fluctuation in the noise level during exposure. Noise is measured on a decibel scale, which serves as an index of loudness. The zero on the decibel scale is based on the lowest sound level that the healthy, unimpaired human ear can detect. Each 10 decibel increase in sound level is perceived as approximately a doubling of loudness. Because the human ear cannot hear all pitches or frequencies, sound levels are frequently adjusted or weighted to correspond to human hearing. This adjusted unit is known as the A-weighted decibel, or dBA.

Since excessive noise levels can adversely affect human activities and human health, federal, state, and local governmental agencies have set forth criteria or planning goals to minimize or avoid these effects. Noise guidelines are generally expressed using one of several noise averaging methods, including Leq, DNL, or CNEL. These descriptors are used to measure a location's overall noise exposure, given that there are times when noise levels are higher (e.g., when a jet is taking off from an airport or when a leaf blower is operating) and times when noise levels are lower (e.g., during lulls in traffic flows on freeways or in the middle of the night). Lmax is the maximum A-weighted noise level during a measurement period.

Vibration

Ground vibration consists of rapidly fluctuating motions or waves with an average motion of zero. Vibration amplitude can be quantified using Peak Particle Velocity (PPV), which is defined as the maximum instantaneous positive or negative peak of the vibration wave. PPV has been routinely used to measure and assess ground-borne construction vibration. Studies have shown that the threshold of perception for average persons is in the range of 0.008 to 0.012 inches/second (in/sec) PPV.

[41] Since completion of the Noise and Vibration Assessment, minor modifications to the outdoor use areas within the Southern Tower were made. While the square footages have been modified, the proposed outdoor use areas are still in the same location; therefore, the conclusions of the analysis would remain the same. While new three foot by three foot balconies are proposed, the balconies would be small and considered private. Private balconies do not require analysis. Janello, Carrie. Illingworth & Rodkin, Inc. Personal communication. March 11, 2022.

3.6.1.2 *Regulatory Framework*

State

California Building Standards Code

The CBC establishes uniform minimum noise insulation performance standards to protect persons within new buildings housing people, including hotels, motels, dormitories, apartments, and dwellings other than single-family residences. Title 24 mandates that interior noise levels attributable to exterior sources not exceed 45 L_{dn}/CNEL in any habitable room. Exterior windows must have a minimum Sound Transmission Class (STC) of 40 or Outdoor-Indoor Transmission Class (OITC) of 30 when the property falls within the 65 dBA DNL noise contour for a freeway or expressway, railroad, or industrial source.

California Green Building Standards Code

For commercial uses, CALGreen (Section 5.507.4.1 and 5.507.4.2) requires that wall and roof-ceiling assemblies exposed to the adjacent roadways have a composite STC rating of at least 50 or a composite OITC rating of no less than 40, with exterior windows of a minimum STC of 40 or OITC of 30 when the commercial property falls within the 65 dBA Ldn or greater noise contour for a freeway or expressway, railroad, or industrial or stationary noise source. The state requires interior noise levels to be maintained at 50 dBA $L_{eq(1\text{-}hr)}$ or less during hours of operation at a proposed commercial use.

City of San José

Envision San José 2040 General Plan

The General Plan Policy EC-1-1 includes noise compatibility guidelines for various land uses. For reference, these guidelines are provided in Table 3.6-1 below.

Table 3.6-1: Land Use Compatibility Guidelines for Community Noise in San José						
Land Use Category	**Exterior DNL Value in Decibels**					
	55	**60**	**65**	**70**	**75**	**80**
1. Residential, Hotels and Motels, Hospitals and Residential Care[1]						
2. Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds						
3. Schools, Libraries, Museums, Meeting Halls, and Churches						
4. Office Buildings, Business Commercial, and Professional Offices						
5. Sports Arena, Outdoor Spectator Sports						
6. Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters						

[1]Noise mitigation to reduce interior noise levels pursuant to Policy EC-1.1 is required.

Normally Acceptable:
Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.

Conditionally Acceptable:
Specified land use may be permitted only after detailed analysis of the noise reduction requirements and noise mitigation features included in the design.

Unacceptable:
New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies. Development would only be considered when technically feasible mitigation is identified that is also compatible with relevant design guidelines.

In addition, the following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to noise and are applicable to the project.

General Plan Policies – Noise and Vibration	
EC-1.1	Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include: <u>Interior Noise Levels</u> • The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected 2040 General Plan traffic volumes to ensure land use compatibility and 2040 General Plan consistency over the life of this plan.

General Plan Policies – Noise and Vibration	
	Exterior Noise Levels • The City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (Table EC-1). The acceptable exterior noise level objective is established for the City, except in the environs of the Norman Y. Mineta San José International Airport, the Downtown Core Area, and along major roadways. For the remaining areas of the City, the following standards apply: – For new multi-family residential projects and for the residential component of mixed-use development, use a standard of 60 dBA DNL in usable outdoor activity areas, excluding balconies and residential stoops and porches facing existing roadways. There will be common use areas available to all residents that meet the 60 dBA exterior standard. Use noise attenuation techniques such as shielding by buildings and structures for outdoor common use areas. – For single-family residential uses, use a standard of 60 dBA DNL for exterior noise in private usable outdoor activity areas, such as back yards.
EC-1.2	Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would: • Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or • Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.
EC-1.3	New nonresidential land uses will mitigate noise generation to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.
EC-1.6	Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City's Municipal Code.
EC-1.7	Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would: • Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months. For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.

General Plan Policies – Noise and Vibration	
EC-1.9	Noise studies are required for land use proposals where known or suspected loud intermittent noise sources occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, mitigation will be implemented so that recurring maximum instantaneous noise levels do not exceed 50 dBA L_{max} in bedrooms and 55 dBA L_{max} in other rooms.
EC-1.11	Continue to require safe and compatible land uses within the Norman Y. Mineta International Airport noise zone (defined by the 65 CNEL contour as set forth in State law) and encourage aircraft operating procedures that minimize noise.
EC-2.3	Require new development to minimize continuous vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, including ruins and ancient monuments or buildings that are documented to be structurally weakened, a continuous vibration limit of 0.08 inch/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A continuous vibration limit of 0.20 inch/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of a historical building, or building in poor condition. On a project-specific basis, this distance of 300 feet may be reduced where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction.

City of San José Municipal Code

Section 20.100.450 of the Municipal Code restricts construction hours within 500 feet of a residential unit to 7:00 AM to 7:00 PM Monday through Friday, unless otherwise expressly allowed in a Development Permit or other planning approval.[42]

3.6.1.3 *Existing Conditions*

The existing noise environment at the project site results primarily from vehicular traffic along East St. John Street, East Santa Clara Street, and North Fourth Street. Aircraft associated with the Norman Y. Mineta San José International Airport and SR 87 traffic noise are also audible on-site.

At the time the analysis was prepared, traffic volumes along the surrounding roadways were substantially lower and not representative of typical conditions due to the shelter-in-place restrictions implemented by the state. As a result, a noise monitoring survey was not prepared to establish existing ambient noise levels. Measurements and noise contours from the Downtown Strategy 2040 FEIR were used to establish existing noise conditions.

The Downtown Strategy 2040 FEIR provides measurement data at a distance of 25 feet from the centerline of North Fourth Street (between East St. John and East St. James Street) and the center of East Street John Street (between North Fourth Street and North Fifth Street) shown as LT-9 and

[42] The Municipal Code does not establish quantitative noise limits for demolition or construction activities occurring in the City.

NOISE MONITORING LOCATIONS | FIGURE 3.6-1

LT-10 in Figure 3.6-1 above, respectively. Data at these locations were collected between April 25, 2017 to April 27, 2017. The day-night average noise levels at LT-9 and LT-10 were 68 and 63 dBA DNL, respectively. Hourly average noise levels at LT-9 ranged from 61 to 70 dBA L_{eq} during the day and from 50 to 66 dBA L_{eq} at night. Hourly average noise levels at LT-10 ranged from 56 to 68 dBA L_{eq} during the day and from 48 to 61 dBA L_{eq} at night. The existing traffic noise contours were based on traffic peak hours from 2015. Noise measurement locations are shown in Figure 3.6-1 above.

Sensitive Receptors

The nearest sensitive receptors are the residences located approximately 15 feet west from the property line and the new residential towers located approximately 80 feet east of the project site, respectively. Additionally, there are other residences located approximately 95 feet immediately south of East Santa Clara Street.

3.6.2 Impact Discussion

For the purpose of determining the significance of the project's impact on noise, would the project result in:

a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?
b) Generation of excessive groundborne vibration or groundborne noise levels?
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

Appendix G of the CEQA Guidelines states that a project would normally be considered to result in significant noise impacts if noise levels conflict with adopted environmental standards or plans or if noise generated by the project would substantially increase existing noise levels at sensitive receivers on a permanent or temporary basis. Based on the applicable noise standards and policies for the site, a significant noise impact would result if exterior noise levels at the proposed residential uses exceed 60 dBA DNL (except in the environs of the Norman Y. Mineta San José International Airport and the Downtown) and/or if interior day-night average noise levels exceed 45 dBA DNL (General Plan Policy EC-1.1).

The CEQA Guidelines state that a project will normally be considered to have a significant impact if noise levels conflict with adopted environmental standards or plans, or if noise levels generated by the project will substantially increase existing noise levels at noise-sensitive receivers on a permanent or temporary basis. CEQA does not define what noise level increase would be substantial. However, the City defines substantial noise increases in General Plan Policy EC-1.2, as discussed below.

City of San José Standards

The City of San José relies on the following standards for new development to avoid impacts above the CEQA thresholds of significance outlined above.

Construction Noise

For temporary construction-related noise to be considered significant, construction noise levels would have to exceed ambient noise levels by five dBA L_{eq} or more and exceed the normally acceptable levels of 60 dBA L_{eq} at the nearest noise-sensitive land uses or 70 dBA L_{eq} at office or commercial land uses for a period of more than 12 months, as defined in General Plan Policies EC-1.2 and EC-1.7.

Operational Noise

Development allowed by the General Plan would result in increased traffic volumes along roadway throughout San José. The City of San José considers a significant noise impact to occur where existing noise sensitive land uses would be subject to permanent noise level increases of three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level, or five dBA DNL or more where noise levels would remain normally acceptable, as defined in General Plan Policy EC-1.2.

In addition, as defined in General Plan Policy EC-1.3, new nonresidential land uses shall mitigate operational noise generation to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.

Construction Vibration

The City of San José relies on guidance developed by Caltrans to address vibration impacts from development projects in San José. A vibration limit of 12.7 millimeters per second (mm/sec; 0.5 inch/sec) PPV is used for buildings that are structurally sound and designed to modern engineering standards. Per General Plan Policy EC-2.3, vibration limit of five mm/sec (0.2 inches/sec) PPV has been used for to minimize the potential for cosmetic damage at buildings of normal conventional construction. For historic buildings or buildings that are documented to be structurally weakened, a limit of two mm/sec (0.08 inches/sec) PPV is used to provide the highest level of protection.

Noise Impacts

Impacts as a result of noise would be less than significant with implementation of the identified Standard Permit Conditions and incorporation of project-specific mitigation measures, consistent with the Downtown Strategy 2040 FEIR as described below.

3.6.2.1 *Project Impacts*

a) Would the project result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

Project-Generated Traffic Noise Impacts

A significant impact would result if traffic generated by the project would substantially increase noise levels at sensitive receptors in the vicinity. A substantial increase would occur if: a) the noise level increase is five dBA DNL or greater, with a future noise level of less than 60 dBA DNL, or b) the noise level increase is three dBA DNL or greater, with a future noise level of 60 dBA DNL or greater.

To determine the effect of project-generated traffic on the nearby residences, the peak hour project trips at four intersections in the vicinity of the site were added to the existing traffic volumes to calculate the existing plus project traffic. By comparing the existing plus project traffic to the existing traffic (refer to Table 7 of Appendix F), the project's noise level was estimated to increase up to two dBA DNL or less along each roadway segment. As a result, implementation of the proposed project would not result in a permanent noise increase of three dBA DNL or more.

Additionally, Table 3.12-6 of the Downtown Strategy 2040 FEIR[43] summarizes all affected intersections located within the downtown. Build out of the Downtown Strategy 2040 would result in significant unavoidable traffic noise impacts along segments of Santa Clara Street, Autumn Street, West San Carlos Street, Bird Avenue, Julian Street, Almaden Boulevard, Race Street, The Alameda, King Road, First Street, Fruitdale Avenue, Alma Avenue, Naglee Avenue, and Keyes Street. None of the project intersections are listed in the table. The proposed project, by itself, would not generate a substantial permanent increase in ambient noise levels in excess of established thresholds.

Mechanical Equipment

As described above, the City's General Plan Policy EC-1.3 provides a threshold of 55 dBA DNL at the property line for new non-residential land uses adjacent to noise-sensitive residential and public/quasi-public land uses. For the purposes of the proposed commercial and residential project, and assuming worst-case scenario, the noise standards listed under Table 20-105 of the City's Municipal Code for Commercial Zoning Districts and the Public/Quasi-Public Zoning District was used. Chapter 20.40, Table 20-105, of the City's Municipal Code requires equipment noise be maintained at or below 55 dBA at the property line of adjacent residential land uses or 60 dBA DNL at commercial land uses.

Ground-Level Equipment

At the ground level, the residential component (Northern Tower) of the project would include transformers, electrical equipment, and an emergency generator while the office component (Southern Tower) would include electrical equipment, a substation, and an emergency generator room. Assuming no windows would be located in the transformer room of the residential tower and no windows would be located in the substation room of the office tower, the building façade would provide a minimum 20 dBA reduction due to the room enclosures. Typically, transformers up to 1,000 kVA generate noise levels up to 64 dBA, as measured at 3.28 feet. Assuming the transformer runs continuously during the daytime and nighttime hours and the 20 dBA reduction, the day-night average noise level would be up to 50 dBA DNL. The nearest receptors (e.g., residential and commercial buildings to the east) would be located 80 feet or more from the transformer and

[43] City of San José. Downtown Strategy 2040 Final Environmental Impact Report. December 2018.

substation rooms. The receptors would be exposed to an hourly average noise level below 30 dBA L_{eq} and a day-night average noise level below 25 dBA DNL from the transformers. All other ground level electrical rooms would generate noise levels lower than the transformers.

Both emergency generators proposed would have a capacity of 1,000 kW. Generators of this size would typically generate noise levels up to 89 dBA at a distance of 50 feet with a standard weather enclosure. Emergency generators are typically tested monthly for a period of one hour between 7:00 AM and 10:00 PM.[44] During the testing periods, the threshold would apply. The generator room for the residential building would be located along the northern building façade, while the generator room for the office building would be located along the eastern building façade. Testing for both generators would occur in the same 24-hour period (assuming worst-case scenario). With the inclusion of Level 1 or Level 2 sound enclosures, noise levels could be reduced to 65 dBA at a distance of 50 feet from the generator room.

Figure 3.6-2 shows the locations of the nearby receptors surrounding the project site and Table 3.6-2 below provides a summary of the estimated operational noise levels from the emergency generators (assuming inclusion of sound enclosures). The receptor references in Table 3.6-2 correlate to the references on Figure 3.6-2.

Table 3.6-2: Estimated Operational Noise Levels from Generators (with Sound Enclosures)

Receptor	Distance from Center of the Residential Generator room (feet)	L_{eq} from Residential Generator (dBA)	Distance from Center of the Office Generator Room (feet)	L_{eq} from Office Generator (dBA)	Combined DNL (dBA)
Off-1	55	64	230	52	51
Comm-2 & Comm-3	70	62	365	48	48
Res-2	155	55	185	54	44
Comm-4	205	53	95	59	47
Res-3	365	48	110	58	45
Comm-5 to Comm-10	635	43	350	48	36

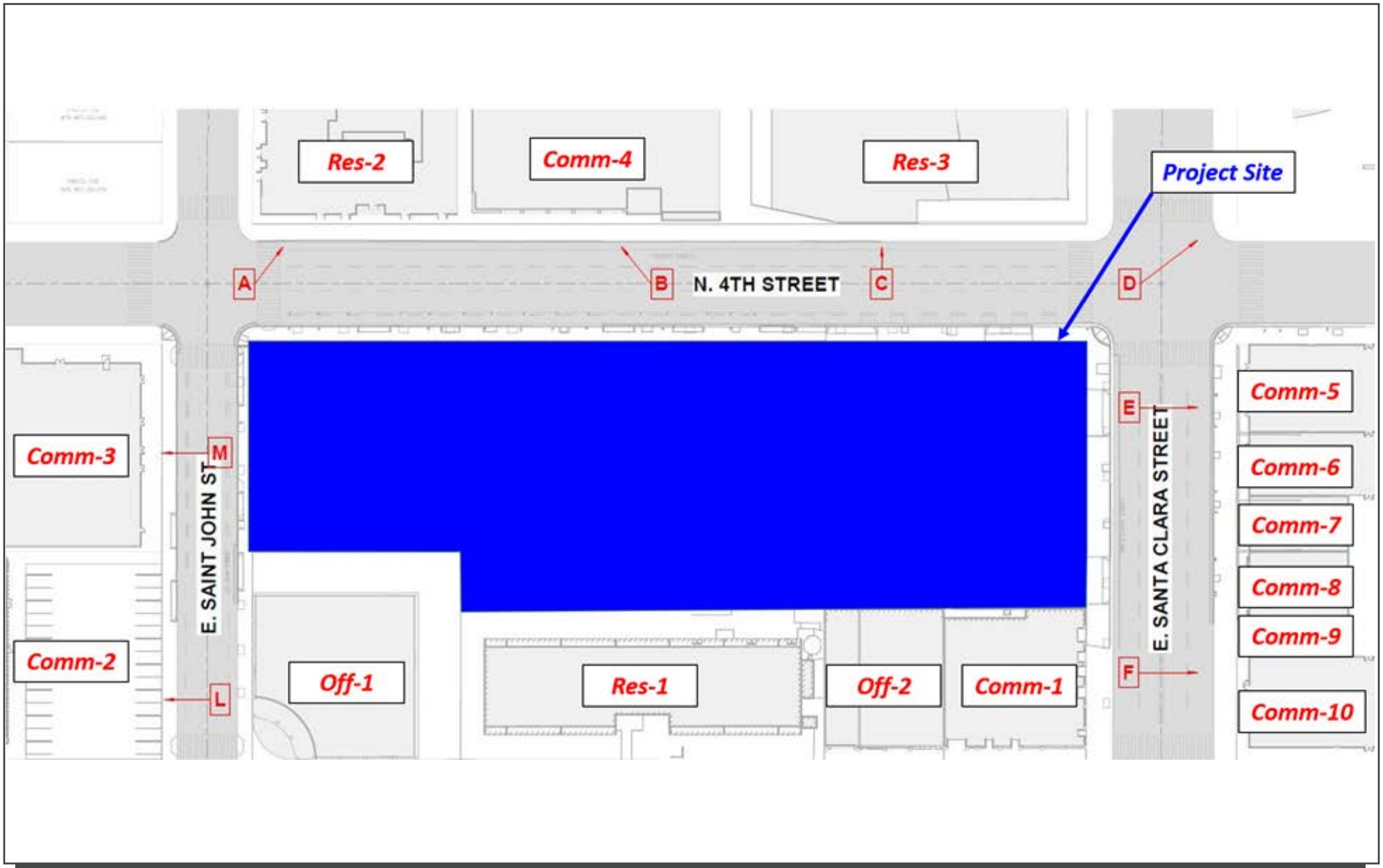
Note: Res-1, Off-2, and Comm-1 are not shown in the table above since these receptors would not have direct line-of-sight to the generator rooms and would be well-shielded.

While the hourly noise levels during the monthly testing period of the emergency generators would exceed the 55 dBA, this exceedance would only occur for one hour every month; therefore, the 55 dBA DNL threshold would not be exceeded.

Rooftop Mechanical Equipment

Solar panels, air cooled chillers, and air source heat pumps are proposed on the roof of both buildings (up to 268 feet above the ground). The buildings to the west of the site are up to 110 feet tall.

[44] It is assumed that the City's thresholds would not apply during emergency conditions when the generators may run continuously during daytime and nighttime hours.



NEARBY RECEPTORS SURROUNDING THE SITE | FIGURE 3.6-2

Assuming a minimum setback of 10 feet from the western edge of the buildings, the elevation of the rooftop equipment would provide at least 20 dBA noise reduction. The commercial buildings to the north and to the south of the project site, as well as Res-2 and Comm-4 to the east, would be located 70 feet or less which would provide at least 20 dBA noise reduction from the elevation of the rooftop equipment. The residences at Res-3, which is currently under construction[45], would have complete direct line-of-sight to the rooftop equipment when the project is operational.

Typical heating pumps would generate noise ranging from 56 to 66 dBA at a distance of three feet. Assuming up to 10 heating pumps would run simultaneously at any given time, hourly average noise levels would range from 66 to 76 dBA L_{eq} at a distance of three feet. While the number and type of air cooled chillers were not available at the time of the study, the worst-case scenario assumes the project would include up to five chillers generating a collective noise level of 56 dBA at 210 feet.

Cooling towers would include fan operations with noise levels up to 74 dBA at a distance of 50 feet. Typically, cooling towers are surrounded by parapet walls or mechanical screens, which provides a minimum noise level reduction of 10 dBA. When combined with the heating pumps and the chillers, the total mechanical equipment noise generated on the rooftop of the residential building would be 94 dBA at a distance of three feet.

For office buildings of similar size, air handling units generate noise levels up to 62 dBA at a distance of 20 feet. When combined with the heating pumps and the chillers, the total mechanical equipment noise generated on the rooftop of the office building would be 93 dBA at a distance of three feet.

Table 3.6-3 below provides a summary of the estimated operational noise levels from the center of the rooftop equipment.

Table 3.6-3: Estimated Operational Noise Levels from Rooftop Equipment

Receptor	Distance from Center of the Residential Rooftop Equipment (feet)	L_{eq} from Residential Equipment (dBA)[1]	Distance from Center of the Office Rooftop Equipment (feet)	L_{eq} from Office Equipment (dBA)[1]	Combined DNL (dBA)
Off-1	105	43	250	35	50
Res-1	135	41	80	45	53
Off-2	275	35	80	45	51
Comm-1	350	33	125	41	48
Comm-2 & Comm-3	200	38	430	30	45
Res-2	110	43	285	34	50
Comm-4	110	43	165	38	51
Res-3	240	56	165	58	**67**

[45] While Res-3 (Miro Tower) is currently built and units are being leased, Miro Tower was under construction at the time the noise and vibration assessment was prepared.

Table 3.6-3: Estimated Operational Noise Levels from Rooftop Equipment					
Receptor	**Distance from Center of the Residential Rooftop Equipment (feet)**	**L_{eq} from Residential Equipment (dBA)[1]**	**Distance from Center of the Office Rooftop Equipment (feet)**	**L_{eq} from Office Equipment (dBA)[1]**	**Combined DNL (dBA)**
Comm-5 to Comm-10	500	30	270	34	42

Note: [1]A conservative 20 dBA reduction was applied to the noise levels of all receptors (except for Res-3) due to the elevation of the rooftop equipment. No reduction was applied to the noise levels to Res-3 since the residential units would have direct line-of-sight to the rooftop equipment.

As shown in the table above, mechanical equipment noise levels would exceed the City's 55 dBA DNL threshold defined in General Policy EC-1.3 at the future residential building located east of the site (Res-3). To ensure compliance with General Plan Policy EC-1.3, the proposed project would be required to implement the following mitigation measure to ensure the project maintains a noise level of 55 dBA or less at the property lines of nearby residences.

Impact NOI-1: Mechanical equipment noise levels would exceed the City's 55 dBA DNL threshold defined in General Plan Policy EC-1.3 at the future residential building located across North Fourth Street to the east of the site (Miro Towers/Res-3).

Mitigation Measure

MM NOI-1.1: Prior to the issuance of any building permits, mechanical equipment shall be selected and designed to meet the City's 55 dBA DNL noise level requirement at the nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building façades farthest from the nearest residences), where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval prior to the issuance of any building permits.

With implementation of Mitigation Measure NOI-1, the project would have a less than significant operational noise impact from mechanical equipment.

Truck Loading and Unloading

The loading zone for the Northern Tower would be located in the north of the transformer rooms and the loading zone for the Southern Tower would be located between the generator and transformer rooms. Both loading areas would be located within the proposed building.

All receptors located north, west, and south of the project site would be adequately shielded from all loading activities. The only receptors with direct line-of-sight to the loading area at the Northern Tower would be Res-2 and Comm-4. Res-3 would be adequately shielded from the Northern Tower loading zone. These receptors would be approximately 80 and 100 feet from the center of the Northern Tower loading zone. Comm-4 and Res-3 would have direct line-of-sight to the Southern Tower loading zone with setbacks of 85 and 100 feet, respectively, from the center of the Southern Tower loading zone.

The loading zone of the Northern Tower is expected to have no more than two deliveries a week by medium-sized trucks. The loading zone of the Southern Tower is expected to have no more than four deliveries a week by medium- and heavy-sized trucks.

Truck delivery noise would include a combination of engine, exhaust, and tire noise, as well as the intermittent sounds of back-up alarms and releases of compressed air associated with truck/trailer air brakes. Heavy trucks typically generate maximum instantaneous noise levels of 70 to 75 dBA at a distance of 50 feet. Smaller medium-sized delivery trucks typically generate maximum noise levels of 60 to 65 dBA at 50 feet. The noise level of backup alarms can vary depending on the type and directivity of the sound, but maximum noise levels are typically in the range of 65 to 75 dBA at a distance of 50 feet. It is assumed that all deliveries and on-site maintenance activities would occur during daytime hours between 7:00 AM and 10:00 PM. For the purposes of this analysis, the noise level reduction due to the building at each loading area was assumed to be 15 dBA. The table below provides a summary of the estimated operational noise levels from truck deliveries.

Table 3.6-4: Estimated Operational Noise Levels from Truck Deliveries

Receptor	Distance from Center of the Nearest Loading Zone (feet)	L_{eq} (dBA)[1]	DNL (dBA)
Res-2	80 from Northern Tower loading zone	41-46	26[1]
Comm-4	100 from Northern Tower loading zone 85 from Southern Tower loading zone	39-55	39[1,2]
Res-3	100	49-54	37[2]

Notes: [1]Assumes one medium truck delivery in a given day.
[2] Assumes two heavy truck delivery in a given day.

As shown in the table above, truck deliveries would not generate noise levels exceeding the City's 55 dBA DNL threshold.

Construction Noise Impacts

Construction of the project is anticipated to occur over a period of 36 months which would generate considerable amounts of noise, especially during earthmoving activities when heavy equipment is used. Pile driving is not proposed. Construction-generated noise levels drop off at a rate of about six

dBA per doubling of the distance between the source and receptor. For each phase, the worst-case hourly average noise level was estimated at the property line of each surrounding land use. Table 3.6-5 below lists the equipment that would be used during construction and the estimated construction noise levels at nearby land uses (from the center of the construction site).

Table 3.6-5: Estimated Construction Noise Levels at Nearby Land Uses

Phase of Construction	Calculated Hourly Average Noise Levels, L_{eq} (dBA)							
	West Residential and Commercial (75 feet)		East Residence and Commercial (165 feet)		North commercial (355 feet)		South Commercial (345 feet)	
	dBA	Exceed Ambient Levels by five dBA or more?	dBA	Exceed Ambient Levels by five dBA or more?	dBA	Exceed Ambient Levels by five dBA or more?	dBA	Exceed Ambient Levels by five dBA or more?
Demolition	87	**Yes**	80	**Yes**	74	No	74	No
Site Preparation	83	**Yes**	76	**Yes**	69	No	70	No
Grading/Excavation	87	**Yes**	80	**Yes**	73	No	74	No
Trenching/Foundation	78	**Yes**	71	No	65	No	65	No
Structure	69	No	62	No	56	No	56	No
Building Exterior	85	**Yes**	78	**Yes**	71	No	72	No
Building Interior	81	**Yes**	75	**Yes**	68	No	68	No
Paving	82	**Yes**	76	**Yes**	69	No	69	No

Notes: The distance is measured from the center of the construction site to adjacent uses.
The ambient noise levels is 56 to 70 dBA $L_{eq.}$

As shown in the table above, ambient noise levels at the nearby land uses would be exceeded by approximately five dBA L_{eq} or more throughout construction. Per General Plan Policy EC-1.7, the City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would involve substantial noise generating activities continuing for more than 12 months. The project site is located within 500 feet of existing residences and within 200 feet of existing commercial uses and would last for a period of more than 12 months which would result in a significant impact.

Impact NOI-2: Construction noise would exceed ambient levels by five dBA for a period of more than one year within 500 feet of residential uses or 200 feet of commercial or office uses, which exceeds the City thresholds defined in General Plan Policy EC-1.7.

The project would be required to implement the following Standard Permit Conditions and mitigation measure during all phases of construction on the project site.

Standard Permit Conditions:

- Pile driving is prohibited.
- Limit construction hours to between 7:00 AM and 7:00 PM, Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.
- Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Prohibit unnecessary idling of internal combustion engines.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
- If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

Mitigation Measure

Consistent with the Downtown Strategy 2040 FEIR and General Plan Policy EC-1.3, the proposed project would be required to implement the Standard Permit Conditions above and the following measure during all phases of project construction.

MM NOI-2.1: Prior to the issuance of any grading or demolition permits, whichever occurs first, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules,

equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits for review and approval, whichever occurs first.

Consistent with the Downtown Strategy 2040 FEIR, the construction noise logistics plan shall include but is not limited to the following measures:

- Construction will shall be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- The project contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
- The unnecessary idling of internal combustion engines shall be prohibited.
- Staging areas and stationary noise-generating equipment shall be located as far as possible from noise-sensitive receptors such as residential uses (a minimum of 200 feet, where feasible).
- The surrounding neighborhood within 500 feet shall be notified early and frequently of the construction activities.
- A "noise disturbance coordinator" shall be designated to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.

With implementation of the Standard Permit Conditions and Mitigation Measure NOI-2.1, the proposed project would have a less than significant construction noise impact.

With implementation of the identified Standard Permit Conditions and Mitigation Measures NOI-1.1 and NOI-2.1, the project would have a less than significant increase in ambient noise levels in the vicinity of the project site. **[Less Impact than Approved Project with Mitigation Incorporated (Significant Unavoidable Impact)]**

b) Would the project result in generation of excessive groundborne vibration or groundborne noise levels?

General Plan Policy EC-2.3 establishes a continuous vibration limit of 0.08 inch/sec PPV to minimize the potential for cosmetic damage to sensitive historic structures, and a continuous vibration limit of 0.2 inch/sec PPV to minimize damage at buildings of normal conventional construction. As mentioned previously, the project site is located north of the San José Downtown Commercial Historic District and near contributing historic structures. Additionally, a portion of the project site (APN 467-20-060) is located within the St. James Square City Landmark District, and the Town Park Towers building at 60 North Third Street is eligible for listing under the NRHP and CRHR and is eligible for listing as a Candidate City Landmark (see *Section 3.3*, *Cultural Resources*, for additional detail).

Typical vibration levels that could be expected from construction equipment at each of the surrounding building(s) in the project vicinity (see Figure 3.3-1) is summarized below in Table 3.6-6.

Table 3.6-6: Vibration Levels at Various Distances

Equipment		PPV (in/sec)						
		West Historic Buildings (5 feet)	West Building (15 feet)[1]	South Historic Buildings (95 feet)	East Historic Building (85 feet)	East Residential Building (65 feet)	North Historic Building (165 feet)	North Commercial Building (115 feet)
Clam shovel drop		**1.186**	**0.354**	0.047	0.053	0.071	0.025	0.038
Hydromill (slurry wall)	in soil	0.047	0.014	0.002	0.002	0.002	0.001	0.001
	in rock	**0.100**	0.030	0.014	0.014	0.014	0.002	0.003
Vibratory Roller		**1.233**	**0.368**	0.048	0.048	0.048	0.026	0.039
Hoe Ram		**0.523**	**0.156**	0.020	0.020	0.020	0.011	0.017
Large bulldozer		**0.523**	**0.156**	0.020	0.020	0.020	0.011	0.017
Caisson drilling		**0.523**	**0.156**	0.020	0.020	0.020	0.011	0.017
Loaded trucks		**0.446**	**0.133**	0.018	0.018	0.018	0.010	0.014
Jackhammer		**0.206**	0.061	0.008	0.008	0.008	0.004	0.007
Small bulldozer		0.018	0.005	0.001	0.001	0.001	0.0004	0.001

Source: Transit Noise and Vibration Impact Assessment, United States Department of Transportation, Office of Planning and Environment, Federal Transit Administration, September 2018 as modified by Illingworth & Rodkin, Inc., April 2021.

Note: [1] Town Park Towers is not a designated historic resource; however, based on the City of San José City Landmark Evaluation for Town Park Towers, it was determined that the building would be eligible for listing in the NRHP and CRHR and is eligible for listing as a Candidate City Landmark. Therefore, the 0.08 in/sec PPV threshold was applied to this building.

As shown in the table above, vibration levels at the historic buildings located approximately five feet west of the site and Town Park Towers (eligible for listing in the NRHP and CRHR and is eligible for listing as a Candidate City Landmark) located approximately 15 feet west of the site would exceed the 0.08 in/sec PPV threshold for sensitive historic structures if the following equipment are used: clam shovel drop, hydromill, vibratory roller, hoe ram, large bulldozer, caisson drilling, loaded trucks, and jackhammer.

Impact NOI-3: Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings within 61 feet of the project site.

Mitigation Measure

The Downtown Strategy 2040 FEIR recognized that construction vibration for future projects in downtown could exceed these thresholds and included mandatory measures to be implemented by future projects to reduce vibration impacts. Consistent with General Plan Policy EC-2.3, the proposed project would implement the following measures during all phases of construction on-site.

MM NOI-3.1: Prior to the issuance of any demolition, grading, or building permits, whichever occurs earliest, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The Plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earliest. The Plan shall include, but not be limited to, the following measures:

- A description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.
- A list of all heavy construction equipment to be used for this project known to produce high vibration levels (e.g., clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning, Building or Code Enforcement or the Director's designee by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort for reducing vibration levels below the thresholds. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.

- Use of heavy vibration-generating construction equipment shall be prohibited within 61 feet of historic buildings and buildings eligible for listing as historic, if feasible.
- Document conditions at all historic structures located within 61 feet of construction prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically:
    - Vibration limits shall be applied to vibration-sensitive structures located within 61 feet of any construction activities identified as sources of high vibration levels.
    - Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 61 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion. The surveys shall include internal and external crack monitoring in the structure, settlement, and distress, and shall document the condition of the foundation, walls and other structural elements in the interior and exterior of the structure.
- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.
- If vibration levels approach limits, construction shall be suspended and contingency measures shall be implemented to lower vibration or secure affect structures.
- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- Conduct a post-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs in accordance with the Secretary of the Interior's Standards where damage has occurred as a result of construction activities.

With implementation of the Mitigation Measure NOI-3.1, the project would have a less than significant construction vibration impact. **[Same Impact as Approved Project (Less Than Significant Impact)]**

c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

The project site is located approximately 1.7 miles southeast of the Norman Y. Mineta San José International Airport. The project site is outside the 60 dBA CNEL contour line of the Norman Y. Mineta San José International Airport. Based on General Plan Policy EC-1.11, the required safe and compatible threshold for exterior noise levels would be at or below 65 dBA CNEL/DNL for aircrafts. Therefore, the proposed project would be compatible with the City's exterior noise standards for aircraft noise. **[Same Impact as Approved Project (Less Than Significant Impact)]**

3.6.2.2 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative noise impact?

The project's noise and vibration impacts are localized; therefore, the geographic study area is the project site and surrounding area (within 1,000 feet of the project site). Construction of the proposed project could potentially occur at the same time as the following projects:

- Fourth Street Housing, City File No. H19-021
- SuZaCo Mixed-Use, City File No. H17-059
- Hotel Clariana, City File No. H17-059
- Fountain Alley Mixed-Use, City File No. H20-037
- Fountain Alley Office, City File No. H19-041
- 19 North Second Street, City File No. H20-040
- Park View Towers, City File No. HA14-009-02
- Sixth Street, City File No. H15-055
- 27 West, City File No. SP18-016
- Eterna Tower, City File No. H20-026

The existing residential building located at the southeast corner of the North Fourth Street and East St. John Street intersection would be considered a sensitive receptor during construction activities at both the proposed project and Fourth Street Housing sites. Additionally, the commercial and residential uses to the west and east of the project site, respectively, would be shared receptors for the proposed project and the SuZaCo Mixed-Use project. The commercial uses located south of East Santa Clara Street would be shared receptors with the Hotel Clariana Addition project. The Downtown Strategy 2040 FEIR concluded that implementation of the identified mitigation in combination with General Plan policies EC-1.7 and EC-2.3 and the City's allowable construction hours would reduce construction noise to a less than significant level. Each individual project includes measures to further reduce noise and vibration levels from the individual sites. With implementation of the identified mitigation and Standard Permit Conditions, the construction noise and vibration levels from individual projects would be reduced to the extent possible during construction of each individual project. Therefore, the project would not result in a cumulatively

considerable contribution to a significant cumulative noise impact. **[Same Impact as Approved Project (Less Than Significant Cumulative Impact)]**

3.6.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District,* 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes only because the City of San José has policies that address existing noise conditions affecting a proposed project. General Plan Policy EC-1.1 requires new development to be located in areas where noise levels are appropriate for the proposed uses, considering federal, state and City noise standards and guidelines as a part of new development review.

Future Exterior Noise Levels

The City's acceptable exterior noise level standard is 60 dBA DNL or less for residential land uses and 70 dBA DNL or less for commercial land uses (General Plan Policy EC-1.1). Per General Plan Policy EC-1.1, the acceptable exterior noise level objective has been established for the City except in the environs of the Norman Y. Mineta San José International Airport, the downtown core area, and along major roadways (General Plan Policy EC-1.1). The project proposes an amenity deck and seating area on the fifth floor and a roof terrace on the 24th floor of the Northern Tower. The amenity deck on the fifth floor would be mostly shielded from the surrounding roadways by the proposed residential and office towers on-site and the existing building located to the west. The seating area, approximately 100 feet from the centerline of North Fourth Street, would stretch to the eastern façade and would have some exposure to traffic noise along North Fourth Street. Future exterior noise levels would be up to 60 dBA DNL at the eastern edge of the seating area; however, the noise levels would be below 60 dBA DNL towards the center of the seating area, as well as the other outdoor use spaces proposed on the amenity deck.

An additional seating area is proposed at the northeastern corner of the fifth floor of the Northern Tower. Future residences would be exposed to traffic noise from both East St. John Street and North Fourth Street. The elevation of the outdoor use area would, however, provide partial shielding for future residences at five feet or more from the northern and eastern edges. The center of the seating area would be approximately 40 feet south of the East St. John Street centerline and approximately 55 feet west of the North Fourth Street centerline. While noise levels at the northeastern edge of the fifth floor seating area would be up to 64 dBA DNL, future exterior noise levels at the center of the outdoor use area would be below 60 dBA DNL, meeting the City's threshold for residential uses.

The residential roof terrace would be located along the northern façade with shielding from the units located along the eastern edge of the terrace. The center of the outdoor space would be adequately shielded and future exterior noise levels at the terrace would be below 60 dBA DNL.

Additionally, terraces associated with the office building are proposed on floors three, five, and nine through 21. The terrace on the third floor would be located at the southwestern corner of the Southern Tower. While the terrace would have direct line-of-sight to East Santa Clara Street, the elevation of the outdoor use space, as well as the proposed building and adjacent existing commercial building would provide partial shielding from the traffic noise at the center of the terrace. At the

center of the terrace, future exterior noise levels would be below 70 dBA DNL. Per the Noise and Vibration Assessment (Appendix F), traffic noise typically reduces by one dBA every two stories above the ground. Based on the elevation of the terraces proposed on floors three, five, and nine through 21, future exterior noise levels at the centers of each terrace would be below the City's normally acceptable threshold of 70 dBA DNL. Therefore, the proposed project would be consistent with General Plan Policy EC-1.1.

Future Interior Noise Levels

The City's acceptable interior noise level standard is 45 dBA DNL or less for residential land uses. Interior noise levels vary depending on the design of the buildings and the selected construction materials and methods. Standard residential construction provides approximately 15 dBA of exterior-to-interior noise reduction with windows partially open (for ventilation). Standard residential construction with windows closed provides approximately 20 to 25 dBA of noise reduction in interior spaces. Where exterior noise levels range from 60 to 65 dBA DNL, adequate forced-air mechanical ventilation can reduce interior noise levels to acceptable levels by allowing occupants the option of closing the windows to reduce noise.

Residential units are proposed on floors three through 24 of the Northern Tower. Units that are located along the eastern façade near North Fourth Street would be set back from the centerline of the roadway by approximately 45 feet. At this distance, the units would be exposed to future exterior noise levels up to 68 dBA DNL. Assuming a 15 dBA of exterior-to-interior noise reduction with windows partially open, future interior noise levels in these units would be up to 53 dBA DNL.

The units located along the northern façade would be set back approximately 25 feet from the East St. John Street centerline. At this distance, the units facing East St. John Street would be exposed to a future exterior noise level ranging from 65 to 68 dBA DNL. With windows partially open, future interior noise levels would range from 50 to 53 dBA DNL.

Additionally, ground level commercial uses and offices on floors three to 20 are proposed within the Southern Tower. The Southern Tower would be set back from the North Fourth Street and East Santa Clara Street centerlines by approximately 45 and 50 feet, respectively. Daytime hourly average noise levels at the ground level of the building exterior would be up to 74 dBA L_{eq} at the southern building façade, with day-night average noise levels up to 72 dBA DNL. Noise levels decrease by approximately one dBA every two stories; therefore, the daytime hourly average noise levels and day-night average noise level at the upper floors would be lower.

Standard construction materials for commercial uses would provide 25 dBA of noise reduction in interior spaces. The inclusion of adequate forced-air mechanical ventilation systems would provide an additional five dBA reduction. Therefore, standard construction materials in combination with forced-air mechanical ventilation would not exceed CALGreen's daytime threshold of 50 dBA $L_{eq(1\text{-}hr)}$.

To comply with the City's interior noise threshold of 45 dBA DNL threshold for residential land uses, the project would be required to comply with the following Standard Permit Condition.

Standard Permit Condition:

- The project applicant shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The project applicant shall conform with any special building construction techniques requested by the City's Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

With implementation of the Standard Permit Condition, the project would meet the City's interior noise standards consistent with General Plan Policy EC-1.1.

3.7 TRIBAL CULTURAL RESOURCES

3.7.1 Environmental Setting

3.7.1.1 *Regulatory Framework*

State

Assembly Bill 52

AB 52, effective July 2015, established a new category of resources for consideration by public agencies called Tribal Cultural Resources (TCRs). AB 52 requires lead agencies to provide notice of projects to tribes that are traditionally and culturally affiliated with the geographic area if they have requested to be notified. Where a project may have a significant impact on a tribal cultural resource, consultation is required until the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource or until it is concluded that mutual agreement cannot be reached.

Under AB 52, TCRs are defined as follows:

- Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are also either:
    - Included or determined to be eligible for inclusion in the California Register of Historic Resources, or
    - Included in a local register of historical resources as defined in Public Resources Code Section 5020.1(k).
- A resource determined by the lead agency to be a TCR.

City of San Jose

General Plan Policies ER-9.2, ER-10.1, and ER-10.3 are relevant to Tribal Cultural Resources and are provided in the General Plan Policies table in *Section 3.3, Cultural Resources*.

3.7.2 Impact Discussion

For the purpose of determining the significance of the project's impact on tribal cultural resources, would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?
b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Similar to the development evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant tribal cultural resources impacts with mitigation incorporated, as described below.

a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code § 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or

ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code § 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code § 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

As mentioned in *Section 3.3.1.2* of the Draft SEIR, the project area is highly sensitive for historic-era archaeological deposits.[46,47] Based on the site's distance from the Guadalupe River and Coyote Creek (approximately 0.6 mile), the project site has a low to moderate potential for Native American resources.[48] No other tribal cultural features, including sites, features, places, cultural landscapes or sacred places have been identified based on available information.

Although there are no known sites listed or eligible for listing in the CRHR, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), Assembly Bill 52 requires lead agencies to complete formal consultations with California Native American tribes, upon request, during the CEQA process to identify previously undocumented tribal cultural resources that may be subject to significant impacts by a project. Where a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document must discuss the impact and whether feasible alternatives or mitigation measures could avoid or substantially lessen the impact. This consultation requirement applies only if the tribes registered with the NAHC have sent written requests for notification of projects to the Lead Agency. In 2017, the City had sent a letter to tribal representatives in the area to welcome participation in consultation process for all ongoing, proposed, or future projects within the City's Sphere of Influence or specific areas of the City. The Ohlone Tribe submitted a request in July of 2018 for notification of projects requiring a Negative Declaration, a Mitigated Negative Declaration, or an Environmental Impact Report that would involve ground-disturbing activities within the downtown area of the City of San José. Then, in response to a more specific verbal request in a meeting with City staff and the representative on July 12, 2018, clarification was received that such notification be sent only for projects in the City of San José that involve ground disturbing activities in Downtown, and that such requests may be sent via e-mail only. In addition, on May 28, 2021, the Tamien Nation requested notification of all projects requiring a Negative Declaration, a Mitigated Negative Declaration, or an Environmental Impact

[46] Holman & Associates, Inc. *Archaeological Survey Report for Donner Lofts*. May 2012.
[47] Holman & Associates, Inc. *Archaeological Literature Search (Hotel Clariana)*. October 2018.
[48] Ibid.

Report within the City of San José. At the time of preparation of this SEIR, these are the only two tribes that have sent written formal requests for notification of projects in the City of San José.

Accordingly, the City sent AB 52 notice to representatives of the Ohlone Tribe (via email) and Tamien Nation (via email and certified mail) on September 30, 2021 and September 29, 2021, respectively. The notice sent to Tamien Nation via certified mail was received by the tribe on October 6, 2021. In response to these notices, the City received one consultation request from the Tamien Nation on November 5, 2021. In response, the City held consultation meetings with representatives of the Tamien Nation on December 9, 2021 and March 10, 2022, and due to the site's proximity to a known village site, mitigation measures for cultural resources sensitivity training before the start of excavation, a preliminary investigation performed by a qualified archaeologist (with a tribal representative) after demolition has occurred, and tribal monitoring during excavation are required to be implemented to reduce potential impacts to previously undocumented tribal cultural resources.

Impact TCR-1: Construction activities associated with the proposed project could result in the disturbance of previously undocumented tribal cultural resources due to a known village site in the immediate project vicinity.

Mitigation Measures

In addition to Mitigation Measures CUL-1.1 and CUL-1.2 identified in *Section 3.3*, *Cultural Resources*, (preliminary investigation and treatment plan, respectively), which were written to address both historic-era and Native American cultural resources, the project would be required to comply with the following additional mitigation measures to avoid impacts to TCRs, per consultation with Tamien Nation conducted in compliance with AB 52.

MM TCR-1.1: **Sensitivity Training.** Prior to issuance of any grading permits, the project applicant shall submit evidence to the Director of Planning, Building and Code Enforcement or the Director's designee that an Archaeological Monitoring Contractor Awareness Training was held prior to ground disturbance. The training shall be facilitated by a qualified archaeologist in coordination with a Native American representative from a California Native American tribe that has consulted on the project, is registered with the Native American Heritage Commission (NAHC) for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.

MM TCR-1.2: **Monitoring.** A qualified Native American monitor, registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, in collaboration with a qualified archeologist, shall also be present during all earthmoving activities such as, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.

Although not required by AB 52, in addition to tribes that have specifically requested notification (Ohlone Tribe and Tamien Nation), all other NAHC-listed tribes known to have traditional lands and cultural places within the City of San José were provided with the NOP for the SEIR on September 29, 2021, and no requests for consultation were received by the City in response to this notification.

Consistent with the Downtown Strategy 2040 FEIR, and in addition to Mitigation Measures CUL-1.1, CUL-1.2, TCR-1.1, and TCR-1.2, the proposed project would be required to comply with the Standard Permit Conditions identified under checklist question b in *Section 3.3*, *Cultural Resources* in the even prehistoric or historic-era archaeological resources are encountered during excavation and/or grading of the site. With implementation of existing regulations, Standard Permit Conditions, and Mitigation Measures CUL-1.1, CUL-1.2, TCR-1.1, and TCR-1.2, the proposed project would have a less than significant impact on tribal cultural resources. **[New Less Than Significant Impact with Mitigation Incorporated (Less than Significant Impact)]**

3.7.2.1 *Cumulative Impacts*

Would the project result in a cumulatively considerable contribution to a significant cumulative tribal cultural resources impact?

The geographic study area for cumulative impacts to tribal cultural resources is the surrounding area (within 1,000 feet of the project site).

While future projects in the area may require excavation, grading, and/or other activities that may affect undiscovered tribal cultural resources, no tribal cultural resources have been identified in the area. The proposed project and other cumulative projects would be required to implement the City's Standard Permit Conditions and any mitigation measures agreed to through consultation with affiliated tribes that would avoid impacts and/or reduce them to a less than significant level consistent with CEQA and AB 52 requirements. These projects would also be subject to the federal, state, and county laws regulating archaeological resources and human remains. Therefore, the project would not result in a cumulatively considerable contribution to a significant cumulative tribal cultural resources impact. **[New Less Than Significant Impact with Mitigation Incorporated (Less than Significant Cumulative Impact)]**

SECTION 4.0 GROWTH-INDUCING IMPACTS

Would the project foster or stimulate significant economic or population growth in the surrounding environment?

The CEQA Guidelines require that an EIR identify the likelihood that a proposed project could "foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment" (Section 15126.2[d]).

Growth-inducing impacts are defined as:

> *[T]he ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth … It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.*

A project can have direct and/or indirect growth-inducement potential. Direct growth inducement results if a project involves construction of new housing that would result in new residents moving to the area. A project can have indirect growth-inducement potential if it establishes substantial new permanent employment opportunities (e.g., commercial, industrial, or governmental enterprises) or if it involves a substantial construction effort with substantial short-term employment opportunities and indirectly stimulates the need for additional housing and services to support the new employment demand. Similarly, under CEQA, a project could indirectly induce growth if it expands roadway capacity or removes an obstacle to additional growth and development, such as removing a constraint on required public services or utilities (e.g., adding a sewage treatment plant that has capacity to serve demand beyond the associated project).

This section of the Draft SEIR is intended to evaluate the impacts of such growth in the surrounding environment. Examples of projects likely to have significant growth-inducing impacts include removing obstacle to population growth, for example by extending or expanding infrastructure beyond what is needed to serve the project. Other examples of growth inducement include increases in population that may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects.

The project proposes to construct two towers on a 2.1-acre site in the downtown area of San José. The project site is in a developed area fully served by public utilities and is part of the planned growth in the Downtown Strategy 2040. There are no undeveloped areas adjacent or in the immediate vicinity of the project site and the project would not remove any obstacles that would help facilitate additional growth not previously analyzed in the Downtown Strategy 2040 FEIR that could significantly affect the physical environment. The project would increase residential development on an infill site and indirect population growth could occur because of the jobs generated by the office component of the project. The proposed project would not require the expansion of utilities or roads nor would the project necessitate the expansion of or require new public services to accommodate development of the project (refer to *Section 4.15* of Appendix A). Therefore, the project would not induce substantial population growth in excess of the planned growth analyzed in the Downtown Strategy 2040 FEIR.

SECTION 5.0 SIGNIFICANT AND IRREVERSIBLE ENVIRONMENTAL CHANGES

CEQA and the CEQA Guidelines require that an EIR address "significant irreversible environmental changes which would be involved in the proposed project, should it be implemented." [§15126(c)]

The project would demolish the existing gas station, church, surface parking lot, and three commercial buildings on-site and construct two towers (an office tower and a residential tower) connected via a podium. Future development on-site would involve the use of non-renewable resources both during construction phases and future operations/use of the site. Construction would include the use of building materials, including materials such as petroleum-based products and metals that cannot reasonably be re-created. Additionally, construction involves significant consumption of energy, usually petroleum-based fuels that deplete supplies of non-renewable resources.

The City of San José encourages the use of building materials that include recycled materials and makes information available on those building materials to developers. The towers would be built to current codes, which require insulation and design to minimize wasteful energy consumption. Additionally, the proposed project would be designed to achieve LEED Silver certification and constructed in compliance with CALGreen requirements, the City's Reach Code, the City's Council Policy 6-32 (Private Sector Green Building Policy) and Green Building Ordinance, and would also be required to comply with the City's Reach Code and will be served by SJCE's default program (GreenSource), which currently provides 60-percent renewable energy, and this percentage will increase in the future. The project would be constructed consistent with City Council Policy 6-29 (Post Construction Urban Runoff Management) and the RWQCB Municipal Regional Stormwater NPDES permit to avoid impacts to waterways. The project site is located in the downtown area which would provide future residents, employees, and patrons access to existing transportation networks and other downtown services. Therefore, the proposed project would facilitate a more efficient use of resources over the lifetime of the project. The project would not result in significant and irreversible environmental changes to the project site.

SECTION 6.0 SIGNIFICANT AND UNAVOIDABLE IMPACTS

A significant unavoidable impact is an impact that cannot be mitigated to a less than significant level if the project is implemented as it is proposed. The following significant unavoidable impacts have been identified as a result of the project:

- **Cultural Resources:** The proposed development of the Northern Tower would impair the overall historic integrity of the St. James Square City Landmark District as it does not comply with: the Secretary of the Interior's Standard 9 for Rehabilitation, the Site Layout/Setbacks, Surface Treatment, Detailing, and Landscaping guidelines of the St. James Square Historic District Design Guidelines, and the design, feeling, and association integrity of the St. James Square City Landmark District.
- **Cumulative Cultural Resources:** The proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District due to incompatible infill, which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984.
- **Land Use and Planning:** Implementation of the proposed project would conflict with applicable General Plan policies adopted for the purpose of avoiding or mitigating an environmental effect.
- **Land Use and Planning:** The proposed project would have a significant unavoidable shade and shadow impact on St. James Park.
- **Cumulative Land Use and Planning:** The proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984.

SECTION 7.0 ALTERNATIVES

CEQA requires that an EIR identify and evaluate alternatives to a project as it is proposed. Two key provisions from the CEQA Guidelines pertaining to the discussion of alternatives are included below:

> **Section 15126.6(a). Consideration and Discussion of Alternatives to the Proposed Project.** An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.
>
> **Section 15126.6(b). Purpose.** Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or be more costly.

Other elements of the CEQA Guidelines discuss that alternatives should include enough information to allow a meaningful evaluation and comparison with the proposed project. The CEQA Guidelines state that if an alternative would cause one or more additional impacts, compared to the proposed project, the discussion should identify the additional impact, but in less detail than the significant effects of the proposed project.

The three critical factors to consider in selecting and evaluating alternatives are: (1) the significant impacts from the proposed project that could be reduced or avoided by an alternative, (2) consistency with the project's objectives, and (3) the feasibility of the alternatives available. Each of these factors is discussed below.

7.1 PROJECT OBJECTIVES

While CEQA does not require that alternatives be capable of meeting all of the project objectives, their ability to meet most of the objectives is considered relevant to their consideration. The objectives of the proposed project are to:

1. Provide a project that meets the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 Plan of locating high density development on infill sites along transit corridors to foster transit use and the efficiency of urban services to strengthen downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José. Specifically, provide high density, high-rise housing in the downtown area in excess of 198 units per acre that is accessible to downtown jobs, retail and entertainment and

various modes of public transit. The development of office and retail uses will provide for jobs at this infill location, which will in turn help to support transit use and existing amenities.

2. Support smart growth, and ideally reduce vehicle miles traveled, by adding housing units, office and retail space to a central transit location served by various modes of public transportation such as bikeways, VTA light rail and buses, and within 0.5 miles of a planned BART extension.

3. Create an attractive new building adding to the City's skyline and activating the ground floor with retail and a connected commercial complex.

4. Create a modern Class A office project with large open floor plates consisting of 20,000 to 40,000 square feet. These large floor plates are intended to attract tenants that are in the technology sector that are looking to increase their businesses and increase employment.

5. Provide bicycle parking in excess of City requirements for residents and employees to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community. The commercial building will provide for associated showers and lockers for employee bike commuters. In addition, a bike repair kitchen will be made available to both project residents and employees.

7.2 SIGNIFICANT IMPACTS FROM THE PROJECT

The CEQA Guidelines advise that the alternatives analysis in an EIR should be limited to alternatives that would avoid or substantially lessen any of the significant effects of the project and would achieve most of the project objectives. Impacts that would be significant include:

- **Air Quality:** Construction activities associated with the proposed project would expose the maximum exposed individual (MEI) to a cancer risk of 42.39 cases per one million for infants which exceeds the Bay Area Air Quality Management District (BAAQMD) significance threshold of 10 cases per one million.
- **Biological Resources:** Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.
- **Cultural Resources:** The proposed development of the Northern Tower would impair the overall historic integrity of the St. James Square City Landmark District as it does not comply with: the Secretary of the Interior's Standard 9 for Rehabilitation, the Site Layout/Setbacks, Surface Treatment, Detailing, and Landscaping guidelines of the St. James Square Historic District Design Guidelines, and the design, feeling, and association integrity of the St. James Square City Landmark District.
- **Cultural Resources:** Construction activities on-site could uncover historic-era archaeological resources associated with pre-1906 earthquake residential and commercial activities.

- **Cumulative Cultural Resources:** The proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District due to incompatible infill, which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984.
- **Hazards and Hazardous Materials:** Construction activities associated with the proposed project could expose the public and/or the environment to hazardous materials and/or soil, soil vapor, and/or groundwater contamination from existing and former uses of the site (existing gas station and former automobile repair and service, gas station, drycleaner, and lumber businesses).
- **Land Use and Planning:** Implementation of the proposed project would conflict with applicable General Plan policies adopted for the purpose of avoiding or mitigating an environmental effect.
- **Land Use and Planning:** The proposed project would have a significant unavoidable shade and shadow impact on St. James Park.
- **Cumulative Land Use and Planning:** The proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984
- **Noise and Vibration:** Mechanical equipment noise levels would exceed the City's 55 dBA DNL threshold defined in General Plan Policy EC-1.3 at the future residential building located across North Fourth Street to the east of the site (Miro Towers/Res-3).
- **Noise and Vibration:** Construction noise would exceed ambient levels by five dBA for a period of more than one year within 500 feet of residential uses or 200 feet of commercial or office uses, which exceeds the City thresholds defined in General Plan Policy EC-1.7.
- **Noise and Vibration:** Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings within 61 feet of the project site.
- **Tribal Cultural Resources:** Construction activities associated with the proposed project could result in the disturbance of previously undocumented tribal cultural resources due to a known village site in the immediate project vicinity.

Summary of Difference in Expert Opinion

TreanorHL concluded that while the Northern Tower would partially diminish the integrity of design and association, the St. James Square City Landmark District would still retain its overall historic character that qualifies it for listing as a historical resource. While the proposed Northern Tower would not fully comply with the St. James Square Historic District Design Guidelines, TreanorHL concluded that the Northern Tower would not impair the significance and integrity of the District as the Northern Tower would be located on a noncontributing parcel at the southeast edge of the District, would not front directly on St. James Square, and would not be directly adjacent to any District contributors.

However, the City of San José maintains a difference in expert opinion and concluded from the TreanorHL Standards and Guidelines assessment that because the proposed development of the Northern Tower would not be compatible with the St. James Square City Landmark District in

features, size, scale, proportion, and massing, it would impact the design and association of the St. James Square City Landmark District and impair the overall historic integrity of the District.

The St. James Square City Landmark District contains only nine contributing resources (including St. James Park) and 16 non-contributing structures and vacant lots. Section 2 of Resolution 57147 adopted by the City Council on October 11, 1983 (recorded January 10, 1984) found that the District designation would ensure the preservation and/or thoughtful modification of structures in this area would be compatible with the historic character of this area. This finding addresses the importance of ensuring the compatibility of future new construction which is supported by the fact that the District contains vacant lots and nearly twice as many non-contributing properties than contributing properties. It is apparent that the designation was intended to result in compatible infill development.

As stated in the TreanorHL Design Guidelines and Standards Compliance Review report, the proposed Northern Tower does not comply with Secretary of the Interior's Standard 9. A project that has been determined to conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties can generally be considered to be a project that will not cause a significant impact. The design of the Northern Tower does not comply with the primary standard applicable to the project (Standards 1-8 do not apply) because it would not be compatible with the St. James Square City Landmark District in features, size, scale, proportion, and massing. Since Standard 10 addresses reversibility and there is no historic resource on site, this standard is less germane to the analysis. The conclusion that the Northern Tower would comply with Standard 10 if it were removed conversely concludes that its construction would cause impairment. In addition, the proposed Northern Tower would not comply with the Site Layout/Setbacks, Surface Treatment, Detailing, and Landscaping sections of the St. James Square Historic District Design Guidelines, which were adopted by the City Council to provide design direction and elements to be incorporated into new building proposals to integrate and complement the historic district. As a result, the proposed Northern Tower would impair the overall historic integrity of the St. James Square City Landmark District.

In summary, because the proposed Northern Tower would not substantially comply with the Standards or relevant local historic preservation regulations and would impair the overall historic integrity of the St. James Square City Landmark District, the City of San José concluded the portion of the project in the District would have a significant unavoidable impact on a historical resource under CEQA.

7.3 ALTERNATIVES

Pursuant to the CEQA Guidelines: "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives." (CEQA Guidelines, § 15126.6, subd. (a), italics added.) As this implies, "an agency may evaluate on-site alternatives, off-site alternatives, or both." (Mira Mar, supra, 119 Cal.App.4th at p. 491.) The CEQA Guidelines thus do not require analysis of off-site alternatives in every case. Nor does any statutory provision in CEQA "expressly require a discussion of alternative project locations." (119 Cal.App.4th at p. 491 citing §§ 21001, subd. (g), 21002.1, subd. (a), 21061.)

Alternatives are discussed that could reduce the following identified significant and unavoidable impacts associated with the project as proposed.

- **Cultural Resources (Section 3.3)**: The proposed Northern Tower would not be compatible with the St. James Square City Landmark District in features, size, scale, proportion, and massing, it would impact the design and association of the St. James Square City Landmark District and impair the overall historic integrity of the District.

- **Land Use and Planning (Section 3.5):** The proposed Northern Tower would not be substantially compliant with the Standards and Guidelines and would impair the overall historic integrity of the St. James Square City Landmark District. In addition, the proposed Southern Tower would partially comply with the 2019 Downtown Design Guidelines and Standards. Implementation of the proposed project would conflict with relevant local historic preservation General Plan policies, resulting in a significant unavoidable impact. Also, the proposed project would result in an increase in shade on St. James Park of more than 10 percent, resulting in a significant unavoidable shade and shadow impact on St. James Park.

Since the project proposes a mix of residential, retail, and office land uses, there are many possible development scenarios. However, three project alternatives have been selected that reduce the height and/or setbacks of the proposed project and could potentially achieve greater compliance with the Standards and local guidelines to reduce or potentially avoid the impairment of the overall historic integrity of the St. James Square City Landmark District and conflicts with General Plan policies adopted for the purpose of avoiding or mitigating an environmental effect. A reduction in the height of proposed development in St. James Square City Landmark District would reduce identified significant and unavoidable impacts related to the shading of St. James Park. Alternatives besides the No Project – No Development Alternative that propose a smaller sized project would involve a shorter construction timeframe since it would require less heavy equipment on-site, which would lessen the identified construction air quality and noise impacts, but the impacts would still be significant and require mitigation as construction is anticipated to exceed 12 months. Impacts from the displacement of existing land uses and ground disturbance (including demolition and proposed tree removal) would be comparable to the proposed project for impacts related to biological resources and hazards and hazardous materials.

The City considered the following alternatives to the proposed project:

- Location Alternative
- No Project – No Development Alternative
- Reduced Height of Northern and Southern Towers Alternative
- Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback Alternative
- Reduced Height of Northern Tower to 160 and 135 Feet Alternative
- 20-Foot Setback of Northern Tower Alternative

7.3.1 Project Alternatives

7.3.1.1 *Considered & Rejected*

Location Alternative

In considering an alternative location in an EIR, the CEQA Guidelines advise that the key question is "whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location".[49] The project proposes to construct a 27-story residential tower with up to 415 dwelling units and a 21-story office tower on an approximately 2.1-acre site, specifically within the Downtown planning area as stated in the objectives.

It is reasonable to assume that there are other sites available within the downtown area that could be redeveloped to support the proposed development. To accommodate the project as proposed, it is likely that existing buildings would need to be demolished because of limited undeveloped parcels. Other sites within downtown that are already owned by the applicant have similar pending development applications. Displacement of existing land uses could trigger secondary effects.

As there are historic buildings throughout the downtown, and it is unlikely that a new location would avoid impacts to historic buildings due to demolition of a historic structure(s) and/or incompatible design relative to historic adjacencies. The impact to the St. James Square City Landmark District could, however, be avoided by constructing the project on a site outside the District boundary. Construction would also need to be outside the San José Downtown Commercial Historic District boundary.

All construction-related impacts, with the exception of impacts related to hazards and hazardous materials, would remain the same if sensitive receptors were located within 1,000 feet of the site, which is likely considering the development density of the Downtown planning area. Since the existing uses to be demolished as part of the proposed project use and store hazardous materials (e.g., existing gas station), and there are multiple RECs associated with the project site, potential impacts related to potential disruption and release of hazardous materials during construction may be less at an alternate location. In addition, the shading impacts identified as significant and unavoidable may be avoided at an alternative location that is not adjacent to St. James Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park, or McEnery Park.

This alternative was not considered further because of the lack of available land to support the proposed project within the downtown area that would avoid the identified construction impacts.

7.3.1.2 *Project Alternatives*

No Project – No Development Alternative

The CEQA Guidelines [§15126(d)4] require that an EIR specifically discuss a "No Project" alternative, which shall address both "the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved, based on current plans and consistent with available infrastructure and community services."

[49] CEQA Guidelines Section 15126.6(f)(2)(A)

The No Project – No Development Alternative would retain the existing buildings and parking lot on-site. If the project site were to remain as is, there would be no significant impacts. This alternative would not meet any of the project objectives. In addition, the City would lose the opportunity to redevelop an underutilized site in the downtown area to meet the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 by locating high density development on a downtown site near transit.

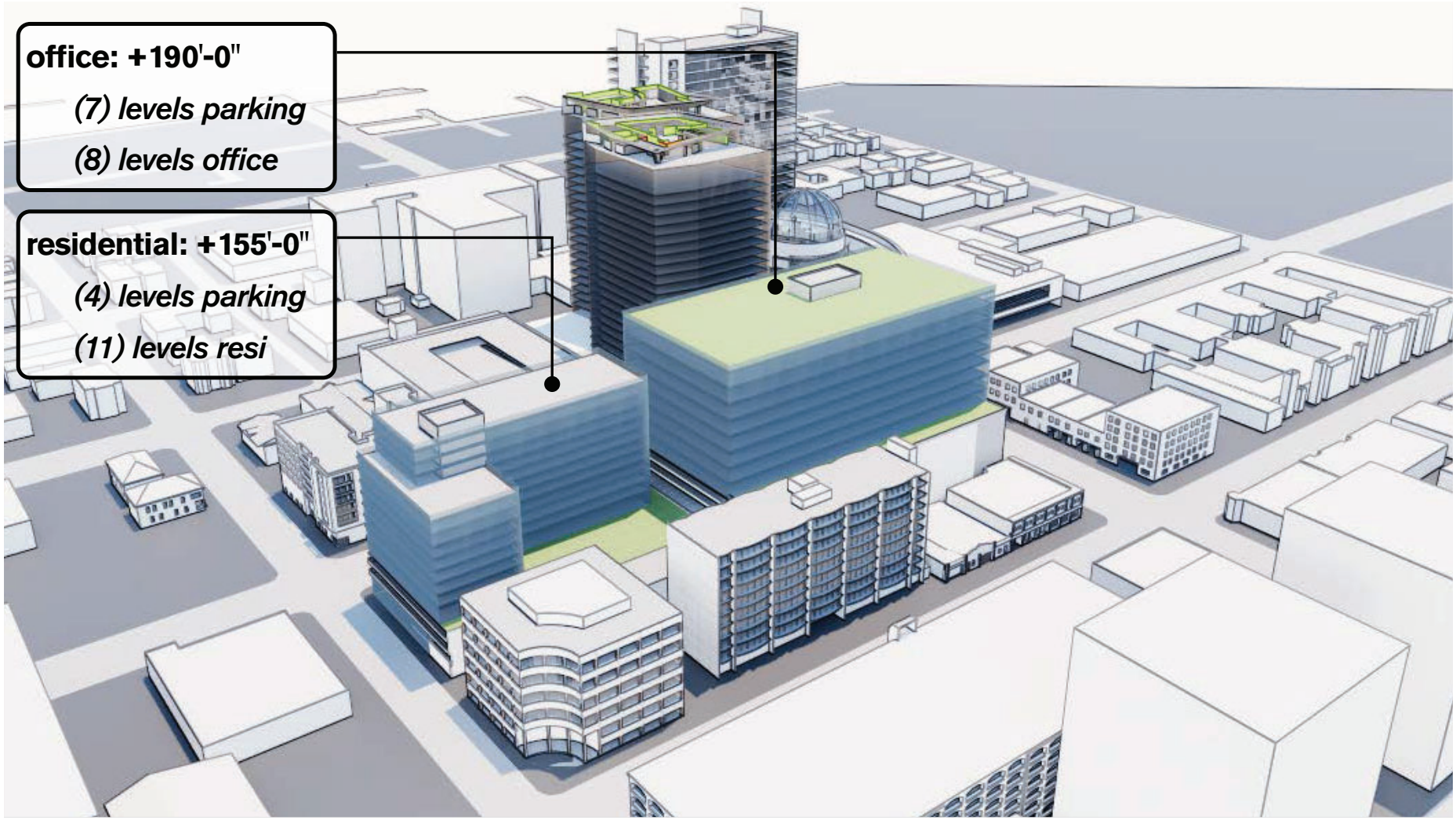
Based on the General Plan designation of *Downtown* for the site, permitted uses include offices and financial services, general retail, education and training, entertainment and recreation, food services, general services, public and quasi-public uses such as religious assembly and community centers, and residential. Under the *Downtown* General Plan designation, projects can have a maximum FAR of 30.0 and up to 800 dwelling units per acre. Based on the *DC* zoning of the site, development shall only be subject to the height limitations necessary for the safe operation of Norman Y. Mineta San José International Airport. There are no minimum setback requirements. However, in the St. James Square City Landmark District, a Historic Preservation Permit is required for the portion of the site located within the District. The compatibility of any proposed development within the District in terms of size, scale, proportion, and massing would be assessed, which could limit the height of a building in the District in order to retain its historic integrity. Any future proposals for the site would require review and approval by the City of San José. It is possible that in the future an alternative development proposal, such as another mixed-use building, may be proposed for the site that conforms with the adopted Standards and Guidelines of the St. James Square City Landmark District. However, future proposals may be comparable in density and scale to what is currently proposed, assuming that any proposed development would try to maximize the potential of the site consistent with development generally anticipated in the Downtown General Plan and Zoning District.

Reduced Height of Northern and Southern Towers Alternative

Under this alternative, both towers would be 15 stories tall and connected via a podium on the basement floor to the eighth floor (refer to Figure 7.3-1). This alternative would include up to 215 residential units (102 du/ac), approximately 320,000 square feet of office space, and approximately 8,500 square feet of retail space. The Northern Tower would be a maximum height of 155 feet while the Southern Tower would be a maximum height of 190 feet. Additionally, this alternative would include one level of below-grade parking and up to seven levels of above-grade parking. This alternative would have a construction period in excess of 12 months.[50]

This alternative would reduce the height of the Northern Tower from 268 feet to 155 feet. While this alternative has not been fully developed to the level of detail as the proposed project, the massing study indicates that only the height of building would be reduced when compared to the project as currently proposed. Similar to the proposed project, this alternative would not comply with the Site Layout/Setbacks, Surface Treatment, Detailing, and Landscaping sections of the St. James Square Historic District Design Guidelines because it provides no setback from the property line or opportunity for landscaping in front of the building. The height of the Northern Tower would greatly exceed the height of the adjacent Tetra Tech building, a non-contributing building in the District, and the contributing buildings in the District. While this alternative would reduce the building heights, the significant impact would not be avoided. This alternative would, however, lessen the impact of

[50] Ring, Lisa. Urban Catalyst. Personal communication. June 8, 2022.



Source: WRNS Studio, November 2020.

REDUCED HEIGHT OF NORTHERN AND SOUTHERN TOWERS | FIGURE 7.3-1

the Northern Tower on the St. James Square City Landmark District compared to the proposed project.

Similar to the proposed project, the Southern Tower under this alternative would not fully comply with the 2019 Guidelines and Standards (e.g., height transition and rear transition of Standard 4.2.2 and massing, façade, and ground floor of Standard 4.2.4) as the tower would be up to 190 feet tall with no setback from the property line and would not maintain a transitional height of 70 feet or less within the first 30 feet from the property line. While the Southern Tower would not comply with the 2019 Guidelines and Standards, it would not demolish or materially alter in an adverse manner those physical characteristics that convey the historic significance and integrity of the historic context buildings or adjacent properties listed in the City's HRI, consistent with the proposed project.

The proposed heights of the Northern and Southern Towers under this alternative would reduce the shadow cast on St. James Park to 9.8 percent, which would not exceed the 10 percent threshold (refer to Figure 7.3-2).[51] Therefore, the project would have a less than significant shading impact on St. James Park. All other identified significant impacts, including those for construction air quality, biological resources, noise, and hazardous materials would remain as major construction activities will still occur for a period of greater than one year due to the size of the project.

This alternative would meet project objectives 2, 3, and 5 to support the growth strategies by increasing housing in proximity to jobs, retail, services and central transit locations served by various modes of public transportation, creating an attractive new building adding to the City's skyline and activating the ground floor with retail and a connected commercial complex, and providing increased bicycle parking for residents in excess of City requirements.

With the Southern Tower, the project would continue to meet objectives 2, 3, 4, and 5 by adding office and retail space to a central transit location served by various modes of public transportation, creating an attractive new building adding to the City's skyline, activating the ground floor with retail and a connected commercial complex, and creating a modern Class A office project with large open floor plates.

Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback Alternative

This alternative analyzes a residential tower in the same location as the proposed Northern Tower with the height of the building reduced from 268 feet to 70 feet and a 20-foot setback from East St. John Street where a 10-foot street setback is currently proposed. The Northern Tower would be six stories high and connected via a podium on the basement floor to the fourth floor (refer to Figure 7.3-3) to the Southern Tower. This alternative also proposes a reduction in the width of the building along North Fifth Street facing St. James Park. This alternative would include approximately 36 residential units (17 du/ac) and would consist of one level of below-grade parking, four levels of above-grade parking, and residential and fitness space on the upper floors (floors five and six). The Southern Tower would remain as proposed because it is located outside the St. James Square City Landmark District. This alternative would have a construction period that exceeds 12 months.[52]

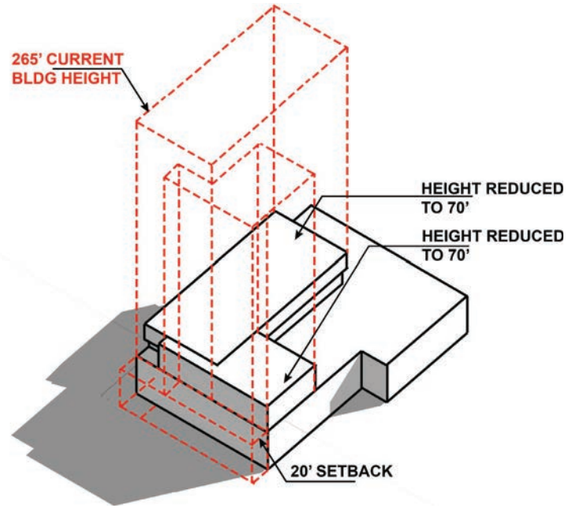
[51] Ibid.
[52] Ring, Lisa. Urban Catalyst. Personal communication. June 8, 2022.

Source: WRNS Studio, November 2020.

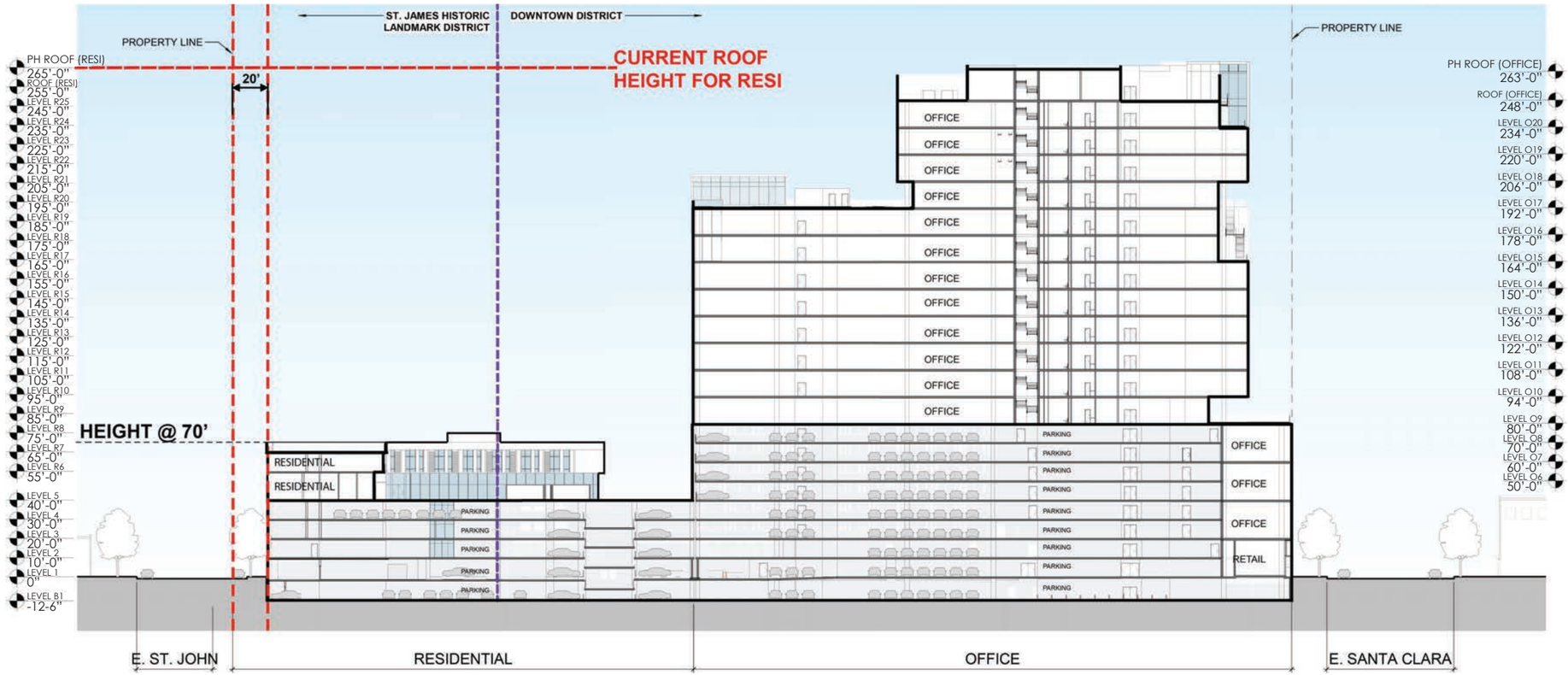
REDUCED HEIGHT OF NORTHERN AND SOUTHERN TOWERS - SHADE AND SHADOW | FIGURE 7.3-2

CURRENT UNIT COUNT : 415
UNITS LOST = 379
TOT. FOR SCHEME A = 36

20' SETBACK & HEIGHT REDUCED TO 70'



AXONOMETRIC VIEW



N-S SITE SECTION

Source: WRNS Studio, January 31, 2022.

REDUCED HEIGHT OF NORTHERN TOWER TO 70 FEET AND 20 FOOT SETBACK TOWER ALTERNATIVE | FIGURE 7.3-3

The proposed 70-foot height and 20-foot setback from East St. John Street would potentially avoid the significant impact of the Northern Tower on the St. James Square City Landmark District because the building is conceptually compatible in size, scale, proportion, and massing to the District, which is the source of the impact on the District's historic integrity of design. The historic district features two to four story buildings, generally rectangular in plan that are large in bulk and mass and setback from the street between 10 and 30 feet (often on platforms). While this alternative has not been fully developed to level of detail as the proposed project, the massing study indicates the reduced height and setback from East St. John Street would conceptually conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties because the height, form, massing and setback of the building would be generally compatible with the contributing buildings in the St. James Square City Landmark District. In addition, this alternative could comply with the Site Layout/Setbacks and Landscaping sections of the St. James Square Historic District Design Guidelines with the significantly increased setback where landscaping could be placed. This alternative could also comply with the height transition and rear transition of Standard 4.2.2 and massing, façade, and ground floor of Standard 4.2.4 of the 2019 Guidelines and Standards. Since the setback, size, scale, proportion, and massing of this alternative would be compatible with the District, features, such as fenestration and architecture features, could be refined to achieve maximum conformance with the Standards and Guidelines, but the reduction in height and setback alone would sufficiently avoid the significant impact of the proposed Northern Towner on the St. James Square City Landmark District.

While the reduction in height for the Northern Tower would help reduce the shade and shadow impact to St. James Park, the Southern Tower would still be 268 feet tall and this alternative would exceed the 10 percent threshold for shade and shadow.[53] All other identified significant impacts, including those for construction air quality, biological resources, noise, and hazardous materials would remain as major construction activities will still occur for a period of greater than one year due to the size of the project.

This alternative would meet project objectives 2, 3, and 5 to support the growth strategies by increasing housing in proximity to jobs, retail, services and central transit locations served by various modes of public transportation, creating an attractive new building adding to the City's skyline and activating the ground floor with retail and a connected commercial complex, and providing increased bicycle parking for residents in excess of City requirements.

With the Southern Tower, the project would continue to meet objectives 2, 3, 4, and 5 by adding office and retail space to a central transit location served by various modes of public transportation, creating an attractive new building adding to the City's skyline, and activating the ground floor with retail and a connected commercial complex, and creating a modern Class A office project with large open floor plates.

This alternative would not meet project objective 1 to provide high density, high-rise housing in the downtown area in excess of 198 units per acre that is accessible to downtown jobs, retail and entertainment and various modes of public transit. This alternative would result in a net decrease of 379 units compared to the project and would only provide 36 residential units.

[53] Ring, Lisa. Urban Catalyst. Personal communication. June 8, 2022.

Reduced Height of Northern Tower to 160 and 135 Feet Alternative

This alternative would develop a residential tower in the same location as the proposed Northern Tower with a height of up to 160 feet stepped down to 135 feet along East St. John Street and a 10-foot setback of the building along East St. John Street from a 40-foot podium height. This alternative also proposes a reduction in the width of the building along North Fifth Street facing St. James Park. Under this alternative, the Northern Tower would be approximately 13 and 15 stories high and connect to the Southern Tower via a podium on the basement floor to the fourth floor (refer to Figure 7.3-4). This alternative would include approximately 225 residential units (107 du/ac) and would consist of one level of below-grade parking, four levels of above-grade parking, eight and ten floors of residential space, and one floor of fitness space. The Southern Tower would remain as proposed because it is located outside the St. James Square City Landmark District. This alternative would have a construction period in excess of 12 months.[54]

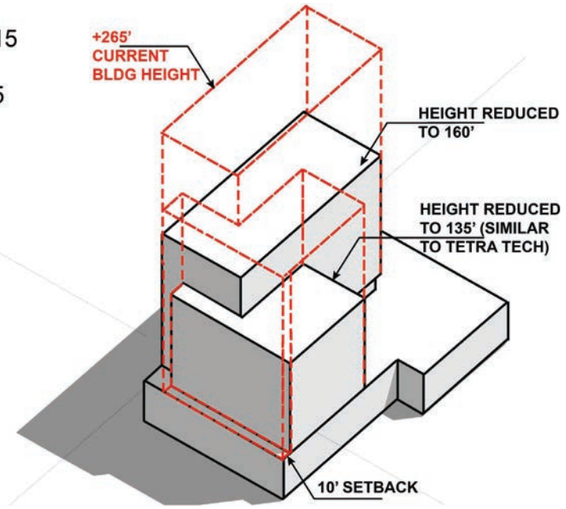
This alternative would reduce the height of the Northern Tower from 268 feet to 160 feet for the portion of the building along North Fourth Street and 268 feet to 135 feet for the majority of the building along East St. John Street, the corner nearest to St. James Park around which the District is centered. The building would be set back 10 feet from East St. John Street from a 40-foot podium height where a five-foot, one story recess is currently proposed above the fifth floor. While this alternative has not been fully developed to the level of detail as the proposed project, the massing study indicates the size and scale of the building would be reduced and the proportion and massing would be more responsive to the St. James Square Historic District Design Guidelines. The 10-foot setback above the fifth floor creates the visual appearance of a podium level which more closely relates to the District featuring two to four story buildings that are generally rectangular in plan and large in bulk and mass. The variation in height of the building would reduce the massing and scale of the 135-foot portion of the proposed building would be similar in height to the adjacent Tetra Tech building, a non-contributing building in the District on the corner of East St. John Street and North Fifth Street. As a result, this alternative could achieve greater conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and would be more compatible with the contributing buildings in the St. James Square City Landmark District. This alternative would not comply with the Site Layout/Setbacks and Landscaping sections of the St. James Square Historic District Design Guidelines because it provides no setback from the property line or opportunity for landscaping in front of the building. This alternative would comply with the height transition Standard, but it would not comply with the rear transition Standard of Section 4.2.2 of the 2019 Guidelines and Standards. This alternative would comply with the massing, façade, and ground floor of Standard 4.2.4 of the 2019 Guidelines and Standards. While this alternative would reduce and vary the building heights and improve the massing of the building by visually creating a podium level and streetwall along East St. John Street, the significant impact would not be avoided. This alternative would however lessen the impact of the Northern Tower on the St. James Square City Landmark District.

This alternative would not reduce the shade and shadow impact to less than 10 percent[55]; therefore, this alternative would continue to have a significant and unavoidable shade and shadow impact. All other identified significant impacts, including those for construction air quality, biological resources,

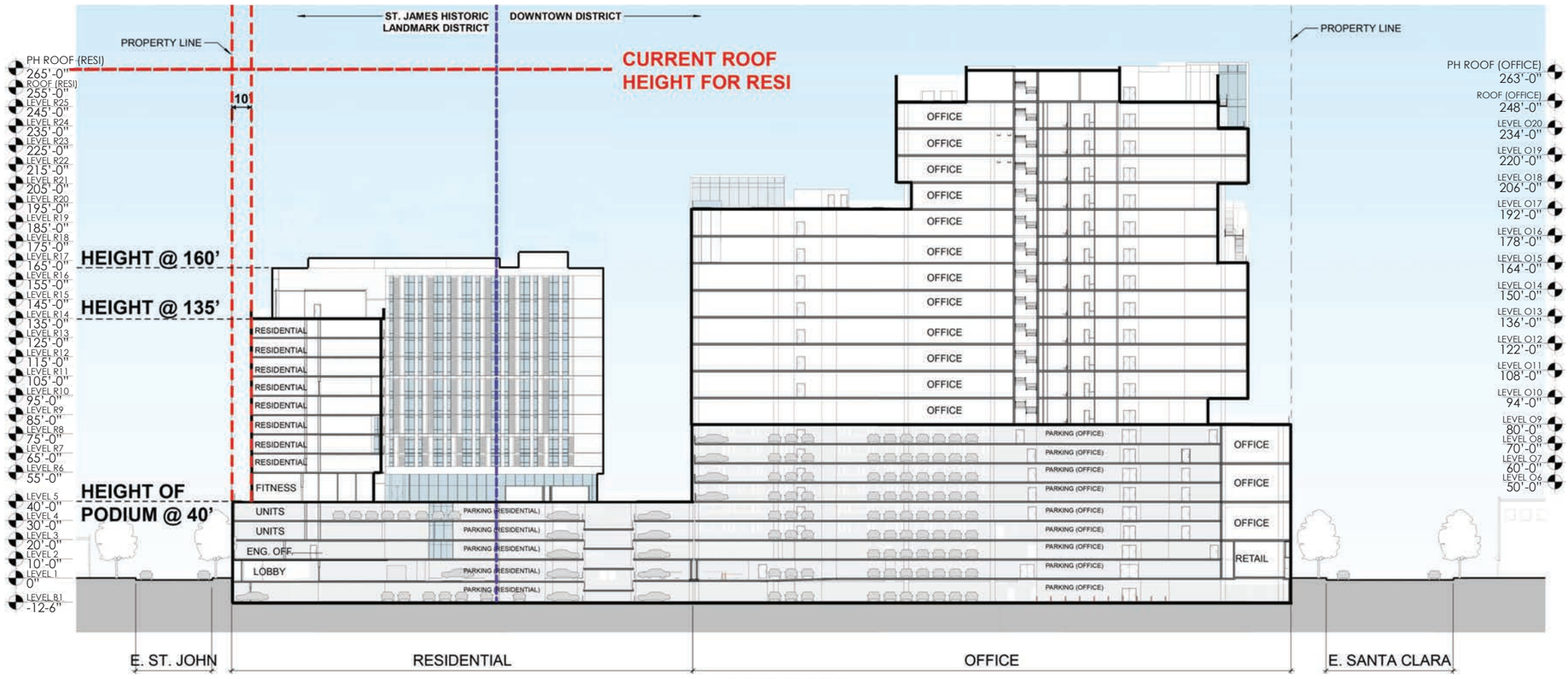
[54] Ring, Lisa. Urban Catalyst. Personal communication. June 8, 2022.
[55] Ibid.

CURRENT UNIT COUNT: 415
UNITS LOST = 190
TOT. FOR SCHEME B = 225

10' SETBACK & REDUCED HEIGHT



AXONOMETRIC VIEW



N-S SITE SECTION

Source: WRNS Studio, January 31, 2022.

REDUCED HEIGHT OF NORTHERN TOWER TO 160 AND 135 FEET ALTERNATIVE | FIGURE 7.3-4

noise, and hazardous materials would remain as major construction activities will still occur for a period of greater than one year due to the size of the project.

This alternative would meet project objectives 2, 3, and 5 to support the growth strategies by increasing housing in proximity to jobs, retail, services and central transit locations served by various modes of public transportation, creating an attractive new building adding to the City's skyline and activating the ground floor with retail and a connected commercial complex, and providing increased bicycle parking for residents in excess of City requirements.

With the Southern Tower, the project would continue to meet objectives 2, 3, 4, and 5 by adding office and retail space to a central transit location served by various modes of public transportation, creating an attractive new building adding to the City's skyline, and activating the ground floor with retail and a connected commercial complex, and creating a modern Class A office project with large open floor plates.

This alternative would be closer to meeting project objective 1 than the Reduced Height of the Northern Tower to 70 feet and 20-foot Setback Alternative in the provision of high density, high-rise housing in the downtown area in excess of 198 units per acre that is accessible to downtown jobs, retail and entertainment and various modes of public transit. This alternative would result in a net decrease of 190 units compared to the proposed project and would provide 225 residential units.

20-Foot Setback of Northern Tower Alternative

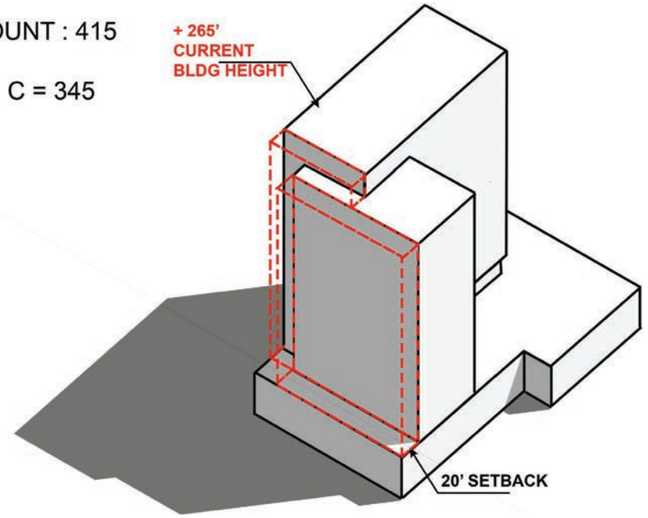
This alternative would propose a residential tower in the same location as the proposed Northern Tower with no height reduction along North Fourth Street and a minor reduction in height along East St. John Street, and a 20-foot setback of the building along East St. John Street from a 40-foot podium height. This alternative also proposes a reduction in the width of the building along North Fifth Street facing St. James Park. Under this alternative, the Northern Tower would be 23 and 25 stories tall and connected to the Southern Tower via a podium on the basement floor to the fourth floor (refer to Figure 7.3-5). This alternative would include up to 345 residential units (164 du/ac) and consist of one level of below-grade parking, four levels of above-grade parking, 18 and 20 floors of residential space, and one floor of fitness space. The Northern Tower would be set back by approximately 20 feet along St. John Street. The Southern Tower would remain as proposed because it is located outside the St. James Square City Landmark District. This alternative would have a construction period in excess of 12 months.[56]

This alternative would reduce the height of the portion of the Northern Tower facing St. James Park by two stories. The building would be set back 20 feet from East St. John Street from a 40-foot podium height where a five-foot, one story recess is currently proposed above the fifth floor. While this alternative has not been fully developed to the level of detail as the proposed project, the massing study indicates the size and scale of the building would be reduced and the proportion and massing would be more responsive to the St. James Square Historic District Design Guidelines. The 20-foot setback above the fifth floor creates a more significant podium level than the Reduced Height of Northern Tower to 160 and 135 Feet Alternative, which would even more closely relate the building to the District featuring two to four story buildings that are generally rectangular in plan and large in

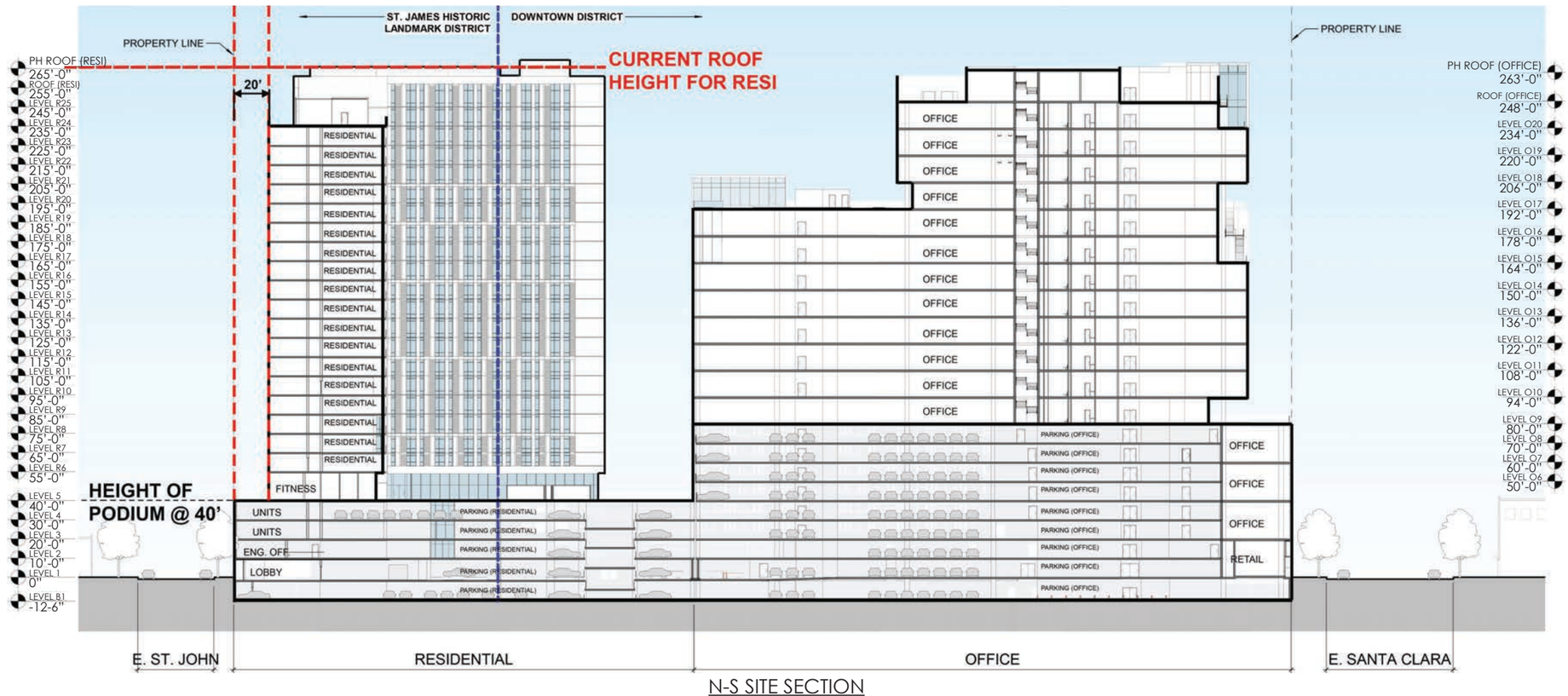
[56] Ring, Lisa. Urban Catalyst. Personal communication. June 8, 2022.

20' SETBACK

CURRENT UNIT COUNT : 415
UNITS LOST = 70
TOT. FOR SCHEME C = 345



AXONOMETRIC VIEW



N-S SITE SECTION

Source: WRNS Studio, January 31, 2022.

20-FOOT SETBACK OF NORTHERN TOWER ALTERNATIVE | FIGURE 7.3-5

bulk and mass. The minor variation in height of the portion of the Northern Tower facing St. James Park would slightly reduce the massing and scale of the 135-foot portion of the proposed building, but it would greatly exceed the height of the adjacent Tetra Tech building, a non-contributing building in the District, and the contributing buildings in the District. As a result, this alternative could achieve greater conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and would be more compatible with the contributing buildings in the St. James Square City Landmark District. This alternative would not comply with the Site Layout/Setbacks and Landscaping sections of the St. James Square Historic District Design Guidelines because it provides no setback from the property line or opportunity for landscaping in front of the building. This alternative would comply with the height transition Standard, but it would not comply with the rear transition Standard of Section 4.2.2 of the 2019 Guidelines and Standards. This alternative would comply with the massing, façade, and ground floor of Standard 4.2.4 of the 2019 Guidelines and Standards. While this alternative would slightly reduce the building height and improve the massing of the building by creating a truer podium level and streetwall along East St. John Street, the significant impact would not be avoided. This alternative would however lessen the impact of the Northern Tower on the St. James Square City Landmark District.

This alternative would not reduce the shade and shadow impact to less than 10 percent[57]; therefore, this alternative would continue to have a significant and unavoidable shade and shadow impact. All other identified significant impacts, including those for construction air quality, biological resources, noise, and hazardous materials would remain as major construction activities will still occur for a period of greater than one year due to the size of the project.

This alternative would meet project objectives 2, 3, and 5 to support the growth strategies by increasing housing in proximity to jobs, retail, services and central transit locations served by various modes of public transportation, creating an attractive new building adding to the City's skyline and activating the ground floor with retail and a connected commercial complex, and providing increased bicycle parking for residents in excess of City requirements.

With the Southern Tower, the project would continue to meet objectives 2, 3, 4, and 5 by adding office and retail space to a central transit location served by various modes of public transportation, creating an attractive new building adding to the City's skyline, and activating the ground floor with retail and a connected commercial complex, and creating a modern Class A office project with large open floor plates.

This alternative would more closely meet project objective 1 than the Reduced Height of the Northern Tower to 70 feet and 20-foot Setback Alternative and the Reduced Height of Northern Tower to 160 and 135 Feet Alternative in the provision of high density, high-rise housing in the downtown area in excess of 198 units per acre that is accessible to downtown jobs, retail and entertainment and various modes of public transit. This alternative would result in a net decrease of 70 units compared to the proposed project and would provide 345 residential units.

[57] Ring, Lisa. Urban Catalyst. Personal communication. June 8, 2022.

7.3.2 Comparison of Environmental Impacts for Alternatives to the Project

Significant Impacts of the Project	Proposed Project	No Project – No Development	Reduced Height and Setback Alternatives			
			Reduced Height of Northern and Southern Towers	Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback	Reduced Height of Northern Tower to 160 Feet and 135 Feet	20-Foot Setback of Northern Tower
Air Quality: Construction activities associated with the proposed project would expose the maximum exposed individual (MEI) to a cancer risk of 42.39 cases per one million for infants which exceeds the Bay Area Air Quality Management District (BAAQMD) significance threshold of 10 cases per one million.	LTSM	NI	LTSM	LTSM	LTSM	LTSM
Biological Resources: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.	LTSM	NI	LTSM	LTSM	LTSM	LTSM
Cultural Resources: The proposed development of the Northern Tower would impair the overall historic integrity of the St. James Square City Landmark District as it does not comply with: the Secretary of the Interior's Standard 9 for Rehabilitation, the Site Layout/Setbacks, Surface Treatment, Detailing, and Landscaping guidelines of the St. James Square Historic District Design Guidelines, and the design, feeling, and association	SU	NI	SU	LTS	SU	SU

Significant Impacts of the Project	Proposed Project	No Project – No Development	Reduced Height and Setback Alternatives			
			Reduced Height of Northern and Southern Towers	Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback	Reduced Height of Northern Tower to 160 Feet and 135 Feet	20-Foot Setback of Northern Tower
integrity of the St. James Square City Landmark District.						
Cultural Resources: Construction activities on-site could uncover historic-era archaeological resources associated with pre-1906 earthquake residential and commercial activities.	LTSM	NI	LTSM	LTSM	LTSM	LTSM
Cumulative Cultural Resources: The proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District due to incompatible infill, which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984.	SU	NI	SU	LTS	SU	SU
Hazards and Hazardous Materials: Construction activities associated with the proposed project could expose the public and/or the environment to hazardous materials and/or soil, soil vapor, and/or groundwater contamination from existing and former uses of the site (existing gas station and former automobile repair and service, gas station, drycleaner, and lumber businesses).	LTSM	NI	LTSM	LTSM	LTSM	LTSM
Land Use and Planning: Implementation of the proposed project would conflict with applicable General Plan policies	SU	NI	SU	LTS	SU	SU

Significant Impacts of the Project	Proposed Project	No Project – No Development	Reduced Height and Setback Alternatives			
			Reduced Height of Northern and Southern Towers	Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback	Reduced Height of Northern Tower to 160 Feet and 135 Feet	20-Foot Setback of Northern Tower
adopted for the purpose of avoiding or mitigating an environmental effect.						
Land Use and Planning: The proposed project would have a significant unavoidable shade and shadow impact on St. James Park.	SU	NI	LTS	SU	SU	SU
Cumulative Land Use and Planning: The proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984.	SU	NI	SU	LTS	SU	SU
Noise and Vibration: Mechanical equipment noise levels would exceed the City's 55 dBA DNL threshold defined in General Plan Policy EC-1.3 at the future residential building located across North Fourth Street to the east of the site (Miro Towers/Res-3).	LTSM	NI	LTSM	LTSM	LTSM	LTSM
Noise and Vibration: Construction noise would exceed ambient levels by five dBA for a period of more than one year within 500 feet of residential uses or 200 feet of commercial or office uses, which exceeds the City thresholds defined in General Plan Policy EC-1.7.	LTSM	NI	LTSM	LTSM	LTSM	LTSM

Significant Impacts of the Project	Proposed Project	No Project – No Development	Reduced Height and Setback Alternatives			
			Reduced Height of Northern and Southern Towers	Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback	Reduced Height of Northern Tower to 160 Feet and 135 Feet	20-Foot Setback of Northern Tower
Noise and Vibration: Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings within 61 feet of the project site.	LTSM	NI	LTSM	LTSM	LTSM	LTSM
Tribal Cultural Resources: Construction activities associated with the proposed project could result in the disturbance of previously undocumented tribal cultural resources due to a known village site in the immediate project vicinity.	LTSM	NI	LTSM	LTSM	LTSM	LTSM
Meets Project Objectives?	**Yes**	**No**	**2-5**	**2-5**	**2-5**	**2-5**

NI – No Impact
LTS – Less Than Significant Impact
LTSM – Less Than Significant Impact with Mitigation
SU – Significant Unavoidable

7.3.3 Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. If the environmentally superior alternative is the "No Project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives (Section 15126.6(e)(2)).

Based on the above discussion, the environmentally superior alternative is the No Project – No Development Alternative, which would not meet any of the project objectives.
Beyond the No Project – No Development Alternative, the Reduced Height of Northern Tower to 70 Feet and 20-foot Setback Alternative would be the environmentally superior alternative because setback, size, scale, proportion, and massing of this alternative would be compatible with the St. James Square City Landmark District, and features such as fenestration and architecture features could be refined to achieve maximum conformance with the Standards and Guidelines. The significant reduction in height and significant increase in setback would avoid the significant impact of the proposed Northern Towner to the St. James Square City Landmark District.

While the reduction in height for the Northern Tower (under the Reduced Height of Northern Tower to 70 Feet and 20-foot Setback Alternative) would help reduce the shade and shadow impact to St. James Park, the Southern Tower would still be 268 feet tall and would continue to exceed the 10

percent threshold for shade and shadow.[58] The only alternative that would reduce the shade and shadow impact below the 10 percent threshold is the Reduced Height of Northern and Southern Towers Alternative.

Additionally, while all the alternatives presented would lessen the significant air quality and noise impacts, the Reduced Height of Northern Tower to 70 Feet and 20-foot Setback Alternative could also avoid the significantly impacts to the St. James Square City Landmark District compared to the other alternatives discussed and the proposed project. The Reduced Height of Northern Tower to 70 Feet and 20-foot Setback Alternative would also avoid the Land Use impact related to conflict with plans, policies and regulation adopted to avoid or mitigate an environmental affect.

For these reasons, the Reduced Height of Northern Tower to 70 Feet and 20-foot Setback Alternative would be the environmentally superior alternative.

[58] Ring, Lisa. Urban Catalyst. Personal communication. June 8, 2022.

SECTION 8.0 REFERENCES

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SECTION 9.0 LEAD AGENCY AND CONSULTANTS

9.1 LEAD AGENCY

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Hexagon Transportation Consultants, Inc.
Gilroy, CA
Traffic

HortScience | Bartlett Consulting
Pleasanton, CA
Arborist Report

Illingworth & Rodkin, Inc.
Cotati, CA
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Noise

TreanorHL
San Francisco, CA
Historic Assessment