Draft Supplemental Environmental Impact Report

SuZaCo Mixed-Use

File Nos.: H21-026, ER21-085 & HP21-005
SCH No.: 2021080463

Prepared by

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

In Consultation with
50 YEARS EST. 1972 DAVID J. POWERS & ASSOCIATES, INC.
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SUMMARY

As proposed, the project would demolish three existing, two-story buildings on-site, while retaining the historic façades of the City Landmark building (142-150 East Santa Clara Street) at the corner of East Santa Clara and South Fourth Streets. The project would construct a four- to six-story mixed-use, U-shaped building with approximately 11,790 square feet of retail and 63,461 square feet of office. 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 project maximum exposed individuals (MEIs) to cancer risk and $PM_{2.5}$ emissions in excess of Bay Area Air Quality Management District (BAAQMD) significance thresholds of 10 cases per one million for cancer risk and 0.3 $\mu g/m^3$ for $PM_{2.5}$, respectively. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**	**MM AIR-1.1:** Prior to the issuance of any demolition, grading and/or building permits (whichever occurs first), the project applicant shall prepare and submit a construction operations plan that includes specifications of the equipment to be used during construction to the Director of the City of San José Department of Planning, Building and Code Enforcement (PBCE) or the Director's designee for review and approval. The plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set forth below. • For all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total, use equipment that meet U.S. Environmental Protection Agency (EPA) Tier 4 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 achieve a 93 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.

Significant Impacts	Mitigation Measures
	• Use of alternatively fueled or electric-powered equipment. • Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment (e.g., stationary cranes and air compressors). • Limit generator use where feasible. Alternatively, the project applicant could develop a plan that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 93 percent or greater. The plan shall be accompanied by a letter signed by an air quality specialist and shall be submitted for review and approval by the Director of the City of San José PBCE or Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs first).
Biological Resources	
Impact BIO-1: Tree removal associated with construction of 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

Significant Impacts	Mitigation Measures
	adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the qualified 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 issuance of any grading or demolition permits, whichever occurs first, the project applicant shall submit the report including the results of the survey and any designated buffer zones to the Director of the City of San José Department of Planning, Building and Code Enforcement (PBCE) or Director's designee for review and approval.
Cultural Resources	
Impact CUL-1: Construction activities on-site could impact previously undocumented historic-era and Native American archaeological resources, as the site is documented as being highly sensitive for historic-era archaeological resources and low to moderately sensitive for Native American archaeological resources. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**	**MM CUL-1.1: Monitoring.** A qualified archaeologist, in collaboration with a Native American monitor, registered with the 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 be present during ground-disturbing activities such as, but not limited to, trenching, initial or full grading, boring on site, or major landscaping. The project applicant shall notify the Director of the City of San José Department of Planning, Building, and Code Enforcement (PBCE) or Director's designee of any finds during monitoring. **MM CUL-1.2: Evaluation.** Any historic-era or Native American archaeological resources identified during monitoring required by MM CUL-1.1 shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery and treatment shall be determined by the project archaeologist in

Significant Impacts	Mitigation Measures
	collaboration with a Native American representative registered with the 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. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Information Center and NAHC Sacred Land File (as applicable), and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation and plan for disposition and treatment of historic-era and Native American archaeological resources shall be submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement or Director's designee.
Hazards and Hazardous Materials	
Impact HAZ-1: Construction activities associated with the proposed project could expose construction workers, the public, neighboring properties and the environment to hazardous materials in the form of impacted soil, soil vapor, and/or groundwater contamination above Regional Water Quality Control Board (RWQCB) environmental screening levels, due to historical use of the site. Fuel oil used for the boiler that was present on-site could have been stored on-site in above-ground and/or below-ground storage tanks, and the former laundry, auto repair, cleaning and drying, dry cleaning, and printing businesses on-site could have used and/or stored petroleum-based solvents, organic solvents, dry cleaning solvents, and/or volatile organic compounds. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**	**MM HAZ-1.1:** Prior to the issuance of any demolition or grading permits, the project applicant shall retain a qualified environmental professional to conduct a Phase II soil, soil vapor and/or groundwater investigation to determine if the soil, soil vapor, and groundwater from former uses of the site have resulted in contamination concentrations above established Regional Water Quality Control Board (RWQCB) Environmental Screening Levels (ESLs). If the Phase II results indicate soil, soil vapor and/or groundwater contamination above ESLs, the project applicant shall enter into a regulatory oversight agreement with the Santa Clara County Department of Environment Health (SCCDEH), RWQCB, or Department of Toxic Substances Control (DTSC). The project applicant shall meet with the regulatory oversight agency and perform additional soil, soil gas and/or groundwater sampling and testing, as required, to adequately define the known and suspected contamination. A Site Management Plan (SMP), Corrective Action Plan (CAP), Remedial Action Plan (RAP), or other equivalent plan shall be prepared and submitted to the regulatory oversight agency for their approval. The plan shall include a Health & Safety Plan (HASP) and shall

Significant Impacts	Mitigation Measures
	establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors. The plan and evidence of regulatory oversight shall be provided to the Director of the City of San José Department of Planning, Building and Code Enforcement (PBCE), and the Environmental Compliance Officer in the City of San José's Environmental Services Department for review.
Noise and Vibration	
Impact NOI-1: Mechanical equipment for the project has the potential to exceed the 55 dBA DNL threshold defined in General Plan Policy EC-1.3 by 11 to 19 dBA DNL (depending on noise control features) at adjacent noise-sensitive residential land uses. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**	**MM NOI-1.1:** A detailed acoustical study shall be prepared by a qualified acoustical engineer prior to the issuance of any building permits to evaluate the potential noise generated by building mechanical equipment and demonstrate the necessary noise control to comply with the City's threshold of 55 dBA DNL at property lines shared with noise-sensitive residential land uses, as defined in General Plan Policy EC-1.3. Noise control features such as acoustical enclosures and barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL threshold. The acoustical study and recommended measures to demonstrate compliance with General Plan Policy EC-1.3 shall be submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement (PBCE) or Director's designee for review and approval prior to issuance of any building permits.
Impact NOI-2: Construction noise would exceed the City thresholds defined in General Plan Policies EC-1.2 and EC-1.7 of an increase in ambient noise levels by five dBA or more for a period of more than one year. **[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, 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 during construction to reduce noise impacts on neighboring residents and other noise-sensitive uses. The noise logistic plan shall be submitted to

Significant Impacts	Mitigation Measures
	the Director of the City of San José Department of Planning, Building and Code Enforcement (PBCE) or Director's designee prior to the issuance of any grading or demolition permits. Consistent with the Downtown Strategy 2040 FEIR, the construction noise logistics plan shall include but is not limited to the following measures: • Construction will be limited to the hours 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 the City of San José PBCE 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

Significant Impacts	Mitigation Measures
	telephone number for the disturbance coordinator would be conspicuously posted at the construction site.
Impact NOI-3: Construction vibration levels would exceed the City's threshold of 0.08 in/sec PPV threshold for historic buildings within 60 feet and the 0.2 in/sec PPV threshold for conventional construction buildings within 25 feet of the project site, as provided in General Plan Policy EC-2.3. **[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 the City of San José Department of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer (HPO) for review and approval prior to issuance of any 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.) and the distance from adjacent structures (both sensitive historic and building of conventional construction, as applicable) to which the equipment is expected to operate shall be submitted to the Director of the City of San José PBCE 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. • Based on review of the Plan, demolition, earth-moving, and ground impacting operations may be required to be phased so as not to occur

Significant Impacts	Mitigation Measures
	during the same time period to reduce vibration levels to levels that would minimize potential vibration impacts to adjacent buildings. • Use of heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent building (where possible). • Document conditions at all historic structures located within 60 feet of construction and at all other buildings located within 25 feet 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 60 feet of any construction activities identified as sources of vibration levels that could damage surrounding buildings. o Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 60 feet of construction activities and all other buildings within 25 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 approach the limits.

Significant Impacts	Mitigation Measures
	• At a minimum, vibration monitoring shall be conducted during demolition and excavation activities and during other construction phases, as necessary to reduce vibration limits to acceptable levels to protect the surrounding buildings. • If vibration levels approach limits identified in the Plan, construction shall be suspended, and contingency measures shall be implemented to lower vibration or secure affected 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 survey on the structure after vibration-generating construction activities where either monitoring has indicated high levels or there have been 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. The survey shall be submitted to the Director of the City of San José PBCE, or Director's designee, and the City's HPO. **MM NOI-3.2:** Prior to the issuance of any demolition, grading, or building permits, whichever occurs earliest, the project applicant shall prepare and implement a Historical Resources Protection Plan (HRRP) that provides measures and procedures to protect nearby historic resources from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage). The HRRP shall be prepared by a qualified Historic Architect and reviewed and approved by the HPO or equivalent of the City of San José PBCE prior to the issuance of any demolition, grading, or building permits, whichever occurs earliest. The project applicant shall ensure the construction contractor follows the HRRP while working near these historic resources. At a minimum, the plan shall include:

Significant Impacts	Mitigation Measures
	• Guidelines for operation of construction equipment adjacent to historical resources; • Means and methods to reduce vibrations levels from excavation and construction; • Requirements for monitoring and documenting compliance with the HRRP; and • Education/training of construction workers about the significance of the adjacent historical resources. **Impact NOI-3.3:** The Historic Architect shall establish a "Monitoring Team" comprised of at least one qualified Historic Architect and one structural engineer for the duration of the site monitoring process. The Monitoring Team shall monitor the adjacent historical resources and any changes to existing conditions shall be reported, including, but not limited to, expansion of cracks, new spalls, or other exterior deterioration during construction phase and any changes to the existing conditions shall be reported. In addition, the Monitoring Team shall prepare a site visit report documenting all site visits. The Monitoring Team shall submit the site visit reports and documents to the City's Historic Preservation Officer no later than one week after each reporting period (or as defined by the HRRP). The City's Historic Preservation Officer shall determine the frequency of the reporting period. The structural engineer shall consult with the Historic Architect if any problems related to the character-defining features of the historic resources occur. The Director of the City of San José PBCE or the Director's designee and the City's HPO may request any additional number of site visits at their discretion. If, in the opinion of the Monitoring Team, substantial adverse impacts related to construction activities are found during construction, the Monitoring Team shall inform the project applicant (or the applicant's designated representative responsible for construction activities), the Director of the City of San José PBCE or the Director's

Significant Impacts	Mitigation Measures
	designee, and the HPO of the potential impacts immediately. The project applicant shall implement the Monitoring Team's recommendations for corrective measures, including halting construction in situations where construction activities would cause immediate damage to historic resources. In the event of damage to a nearby historic resource during construction, the project applicant shall ensure that repair work is performed in compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and shall restore the character-defining features in a manner that does not affect the structure's historic status. The Monitoring Report shall also include, but is not limited to, the following: • Summary of the construction progress; • Identification of substantial adverse impacts related to construction activities; • Problems and potential impacts to the historical resources during construction activities; • Recommendations to avoid any potential impacts; • Actions taken by the project applicant in response to the problem; • Progress and the level of success in meeting the applicable Secretary of the Interior's Standards for the Treatment of Historic Properties for the project as noted above for the character-defining features, and in preserving the character-defining features of nearby historic properties; and • Inclusion of photographs to explain and illustrate progress. • In addition, the Monitoring Team shall submit a final document associated with monitoring and repairs after completion of the construction activities to the Director of the City of San José PBCE or the Director's designee and the HPO prior to the issuance of any Certificate of Occupancy (temporary or final).

Significant Impacts	Mitigation Measures
Tribal Cultural Resources	
Impact TCR-1: Based on Assembly Bill (AB) 52 Consultation with Tamien Nation and the City of San José, the project area is highly sensitive for previously undocumented tribal cultural resources due to proximity to a Native American village site. **[New Less Than Significant Impact with Mitigation Incorporated (Less Than Significant Impact)]**	**MM TCR-1.1: Tribal Cultural Awareness Training.** Prior to issuance of any demolition or grading permit, whichever occurs first, the project applicant shall be required to submit evidence that a Cultural Awareness Training will be provided to construction personnel prior to ground disturbance. The training shall be facilitated by a qualified archaeologist 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.

Summary of Alternatives to the Proposed Project

The California Environmental Quality Act (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

If the project were proposed on an alternate site within the downtown, it is likely that the existing building(s) on that site would need to be demolished to accommodate the proposed development because there are limited undeveloped parcels downtown.

Preservation Alternative 1: Relocation of 142-150 East Santa Clara Street Building

Under this alternative, the building at 142-150 East Santa Clara Street would be relocated outside of the San José Downtown Commercial National Register Historic District.

No Project – No Development Alternative

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

Preservation Alternative 2: Complete Retention of the City Landmark Building at 142-150 East Santa Clara Street

Under this alternative, the entirety of the City Landmark building at 142-150 East Santa Clara Street would be retained on-site and the remainder of the site would be redeveloped. Retention of the entire City Landmark building would preclude inclusion of the below-grade retail space in this alternative

and would reduce new office space by approximately 34,560 square feet.[1] Further reductions in the new office space may also be required to accommodate the back of house functions and utilities. With this alternative, the new office space would be reduced to less than 30,000 square feet. The existing nine residential units and approximately 5,760 square feet of retail space would remain in the City Landmark building.

Areas of Public Controversy

Areas of public concern include:

- Impacts to known tribal cultural resources and Assembly Bill (AB) 52
- Impacts to historic structures and the San José Downtown Commercial National Register Historic District
- Concurrent construction and conflicts with BART Silicon Valley, Phase II project

[1] The existing City Landmark building has a footprint of approximately 5,760 square feet. The project proposes six floors of office space in this location. The loss of square footage within the existing building footprint under this alternative would be 5,760 x 6 = 34,560.

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) to the Downtown Strategy 2040 Final Environmental Impact Report (FEIR) for the SuZaCo 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. The Downtown Strategy 2040 FEIR provides project-level approval for traffic and traffic-related air quality and noise impacts if the proposed development does not exceed the overall development analyzed. Therefore, analysis of these topics is not required for the proposed project. 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, cultural resources, hazardous materials, and noise. Thus, this SEIR to the Downtown Strategy 2040 FEIR has been prepared to address these potential new

significant impacts. During the preliminary review of the project, the City of San José determined that an SEIR would be required because the project includes substantial demolition of the 142-150 East Santa Clara Street building, a contributing building, within the San José Downtown Commercial National Register Historic District which could potentially result in a significant adverse change in a historic resource. The SEIR evaluation process is the same as the SEIR process as outlined below.

1.1.1.1 *Employment Priority Area*

The subject site is in located the Downtown Employment Priority Area (EPA). The Downtown EPA is planned for intensive job growth because of the area's proximity and access to the future Downtown Bay Area Rapid Transit (BART) station. The overlay boundary is intended to respect property lines and not split parcels. Due to proximity to the future BART station, the EPA Overlay supports development at very high intensities, where such high intensity is compatible with other policies within the General Plan, such as Historic Preservation policies.

The EPA Overlay does not change the uses or density otherwise allowed within the base *Downtown* land use designation. The EPA Overlay, however, requires a minimum Floor Area Ratio (FAR) of 4.0 for commercial (job-generating) uses, including office, retail, service, hotel, and entertainment uses, prior to allowing residential uses, as supported by the *Downtown* General Plan Land Use/Transportation Diagram designation. Typically, the base land use designation will be *Downtown* with an allowed commercial FAR of up to 15.0 (three to 30 stories) and density of up to 800 dwelling units per acre (du/ac). For example, a new development project on a one-acre site within the EPA Overlay would be required to provide at least 174,240 square feet of commercial space before the General Plan would support the addition of residential uses to the project. While the EPA Overlay would establish minimum commercial requirements prior to allowing residential uses, the EPA Overlay does not establish a minimum FAR for stand-alone commercial uses.

The development intensity and site design elements in the areas within the EPA Overlay designation should reflect an intense, transit-oriented land use pattern that is typically expected in downtown. It is envisioned that active commercial uses (e.g., retail and entertainment uses) would be located on the ground level with high-intensity office development above.

To help activate the Downtown BART corridor, new development within the EPA Overlay should incorporate active ground floor commercial uses along the street in new development projects. Projects with complete development permit applications already on file with the City prior to the date of adoption by the City Council of the Downtown Employment Priority Area Overlay would not be subject to the requirements of the EPA Overlay, provided any new application or amendment or adjustment to an existing complete application will subject the proposed project to the EPA Overlay requirements as set forth in the General Plan and this Strategy.

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 August 24, 2021. The standard 30-day comment period concluded on September 23, 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 of San José also held a public scoping meeting on September 15, 2021 to discuss the project and solicit public input as to the scope and contents of this SEIR. The meeting was held virtually over Zoom. Appendix K of this SEIR includes the NOP and comments received on the NOP.

1.2.2 Draft EIR 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 EIR during the 45-day public review period should be sent to:

Shannon Hill, *Planner III*
Shannon.Hill@sanjoseca.gov
(408) 535-7872
200 East Santa Clara Street, 3rd Floor
San José, CA 95113

1.3 FINAL EIR/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 SEIR 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 Notice of Determination

If the project is approved, the City will file a Notice of Determination (NOD) within five days of project approval, which will be available for public inspection and posted within 24 hours of receipt at the County Clerk's Office and State Clearinghouse 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 0.34-acre project site [Assessor's Parcel Numbers (APNs) 467-23-034, -035, and -037] is currently developed with two-story mixed-use buildings containing a total of 11 residential units and approximately 20,995 of commercial space in downtown San José. The addresses associated with the project site are: 142-150 East Santa Clara Street (APN 467-23-035), 130-134 South Fourth Street (APN 467-23-037), and 17-19 South Fourth Street (APN 467-23-034). The site is bounded by East Santa Clara Street to the north, North Fourth Street to the east, a surface parking lot associated with Hotel Clariana and residential uses to the south, and commercial buildings to the west. Two of the three parcels (APNs 467-23-035 and 467-23-037) are located within the San José Downtown Commercial National Register Historic District (San José Commercial District).[2] The 142-150 East Santa Clara Street parcel contains a contributing building, while the 130-134 East Santa Clara Street contains a non-contributing building within the San José Commercial District. Refer to Figure 2.1-1 for a map of the San José Commercial District. The 142-150 East Santa Clara Street parcel also contains a designated City Landmark.

Vehicular access to the project site is currently provided via a single-car driveway along North Fourth Street. Refer to Figures 2.1-2 to 2.1-4 for the regional, vicinity, and aerial maps.

2.2 PROJECT DESCRIPTION

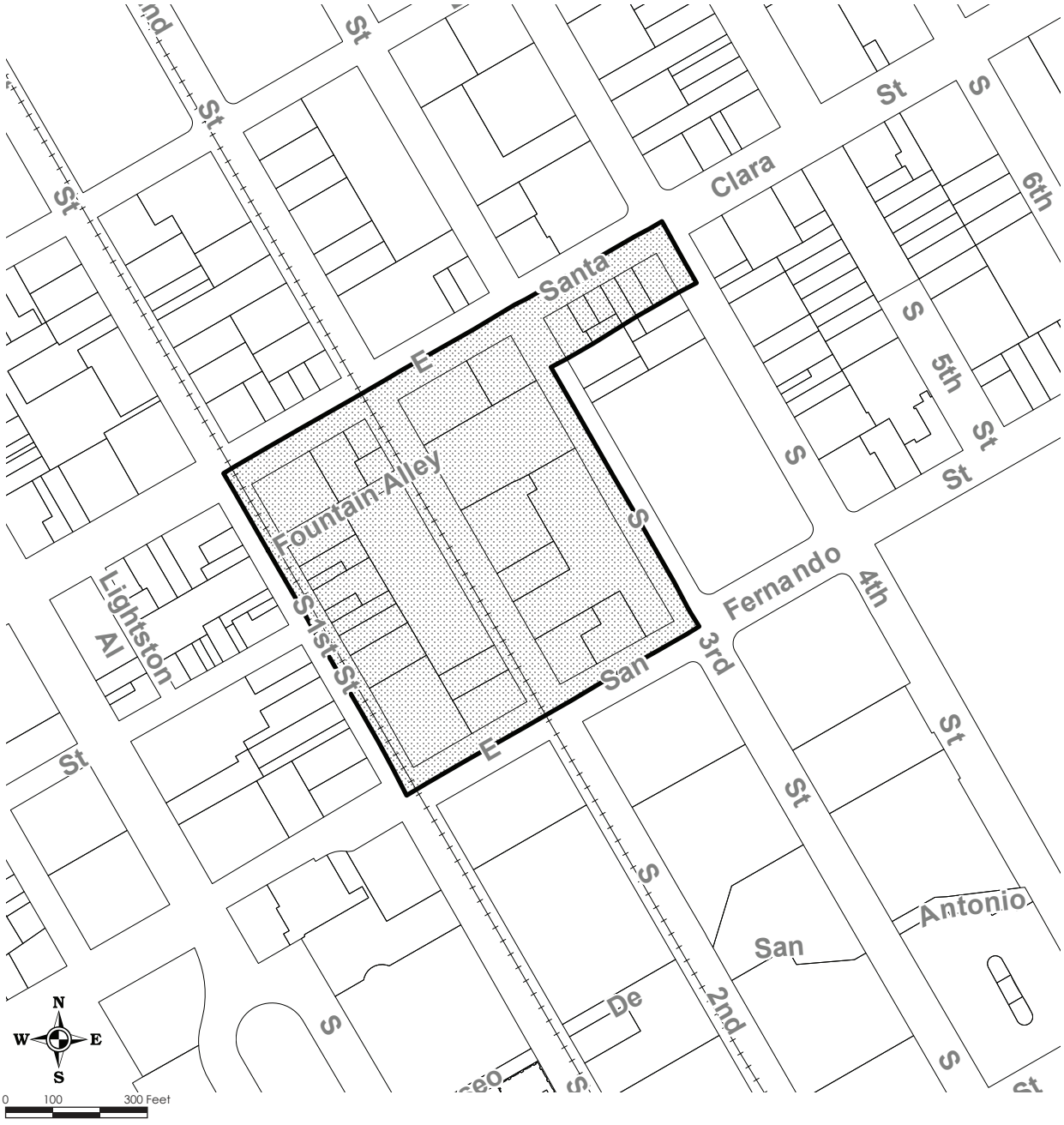
As proposed, the project would demolish three existing, two-story buildings on-site, while retaining the historic façades of the City Landmark building (142-150 East Santa Clara Street) at the corner of East Santa Clara and South Fourth Streets. The project would construct a four- to six-story mixed-use, U-shaped building (approximately 75,251 square feet). The building would be six stories at the corner of the South Fourth Street and East Santa Clara Street and four stories at the portion of the building facing East Santa Clara Street. The maximum height to the top of the roof parapet would be 85 feet.

The building would consist of ground floor retail/restaurant space and one level of below-grade retail (totaling approximately 11,790 square feet), while the remaining floors would consist of office space (totaling approximately 63,461 square feet). Amenity space with seating areas is proposed on the roof. No on-site parking spaces are proposed; however, off-site parking is proposed at the Fourth Street parking garage at 88 South Fourth Street, approximately 400 feet southeast of the project site. Additionally, a total of 13 bicycle parking spaces. Refer to Figures 2.2-1 and 2.2-2 for the site plan and elevations.

2.2.1 Mechanical Equipment

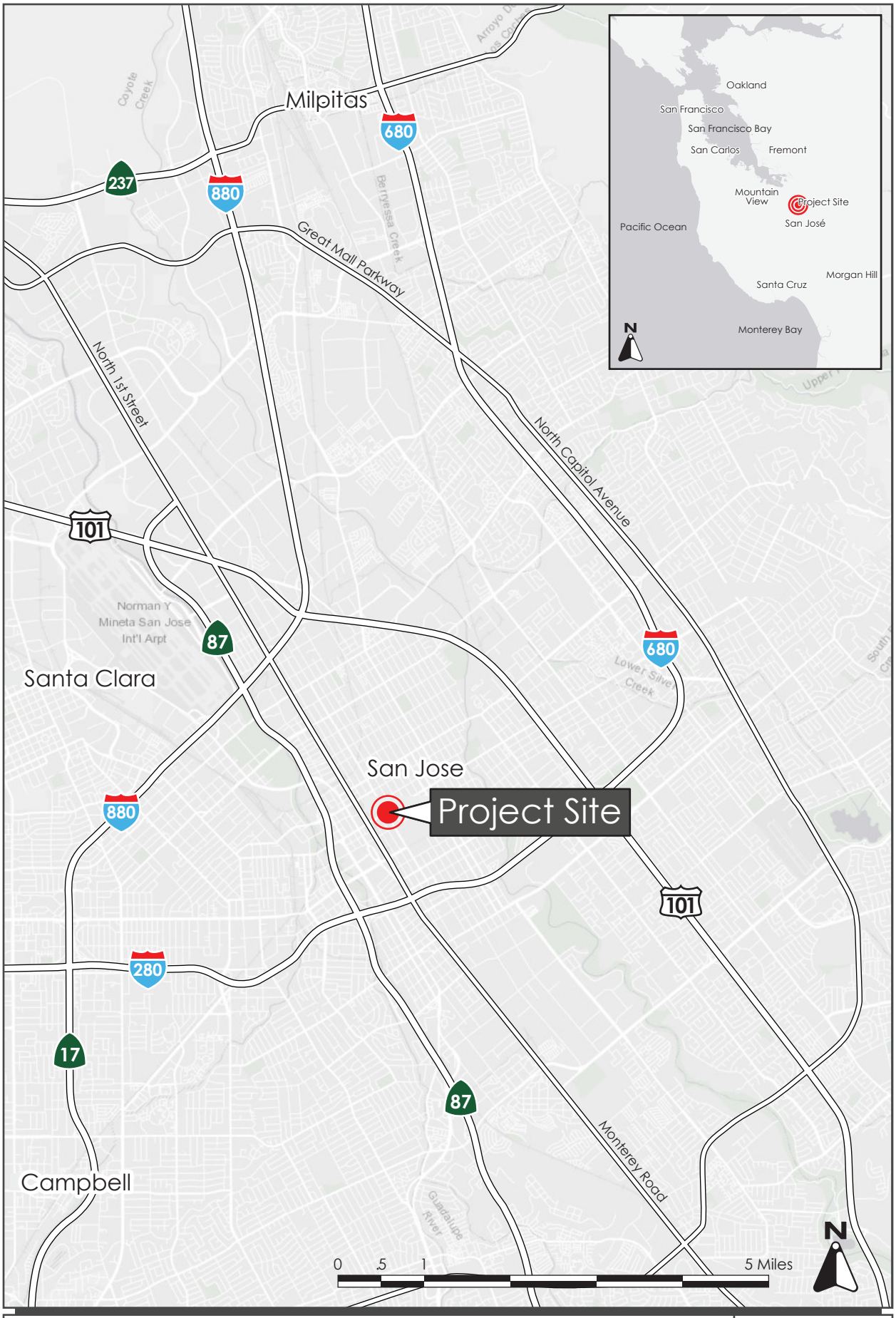
The project proposes a 100-kilowatt (kW) emergency diesel generator powered by a 134 horsepower (HP) diesel engine on the roof. The generator would be operated during periods of emergency and for maintenance and testing purposes with a maximum of 50 hours per year. During the maintenance and

[2] The Historic 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, East San Fernando Street to the south, and extends to South Third Street and South Fourth Street (along East Santa Clara Street) to the east.



Source: City of San José, Planning Division, May 2008.

SAN JOSÉ COMMERCIAL DISTRICT MAP | FIGURE 2.1-1



REGIONAL MAP | FIGURE 2.1-2

VICINITY MAP

FIGURE 2.1-3

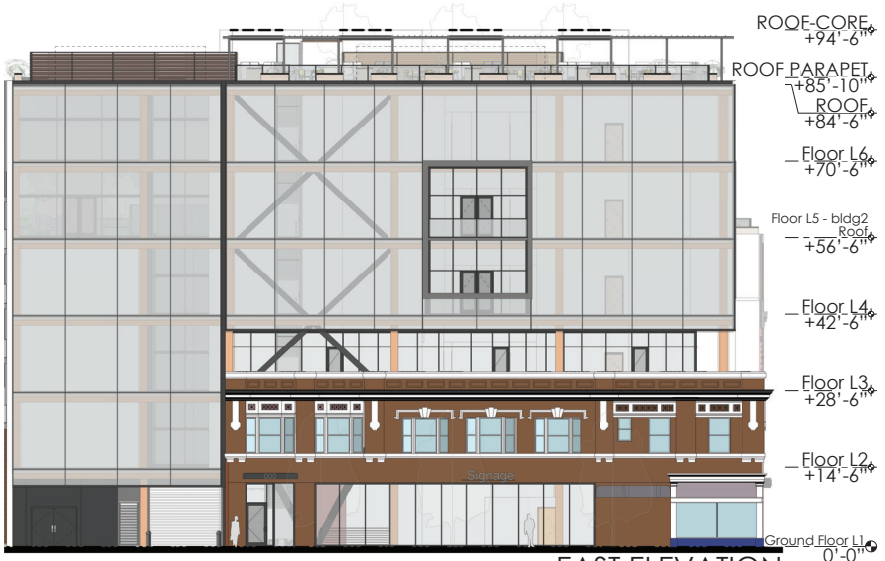
AERIAL PHOTOGRAPH AND SURROUNDING LAND USES | FIGURE 2.1-4

Source: RMW Architecture & Interiors, January 21, 2022.

SITE PLAN - GROUND FLOOR

FIGURE 2.2-1

NORTH ELEVATION



EAST ELEVATION

SOUTH ELEVATION

Source: RMW Architecture & Interiors, January 21, 2022.

ELEVATIONS

FIGURE 2.2-2

testing periods, the generator would run for less than one hour.

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, though no specific building measures have been identified at this time.

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, any project within a historic district shall conform to applicable guidelines adopted, and as amended by City Council (refer to *Section 20.70.110* of the City's Municipal Code).

2.2.4 Construction

The project would be constructed over a period of 18 months starting in September 2022.

2.3 PROJECT OBJECTIVES

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

1. Provide a project that meets all relevant strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy Plan by providing commercial development in the Downtown Strategy Plan area on infill sites along transit corridors to foster transit use; contribute to a reduction of Citywide vehicle miles traveled by focusing commercial development in an area well served by transit and in proximity to services and housing within the Downtown Strategy Plan area; and; strengthen downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José.

2. Enter into a lease with the San José Department of Transportation for a nearby parking garage to rent parking stalls, which allows for a flexible long-term solution fostering long-term pedestrian utilization in a Focused Growth area of downtown.

3. Create a commercial development project in the Downtown Focused Growth area to further the San José 2040 General Plan goal of creating a central identity for San José.

4. Construct a commercial development that is marketable and produces a reasonable return on investment for the project sponsor and its investors and is able to attract investment capital and construction financing.

5. Create a modern Class A office project to attract tenants and support the City's economic development goals.

6. Promote the City's goal of a multi-modal future by enhancing existing pedestrian networks, enhancing the existing cycling network and providing secure bike storage and shower facilities.

7. Adding economic development growth in a transit centric location served by various modes of public transportation such as bikeways, VTA light rail and buses, and planned BART extension.

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:

- Historic Preservation Permit
- Site Development Permit
- Lot Line Adjustment
- Demolition, Grading, and Building Permit(s)
- All other Department of Public Works Clearances

SECTION 3.0 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION

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

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

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 identifies the approved but not yet constructed/occupied and pending projects in the project vicinity (within half-mile radius) that are evaluated in the cumulative analysis.

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	East 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.
Sixth 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).

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Name	**Location**	**Description**
South Market Mixed-Use	477 South Market Street	Construction of a six-story mixed-use building with 130 residential units and approximately 5,000 square feet of commercial space.
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 Expansion[3]	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.

[3] Modifications to the original project (e.g., Hotel Clariana Expansion and Clariana Phase II) have been approved since circulation of the NOP.

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Name	**Location**	**Description**
Adobe North Tower	333 West San Fernando Street	Construction of an approximately 1,315,000-square foot building, 690,328 square feet of research and development and office use, and up to 8,132 square feet of retail use.
Miro Tower[4]	157 East Santa Clara Street	Construction of up to 630 residential units and approximately 21,000 square feet of ground floor retail.
Museum Place5	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.
Almaden Office	North corner of South Almaden Boulevard and Woz Way	Construction of up to approximately 1,727,777 square feet of office in two 16-story towers (North Tower and South Tower) with amenity/food and beverage space.
Pending		
Fountain Alley Mixed-Use[6]	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

[4] While Miro Tower is currently built and units are being leased, Miro Tower was under construction at the time this document was prepared. Therefore, Miro Tower was included in technical analyses and in this table.
[5] Modifications to the original project have been approved since circulation of the NOP.
[6] Fountain Alley Mixed-Use is also known as Energy Hub.

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Name	**Location**	**Description**
		approximately 405,924 square feet of office space.
Icon-Echo	147 East Santa Clara Street	Construction of two towers (a 525,000-square foot office tower and a residential tower with 415 units) connected via a podium on floors one to four.
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 percent restricted affordable units for low-income residents) and no proposed parking
BoTown Residential	409 South Second Street	Construction of a 29-story high-rise with up to 520 residential units and approximately 6,400 square feet of ground floor retail.
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).
San José Stage/Home 2 Hotel	490 South First Street	Construction of a new 132,000-square foot mixed-use building (seven stories) with a total of 151 hotel rooms, and 17,000 square feet of performance theater/auditorium space.
South Fourth Street Mixed-Use	439 South Fourth Street	Construction of an 18-story mixed use building consisting of 218 residential units, approximately 1,345 square feet of commercial use and approximately 12,381 square feet of public eating establishment.

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Name	**Location**	**Description**
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.

For each environmental issue, cumulative impacts may occur within different geographic areas. For example, the project's operational 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[7,8]

The following discussion is based on an Air Quality Assessment, Response to Parking Comment Memorandum, and Cumulative Memorandum prepared by Illingworth & Rodkin, Inc. in March 2022, May 2022, and September 2021, respectively. Copies of the report and memorandums are included as Appendix B of the SEIR.

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.[9] 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
Ozone (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

[7] Since completion of the air quality analysis, the mechanical circulation, the office square footage, the retail square footage, and proposed on-site parking spaces have changed. Specifically, the office square footage has decreased to approximately 63,461 square feet, the retail square footage has increased to approximately 11,790 square feet, and on-site parking is no longer proposed. All parking would be off-site at the City's Fourth Street parking garage at 88 South Fourth Street. The overall total building square footage would remain the same and construction activities (e.g., equipment quantities and hours) would not change. While emissions (i.e., ROG and energy) would decrease slightly from these land uses changes, the project's criteria pollutant and GHG emissions and the community risk impacts would be below the thresholds and any minor decrease would cause the emissions and impacts to remain below the thresholds.

[8] Since the project would be using an existing parking garage and not constructing any new parking garage on-site, there would be no new construction emissions associated with the project's parking (as discussed in the Response to Parking Comment Memorandum in Appendix B of the Draft SEIR). The operational modeling of the air quality analysis analyzed traffic emissions associated with the 620 net new daily trips which is not dependent on the parking location.

[9] 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.

Table 3.1-1: Health Effects of Air Pollutants		
Pollutants	**Sources**	**Primary Effects**
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

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).[10] Chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the California Air Resources Board (CARB).

[10] California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed October 6, 2021. https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.

Sensitive Receptors

Sensitive receptors are groups of people that are more susceptible to exposure to pollutants (i.e., children, the elderly, and people with illnesses). Locations that may contain high concentrations of sensitive population groups include residential areas, hospitals, daycare and elder care facilities, elementary schools, parks and places of assembly.

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.[11]

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

Various policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to air quality, as listed in the following table. 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-10.5	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-11.2	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.

[11] BAAQMD. *Final 2017 Clean Air Plan.* April 19, 2017. Accessed October 6, 2021. http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans.

General Plan Policies - Air Quality	
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: carbon monoxide (CO), ozone (O_3), nitrogen dioxide (NO_2), and suspended particulate matter (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).[12]

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 October 5, 2021. http://www.baaqmd.gov/about-air-quality/air-quality-summaries.

[12] 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.

"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 closest sensitive receptors are the residences located on the second floor of the mixed-use building located between the project parcels at 138 East Santa Clara Street, and there are additional residential uses located approximately 54 feet from the southern boundary of the project site, immediately adjacent to the project site's western boundary, approximately 200 feet west of the project site, and approximately 355 feet southeast of the project site. In addition, there is a senior living facility (Town Park Towers) approximately 295 feet to the northwest and school-aged children at Little Einstein's Montessori Preschool and Horace Mann Elementary School located approximately 131 feet and 877 feet northeast of the site, respectively. In addition to existing sensitive receptors, there is a planned future residential use immediately south of the project site as part of the Clariana Phase II development. Refer to Figure 3.1-1 for the locations of off-site sensitive receptors included in the analysis.

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 with mitigation incorporated and implementation of the identified Standard Permit Conditions below. The 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/day)	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*

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 be required to include bicycle parking consistent with City standards. Therefore, the project is consistent with this measure.

Table 3.1-4: Bay Area 2017 Clean Air Plan Applicable Control Measures		
Control Measures	**Description**	**Project Consistency**
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.	The project proposes a total of 13 bicycle parking spaces which will meet the City's minimum bicycle parking requirement. The project area has adequate pedestrian and bicycle facilities. 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.	The project site is located within the downtown area and 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, and the most recent CALGreen requirements. In addition, the project would be designed to achieve LEED Silver certification. Therefore, 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/ roofing upgrades for commercial and residential multifamily housing.	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. Therefore, the project is consistent with this control measure.

Table 3.1-4: Bay Area 2017 Clean Air Plan Applicable Control Measures		
Control Measures	**Description**	**Project Consistency**
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.	A total of seven street trees are proposed for removal. Any trees removed would be replaced consistent with the City's tree replacement ratio. 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 emissions from construction associated with the project. The project's land use types and sizes, as well as the construction schedule, were input into CalEEMod. The CARB EMission FACtors 2021 (EMFAC2021) model was used to estimate construction traffic emissions.

The following proposed land uses were input into CalEEMod, which included 64,742 square feet entered as "General Office Building", 10,509 square feet entered as "Regional Shopping Center",

and two parking spaces entered as "Enclosed Parking Structure".[13] The project equipment list and schedule were based on data provided by the applicant (refer to Attachment 2 of Appendix B of this document). The construction schedule assumes that the project would begin construction in September 2022 for approximately 18 months (up to 543 construction workdays). Traffic-related emissions were based on CalEEMod estimates and haul trips were calculated based on the estimated demolition material to be exported and soil material import/export, and the estimated cement and asphalt truck trucks (refer to Appendix B of this document). 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

Description	ROG	NO_x	PM_{10}	$PM_{2.5}$
Construction Emissions Per Year (Tons)				
2022	0.03	0.32	0.02	0.01
2023	0.29	0.97	0.04	0.04
2024	0.21	0.17	<0.01	<0.01
Annualized Daily Construction Emissions Per Year (Pounds Per Day)				
2022 (122 construction workdays)	0.58	5.59	0.28	0.24
2023 (365 construction workdays)	1.67	5.62	0.25	0.23
2024 (56 construction workdays)	7.53	6.34	0.16	0.14
BAAQMD Thresholds (pounds per day)	*54*	*54*	*82*	*54*
Threshold Exceeded?	**No**	**No**	**No**	**No**

As shown in the table above, BAAQMD significance thresholds would not be exceeded. 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 vehicles driven by future employees and patrons of the site. Vehicle trip generation rates, energy usage, and other default CalEEMod 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).

In addition, the project proposes a 100-kW emergency diesel generator powered by a 134 HP diesel engine on the roof. The generator would be operated during periods of emergency and for maintenance and testing purposes with a maximum of 50 hours per year. During the maintenance and testing periods, the generator would run for less than one hour. Table 3.1-6 below shows an estimate

[13] Since completion of the air quality analysis, the mechanical circulation, the office square footage, the retail square footage, and proposed on-site parking spaces have changed. Specifically, the office square footage has decreased to approximately 63,461 square feet, the retail square footage has increased to approximately 11,790 square feet, and on-site parking is no longer proposed. All parking would be off-site at the City's Fourth Street parking garage at 88 South Fourth Street. The overall total building square footage would remain the same and construction activities (e.g., equipment quantities and hours) would not change. While emissions (i.e., ROG and energy) would decrease slightly from these land uses changes, the project's criteria pollutant and GHG emissions and the community risk impacts would be below the thresholds and any minor decrease would cause the emissions and impacts to remain below the thresholds.

of emissions from operation of the proposed project using CalEEMod. The proposed project would be operational in 2024.

Table 3.1-6: Operational Emissions for the Project				
Description	**ROG**	**NO_x**	**PM_{10}**	**$PM_{2.5}$**
2024 Project Operational Emissions (tons/year)	0.57	0.28	0.37	0.10
BAAQMD Thresholds (tons/year)	*10*	*10*	*15*	*10*
Threshold Exceeded?	**No**	**No**	**No**	**No**
2024 Project Operational Emissions (pounds/day)	3.14	1.51	2.05	0.53
BAAQMD Thresholds (pounds/day)	*54*	*54*	*82*	*54*
Threshold Exceeded?	**No**	**No**	**No**	**No**
Note: Assumes 365-day operation.				

As shown in the table above, implementation of the project would not exceed BAAQMD significance thresholds for ROG, NO_x, PM_{10}, and $PM_{2.5}$. The proposed project would, however, contribute to the previously identified significant unavoidable regional criteria pollutant impact from full build out of the Downtown Strategy 2040. The project site is located in the downtown area which has the lowest vehicle miles traveled (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/or operational criteria emissions. As shown in Table 3.1-4, the project would be consistent with the applicable control measures. Therefore, the proposed project would not conflict with or obstruct implementation of the 2017 CAP. **[Less Impact than Approved Project (Significant Unavoidable Impact)]**

a) 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, by itself, to 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 discussed previously, 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)]**

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

Construction activities on-site would temporarily generate fugitive dust in the form of PM_{10} and $PM_{2.5.}$ Additionally, construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC, and could pose as a health risk to nearby sensitive receptors.

Dust Generation

For fugitive dust, the BAAQMD Air Quality Guidelines consider these impacts to be less than significant if Best Management Practices (BMPs) are implemented to reduce the emissions. The project would be required to implement the following BMPs recommended by BAAQMD, which have been adopted by the City as Standard Permit Conditions, during all phases of construction to reduce dust and other particulate matter emissions.

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 5 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 properly 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.

As described above, implementation of the Standard Permit Conditions, construction dust and other particulate matter would have a less than significant construction air quality impact (per BAAQMD CEQA Guidelines).

Project Construction – Community Risk Impacts

A health risk assessment of project construction activities was completed to analyze potential health effects to nearby sensitive receptors (within 1,000 feet of the project site) from DPM and $PM_{2.5}$ construction emissions. 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. The U.S. EPA AERMOD dispersion model was used to estimate construction-related DPM and $PM_{2.5}$ concentrations at existing sensitive receptors (e.g., residences and school-aged children) in the vicinity of the project construction area. The U.S. EPA AERMOD dispersion model inputs and results are described further in Appendix B of this document.

The cancer risk and $PM_{2.5}$ maximum exposed individuals (MEIs) were identified at the residence located 20 feet and 10 feet above-grade, respectively, of the 75 East Santa Clara Street building (refer to Figure 3.1-1[14]). Sensitive receptors are designated in green, and the MEI is designated in red.

The cancer risk MEI would have a cancer risk of 131.54 cases per one million (for infants) which exceeds the BAAQMD threshold of 10 cases per one million. The adult cancer risk at the location of the cancer risk MEI would be 2.25 cases per one million. The maximum-annual $PM_{2.5}$ concentration would be 1.64 $\mu g/m^3$, which exceeds BAAQMD significance threshold of 0.3 $\mu g/m^3$. The maximum hazard index (HI) concentration is 0.12, which is below the HI of greater than 1.0.

Impact AIR-1: Construction activities associated with the proposed project would expose the project maximum exposed individuals (MEIs) to cancer risk and $PM_{2.5}$ emissions in excess of Bay Area Air Quality Management District (BAAQMD) significance thresholds of 10 cases per one million for cancer risk and 0.3 $\mu g/m^3$ for $PM_{2.5}$, respectively.

Mitigation Measure

In addition to the Standard Permit Conditions listed above and in conformance with General Plan Policies MS-10.1 and MS-13.1, the following mitigation measure would be implemented during all demolition and construction activities to reduce TAC emissions impacts.

MM AIR-1.1: Prior to the issuance of any demolition, grading and/or building permits (whichever occurs first), the project applicant shall prepare and submit a construction operations plan that includes specifications of the equipment to be used during construction to the Director of the City of San José Department of Planning, Building and Code Enforcement (PBCE) or the Director's designee for review and approval. The plan shall be accompanied

[14] Figure 3.1-1 shows the off-site receptors that were modeled, which are the closest receptors within a couple hundred feet of the project site that are most influenced by the project's impacts. Divine, Casey. Illingworth & Rodkin, Inc. Personal Communication. May 18, 2022.

Source: Illingworth & Rodkin, Inc., October 1, 2021.

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

by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.

- For all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total, use equipment that meet U.S. Environmental Protection Agency (EPA) Tier 4 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 achieve a 93 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.
- Use of alternatively fueled or electric-powered equipment.
- Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment (e.g., stationary cranes and air compressors).
- Limit generator use where feasible.

Alternatively, the project applicant could develop a plan that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 93 percent or greater. The plan shall be accompanied by a letter signed by an air quality specialist and shall be submitted for review and approval by the Director of the City of San José PBCE or Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs first).

With implementation of the required Standard Permit Conditions for dust and Mitigation Measure AIR-1.1, the project's construction cancer risk would be reduced 9.30 chances per one million and the annual $PM_{2.5}$ concentration would be reduced 0.25 μ/m^3 which would not exceed BAAQMD significance threshold for cancer risk and annual $PM_{2.5}$ concentration. The HI would be 0.01 (with mitigation).

In addition, the cancer risk, non-cancer health hazards, and maximum annual $PM_{2.5}$ concentration associated with construction activities at the nearby schools were analyzed. It was determined that the project's construction impacts at the nearby schools would not exceed BAAQMD significance threshold for cancer risk, annual $PM_{2.5}$ concentration, or the HI. Therefore, the proposed project would have a less than significant construction community risk impact.

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. Projects with the potential to cause or contribute to increased cancer risk from traffic include those that have high

numbers of diesel-powered on road trucks or use off-road diesel equipment on-site (e.g., distribution center, a quarry, or a manufacturing facility), may potentially expose existing or future planned receptors to substantial cancer risk levels and/or health hazards. The project's trip generation was estimated from the traffic analysis and CalEEMod. The proposed project was estimated to generate up to 620 net new daily trips. The proposed project, by itself, would not generate enough trips to generate a TAC source; therefore, the project traffic emissions would be negligible and is not included in this analysis.

The project would include a 100-kW emergency diesel generator powered by a 134-HP diesel engine on the roof. The generator 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 generator emissions were estimated using CalEEMod.

In addition, 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 operation of the emergency generator. To estimate the increased cancer risk from the generator at the MEIs, the cancer risk exposure duration was adjusted to account for the MEIs being exposed to construction for the first two years of the 30-year period. Refer to Appendix B of this document for more information and Figure 3.1-1 above for the location of the project generator and off-site receptors. Table 3.1-7 provides a summary of the construction and operation risk impacts at the off-site MEIs.

Table 3.1-7: Construction and Operation Risk Impacts at Off-Site MEI

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Residential Sensitive Receptor (MEI)			
Project Construction (Years 0-2) Mitigated	9.30 (infant)	0.25	0.01
Project Generator (Years 3-30)	0.01	<0.01	<0.01
Total/Maximum Project Impact (Years 0-30) Mitigated	9.31 (infant)	0.25	0.01
BAAQMD Single-Source threshold	***>10.0***	***>0.3***	***>1.0***
***Exceed Threshold?* Mitigated**	No	No	No
Little Einstein's Montessori Preschool Receptor[1]			
Project Construction (Years 0-2) Unmitigated	0.26 (child)	0.01	<0.01
Project Generator (Year 3)	<0.01	<0.01	<0.01
Total/Maximum Project Impact (Years 0-3) Unmitigated	<0.27 (child)	0.01	<0.01
BAAQMD Single-Source threshold	***>10.0***	***>0.3***	***>1.0***
***Exceed Threshold?* Unmitigated**	No	No	No
Horace Mann Elementary School Receptor[1]			
Project Construction (Years 0-2) Unmitigated	0.16 (child)	<0.01	<0.01
Project Generator (Year 3)	0.01	<0.01	<0.01

Table 3.1-7: Construction and Operation Risk Impacts at Off-Site MEI			
Source	**Cancer Risk (per million)**	**Annual $PM_{2.5}$ ($\mu g/m^3$)**	**Hazard Index**
Total/Maximum Project Impact (Years 0-3) Unmitigated	0.17 (child)	<0.01	<0.01
BAAQMD Single-Source threshold	***>10.0***	***>0.3***	***>1.0***
***Exceed Threshold?* Unmitigated**	No	No	No

Note: [1] The air quality analysis did not include the mitigated numbers for Little Einstein Montessori Preschool and Horace Mann Elementary School since the single-source thresholds would not be exceeded (without mitigation).

The maximum cancer risk and annual $PM_{2.5}$ concentration at the MEIs from construction and operation of the project (without mitigation) would exceed BAAQMD's significance thresholds of 10 cases per one million and annual $PM_{2.5}$ concentration of 0.3 $\mu g/m^3$, respectively. The HI from construction and operation of the project would not exceed BAAQMD's significance threshold of greater than 1.0. With implementation of the Standard Permit Conditions and Mitigation Measure AIR-1.1, the total maximum project cancer risk impact to infants and annual $PM_{2.5}$ concentration would be reduced by 93 percent to 9.31 cases per one million and by 85 percent to 0.25 $\mu g/m^3$, respectively, which would be below the BAAQMD significance threshold for cancer risk and annual $PM_{2.5}$ concentration. Additionally, the total maximum project impact to school-aged children (without mitigation) would not exceed BAAQMD's significance threshold for cancer risk, $PM_{2.5}$ concentration, and HI.

As a result, the proposed project would result in a less than significant operational TAC impact to nearby sensitive receptors with implementation of the Standard Permit Conditions and Mitigation Measure AIR-1.1.

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 summarized in Tables 3.1-5 and 3.1-6, the proposed project would not exceed BAAQMD thresholds for operational or construction period criteria pollutant emissions. Therefore, it would result in a less than significant project-level criteria pollutant impact and the project would not expose sensitive receptors to substantial criteria pollutant concentrations.

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

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

Land uses that have the potential to generate considerable odors include, but are not limited to, wastewater treatment plants, landfills, confined animal facilities, refineries, chemical plants, composting operations, and food manufacturing facilities.

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 the use of cleaning supplies and maintenance chemicals which would generate temporary odors in the areas of use, it would be comparable to the surrounding land uses in the area and would not generate odors that would affect 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

Substantial sources of mobile TAC emissions within 1,000 feet of the project site are East Santa Clara Street, Third Street, and Fourth Street. The average daily trips (ADT) on East Santa Clara Street, Third Street, and Fourth Street were estimated using the AM and PM peak-hour background plus project traffic volumes for nearby roadways provided by *Hexagon Transportation Consultants*.

It is estimated that the ADT on East Santa Clara Street, Third Street, and Fourth Street would be 16,323 vehicles, 10,566 vehicles, and 10,400 vehicles, respectively.

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.

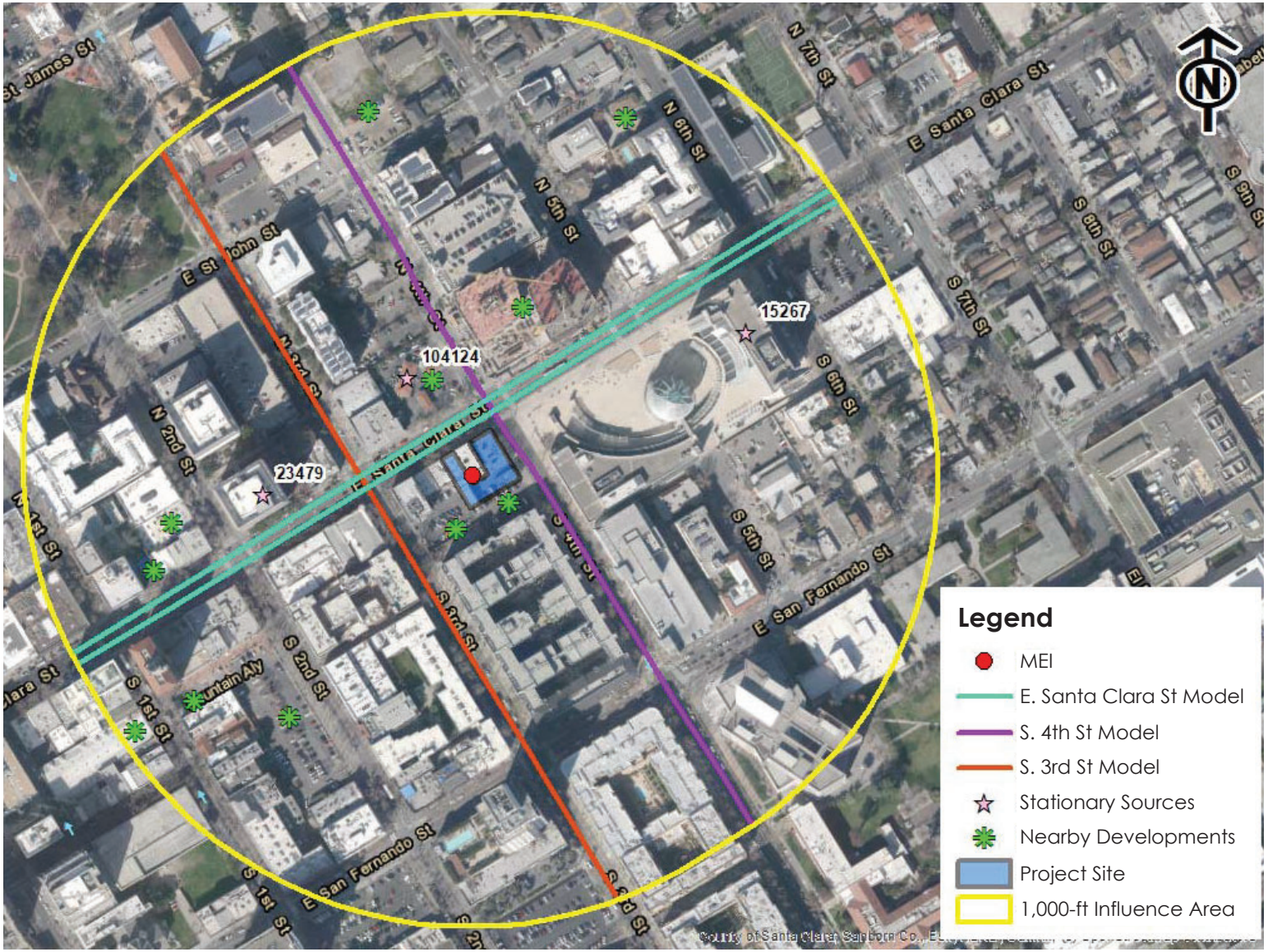
Construction Risk Impacts from Nearby Development

There are 10 projects (Miro Tower File Nos. SP17-009 and T16-056, Icon-Echo Mixed-Use File No. SP21-031, Fourth Street Housing H19-021, Hotel Clariana Expansion File No. H17-059, Fountain Alley Mixed-Use File No. H20-037, 19 North Second Street File No. H20-040, Sixth Street Project File No. H15-055, Eterna Tower File No. H20-026, 27 West File No. SP18-016, and Fountain Alley Office File No. H19-041) located within 1,000 feet of project site. For nearby developments that did not have construction analyses completed at the time the air quality analysis was prepared, it was assumed that the construction risks would be less than the BAAQMD single-source thresholds for community risks and hazards. For nearby developments located more than 500 feet from the site, the construction risks were assumed to be half of the BAAQMD single-source thresholds due to dispersion and the distance between the source and receptors. For the purposes of this analysis, it was conservatively assumed the entire construction period from the proposed project would overlap with the nearby developments' construction schedules. 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 provides a summary of the cumulative TAC sources in the project area, as well as nearby development included in the analysis. Figure 3.1-2 shows the project site and the nearby TAC and $PM_{2.5}$ sources

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 Mitigated	9.31 (infant)	0.25	0.01
East Santa Clara Street	2.21	0.18	<0.01
Third Street	1.12	0.07	<0.01
Fourth Street	1.20	0.07	<0.01
Facility ID #15267 (Generator), MEI at 700 feet	0.40	0.01	<0.01
Facility ID #23479 (Generator), MEI at 450 feet	0.38	--	--
Facility ID #104124 (Gas Station), MEI at 820 feet	4.09	--	0.02
Nearby Developments			
Icon-Echo Mixed-Use, 100 feet north	<7.46	<0.05	<0.01
Hotel Clariana, adjacent to the west and south	<8.80	<0.07	<0.01
Fourth Street Housing, 720 feet north	<4.30	<0.06	<0.01



Source: Illingworth & Rodkin, Inc., October 1, 2021.

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

Table 3.1-8: Cumulative Sources at Project MEI			
Source	**Cancer Risk (per million)**	**Annual $PM_{2.5}$ ($\mu g/m^3$)**	**Hazard Index**
Fountain Alley Mixed-Use, 560 feet west	<5.11	<0.10	<0.01
Fountain Alley Office, 710 feet west	<4.50	<0.03	<0.01
19 North Second Street, 585 feet west	<3.07	<0.02	<0.01
Sixth Street, 735 feet east	<5.00	<0.15	<0.50
27 West, 925 feet west	<2.40	<0.05	<0.01
Eterna Tower, 660 feet northwest	<4.24	<0.09	<0.01
Combined Sources Mitigated	<63.59	**<1.20**	<0.65
BAAQMD Cumulative Source threshold	***>100***	***>0.8***	***>10.0***
Exceed Threshold? **Mitigated**	No	**Yes**	No

BAAQMD CEQA Guidelines state that in instances where a pre-existing cumulative health risk impact exist, the project's individual contribution to that cumulative impact should be analyzed.[15] If project health risks would be reduced to below the single-source thresholds with best available mitigation measures, the project's contribution to pre-existing cumulative impacts would not be cumulatively considerable.

As shown in the table above, the cancer risk and annual $PM_{2.5}$ concentration, without mitigation, would exceed the BAAQMD threshold for cumulative sources. Implementation of Mitigation Measure AIR-1.1 and Standard Permit Conditions would reduce the cancer risk to less than 63.59 cases per one million which would be below BAAQMD's cumulative cancer risk significance threshold of 100 cases per one million. The combined $PM_{2.5}$ concentration from existing sources (0.95 $\mu g/m^3$) would exceed the BAAQMD significance threshold of 0.8 $\mu g/m^3$ for $PM_{2.5}$ even after implementation of Mitigation Measure AIR-1.1 and the identified Standard Permit Conditions, resulting in a pre-existing cumulative health risk impact. However, the project would not exceed BAAQMD single-source thresholds for cancer risk and annual $PM_{2.5}$ concentrations with implementation of Mitigation Measures AIR-1.1 and the Standard Permit Conditions (see Table 3.1-7). 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)]**

[15] 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

3.2 BIOLOGICAL RESOURCES

The following discussion is based on an Arborist Report prepared by HortScience | Bartlett Consulting in October 2021. A copy of this report is included as Appendix C of the SEIR.

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.[16] 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

[16] United States Department of the Interior. "Memorandum M-37050. The Migratory Bird Treaty Act Does Not Prohibit Incidental Take." Accessed October 6, 2021. https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf.

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 and City of San José

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.

Tree Removal Ordinance

The City of San José Tree Removal Controls (San José Municipal Code, Sections 13.32.010 to 13.32.100) serve to protect all trees on private parcels of land in the City 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. In addition, a tree removal permit is required from the City of San José for the removal of ordinance-sized trees; street trees, heritage trees, or any tree located on multifamily, commercial, industrial, or mixed-use property or in a common area. The ordinance protects both native and non-native tree species. On private property, tree removal permits are issued by the Department of Planning, Building and Code Enforcement (PBCE). 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 Department of Transportation in consultation with 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.

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.
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*

Special-Status Species

The project site is currently developed and located in an urbanized area of downtown San José which include predominantly urban adapted birds and animals. No sensitive habitats or wetlands are located on or adjacent to the site.

The project site is located within the Habitat Plan study area and is designated as "Urban-Suburban" land.[17] "Urban-Suburban" land is comprised of areas where native vegetation has been cleared for residential, commercial, industrial, transportation, or recreational structures, and is defined as having one or more structures per 2.5 acres.

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 on private parcels of land in the City, as well as Heritage Trees and street trees, are protected from removal without a permit. In addition, any tree regardless of size located on multifamily, commercial, industrial, or mixed-use property or in a common area require a tree removal permit.

A total of seven non-native street trees were surveyed which included three Raywood ash and four red oak trees. The following table lists all trees surveyed by *HortScience | Bartlett Consulting*. The location of the trees is shown in Figure 3.2-1.

Table 3.2-1: Tree Survey

Tree No.	Scientific Name	Common Name	Circumference (Inches)	Diameter (inches)
1	*Fraxinus oxycarpa*	Raywood ash	35	11
2	***Fraxinus oxycarpa***	**Raywood ash**	**47**	**15**
3	***Fraxinus oxycarpa***	**Raywood ash**	**50**	**16**
4	***Quercus rubra***	**Red oak**	**57**	**18**
5	*Quercus rubra*	Red oak	35	11
6	***Quercus rubra***	**Red oak**	**44**	**14**
7	***Quercus rubra***	**Red oak**	**53**	**17**

Notes: Ordinance sized trees are 38+ inches in circumference
Bold denotes ordinance-sized trees

[17] Santa Clara Valley Habitat Agency. "Habitat Agency Geobrowser." Accessed October 6, 2021. http://www.hcpmaps.com/habitat/.

TREE LOCATION MAP | FIGURE 3.2-1

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 with mitigation incorporated, 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. 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: Tree removal associated with construction of 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, 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 qualified 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 issuance of any grading or demolition permits, whichever occurs first, the project applicant shall submit the report including the results of the survey and any designated buffer zones to the Director of the City of San José Department of Planning, Building and Code Enforcement (PBCE) or Director's designee for review and approval.

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 the Los Gatos Creek and Guadalupe River and associated riparian corridors. The

project site is located approximately one mile and 0.6 miles west of Los Gatos Creek and Guadalupe River, respectively. No riparian habitats or other sensitive natural communities are located within or adjacent to the project site. Therefore, implementation of the project would not adversely affect any riparian habitat or other sensitive natural community, and there would be no impact. **[Less Impact than 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 site is not located adjacent to any waterway nor are there federally protected wetlands, as defined by Section 404 of the Clean Water Act (CWA), located on the project site. Therefore, implementation of the proposed project would have no effect on any wetland habitat. **[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?

The project site is in an urbanized area of downtown and no natural habitat exists on-site that would support endangered, threatened, or special-status wildlife species. The project site is not used as a wildlife corridor by any native resident or migratory fish or wildlife species. Therefore, the proposed project would not interfere with the movement of any fish or wildlife species. **[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?

For the purposes of this analysis, it is assumed that all seven non-native street trees would be removed. 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 stated in Table 3.2-2 below, as amended:

Table 3.2-2: Tree Replacement Ratios				
Circumference of Tree to be Removed	**Replacement Ratios Based on 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.

Five trees would be replaced at a 4:1 ratio and two trees would be replaced at a 2:1 ratio, and five trees would be replaced at a 1:1 ratio. The project would be required to plant a total of 24 trees on-site per the City's tree replacement policy[18]. 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 (PBCE).

- 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 PBCE. 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 with 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 accordance with City policy, tree replacement would be implemented as shown in Table 3.2-2. The proposed project would be required to meet the tree replacement requirements as noted above. 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)]**

[18] Street trees and other right-of-way trees do not count as replacement trees. Only on-site trees would count towards replacement trees.

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 0.34-acre project site is located 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*;[19]
- 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 2 Acres is Covered," or "Urban Development Equal to or Greater than 2 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 proposed project 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:

- **Santa Clara Valley Habitat Plan**. 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 all applicable fees 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.

[19] 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).

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?

The geographic area for cumulative biological resources impacts includes the project site and nearby parcels (e.g., Miro Tower, under construction, and Hotel Clariana Expansion). Neither the project site or the surrounding area contain sensitive, wetland, or riparian habitat. Therefore, the project's impact to sensitive natural communities 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. However, all projects would be subject to federal and state regulations 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 discussion is based on a Historic Project Analysis prepared by Page & Turnbull in April 2022. Additionally, the following discussion is based upon a Historic Treatment Report prepared by Page & Turnbull in December 2021. Copies of the reports are attached in Appendix D and E, respectively.

The archaeological discussion is based upon a Literature Search completed for a nearby project (Hotel Clariana Expansion Project, File No. H17-059). A copy of the Literature Search is on file at the Department of Planning, Building and Code Enforcement to those 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 National Register of Historic Places (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 California Register of Historical Resources (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 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.[20]

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

[20] 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.

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.

Senate Bill 18

The intent of SB 18 is to aid in the protection of traditional tribal cultural places through local land use planning by requiring city governments to consult with California Native American tribes on projects which include adoption or amendment of general plans (defined in Government Code Section 65300 et seq.) and specific plans (defined in Government Code Section 65450 et seq.). SB 18 requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process.

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.

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 Historic Resources Inventory (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.

Envision San José 2040 General Plan

Various policies in the City's 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to cultural resources, as listed below.

General Plan Policies - Cultural Resources	
LU-13.1	Preserve the integrity and fabric of candidate or designated Historic Districts.
LU-13.2	Preserve candidate or designated landmark buildings, structures and historic objects, with first priority given to preserving and rehabilitating them for their historic use, second to preserving and rehabilitating them for a new use, or third to rehabilitation and relocation on-site. If the City concurs that no other option is feasible, candidate or designated landmark structures should be rehabilitated and relocated to a new site in an appropriate setting.
LU-13.3	For landmark structures located within new development areas, incorporate the landmark structures within the new development as a means to create a sense of place, contribute to a vibrant economy, provide a connection to the past, and make more attractive employment, shopping, and residential areas.
LU-13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
LU-13.6	Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State of California requirements regarding historic buildings and/or structures, including the California Historical Building Code.
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.

General Plan Policies - Cultural Resources	
LU-14.1	Preserve the integrity and enhance the fabric of areas or neighborhoods with a cohesive historic character as a means to maintain a connection between the various structures in the area.
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*

Archaeological Resources

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 0.6 miles west.

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 at 151 West Mission Street. 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. This second pueblo is located approximately 0.3 miles west of the project site.

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.

In 1884, the project site was developed with a boarding house, an unidentified structure, a dwelling unit, two stables and a shed. From 1891 to 1939, the 142-150 East Santa Clara Street site was developed with commercial uses. The existing building was completed circa 1913-1915. The ground floor of the building has been occupied by a series of commercial tenants, originally in two commercial spaces, including the Chinese American-owned State Meat Market from the mid-1930s to the mid-1980s. The second-story of the building has been continuously used as residential space, originally built with nine units occupied by a series of rental tenants. In 1891, the 17-19 South Fourth Street site was constructed with a one- to two-story, wood-frame residential building and a shed. By 1915, there was a French Laundry in a one- and two- story, wood-frame commercial building with no setback. The existing building was constructed in 1939 with ground floor commercial uses and second floor residential uses. In 1891, the 130-134 East Santa Clara Street site was developed with a one-story, wood-frame residential building with a deep setback. The existing commercial building was constructed in 1901. In 1915, the building consisted of the two-story main brick building, with the narrow second-story wood-frame addition and a one-story wood-frame "sausage factory" at the rear. A brick smokehouse was located at the southwest corner of the sausage factory. An iron-clad stable was set at the rear of the parcel. Major exterior and interior alterations occurred from 1945 and the concrete addition was added to the rear in 1955 as an "auto parts warehouse. Alteration of the primary façade to remove the bay windows and other decorative details likely occurred in late 1959 or 1960.

Based on a literature search prepared for a nearby project[21], 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 for Native American resources.[22]

Structures On-Site

The project site contains three existing buildings located at 130-134 East Santa Clara Street, 17-19 South Fourth Street, and 142-150 East Santa Clara Street. The two-story mixed-use buildings located

[21] Holman & Associates, Inc. *Archaeological Literature Search (Hotel Clariana)*. October 2018.
[22] Ibid.

at 130-134 East Santa Clara Street and 142-150 East Santa Clara Street are situated within the San José Commercial District.

The building located at 130-134 East Santa Clara Street is listed in the City's HRI as an "Identified Structure." The building is listed in the NRHP as a non-contributing building to the San José Commercial District and is not individually eligible for listing in the NRHP, CRHR or as a Candidate City Landmark.

The building at 17-19 South Fourth Street is located outside the San José Commercial District and is not eligible for listing in the NRHP, CRHR or as a Candidate City Landmark.

Therefore, the buildings located at 130-134 East Santa Clara Street and 17-19 South Fourth Street are not considered to be historical resources under CEQA.

The building located 142-150 East Santa Clara Street is a designated City Landmark and is listed in the City's HRI as a "City Landmark Structure" and a "Contributing Site/Structure." The building is listed in the NRHP as a contributing building to the San José Commercial District and was determined to be eligible for individual listing in the NRHP. The building is listed in the CRHR as an individual resource and a district contributor. Therefore, the building located 142-150 East Santa Clara Street is considered to be a historical resource under CEQA.

142-150 East Santa Clara Street

The two-story building, constructed circa 1913-1915, is of brick masonry and consists of ground floor commercial space and residential units on the second floor. The building has glazed storefronts with neoclassical design motifs typical of early 20th century buildings. The north and east building façades consist of Neoclassical ornamentation with fenestration pattern window bays. The ground floor of the building has been altered several times since it was originally built, but still retains many characteristics of typical early 20th century commercial buildings (e.g., recessed entries flanked by large display windows, a tile-clad bulkhead[23], and transom[24] spanning the width of the primary façade).

The 142-150 East Santa Clara Street building is a designated City Landmark and contributor to the San José Commercial District. The building is currently listed in the CRHR as both an individual resource and a district contributor. Since the building located 142-150 East Santa Clara Street was previously evaluated for individual significance and determined to be a historical resource under CEQA, no further evaluation was needed.

[23] A bulkhead is defined as a dividing wall or barrier separating compartments.
[24] A transom is defined as a horizontal structural beam or crossbar that crosses over a door.

130-134 East Santa Clara Street

The two-story brick building located at 130-134 East Santa Clara Street was constructed in 1901 and designed by locally significant architects, Wolfe & McKenzie.[25] The building consists of ground floor commercial space and residential uses on the second floor. The building is rectangular-shaped with a flat roof. A concrete addition at the rear was constructed in 1955. The northern building façade consists of two storefronts at the ground floor with recessed glazed metal doors. There are two aluminum-frame windows located on the second floor. The building has been significantly altered and no longer retains its original character-defining features besides the proportions of the commercial spaces and openings, and the locations of the second-floor windows.

The 130-134 East Santa Clara Street building is a non-contributor to the San José Commercial District. The building had not been previously evaluated for individual significance; therefore, the property was evaluated for potential significance against the NRHP, CRHR and City Landmark criteria.

NRHP/CRHR Evaluation

While the building is an example of early 20th century pedestrian-focused commercial development in downtown San José, it is not representative of any important patterns of development within San José. Therefore, the property is not eligible under Criterion A of the NRHP or Criterion 1 of the CRHR. The original owner of the building, Louis Henning, was a prominent local resident and business owner; however, he did not make any significant contributions to the historic development of San José, the state, or the nation. Therefore, the property is not eligible under Criterion B of the NRHP or Criterion 2 of the CRHR. The property contains a building a stucco-clad brick building that is rectangular shaped with ground floor space that is typical of 19th and early 20th century commercial buildings. The building does not contain any distinctive characteristics of an architectural style. In addition, the building has been altered significantly in a manner that only the proportions of the ground floor and openings, and the location of the windows on the second floor remaining as features of the original building. Therefore, the property is not 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, it is not be eligible under Criterion D of the NRHP or Criterion 4 of the CRHR.

[25] Wolfe & McKenzie's work is recognized for its mixture of architectural styles, use of dormers, deep overhands, cantilevered corner window boxes, and second-floor roof decks and balconies.

Aspects of Integrity

Since the property at 130-134 East Santa Clara Street is not individually eligible for listing under the NRHP or CRHR, the historic integrity of the building and site was not analyzed.

City of San José City Landmark Evaluation

The following is an evaluation of property against the City of San José's Historic Landmark Designation Criteria, as outlined in the San José Municipal Code Section 13.48.100.H.

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. Therefore, the property is not eligible under this criterion.

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

   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 (refer to previous discussion). 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 typical of 19th and early 20th century commercial buildings, 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 building has been substantially altered and 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 has been substantially altered and has no notable character-defining features. 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;

   While the building was designed by locally significant architects, Wolfe & McKenzie, it has been substantially altered and is no longer recognizable as Wolfe & McKenzie's work. Therefore, the property 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 has been substantially altered and does not contain any unique or architectural innovations. Therefore, the property is not eligible under this criterion.

In summary, the property is not eligible for listing in the NRHP or CRHR and is not eligible for listing in the HRI as a Candidate City Landmark.

17-19 South Fourth Street

The two-story concrete building located at 17-19 South Fourth Street was constructed in 1939. The rectangular shaped building has a flat roof and consists of ground floor commercial space and residential units on the second floor. The ground floor façade consists of a glazed storefront with a tiled bulkhead and wood doors. The door located at the southeastern corner of the building provides access to the residential units. The façade is characterized by four decorative wood bands that visually separate the ground floor from the second floor. There are three-lite casement windows located on the second floor with two decorative wood bands and a metal cornice located above the windows. The majority of the building is two stories and drops down to one story at the rear.

NRHP/CRHR Evaluation

The building is not representative of any important patterns of development within downtown San José. Therefore, the property would not be eligible under Criterion A of the NRHP or Criterion 1 of the CRHR. The building is not associated with persons of local significance; therefore, the property would not be eligible under Criterion B of the NRHP or Criterion 2 of the CRHR. The concrete building with ground floor commercial space t is typical of 19th and early 20th century commercial buildings. While the building consists of horizontal elements between the two stories, it does not contain any distinctive characteristics of an architectural 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, it is not eligible under Criterion D of the NRHP or Criterion 4 of the CRHR.

Aspects of Integrity

Since the property at 17-19 South Fourth Street is not individually eligible for listing under the NRHP or CRHR, the historic integrity of the building and site was not further analyzed.

City of San José City Landmark Evaluation

The following is an evaluation of the building against the City of San José's Historic Landmark Designation Criteria, as outlined in the San José Municipal Code Section 13.48.100.H.

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. Therefore, the property is not eligible under this criterion.

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

   The building is not 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 typical of 19th and early 20th century commercial buildings, 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, it is not eligible under this criterion.

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

   The building has no distinguishing characteristics of an architectural type. 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;

   The building was not designed or built by a master architect or builder; therefore, the property 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. Therefore, the property is not eligible under this criterion.

In summary, the property is not eligible for listing in the NRHP or CRHR and is not eligible for listing in the HRI as a Candidate City Landmark.

Structures Off-Site

The project site is within and adjacent to the San José Commercial District bounded by South First Street to the west, East Santa Clara Street to the north, South Third Street/South Fourth Street to the east, and East San Fernando Street to the south. The San José Commercial District is a historical resource comprised of architecturally and historically significant buildings constructed from the 1870s to the early 1940s.

Outside of the San José Commercial District and across East Santa Clara Street, there are three historical resources within approximately 200 feet of the project site that are listed in the City's HRI. These buildings are 21 North Fifth Street, 30 North Third Street, and 105 East Santa Clara Street. 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

No.	Building Name	Address	Year Built	Significance
1	--	21 North Fifth Street	--	Identified Site/Structure
2	Sperry Flour Co.	30 North Third Street	1917	Eligible for NRHP, Eligible for CRHR, City Landmark Site/Structure
3	Alliance Building	105 East Santa Clara Street	1908	Eligible for NRHP, Eligible for CRHR, Structure of Merit

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 a 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 Historic Resources Inventory.

As described below, the proposed project would cause a substantial adverse change in the significance of the designated City located at 142-150 East Santa Clara Street, a historical resource under CEQA. The proposed project would have a less than significant impact on the San José Commercial District and historical resources within 200 feet of the project site.

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?

Secretary of the Interior's Standards for Rehabilitation

As proposed, the project would demolish the majority of the building located at 142-150 East Santa Clara Street, while retaining the north and east historic façades on East Santa Clara Street and South Fourth Street. To inform the analysis of whether the project would cause a substantial adverse change to this designated City Landmark, Page & Turnbull prepared a project analysis report. Included in the report is an assessment of the proposed project for conformance with the Secretary of the Interior's Standards for Rehabilitation (Standards). The Standards analysis is outlined below.

Standard 1 – *A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.*

The project site has been used as a commercial and residential building since it was constructed. The proposed project would continue the use of the ground-floor commercial storefronts and convert the residential land use on the upper floor to commercial space. The storefronts facing East Santa Clara Street (e.g., the existing recessed entrances and glass tile transom) would be retained for the commercial use. Additionally, construction of a lobby entrance and display windows at the south side of the east façade would introduce new elements to the retained walls of the building. Glazed walls would rise above the second floor of the existing historic north and east façades. While many historic features of the ground-floor commercial space at the north historic façade would be retained, a new six-story mixed-use building is proposed to be constructed behind the existing historic façades and the east historic façade is proposed to be altered, which would significantly change the appearance of the historic resource and its environment. Therefore, the proposed project does not comply with Standard 1.

Standard 2 – *The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*

The proposed building would be essentially located within the existing footprint of the historic building (behind the north and east historic façades). The character-defining features of the building include the following:

- Two-story, rectangular massing with a flat roof;
- Brick masonry construction with plaster cladding on the north and east façades
- Prominent molded cornice and tall parapet with recessed panels;
- Second-story fenestration pattern on primary façade;
- Second-story fenestration pattern on east façade;
- Wide second-story pilasters on the north and east façades;
- Three ground-floor storefronts with recessed entries and plate-glass display windows[26];
- Continuous transom over three ground-floor storefronts at the north façade and a portion of the east façade;
- Square pilasters between the ground floor storefront bays;
- The "State Market" painted sign at the east façade;
- Glazed tile bulkhead.

The majority of character-defining features (e.g., storefronts, fenestration patterns, and decorative elements) located on the north and east façades of the building would be retained as part of the proposed project. The project proposes additional glazing at the southern portion of the east façade which would change the character of the building as viewed from South Fourth Street.

The building's two-story massing is a character-defining feature of the historic building. The proposed new building would be up to six stories tall and would change the historic character of the property. The proposed project would remove the plaster cladding on the exterior of the building, which is original to the design of the building. Removal of the plaster cladding would remove historic material that is a character-defining feature of the property, In addition, removal of the interior, roof, and west and south walls would only leave two of the original walls of the building. As a result, it would no longer exist as a building. Therefore, the proposed project does not comply with Standard 2.

Standard 3 – *Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.*

The proposed project would not create a false sense of historical development. All new construction would be distinct in materials and style from the retained north and east historic façades. Therefore, the proposed project complies with Standard 3.

Standard 4 – *Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.*

[26] The current materials are not character-defining.

No previous alterations to the building have gained significance in their own right; therefore, the proposed project complies with Standard 4.

Standard 5 – *Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.*

The proposed project would retain and rehabilitate the ground-floor glazed storefronts with glazed tile bulkhead and glass tile transom, pilasters segmenting the storefront bays, second-story fenestration pattern and window forms, window bay ornamentation, and distinctive cornice and parapet. The proposed project would remove the plaster cladding on the exterior of the building, which is original to the design of the building. Alterations to the east historic façade would include the addition of a new entrance and glazing at the southern portion of the façade which would remove some original masonry wall and two original punched openings. The rear and side building façades, as well as the building's interior, contribute to its character-defining massing, materials, and historic uses and are proposed to be demolished. Therefore, the proposed project does not comply with Standard 5.

Standard 6 – *Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.*

The project would retain original materials wherever possible and replacement would only be used where necessary (due to deterioration) consistent with the Standards. Therefore, the project complies with Standard 6.

Standard 7 – *Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.*

All treatments proposed for the retained historic façades shall be undertaken using the gentlest means possible to avoid damage to historic materials. Therefore, the project complies with Standard 7.

Standard 8 – *Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.*

The proposed project would include excavation activities which has the potential to disturb subsurface cultural resources. In accordance with General Plan policy ER-10.3, the project would comply with the identified Standard Permit Condition (refer to checklist question b) to reduce or avoid impacts to subsurface cultural resources. Therefore, the project complies with Standard 8.

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

The north and east historic façades of the building would be retained while its interior, roof, and west and south walls would be demolished. Construction of the proposed project (up to six stories) within the north and east walls would be taller than the two-story historic façades.

The new construction would be a glazed building that would visually highlight the interior mass timber framing. The third floor of the proposed new building would include an approximately 15-foot recess from the existing two-story north wall and a five-foot recess from the existing two-story east wall, which would provide a visual distinction between the historic and new portions of the building. This recess would be present only on the third floor; the building façades would step out on floors four to six. Floors four to six would step back approximately five feet from the historic north façade and two feet of the historic east façade. The proposed glass curtain walls of the new four stories above the existing walls would allow for the historic two-story brick façades to remain visually prominent. The recessed balcony openings at floors fourth and five on the north and east historic façades would break up the solidity of the curtain walls which allows these historic façades to remain the visual focus on the prominent corner. The proposed new openings and signage would respect the existing ground-floor alignment of the remaining historic storefronts.

The proposed new building would be distinctly different in overall character from its current and historic appearance. The contemporary design of the new building does not relate architecturally or materially to the design of the historic building. The construction of four new stories would significantly change the historic integrity of the property and its environment. Therefore, the project does not comply with Standard 9.

Standard 10 – *New additions and adjacent or related new construction shall 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.*

While removal of the new construction would restore the retained north historic façade and rehabilitate with alterations the retained east historic façade, the essential form and integrity of the historic resource would be compromised by the demolition of the building's interior, roof, and west and south walls. Therefore, the proposed project does not comply with Standard 10.

As currently proposed, the project would comply with five of the 10 Standards, including Standards 3, 4, 6, 7 and 8.

2003 San José Downtown Historic District Design Guidelines

The 2003 San José Downtown Historic District Design Guidelines (2003 Historic District Guidelines) aim to retain and enhance the character-defining features of the San José Downtown Historic District. The 2003 Historic Guidelines identify 13 design guidelines (e.g., building height, corner element, massing, façades, rear façades, openings, entries, exterior materials, ground floors, setback and stepbacks, parking, pedestrian passageways, and vehicular access) for infill construction.

The portion of the project that is located on the 130-134 East Santa Clara Street site in the San José Commercial District would be considered "infill" under the 2003 Historic District Guidelines.

Building Height - *Maximum of four stories above grade, not to exceed 60 feet. Grand stories (floor-to-ceiling heights of 18 to 20 feet) permitted on first and second stories, when called for by use or program requirements. The building height of infill construction that fronts onto Fountain Alley shall not exceed the roofline height of any existing adjacent structure.*

The infill portion of the proposed project would be four stories tall (up to 57 feet tall) and would not front onto Fountain Alley. Therefore, the project is consistent with this guideline.

Corner Element - *At the corners of major intersections, and at the southwest corner of Second Street and Fountain Alley, the use of a corner element can add distinction to a building's architecture and enhance character-defining settings.*

The infill portion of the project would not be located at the corner of an intersection; therefore, this guideline is not applicable.

Massing - *Massing to be responsive in form and composition to prevailing character of the existing urban setting. At the same time, infill construction with extensive frontage on streets or alleys needs to be segmented into several smaller facades or buildings.*

The infill portion of the project would be compatible in form and composition to the adjacent buildings with aligned storefronts and signage at the ground floor and the upper floor consistent with early 20th century buildings. Therefore, the project is consistent with this guideline.

Facades - *Spacing, sizing and rhythm of openings and fenestration are to be compatible with neighboring structures; by contrast, there are to be no blank facades that front onto streets, alleyways, courtyards, light courts or facades of neighboring structures with openings. All facades are to include a base or bulkhead element.*

The infill portion of the project would include a façade with distinguishable horizontal bays and vertical levels consistent with adjacent district contributors. A distinct base or bulkhead element is not proposed at the ground floor. Therefore, the proposed project is partially consistent with this guideline.

Rear Facades - *To be articulated and punched in a manner compatible with existing adjacent rear facades.*

The rear façade of the proposed project would not be articulated or punched in a manner compatible with the adjacent façades. Since the project site is located at the edge of the San José Downtown Historic District, the rear façade would be minimally visible from the district boundaries. Therefore, the project is partially consistent with this guideline.

Openings - *All windows and doors (with the possible exception of security, fire safety or service doors) are to be transparent and inviting to the passerby; no mirror, tinted, frosted or opaque glazing. All windows at ground level are to include a base or bulkhead element.*

All windows and doors of the proposed project would be transparent. Therefore, the project is consistent with this guideline.

Entries - *Historic storefront entries in the District are well defined and connect the building to the street. New entries should be similarly articulated.*

The storefront and access doors on the upper level of the infill portion of the proposed project would be well defined and connect directly to the East Santa Clara Street pedestrian right-of-way. Therefore, the project is consistent with this guideline.

Exterior Materials - *Masonry, terra cotta, limestone, plaster, glass mosaic, cast stone, concrete, metal, glass and wood (trim, finishes and ornament only). The use of GFRC (glass fiber reinforced concrete), EIFS (exterior insulating finish surface), unclad concrete, lava rock or used brick is inappropriate, especially within the Historic District.*

The infill portion of the proposed project would consist of glass, plaster, and metal elements with interior timber framing; therefore, the project is consistent with this guideline.

Ground Floors - *Classic elements of storefront design are to be the dominant treatment, and all strongly pedestrian-oriented.*

The proposed storefront elements of the infill façade would consist of elements typically seen on neighboring district contributors (e.g., rectangular display windows flanking a pedestrian entrance). Therefore, the proposed project is consistent with this guideline.

Setbacks and Stepbacks - *Not permitted.*

The façade of the infill portion of the building would be slightly set back from the adjacent district contributors which would allow the historic façades to be visually prominent on the block. This narrow margin would not be perceived as a setback or stepback. Therefore, the proposed project is consistent with this guideline.

Pedestrian Passageways - *Strongly encouraged, with minimum of one each for infill construction that replaces at-grade, paved parking lots that presently exist as the two large parcels known as APN 467-22-121 and APN 467-22-134; passageways to be "lined" with retail storefronts and/or active display cases.*

This guideline is not applicable since the project would not replace an at-grade parking lot or be located in either of the listed parcels.

Vehicular Access - *One each for infill construction on APN 467-22-121 and APN 467-22-134.*

Vehicular access to the site would not be located on either of the listed parcels; therefore, this guideline is not applicable.

Parking - *No new surface or visible above-grade parking; valet services to be provided as appropriate or required.*

The proposed project would not include any new surface or above-level parking. Therefore, the proposed project is consistent with this guideline.

The non-contributing building at 130-134 East Santa Clara Street would be replaced by a four-story building which is consistent with eight of the 13 adopted guidelines for infill development (building height, massing, openings, entries, exterior materials, ground floors, setbacks and stepbacks, and parking) and partially consistent with two of the adopted guidelines for infill development (façades, rear façades, and pedestrian passageways) within the San José Commercial District. Two of the adopted guidelines (corner element and vehicular access) are not applicable to the project.

2003 Historic District Guidelines for Additions to Historic Buildings

The proposed project would remove the building interior, roof, and west and south walls of the 142-150 East Santa Clara Street building in the San José Commercial District. The new construction at this site has been designed as a vertical addition behind the north and east historic façades. The design guidelines for additions to historic buildings directly address compatibility with the historic character of existing buildings within a project site, including more detail regarding the relationship of the proposed new construction to the existing historic building than is included in the guidelines for infill development. As such, the compatibility of the proposed new construction with respect to the character of the retained north and east walls of 142-150 East Santa Clara Street is analyzed using the guidelines for Additions to Historic Buildings.

Consideration should first be given to accommodating new uses in the existing building envelope in order to maintain the integrity of the historic building.

The existing building envelope would be unable to accommodate the new uses. Therefore, the project is consistent with this design guideline.

New additions should be constructed of compatible materials, should be sited in an unobtrusive manner and should be subordinate to the original building.

While the new construction would consist of glass exterior and visible timber framing which is compatible with the historic building, the proposed new six-story building behind the north and east historic façades would be visibly larger than the original two-story building on-site. It would neither be unobtrusive nor subordinate to the original. Therefore, the project is not consistent with this design guideline.

Window patterns in a new addition should be reflective of, but not mimic, the historic building.

The proposed new glass curtain walls would be different in character and spacing than the second-story glazing of the retained historic façades. The appearance of the regular bays would, however, be similar to the upper-story bays of the retained historic façades, as well as the neighboring district contributors. Therefore, the project would be partially consistent with this design guideline.

Locate additions or new building components in a manner that does not dominate or compete with a historic building's primary façade, and that does not conceal or obscure other character-defining features of a historic building.

The proposed addition would not conceal or obscure any character-defining features of the retained north and east historic façades. The separation between the retained historic façades and the new

upper stories provided by the recessed third floor at the north and east façades would allow the remaining walls to remain visible and distinct. Therefore, the project would be consistent with this design guideline.

Design and construct additions where the new work avoids irreversible alteration of, or damage to, historic building fabric. In those cases where building exteriors become enclosed as new interior walls and spaces, preserve details of the building exterior.

The proposed project would remove all interior elements, the roof and two exterior walls of the historic building. Therefore, the project would result in an irreversible alteration to the historic building fabric. The project would not be consistent with this design guideline.

Limit the number and size of openings that connect the addition with the historic building. At points of transition, floor and ceiling levels of the addition need to correspond to existing floor and ceiling levels of the historic building.

The floor and ceiling levels of the first and second floors at the rear would correspond to the retained north and east historic façades. The new construction would continue to correspond to these historic façades through the sixth floor. The project would be consistent with this design guideline.

Design and locate the addition so that natural light, ventilation and interior circulation of the historic building are not adversely affected.

The proposed project would not retain any existing elements of the historic building interior of 142-150 East Santa Clara Street. The project would not be consistent with this design guideline.

Avoid "carving" out a portion of an existing façade at any level for use as a new exterior patio or deck, as such "additions" destroy historic building fabric and create voids.

The project does not propose to add new exterior patios or decks at any part of the retained historic façades. The project would be consistent with this design guideline.

The project is partially consistent with the additions to historic buildings guidelines.

2003 Historic District Guidelines for Adaptive Reuse

The City of San José has defined the following design goals, principles, and guidelines for adaptive reuse projects within the San José Commercial District. The project's consistency with each goal is discussed below.

Rehabilitation and Adaptive Reuse: Design Goals

Rehabilitation and adaptive use of historic resources in the Downtown San José Historic District should strive to simultaneously achieve two interrelated goals:

1. *Retention and rehabilitation of buildings, storefronts, spaces, settings and other distinctive features that characterize the Downtown San José Historic District; and*

2. *Rehabilitation and adaptive use of historic storefronts, balconies, paseos, alleyways, patios, courtyards and other ground-level spaces and uses that strongly appeal to and support 24-hour pedestrian life and enjoyment of the Downtown San José Historic District.*

The proposed project would rehabilitate the existing commercial storefronts of 142-150 East Santa Clara Street facing East Santa Clara Street. These pedestrian-focused storefronts would continue to be used as ground-floor commercial use which has characterized the building's primary façade since its construction. As such, the project is consistent with these design goals.

Rehabilitation and Adaptive Reuse: Design Principles

- *Rehabilitation and adaptive use that proudly "showcase" character-defining features, both interior and exterior, of the structure's historic building fabric.*
- *Rehabilitation and adaptive use that are deliberately responsive, and therefore contribute, to character-defining and character-enhancing features of the urban setting, such as streets, alleyways, courtyards and passages.*
- *Rehabilitation and adaptive use that emphasize interaction and "transparency" between the private and public realms, achieved visually and, as appropriate, physically. Rehabilitation and adaptive use of buildings with classic "Main Street" or postwar storefronts that put a premium on retention, repair and maintenance of original building materials, architectural ornament, entries, transoms, display windows and other distinctive features.*
- *Rehabilitation and adaptive use that increase density without sacrificing integrity of the historic structure's character-defining features.*
- *Rehabilitation and adaptive use with new additions and materials that are compatible with, but clearly differentiated from, basic design elements and use of materials belonging to the historic structure.*
- *Rehabilitation and adaptive use of building interiors and outdoor spaces that reward the pedestrian with a sense of discovery Rehabilitation and adaptive use that avoid creating a false view of history, such as use of conjectural features or architectural elements that belong to other buildings, places, styles or periods.*
- *Rehabilitation and adaptive use that avoid gratuitous schemes or solutions known as "façadism" or "façadectomy", wherein a fragment of a former historic building (in most cases, the front façade) is tacked on to an entirely new structure.*

The character-defining features of the north and east historic façades would be retained, and the proposed rehabilitation and the new construction would be developed to allow these features to be preserved and seismically strengthened and thereby remain as a visually prominent part of the East Santa Clara Street streetscape. Expansive glazing at the historic storefront locations, as well as on the east façade and the new building would provide transparent interfaces between outdoor and indoor spaces. The proposed new building would increase the commercial use capacity of the site, while retaining the distinctive north and east historic façades which include the majority of the building's character-defining features. Through use of contemporary materials and design vocabulary, new elements of the proposed project would be clearly differentiated from the remaining north and east walls. Nonetheless, the project does propose to retain only the two walls of the original building, with

entirely new construction within, behind, and above these two exterior walls. Therefore, the project is considered "facadism" as identified in the 2003 Historic District Guidelines for Adaptive Reuse and would not comply with these design principles.

Rehabilitation and Adaptive Reuse: Design Guidelines

- *Rehabilitation and adaptive use projects that are likely to introduce significant change to historic building fabric are well served by first completing an historic structure report (by a qualified professional), which identifies character-defining features of an historic property, ranks such features in terms of their significance, and recommends appropriate kinds of actions, e.g., preservation, restoration, rehabilitation, replacement and/or repair.*

A Historic Treatment Report for the north and east façades of the 142-150 East Santa Clara Street building was prepared by Page & Turnbull that identifies the character-defining features of the two walls to be retained and includes recommendations for appropriate preservation and restoration of the remaining historic fabric (refer to Appendix E of this document). The project shall, as a Condition of Project Approval, comply with the treatment report and, therefore, is consistent with this design guideline.[27]

- *After identifying the character defining features of the historic building, upgrade plans should involve the least degree of intervention. Where repairs are necessary, patching and then repairing in-kind should take place.*

The character-defining features of the north and east façades of the building at 142-150 East Santa Clara building shall be repaired as necessary using the least degree of intervention. Historic materials that cannot be repaired shall be replaced in-kind. The project is consistent with this design guideline.

- *Any change to historic building fabric, whether to an interior space, a building material or a fixture, should carefully consider three criteria: compatibility with the historic character-defining features to be retained, its differentiation from the historic building fabric, and the "reversibility" of such a change.*

The proposed new construction at 142-150 East Santa Clara Street would be clearly differentiated from the original building fabric by its use of contemporary building materials and style. While the expansive glazing and rectilinear details of the new construction would be very different from the historic fabric, these new elements refer to the proportions of the historic building, and neighboring historic district contributing buildings. As the project proposes to demolish the roof, interior and the south and west walls of building, the proposed work would not be reversible. The project is partially consistent with this design guideline.

[27] The project includes an application for a Historic Preservation Permit. If issued by City Council, the rehabilitation of the north and east façades would need to comply with the Secretary of the Interior's Standards and specific treatment plans shall be required prior to issuance of any demolition, grading or building permit (whichever occurs first).

- *The configuration and arrangement of interior spaces, as well as other interior character-defining features such as skylights, moldings, balustrades, fixtures, hardware, glazing and signing, should be retained and, to the extent possible, incorporated into a rehabilitation and adaptive use project. Increasingly, it is possible to obtain replacement parts or hardware to restore such character-defining features.*

The proposed project would not retain any interior spaces or features of the historic building. However, the interior of the building has been altered significantly over the years and very few distinctive original features remain. The project is partially consistent with this design guideline.

- *Original building materials should be retained, maintained, and, if necessary, cleaned and repaired. Retention of original building materials, rather than replacement with new or substitute building materials, definitely is more desirable.*

The proposed project would retain and repair the north and east historic façades of the building at 142-150 East Santa Clara Street. The project is consistent with this design guideline.

- *Seismic retrofit of historic structures should retain and preserve character-defining building materials and interior spaces to the greatest extent possible. The use and placement of retrofit systems and materials should minimize, whenever possible, both their visual presence and their impact on existing historic building materials, finishes and spaces.*

Seismic retrofit of the historic building is not proposed as part of the project; therefore, this design guideline is not applicable.

- *Signs, awnings, other decorative projections (functional and non-functional), false ceilings, security hardware and other "added" items to historic building fabric are not to hide, obstruct or compromise the integrity of character-defining architectural detail, historic ornament, building materials or craftsmanship.*

The proposed exterior signs would not obstruct or compromise the integrity of the character-defining features of the north and east walls and storefronts. The proposed project has been designed to align with existing horizontal elements of the historic façades. No other elements that would compromise the integrity of the character-defining features are proposed. Therefore, the project is consistent would with this design guideline.

- *Classic elements of Main Street storefront design are to be retained, and, as warranted, repaired, restored or reconstructed. Such elements include bulkheads, front doors with kick plates and wood framing, "matching" front display windows to each side of a recessed front entry, transom windows and compatible hardware.*

As proposed, the project would rehabilitate the existing storefront bays on the north wall facing East Santa Clara Street and retain the display windows and recessed entries. The character-defining

features of these storefronts (e.g., tile bulkhead and leaded glass transom and pilasters) would also be retained. The project is consistent with this design guideline.

- *Healthy, mature trees are to be retained and cared for, as character-defining features present in Fountain Alley, alleyways, paseos and courtyards. The use of accent landscaping, such as planter boxes and potted plants, potentially is appropriate in public spaces such as alleyways, paseos, patios, courtyards and passages, when routinely maintained.*

Existing mature trees have not been identified as part of the character-defining streetscape surrounding the building at 142-150 East Santa Clara Street. Planter boxes are proposed on the third floor and potted trees are proposed on the rooftop patio which will be visible from the street. The project is consistent with this design guideline.

- *All permanent street furniture, landscaping, paving materials, signing and use of outdoor furniture located in the public right-of-way are held to a single standard for all of Downtown San José.*

Paving materials, landscaping, and signage shall adhere to the City of San José's standards. The project is consistent with this design guideline.

In summary, the proposed project would partially meet the City of San José's goals and policies, and it is partially consistent with the principles and guidelines for rehabilitation and adaptive reuse with respect to the City Landmark at 142-150 East Santa Clara Street. The proposed project would be consistent with the design goals, but it would not be consistent with the design principles for adaptive reuse. In addition, the project would partially comply with the design guidelines.

Significant Impact to 142-150 East Santa Clara Street

As designed, the project does not comply with five of the 10 Standards (Standards 1, 2, 5, 9, and 10). While many historic features of the ground-floor commercial space at the north façade would be retained, a new six-story mixed-use building is proposed to be constructed behind the existing historic façades and the east historic façade is proposed to be altered, which would significantly change the appearance of the historic resource and its environment. The building's two-story massing is a character-defining feature of the historic building. The proposed new building would be up to six stories tall and would change the historic character of the property. The proposed project would remove the plaster cladding on the exterior of the building, which is original to the design of the building. Removal of the plaster cladding would remove historic material that is a character-defining feature of the property. In addition, removal of the interior, roof, and west and south walls would only leave two of the original walls of the building. As a result, it would no longer exist as a building. The contemporary design of the new building does not relate architecturally or materially to the design of the historic building. The construction of four new stories would significantly change the historic integrity of the property and its environment.

For a project to cause a substantial adverse change in the significance of a historical resource, it must demolish or materially alter in an adverse manner those physical characteristics that convey the

resources' historic significance and accounts for its identification as a City Landmark. The demolition of the City Landmark's interior, roof, and west and south walls would result in the loss of the historical resource as a building and loss of its significance and eligibility as a City Landmark, Therefore, the proposed project would cause substantial adverse change in the significance of the historical resource located at 142-150 East Santa Clara Street.

Significance Impact to the San José Commercial District

The project would retain the character-defining features of the north and east facades of the contributing building to the San José Commercial District at 142-150 East Santa Clara Street. The proposed rehabilitation and the new construction would allow these features to be preserved and thereby remain as a visually prominent part of the East Santa Clara Street streetscape. The proposed new building would retain the ground floor storefronts. These pedestrian-focused storefronts would continue to be used as ground-floor commercial use which has characterized the building's primary façade since its construction. Through use of contemporary materials and design vocabulary, new elements of the proposed project would be clearly differentiated from the remaining north and east walls. While the project is considered "facadism" as identified in the 2003 Historic District Guidelines for Adaptive Reuse, the historic façades would continue to contribute to the overall character of the San José Commercial District.

The four-story portion of the project would demolish and replace the non-contributing building at 130-134 East Santa Clara Street. As designed, this portion of the proposed project would be largely consistent with the adopted guidelines for infill development within the San José Commercial District. The infill portion of the project would be compatible in form and composition to the adjacent buildings with aligned storefronts and signage at the ground floor and the upper floor consistent with early 20th century buildings. The façade of the building would be slightly set back from the adjacent district contributors which would allow the historic façades to be visually prominent on the block, and the façade is designed with distinguishable horizontal bays and vertical levels consistent with adjacent district contributors. The project would consist of glass, plaster, and metal elements with interior timber framing and elements typically seen on neighboring district contributors (e.g., rectangular display windows flanking a pedestrian entrance). Therefore, the proposed infill construction would respect the visual importance of the neighboring contributing buildings and link the San José Commercial District to its greater surroundings by providing a transition from early 20th century commercial architecture to more recent development along and across South Fourth Street and East Santa Clara Street.

In summary, the proposed project would not cause substantial adverse change in the significance of the San José Commercial District to the extent that its eligibility for listing in the NRHP would be compromised. Therefore, the project would have a less than significant impact on the San José Commercial District.

Vibration Impacts Resulting from Project Construction

Per General Plan Policy EC-2.3, a continuous vibration limit of 0.08 inch/sec PPV will be used to minimize the potential for cosmetic damage to sensitive historic structures, and a continuous vibration limit of 0.2 inch/sec PPV will be used to minimize damage at buildings of normal conventional construction. Construction activities on-site would include demolition, site preparation,

grading/excavation, trenching/foundation, building (exterior/interior), and paving. Pile driving is not proposed. Analysis of potential vibration impacts to historic structures is provided in *Section 3.6, Noise and Vibration.* As discussed in that section, with implementation of Mitigation Measures NOI-3.1 to NOI-3.3, the project would have a less than significant construction vibration impact on adjacent historic buildings.

In conclusion, the proposed project would have a significant, unavoidable impact on a City Landmark , but would have a less than significant impact on the San José Commercial District. With implementation of Mitigation Measures NOI-3.1 to NOI-3.3, the project would have a less than significant construction vibration impact on adjacent historic buildings. **[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 proposed project would be excavated approximately 14 feet for the below-grade retail space. Based on a literature search prepared for a nearby project[28], there is high potential for historic-era buried deposits to be uncovered during construction activities and a low to moderate potential for buried Native American archaeological deposits.

Impact CUL-1: Construction activities on-site could impact previously undocumented historic-era and Native American archaeological resources, as the site is documented as being highly sensitive for historic-era archaeological resources and low to moderately sensitive for Native American archaeological resources.

Mitigation Measures

Consistent with General Plan policy ER-10.3 and the Downtown Strategy 2040 FEIR, the proposed project would implement the following mitigation measures to reduce or avoid impacts to subsurface archaeological resources.

MM CUL-1.1: **Monitoring.** A qualified archaeologist, in collaboration with a Native American monitor, registered with the 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 be present during ground-disturbing activities such as, but not limited to, trenching, initial or full grading, boring on site, or major landscaping. The project applicant shall notify the Director of the City of San José Department of Planning, Building, and Code Enforcement (PBCE) or Director's designee of any finds during monitoring.

[28] Holman & Associates, Inc. *Archaeological Literature Search (Hotel Clariana)*. October 2018.

MM CUL-1.2: **Evaluation.** Any historic-era or Native American archaeological resources identified during monitoring required by MM CUL-1.1 shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery and treatment shall be determined by the project archaeologist in collaboration with a Native American representative registered with the 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. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Information Center and NAHC Sacred Land File (as applicable), and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation and plan for disposition and treatment of historic-era and Native American archaeological resources shall be submitted to the Director of the City of San José PBCE or Director's designee.

With implementation of the identified Mitigation Measures CUL-1.1 and 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?

Construction activities associated with the project have the potential to disturb 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. In the event of the discovery of human remains 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 the City of San José Planning, Building or Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD shall 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 the mediation by the NAHC fails to provide measures acceptable to the landowner.

With implementation of the identified Standard Permit Condition, 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. For this project, the geographic study area is the project site, San José Commercial District, and surrounding area which is within 1,200 feet of the project site. The study area has been defined due to the potential to uncover archaeological resources and impact historical resources.

Historic Buildings

The project site is located within the San José Commercial District. While the historic integrity of the City Landmark at 142-150 East Santa Clara Street would be significantly compromised due to the demolition of the building interior, roof, and south and west walls, the proposed project would not diminish the historic integrity and significance of the San José Commercial District to the extent that it would no longer be eligible for listing in the NRHP (refer to discussion under checklist question a). In addition, with implementation of Mitigation Measures NOI-3.1 to NOI-3.3, the project's construction impacts to the adjacent historic buildings would be reduced to a less than significant level.

In addition to the proposed project, there is one other pending project (Energy Hub File No. H20-037) and four recently approved, but not yet constructed projects (82-96 East Santa Clara Street File No. HP21-003, Bank of Italy File No. HP20-003, Knox Goodrich and FAB building File Nos. HP19-007 and H19-041, and Hotel Clariana Expansion Project File No. H17-059), within the San José Commercial District. The pending project will be subject to its own CEQA analysis to determine consistency with the Secretary of the Interior Standards and the 2003 Historic District Guidelines. The four approved projects were individually analyzed and found to be consistent with all applicable design guidelines and standards. While the development/redevelopment of the parcels within the San José Commercial District could cumulatively change the visual character of the San José Commercial District, consistency with the applicable design guidelines and standards ensure that the combined effect of these projects would not significantly impact its historic integrity and significance.

For these reasons, the project would not result in a cumulatively considerable impact on historical resources.

Subsurface Resources

With implementation of the Mitigation Measures CUL-1.1 and CUL-1.2, 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 under sub-heading "Historic Buildings", demolition of the buildings on-site would not be cumulatively considerable. As discussed under sub-heading "Subsurface Resources", implementation of the identified mitigation measures would reduce impacts to subsurface resources and the impact would not be cumulatively considerable. **[New Less Than Significant Cumulative Impact (Significant Unavoidable Cumulative Impact)]**

3.4 HAZARDS AND HAZARDOUS MATERIALS

The following discussion is based on Phase I Environmental Site Assessments (ESAs) prepared by Cornerstone Earth Group in September 2018 (142-150 East Santa Clara Street, May 2019 (130-134 East Santa Clara Street), and July 2019 (15, 17, and 19 South Fourth Street). The reports are included as Appendix F 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. The Division of Occupational Safety and Health (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 not listed in the Cortese List.[29]

Toxic Substances Control Act

The Toxic Substances Control Act (TSCA) of 1976 provides the EPA with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics, and pesticides. The TSCA addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon, and lead-based paint.

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 and Lead-Based Paint

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

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.

[29] CalEPA. "Cortese List Data Resources." Accessed October 12, 2021. https://calepa.ca.gov/sitecleanup/corteselist.

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-7.5	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.

General Plan Policies - Hazards and Hazardous Materials	
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 0.34-acre project site is currently developed with two-story mixed-use buildings containing residential and commercial uses. Groundwater on-site is estimated at a depth ranging from 10 to 20 feet below the ground surface (bgs).[30] 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, aerial photographs, City directory listings, and agency records.

15, 17, and 19 South Fourth Street

The 15, 17, and 19 South Fourth Street site was developed with a shed and two stables in 1884. By 1891, a dwelling unit and shed was constructed fronting South Fourth Street. By 1915, the 17 South Fourth Street site was developed with a commercial building occupied by a laundry business and a boiler was located along the southern portion of the site. In 1930, an auto repair shop was constructed at 15 South Fourth Street.

130-134 South Fourth Street

The site was developed with a dwelling unit in 1884 and by 1915, the existing commercial building fronting East Santa Clara Street was constructed. By 1922, a cleaning and dying business occupied the 134 East Santa Clara Street building. Subsequent occupants have been predominantly retail and restaurants on the ground floor and residences on the second floor.

By 1915, a sausage factory and a stable was located on the southeast portion of 130-134 South Fourth Street. By 1950, these structures were removed and replaced with an auto parts warehouse in 1955. A warehouse and printing use occupied the site in 1968. The building is currently used for grocery storage and miscellaneous household items, parking, and the mezzanine within the structure was converted into a residential unit.

[30] Cornerstone Earth Group. *Phase I Environmental Site Assessment 142-150 East Santa Clara Street*. May 15, 2019.

142-150 South Fourth Street

The 142-150 South Fourth Street site was developed with a boarding house from at least 1884 until 1891. From 1891 until 1915, the site was occupied by a blacksmith shop and a wagon repair business. By 1915, the current building was constructed and the western portion was occupied by a paint store. In 1930, the eastern space (at 150 East Santa Clara Street) was occupied by a restaurant and meat market. From 1991 until 2006, the space at 150 East Santa Clara Street was either vacant or retail. Since 2010, the eastern space has been occupied by a pizza restaurant. A laundry business occupied 142 and 144 East Santa Clara Street in 1957 and by 1963, the space was occupied by other tenants (e.g., karate studio, salon, tarot card/psychic shop). The second story residential units were constructed by 1957 and have been used for residential purposes since then.

3.4.1.4 *On-Site Sources of Contamination*

Previous operations of the project site (e.g., laundry business, auto repair business, dry cleaner, cleaning and dying business, and printing business) have been identified as RECs (recognized environmental concerns). 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 to the environment; under conditions indicative of a release to the environment; or under conditions that pose a material threat of a future release to the environment. As mentioned above, a boiler was present on-site. Fuel oil could have been used to power the boiler which could have been store on-site in an aboveground storage tank (AST) or underground storage tank (UST). The former laundry, auto repair, cleaning and drying, dry cleaning, and printing businesses on-site could have used and/or stored petroleum-based solvents, organic solvents, dry cleaning solvents, and/or volatile organic compounds (VOCs). Spills or leaks from these hazardous materials could impact the soil, soil vapor, and/or groundwater quality of the site.

Additionally, the past use of a boarding house and blacksmith shop could be connected to underground structures (e.g., a septic tank and/or heating oil tank) which could result in soil impacts.

Based on the age of the existing buildings on-site, it is reasonable to assume that ACMs and LBP may be present in the existing buildings proposed for demolition.

3.4.1.5 *Off-Site Sources of Contamination*

Based on the Phase I ESAs completed for the proposed project, there are no open cases in proximity to the project site (within one-eighth of a mile or 660 feet). In addition, no off-site facilities have been identified as being an environmental concern for the project site within one-eighth of a mile because either no release has occurred, the distance of the facility from the project site, the facility is listed as a closed case, and/or the direction of groundwater flow. All site identified within the one-eighth mile radius are listed in Appendix F.

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[31] 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 70 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 with mitigation incorporated and implementation of the identified Standard Permit Conditions, as described below.

[31] Walter B. Windus, PE. Aviation Consultant. "Comprehensive Land Use Plan: Norman Y. Mineta San José International Airport." May 2011. Accessed October 12, 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?

As discussed above in *Section 3.4.1.4 On-Site Sources of Contamination*, historical use of the site may have impacted the soil, soil vapor, and/or groundwater quality of the site. In addition, based on the age of the existing buildings on-site, it is reasonable to assume that ACMs and LBP may be present in the existing buildings proposed for demolition.

Construction

Any hazardous materials (e.g., debris or soil containing LBP, asbestos or coatings) that would be removed from the site during project demolition and construction would be properly disposed of. The project would be required to comply with General Plan policy EC-6.2 which requires proper storage, use, and disposal of hazardous materials and wastes at licensed facilities. In addition, the proposed project would implement Mitigation Measure HAZ-1.1 listed below under checklist question b to address potential contamination of the site to ensure that construction activities would not expose workers, the public or the environment to hazardous materials.

Operation

Once the project is operational, the project would likely include the use and storage of cleaning supplies and maintenance chemicals in small quantities similar to adjacent land uses in the area. The small quantities of cleaning supplies and maintenance chemicals used on-site would not pose a risk to adjacent land uses. As a result, implementation of the proposed project would not create a significant hazard to the public or environment from the use, transport, or storage of these chemicals.

With implementation of Mitigation Measure HAZ-1.1 and compliance with existing regulations, construction and operation of the project would not create a significant hazard to the public or environment from the use, transport, or storage of hazardous materials. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

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?

Previous operations of the project site (e.g., laundry business, auto repair business, dry cleaner, cleaning and dying business, and printing business) have been identified as RECs. In addition, fuel oil could have been used to power the boiler that was previously located along the southern portion of the site in 1915. Based on the age of the existing buildings on-site, it is reasonable to assume that ACMs and LBP may be present in the existing buildings proposed for demolition.

On-Site Contamination

As mentioned above, fuel oil used for the boiler that was present on-site could have been stored on-site in an AST or UST, and the former laundry, auto repair, cleaning and drying, dry cleaning, and printing businesses on-site could have used and/or stored petroleum-based solvents, organic solvents, dry cleaning solvents, and/or VOCs. Spills or leaks from these hazardous materials could impact the soil, soil vapor, and/or groundwater quality of the site (refer to *Section 3.4.1.4*).

Impact HAZ-1: Construction activities associated with the proposed project could expose construction workers, the public, neighboring properties and the environment to hazardous materials in the form of impacted soil, soil vapor, and/or groundwater contamination above Regional Water Quality Control Board (RWQCB) environmental screening levels, due to historical use of the site. Fuel oil used for the boiler that was present on-site could have been stored on-site in above-ground and/or below-ground storage tanks, and the former laundry, auto repair, cleaning and drying, dry cleaning, and printing businesses on-site could have used and/or stored petroleum-based solvents, organic solvents, dry cleaning solvents, and/or volatile organic compounds.

Mitigation Measure

MM HAZ-1.1: Prior to the issuance of any demolition or grading permits, the project applicant shall retain a qualified environmental professional to conduct a Phase II soil, soil vapor and/or groundwater investigation to determine if the soil, soil vapor, and groundwater from former uses of the site have resulted in contamination concentrations above established Regional Water Quality Control Board (RWQCB) Environmental Screening Levels (ESLs). If the Phase II results indicate soil, soil vapor and/or groundwater contamination above ESLs, the project applicant shall enter into a regulatory oversight agreement with the Santa Clara County Department of Environment Health (SCCDEH), RWQCB, or Department of Toxic Substances Control (DTSC). The project applicant shall meet with the regulatory oversight agency and perform additional soil, soil gas and/or groundwater sampling and testing, as required, to adequately define the known and suspected contamination. A Site Management Plan (SMP), Corrective Action Plan (CAP), Remedial Action Plan (RAP), or other equivalent plan shall be prepared and submitted to the regulatory oversight agency for their approval. The plan shall include a Health & Safety Plan (HASP) and shall establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors. The plan and evidence of regulatory oversight shall be provided to the Director of the City of San José Department of Planning, Building and Code Enforcement (PBCE), and the Environmental Compliance Officer in the City of San José's Environmental Services Department for review.

With implementation of the identified mitigation measure, construction of the project would not significantly impact construction workers or nearby land uses to any 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 and nearby land uses to harmful levels of ACMs and LBP. The project would be required to implement the following Standard Permit Conditions, which would 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 ACMs and/or LBP.
- During demolition activities, all building materials containing lead-based paint 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 lead-based paint 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 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 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.

Off-Site Contamination

As discussed in *Section 3.4.1.5*, *Off-Site Sources of Contamination*, no off-site facilities were determined to represent a significant environmental concern to the project site. Therefore, implementation of the project would not have the potential to exacerbate existing off-site soil or groundwater contamination sources and would not impact persons or properties off-site.

Dewatering During Construction

The project site would be excavated to a depth of approximately 14 feet for the below-grade retail and would likely encounter groundwater during excavation activities on-site. As discussed above, the historical uses of the site have potential to result in groundwater contamination. However, Mitigation Measure HAZ-1.1 identified for checklist question b above requires that the project applicant retain a qualified environmental professional to conduct a Phase II soil, soil vapor and/or groundwater investigation to determine if the any soil, soil vapor, and groundwater from former uses of the site resulted in pollutants of concern above environmental screening levels prior to demolition and/or excavation of the site, and proper disposal of contaminated groundwater, as necessary, will be required.

Therefore, with implementation of Mitigation Measure HAZ-1.1 and the Standard Permit Conditions identified above, 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 (SJSU), Horace Mann Elementary School, and Little Einstein's Montessori Preschool. The project would construct a mixed-use building comprised of one level of below-grade retail and office space. Once operational, the proposed land uses 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.

However, as discussed for the previous checklist questions, historical use of the site may have resulted in soil, soil vapor and/or groundwater contamination in excess of environmental screening levels, and construction of the proposed project could result in disruption of contaminated materials that could release hazardous materials, substances, and/or waste within one-quarter mile of nearby schools. In addition, ACMs and LBP in the structures to be demolished could be released into the air without appropriate control measures. However, the project would be required to comply with the Standard Permit Conditions to reduce impacts from ACMs and LBP and implement Mitigation Measure HAZ-1.1 to reduce and avoid potential impacts from ACMs and LBP, soil, soil vapor, and/or groundwater contamination from demolition construction activities, which would reduce impacts to nearby schools to less than significant. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

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?

The proposed project is not located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 (Cortese List).[32] Therefore, construction and operation of the project would not create a significant hazard to the public or the environment, as it relates to disrupting contamination associated with a Cortese List site. **[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?

As described previously, the Norman Y. Mineta San José International Airport is located approximately 1.7 miles northwest of the project site. The project site is not located within the Norman Y. Mineta San José International Airport CLUP-defined safety zone or the Airport Influence Area (AIA). Under FAR Part 77, the FAA must be notified of proposed structures within an extended zone defined by imaginary surfaces that radiate out for several miles from an airport's runways. Any proposed structure (including buildings, poles, antennae, and temporary construction cranes) that would penetrate the imaginary surface or which would stand 200 feet or more in height, must be submitted to the FAA for an aeronautical study. For the project site, any proposed structure of a height greater than approximately 70 feet above the ground surface is required to be submitted to the FAA for review (under FAR Part 77) for a "Determination of No Hazard." The proposed project would have a maximum height of 85 feet to the top of the parapet; therefore, notification to the FAA is required to determine the potential for the project to create an aviation hazard.
The proposed project would be required to implement the identified Standard Permit Condition below.

Standard Permit Condition:

- **FAA Clearance Required**. 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.

In addition to receiving a "Determination of No Hazard" from the FAA, the project would be required to follow all applicable General Plan policies and regulations outlined in the CLUP for the Norman Y. Mineta San José International Airport and Downtown Strategy 2040 FEIR. Implementation of the identified Standard Permit Condition would ensure that the project does not result in a safety hazard or excessive noise exposure due to activities of the Norman Y. Mineta San José International Airport. **[Same Impact as Approved Project (Less than Significant Impact)]**

[32] CalEPA. "Cortese List Data Resources." Accessed October 12, 2021. https://calepa.ca.gov/sitecleanup/corteselist.

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

Capacity of the project was accounted for in in the Downtown Strategy 2040 Plan and FEIR. In addition, the project would be built to 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 downtown San José and is not adjacent to any wildland area. As a result, implementation of the 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. Although there is potential for accidental release of hazardous materials and/or substances during demolition and construction, the project would be required to implement the identified Standard Permit Conditions to reduce impacts due to the presence of ACMs and LBP and Mitigation Measure HAZ-1.1 to reduce construction workers' and adjacent uses exposure to potential contaminated soil, soil vapor, and/or groundwater during construction. Any pending, approved, or recently constructed projects within 1,000 feet of the project site would also be required to implement the Standard Permit Conditions and site-specific mitigation measures, as applicable. 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, as applicable, for the health of future users and to provide this information as part of the environmental review process.

The project shall implement Mitigation Measure HAZ-1.1 to reduce construction workers and future site users' exposure to potential contaminated soil, soil vapor, and groundwater contamination from

former uses of the site. With implementation of the required mitigation measures, the proposed project would not result in human health and environmental hazards to future site users consistent with Policy EC-7.2.

3.5 LAND USE AND PLANNING

3.5.1.1 *Environmental Setting*

3.5.1.2 *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 Historic Resources Inventory (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.

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 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-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.

General Plan Policies - Land Use	
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-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-3.4	Facilitate development of retail and service establishments in Downtown, and support regional- and local-serving businesses to further primary objectives of this Plan.
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.

General Plan Policies - Land Use	
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-13.2	Preserve candidate or designated landmark buildings, structures and historic objects, with first priority given to preserving and rehabilitating them for their historic use, second to preserving and rehabilitating them for a new use, or third to rehabilitation and relocation on-site. If the City concurs that no other option is feasible, candidate or designated landmark structures should be rehabilitated and relocated to a new site in an appropriate setting.
LU-13.3	For landmark structures located within new development areas, incorporate the landmark structures within the new development as a means to create a sense of place, contribute to a vibrant economy, provide a connection to the past, and make more attractive employment, shopping, and residential areas.
LU-13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
LU-13.6	Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State of California requirements regarding historic buildings and/or structures, including the California Historical Building Code.
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.
LU-14.1	Preserve the integrity and enhance the fabric of areas or neighborhoods with a cohesive historic character as a means to maintain a connection between the various structures in the area.
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.
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.

General Plan Policies - Land Use	
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.

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.

3.5.1.3 *Existing Conditions*

Existing Land Uses

The approximately 0.34-acre project site is comprised of three parcels (APNs 467-23-034, -035, and -037) located in downtown San José. The site is bounded by East Santa Clara Street to the north, South Fourth Street to the east, a surface parking lot associated with Hotel Clariana to the south, and commercial buildings to the west. The project site is currently developed with two-story mixed-use buildings containing a total of 11 residential units and approximately 20,995 of commercial space.

As discussed in *Section 3.3* of the Draft SEIR, the building located at 130-134 East Santa Clara Street is listed in the NRHP as a non-contributing building to the San José Commercial District and is not individually eligible for listing in the NRHP, CRHR or as a Candidate City Landmark, and the building at 17-19 South Fourth Street is not eligible for listing in the NRHP, CRHR or as a Candidate City Landmark. Therefore, the buildings located at 130-134 East Santa Clara Street and 17-19 South Fourth Street are not considered to be historical resources under CEQA.

However, the building located 142-150 East Santa Clara Street is listed in the NRHP as a contributing building to the San José Commercial District and was determined to be eligible for individual listing in the NRHP. In addition, the building is listed in the California Register of Historical Resources as an individual resource and a district contributor. The building is also a designated City Landmark. Therefore, the building located 142-150 East Santa Clara Street is considered to be historical resources under CEQA, and implementation of the project has the potential to impact this property and subsurface resources.

The project site is designated *Downtown* under the City's General Plan and has a zoning designation of *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.

Under the *DC* zoning designation, any project within a historic district shall conform to applicable guidelines adopted, and as amended by City Council (refer to *Section 20.70.110* of the City's Municipal Code).

Surrounding Land Uses

The project site is surrounded by a variety of land uses including residential and commercial development ranging from one to 28-stories. Immediately north of the site is East Santa Clara Street, a four-lane roadway. North of East Santa Clara Street is a gas station and a mixed-use development that recently finished construction (Miro Towers, City File Nos. SP17-009 and T16-056). Immediately east of the project site is South Fourth Street, a one-way local connector with two southbound lanes. Located east of South Fourth Street is City Hall which consists of an 18-story office tower, a glass rotunda, and a council chamber wing. South of the project site is a surface parking lot associated with Hotel Clariana and a five-story modern apartment complex. A three-story building is surrounded by the proposed project (APN 467-23-036). Immediately west of the project site is a cluster of five two- to three-story commercial businesses.

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?
c) 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)?

Inconsistent with the capacity build out evaluated in the Downtown Strategy 2040, the proposed project would result in significant land use impacts, as described below.

3.5.2.1 *Project Impacts*

a) Would the project physically divide an established community?

Changes in land use are not adverse environmental impacts in and of themselves, but they may create conditions that adversely affect existing uses in the immediate vicinity. Currently, the project site is surrounded by commercial and residential land uses ranging from one- to 28-stories. The project proposes to construct a four- to six-story mixed-use building in the downtown area which would be compatible with the surrounding land uses and building heights. In addition, the project does not include any features that would physically divide the community (e.g., roadway, railway, or highway). As a result, implementation of the 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 discussed in *Section 3.3 Cultural Resources*, while the project would have a less than significant impact on the San José Commercial District, the proposed project would only partially meet the City of San José's goals and policies and is partially consistent with the principles and guidelines for rehabilitation and adaptive reuse with respect to the City Landmark at 142-150 East Santa Clara Street (refer to *Section 3.3.2.1* for a full discussion). The project would conflict with General Plan Policies LU-13.2, LU-13.6, LU-13.7, and LU-13.8 and is partially consistent with the 2003 Historic District Guidelines and Secretary of the Interior's Standards for Rehabilitation. As a result, the proposed project would conflict with existing land use policies and regulations adopted for the purpose of avoiding or mitigating an environmental effect. **[New Significant Unavoidable Impact (Less than Significant Impact)]**

c) 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?

A significant shade and shadow impact would occur if the project would result in an increase in shading of 10 percent or more onto any of the six major open space areas in the downtown San José area (St. James Park, Plaza of Palms, Plaza de César Chávez, Paseo de San Antonio, Guadalupe River Park, McEnery Park). The proposed project is located a sufficient distance from the six major open space areas in the downtown area to avoid shade and shadow impacts. The nearest major open space area is St. James Park located approximately 0.1 miles northwest of the project site. At this distance, the proposed building would not cast a shadow onto any of the identified major open spaces. **[Same Impact as Approved Project (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 study area is the San José Commercial District and the broader downtown area. As discussed above for checklist question b, the project would not comply with General Plan Policies LU-13.2, LU-13.6, LU-13.7, and LU-13.8 and is partially consistent with the 2003 Historic District Guidelines and Secretary of the Interior's Standards for Rehabilitation as they relate to the property located at 142-150 East Santa Clara Street, which is a designated City Landmark and listed in the NRHP, CRHR, and the City's HRI. This is considered a significant and unavoidable impact. While there is a project-level impact, when combined with other projects, the project-level impact would not be cumulatively considerable. Therefore, the project would not result in a cumulatively considerable contribution to a significant land use and planning impact. **[Same Impact as Approved Project (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 February 2022. A copy of this report is included as Appendix G 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 L_{eq}, 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.

3.6.1.2 *Regulatory Framework*

State

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 2040 General Plan includes noise compatibility guidelines for various land uses. For reference, these guidelines are provided in Table 3.5-1 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. <u>Exterior Noise Levels</u> • 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.

General Plan Policies – Noise and Vibration	
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.
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.

3.6.1.3 *Existing Conditions*

Noise

The existing noise environment at the project site results primarily from vehicular traffic and aircraft associated with the Norman Y. Mineta San José International Airport. A noise monitoring survey was completed in the vicinity of the project site in September 2021 which included three short-term noise measurements (ST-1 to ST-3). These measurements coincide with the previous short-term measurement locations completed for the Hotel Clariana Expansion Project (File No. H17-059) in

2018.[33] The noise and vibration assessment prepared for the Hotel Clariana Expansion Project also included two long-term measurements (LT-1 and LT-2). The change in measured noise levels were used to assess the change in the 2018 to 2021 noise environment.

The Hotel Clariana Expansion Project noise monitoring survey occurred from November 30, 2018 to December 3, 2018. LT-1 was made approximately 25 feet west of the South Third Street centerline with typical hourly average noise levels ranging from 63 to 80 dBA L_{eq} during the day and from 58 to 68 dBA L_{eq} at night. The weekend day-night noise level ranged from 71 to 74 dBA DNL. LT-2 was made at the eastern end of the Hotel Clariana parking lot. At this location, the hourly average noise levels ranged from 55 to 67 dBA L_{eq} during the day and from 51 to 64 dBA L_{eq} at night. The weekend day-night noise level ranged from 63 to 67 dBA DNL.

ST-1 was made approximately 40 feet from the 130 East Santa Clara Street roadway centerline. During the 10-minute measurement, passenger cars generated noise levels ranging from 62 to 79 dBA; heavy trucks generated noise levels ranging from 69 to 73 dBA; buses generated noise levels ranging from 68 to 77 dBA; and motorcycles generated noise levels ranging from 72 to 84 dBA. The 10-minute average noise level measured at ST-1 in 2021 was 64 dBA, which was approximately one dBA lower compared to the ST-1 2018 measurement.

ST-2 was made approximately 35 feet from the South Fourth Street centerline. During the 10-minute measurement, passenger cars along South Fourth Street generated noise levels ranging from 63 to 77 dBA. The 10-minute average noise level measured at ST-2 in 2021 was 65 dBA, which was approximately four dBA lower than the short-term measurement in 2018.

ST-3 was made approximately 35 feet from the South Third Street centerline. During the 10-minute measurement, passenger cars along South Third Street generated noise levels ranging from 61 to 75 dBA; heavy trucks generated a noise level of 73 dBA; and overhead jets generated a noise level of 64 dBA. The 10-minute average noise level measured at ST-3 in 2021 was 64 dBA, which was approximately one dBA lower than the 2018 short-term measurement. Since all of the short-term measurements were similar to those measured in 2018, the long-term measurements made in 2018 were used as the existing ambient noise environment at the project site and in the surrounding area.

Noise measurement locations are shown in Figure 3.6-1.

Sensitive Receptors

The closest sensitive receptors are the residences located on the second floor of the mixed-use building located between the project parcels at 138 East Santa Clara Street, and there are additional residential uses located approximately 54 feet from the southern boundary of the project site, immediately adjacent to the project site's western boundary, approximately 200 feet west of the project site, and approximately 355 feet southeast of the project site. In addition, there is a senior living facility (Town Park Towers) approximately 295 feet to the northwest and school-aged children at Little Einstein's Montessori Preschool and Horace Mann Elementary School located approximately 131 feet and 877 feet northeast of the site, respectively.

[33] Illingworth & Rodkin, Inc. *Hotel Clariana Addition Noise and Vibration Assessment.* March 5, 2019.

NOISE MONITORING LOCATIONS | FIGURE 3.6-1

In addition to existing sensitive receptors, there is a planned future residential use immediately south of the project site as part of the Clariana Phase II development.

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, of 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. A three dBA noise level increase is considered the minimum increase that is perceptible to the human ear. Typically, project-generated noise level increases of three dBA DNL or greater are considered significant where resulting exterior noise levels will exceed the normally acceptable noise level standard. Where noise levels will remain at or below the normally acceptable noise level standard with the addition of project noise, a noise level increase of five dBA DNL or greater is considered significant.

City of San José Standards

The City of San José relies on the following guidelines 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.

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.

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. A conservative vibration limit of five mm/sec (0.2 inches/sec) PPV has been used for buildings that are found to be structurally sound but where structural damage is a major concern. For historic buildings or buildings that are documented to be structurally weakened, a conservative limit of two mm/sec (0.08 inches/sec) PPV is used to provide the highest level of protection.

Noise Impacts

In conformance with the Downtown Strategy 2040 FEIR, the project would be required to be constructed in accordance with General Plan policies and Zoning Ordinance requirements. Impacts as a result of noise would be less than significant with mitigation incorporated and implementation of the identified Standard Permit Conditions, 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. As defined by General Plan Policy EC-1.2, a substantial increase would occur if: a) Noise increases at sensitive receptors would increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or or b) Noise increases at noise sensitive receptors would increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.

General Plan Policy EC-1.1 defines what the City considers to be "Normally Acceptable" noise levels for various land uses. In relation to the project, exterior noise exposure levels of 60 DBA DNL and 70 DBA DNL are considered "Normally Acceptable" for surrounding residential and commercial uses, respectively.

To determine the effect of project-generated traffic on sensitive receptors in the project vicinity, the existing peak hour trips at four intersections (Third Street/Santa Clara Street, Fourth Street/East Santa Clara Street, Third Street/San Fernando Street, and Fourth Street/San Fernando Street) 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, the project's contribution to the overall noise level was estimated to be one dBA DNL or less along each roadway segment. The proposed project is part of planned growth in the Downtown Strategy 2040 which analyzed the traffic noise increase from build out of the plan. Additionally, Table 3.12-6 of the Downtown Strategy FEIR provides a summary of all affected intersections located within the downtown. Noise levels would increase substantially (e.g., three dBA DNL or more) along segments of Santa Clara Street, Autumn Street, 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. While the project site is located along East Santa Clara Street, it is not located along an identified affected intersection such as Montgomery Street and Santa Clara Street or Autumn Street and Santa Clara Street. As a result, implementation of the proposed project would result in a less than significant traffic noise impact in the vicinity of the project site.

Mechanical Equipment

In compliance with General Plan Policy EC-1.3, noise levels from new non-residential land uses are required to 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.

Based on the plans provided by the applicant, mechanical equipment is proposed along the western edge of the fifth floor and near the center of the site and along the southeastern edge on the roof. At the time the analysis was completed, no specific details on the mechanical equipment were available.

Heating, Ventilation, and Air-Condition Units, Heat Pumps, Condensers, etc.

Mixed-use commercial buildings typically include heating, ventilation, and air-conditioning (HVAC) units, heat pumps, condensers, etc. which generate noise levels ranging from 56 to 66 dBA at a distance of three feet. Assuming the worst-case scenario, up to eight units could operate simultaneously at any given time, generating noise levels up to 75 dBA at a distance of three feet. The fifth floor would be located nearest to adjacent future noise-sensitive receptors of the Hotel Clariana Expansion and Clariana Phase II developments, approximately five feet from the shared property line. At this distance, noise levels would be up to 71 dBA L_{eq} and up to 77 dBA DNL (assuming the equipment runs continuously and would not include noise attenuation). The City's 55 dBA DNL threshold would be exceeded. Since the Hotel Clariana Expansion and Clariana Phase II developments would be the nearest future noise-sensitive receptor, residents of the adjacent future development would not be subject to General Plan Policy EC-1.2. Future residences are not subject to the existing ambient noise environment since General Plan Policy EC-1.2 relates to permanent noise increase.

Emergency Diesel Generator

The project is proposing a 100-kW emergency diesel generator powered by a 134 HP diesel engine on the southern portion of the roof, approximately 20 feet from the southern property line, which

would be shared with the nearest residential use. Emergency generators are typically tested monthly for one hour between 7:00 AM and 10:00 PM. Generators of this size typically generate noise levels up to 87 dBA at a distance of 23 feet. For purposes of assessing the worst-case scenario, it was assumed that no noise attenuation from mechanical screening is proposed. Noise levels could be reduced by eight dBA with sufficient noise attenuation. Hourly average noise levels at the nearest residential property line with no noise attenuation would range from 80 to 88 dBA L_{eq}. The day-night average noise level would range from 66 to 74 dBA DNL (depending on noise control features).

Noise levels from mechanical equipment could exceed the City's 55 dBA DNL threshold at the property lines of future noise-sensitive adjacent to the southern boundary of the project site. The nearest existing residential use would be located approximately 70 feet south of the project site and would not result in a permanent noise level increase of three dBA DNL or more. Therefore, noise levels from the mechanical equipment would potentially exceed the City's 55 dBA DNL threshold at property lines shared with existing and planned noise-sensitive residential uses.

Impact NOI-1: Mechanical equipment for the project has the potential to exceed the 55 dBA DNL threshold defined in General Plan Policy EC-1.3 by 11 to 19 dBA DNL (depending on noise control features) at adjacent noise-sensitive residential land uses.

Mitigation Measure

In accordance with General Plan Policies EC-1.2 and EC-1.3, the following mitigation measure is included to reduce impacts to adjacent noise-sensitive land uses from mechanical equipment.

MM NOI-1.1: A detailed acoustical study shall be prepared by a qualified acoustical engineer prior to the issuance of any building permits to evaluate the potential noise generated by building mechanical equipment and demonstrate the necessary noise control to comply with the City's threshold of 55 dBA DNL at property lines shared with noise-sensitive residential land uses, as defined in General Plan Policy EC-1.3. Noise control features such as acoustical enclosures and barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL threshold. The acoustical study and recommended measures to demonstrate compliance with General Plan Policy EC-1.3 shall be submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement (PBCE) or Director's designee for review and approval prior to issuance of any building permits.

With implementation of Mitigation Measure NOI-1.1, this potential operational noise impact from mechanical equipment would be less than significant.

Truck Loading and Unloading

As proposed, a truck loading and unloading zone would be located at the ground level near the rear of the building. As the loading zone would be shielded by the building, truck loading and unloading activities would not generate noise levels exceeding the City's 55 dBA DNL threshold.

Construction Noise Impacts

Based on the 2018 measurements (LT-1 and LT-2), ambient noise levels at the noise-sensitive receptors in the project vicinity range from 55 to 80 dBA L_{eq} during daytime hours. The project is estimated to be constructed over a period of 18 months.

Construction activities generate considerable amounts of noise, especially during earth-moving activities when heavy equipment is used. Construction activities associated with the project would include demolition of the existing buildings, excavation/grading, trenching/foundations, utilities, and building construction. Pile driving is not proposed. Instead, cast in drilled hole piles (CIDH) would be used for the foundation of the proposed building.

For each phase, the worst-case hourly average noise level was estimated at the property line of each surrounding land use. Table 3.6-2 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 3.6-2: Estimated Construction Noise Levels at Nearby Land Uses

Phase of Construction	Calculated Hourly Average Noise Levels, L_{eq} (dBA)									
	Ambient Noise levels = 55 to 80 dBA L_{eq}									
	West Existing Commercial (25 feet)		South Future Residents/Hotel and Existing Commercial (70 feet)		North Future Residential and Existing Commercial (145 feet)		Northeast Future Residential[1] (205 feet)		City Hall (135 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?	dBA	Exceed Ambient Levels by five dBA or more?
Demolition	95	**Yes**	86	**Yes**	79	No	76	No	80	No
Site Preparation	93	**Yes**	84	No	77	No	74	No	78	No
Grading/ Excavation	94	**Yes**	85	**Yes**	79	No	76	No	80	No
Trenching/ Foundation	91	**Yes**	82	No	76	No	73	No	77	No
Building - Exterior	92	**Yes**	83	No	77	No	74	No	78	No
Building - Interior	86	**Yes**	77	No	71	No	68	No	71	No
Paving	91	**Yes**	82	No	75	No	72	No	76	No

Notes: The distance is measured from the center of the construction site to adjacent uses.
There are existing residences (Legato Apartments at 136-140 East Santa Clara Street) located along the inner western leg of the proposed building. As these residences are located within 500 feet and project construction would last for a period of more than 12 months, the project would be required to implement Mitigation Measure NOI-2.1 as discussed below.
[1]While 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.

As shown in the table above, ambient levels at the nearby land uses would be exceeded by five dBA L_{eq} during different phases of construction. 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 (per General Plan Policy EC-1.7).

Impact NOI-2: Construction noise would exceed the City thresholds defined in General Plan Policies EC-1.2 and EC-1.7 of an increase in ambient noise levels by five dBA or more for a period of more than one year.

Mitigation Measure

Consistent with the Downtown Strategy 2040 FEIR and the Municipal Code, the proposed project would be required to implement the following measures during all phases of demolition and project construction.

MM NOI-2.1: Prior to the issuance of any grading or demolition permits, 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 during construction to reduce noise impacts on neighboring residents and other noise-sensitive uses. The noise logistic plan shall be submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement (PBCE) or Director's designee prior to the issuance of any grading or demolition permits.

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

- Construction will be limited to the hours 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 the City of San José PBCE 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 identified Mitigation Measure NOI-2.1, the proposed project would have a less than significant construction noise impact.

Per the Downtown Strategy 2040 FEIR, build out of the Downtown Strategy 2040 would result in a significant unavoidable impact at existing noise-sensitive land uses adjacent to segments of Santa Clara Street, Autumn Street, 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 due to substantial increases in traffic noise. The project site is not located along any of the identified affected intersections mentioned in the Downtown Strategy FEIR and is part of planned growth in the Downtown Strategy 2040. In accordance with General Plan Policies EC-1.2 and EC-1.3, the project would implement Mitigation Measure NOI-1.1 to reduce operational noise impacts to adjacent noise-sensitive land uses from mechanical equipment. With implementation of Mitigation Measure NOI-2.1, the project would result in a less than significant construction noise impact. **[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?

Project construction could generate perceptible vibration when heavy equipment or impact tools (e.g., jackhammers, hoe rams) are used. Per General Plan Policy EC-2.3, a continuous vibration limit of 0.08 inch/sec PPV will be used to minimize the potential for cosmetic damage to sensitive historic structures, and a continuous vibration limit of 0.2 inch/sec PPV will be used to minimize damage at buildings of normal conventional construction.

Jackhammers typically generate vibration levels of 0.035 in/sec PPV and drilling typically generates vibration levels of 0.09 in/sec PPV at a distance of 25 feet. Typical vibration levels that could be expected from construction equipment at 25 feet is summarized below in Table 3.6-3.

Table 3.6-3: Typical Vibration Levels from Construction Equipment at 25 Feet				
Equipment		**PPV at 25 feet (in/sec)**	**Minimum Distance to Meet 0.08 in/sec PPV (feet)**	**Minimum Distance to Meet 0.2 in/sec PPV (feet)**
Clam Shovel Drop		0.202	59	26
Hydromill	in soil	0.008	4	2
	in rock	0.017	7	3
Vibratory Roller		0.210	61	27
Hoe Ram		0.089	28	13
Large Bulldozer		0.089	28	13
Caisson Drilling		0.089	28	13
Loaded Trucks		0.076	24	11
Jackhammer		0.035	12	6
Small Bulldozer		0.003	2	<1
Source: Transit Noise and Vibration Impact Assessment Manual, Federal Transit Administration, Office of Planning and Environment, U.S. Department of Transportation, September 2018, as modified by Illingworth & Rodkin, Inc., September 2021.				

As shown in the table above, heavy vibration-generating construction equipment could produce vibration levels of 0.08 in/sec PPV or more at historic buildings within 60 feet of the project site and of 0.2 in/sec PPV or more at nonhistorical buildings within 26 feet of the project site.

As mentioned previously, the project site is located within the San José Commercial District. The buildings adjoining the project site to the west (e.g., 136 East Santa Clara Street, 126 East Santa Clara Street, 118 East Santa Clara Street, and 100 East Santa Clara Street) are contributors to the district. Additionally, the building located north of the site at 105 East Santa Clara Street is also historic. All other buildings surrounding the site are buildings of conventional construction and would be subject to the 0.2 in/sec PPV threshold. Table 3.6-4 below provides a summary of construction equipment vibration levels at nearby historic and building of conventional construction.

Table 3.6-4: Impacts to Nearby Buildings Surrounding the Project Site							
Equipment		**Vibration Levels Nearby (in/sec PPV)**					
		Historic Buildings[1] (5 feet west)	**Adjacent Future Residential Building (5 feet south)**	**Historic Building[2] (40 feet west)**	**Historic Building[3] (80 feet west)**	**Historic Building[4] (95 feet northwest)**	**City Hall (80 feet east)**
Clam Shovel drop		**1.186**	**1.186**	**0.120**	0.056	0.047	0.056
Hydromill	soil	0.047	0.047	0.005	0.002	0.002	0.002
	rock	**0.100**	0.100	0.010	0.005	0.004	0.005
Vibratory Roller		**1.233**	**1.233**	**0.125**	0.058	0.048	0.058
Hoe Ram		**0.523**	**0.523**	0.053	0.025	0.020	0.025
Large bulldozer		**0.523**	**0.523**	0.053	0.025	0.020	0.025

Table 3.6-4: Impacts to Nearby Buildings Surrounding the Project Site						
Equipment	**Vibration Levels Nearby (in/sec PPV)**					
	Historic Buildings[1] (5 feet west)	**Adjacent Future Residential Building (5 feet south)**	**Historic Building[2] (40 feet west)**	**Historic Building[3] (80 feet west)**	**Historic Building[4] (95 feet northwest)**	**City Hall (80 feet east)**
Caisson drilling	**0.523**	**0.523**	0.053	0.025	0.020	0.025
Loaded trucks	**0.446**	**0.446**	0.045	0.021	0.018	0.021
Jackhammer	**0.206**	**0.206**	0.021	0.010	0.008	0.010
Small bulldozer	0.018	0.018	0.002	0.001	0.001	0.001

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

Note: The vibration levels were estimated under the assumption that each piece of equipment would operate along the nearest boundary of the project site. This represents the worst-case scenario.

[1] At 126 and 136 East Santa Clara Street.

[2] At 118 East Santa Clara Street.

[3] At 100 East Santa Clara Street.

[4] At 105 East Santa Clara Street.

The 0.08 in/sec PPV threshold would be exceeded for historic buildings located within 60 feet of the site, and the 0.2 in/sec PPV would be exceeded for buildings of conventional construction within 25 feet of the project site.

Impact NOI-3: Construction vibration levels would exceed the City's threshold of 0.08 in/sec PPV threshold for historic buildings within 60 feet and the 0.2 in/sec PPV threshold for conventional construction buildings within 25 feet of the project site, as provided in General Plan Policy EC-2.3.

Mitigation Measures

The Downtown Strategy 2040 FEIR recognized that construction vibration for future projects in downtown could exceed these thresholds and that proposed projects would be required to complete project-specific analysis for future projects to analyze and reduce vibration impacts when they are estimated to exceed the City thresholds provided in General Plan Policy EC-2.3. As shown in Table 3.6-4 above, construction vibration levels are anticipated to exceed City thresholds for both existing sensitive structures and planned buildings of conventional construction. Therefore, the proposed project would be required to implement the following mitigation measure to reduce vibration impacts below City thresholds during all phases of demolition and 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 the City of San José Department of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer (HPO) for review and approval prior to issuance of any 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.) and the distance from adjacent structures (both sensitive historic and building of conventional construction, as applicable) to which the equipment is expected to operate shall be submitted to the Director of the City of San José PBCE 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.
- Based on review of the Plan, demolition, earth-moving, and ground impacting operations may be required to be phased so as not to occur during the same time period to reduce vibration levels to levels that would minimize potential vibration impacts to adjacent buildings.
- Use of heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent building (where possible).
- Document conditions at all historic structures located within 60 feet of construction and at all other buildings located within 25 feet 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 60 feet of any construction activities identified as sources of vibration levels that could damage surrounding buildings.
    - Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 60 feet of construction activities and all other buildings within 25 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 approach the limits.
- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities and during other construction phases, as necessary to reduce vibration limits to acceptable levels to protect the surrounding buildings.
- If vibration levels approach limits identified in the Plan, construction shall be suspended, and contingency measures shall be implemented to lower vibration or secure affected 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 survey on the structure after vibration-generating construction activities where either monitoring has indicated high levels or there have been 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. The survey shall be submitted to the Director of the City of San José PBCE, or Director's designee, and the City's HPO.

MM NOI-3.2: Prior to the issuance of any demolition, grading, or building permits, whichever occurs earliest, the project applicant shall prepare and implement a Historical Resources Protection Plan (HRRP) that provides measures and procedures to protect nearby historic resources from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage).

The HRRP shall be prepared by a qualified Historic Architect and reviewed and approved by the HPO or equivalent of the City of San José PBCE prior the issuance of any demolition, grading, or building permits, whichever occurs earliest. The project applicant shall ensure the construction contractor follows the HRRP while working near these historic resources. At a minimum, the plan shall include:

- Guidelines for operation of construction equipment adjacent to historical resources;

- Means and methods to reduce vibrations levels from excavation and construction;
- Requirements for monitoring and documenting compliance with the HRRP; and
- Education/training of construction workers about the significance of the adjacent historical resources.

MM NOI-3.3: The Historic Architect shall establish a "Monitoring Team" comprised of at least one qualified Historic Architect and one structural engineer for the duration of the site monitoring process. The Monitoring Team shall monitor the adjacent historical resources and any changes to existing conditions shall be reported, including, but not limited to, expansion of cracks, new spalls, or other exterior deterioration during construction phase and any changes to the existing conditions shall be reported.

In addition, the Monitoring Team shall prepare a site visit report documenting all site visits. The Monitoring Team shall submit the site visit reports and documents to the City's Historic Preservation Officer no later than one week after each reporting period (or as defined by the HRRP). The City's Historic Preservation Officer shall determine the frequency of the reporting period. The structural engineer shall consult with the Historic Architect if any problems related to the character-defining features of the historic resources occur. The Director of the City of San José PBCE or the Director's designee and the City's HPO may request any additional number of site visits at their discretion.

If, in the opinion of the Monitoring Team, substantial adverse impacts related to construction activities are found during construction, the Monitoring Team shall inform the project applicant (or the applicant's designated representative responsible for construction activities), the Director of the City of San José PBCE or the Director's designee, and the HPO of the potential impacts immediately. The project applicant shall implement the Monitoring Team's recommendations for corrective measures, including halting construction in situations where construction activities would cause immediate damage to historic resources. In the event of damage to a nearby historic resource during construction, the project applicant shall ensure that repair work is performed in compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and shall restore the character-defining features in a manner that does not affect the structure's historic status. The Monitoring Report shall also include, but is not limited to, the following:

- Summary of the construction progress;
- Identification of substantial adverse impacts related to construction activities;
- Problems and potential impacts to the historical resources during construction activities;

- Recommendations to avoid any potential impacts;
- Actions taken by the project applicant in response to the problem;
- Progress and the level of success in meeting the applicable Secretary of the Interior's Standards for the Treatment of Historic Properties for the project as noted above for the character-defining features, and in preserving the character-defining features of nearby historic properties; and
- Inclusion of photographs to explain and illustrate progress.
- In addition, the Monitoring Team shall submit a final document associated with monitoring and repairs after completion of the construction activities to the Director of the City of San José PBCE or the Director's designee and the HPO of the City of San José PBCE prior to the issuance of any Certificate of Occupancy (temporary or final).

With implementation of Mitigation Measures NOI-3.1 to NOI-3.3, the project would have a less than significant construction vibration impact on historic and buildings of conventional construction. **[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 and is outside the 60 dBA CNEL contour line. The project site is not located within the AIA, as defined by the Norman Y. Mineta San José International Airport's CLUP. However, it is located outside the City's projected 2037 60 dBA CNEL/DNL noise contour. 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. Additionally, the CLUP includes noise policies and contains standards for projects within the vicinity of the Norman Y. Mineta San José International Airport. Policy N-2 of the CLUP states that transient lodging (i.e., motels and hotels) is generally acceptable in 55 to 60 CNEL noise environments. The project site is located outside the 60 dBA CNEL/DNL noise contour; thus, it is in a generally acceptable noise environment and noise impacts from aircraft operations would be less than significant. **[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:

- Miro Tower
- Icon-Echo Mixed-Use
- Hotel Clariana Expansion
- Fourth Street Housing
- Fountain Alley Mixed-Use[34]
- Fountain Alley Office
- 19 North Second Street
- Sixth Street Project
- 27 West
- Eterna Tower

The existing commercial buildings, existing and future residences of Miro Tower, and City Hall would have direct line-of-sight to three construction sites (e.g., Icon-Echo Mixed-Use, Hotel Clariana, and the proposed project) for several years.

The Downtown Strategy 2040 FEIR concluded that compliance 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. As discussed in the analysis above, Mitigation Measures NOI-1.1, NOI-2.1, NOI-3.1, NOI-3.2, and NOI-3.3 are proposed to achieve compliance with these General Plan Policies, which are the City's thresholds for noise impacts. As for the proposed project, each individual project listed above is required to include measures, as applicable, to reduce construction noise impacts below City thresholds. With implementation of the identified mitigation measures and Standard Permit Conditions, the construction noise levels from individual projects would be reduced to the extent possible during construction of each individual project, including the proposed 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 interior and exterior noise levels for proposed projects.

City General Plan Policy EC-1.1 includes a standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals of 45 dBA DNL. As the project proposes commercial land uses, this policy is not applicable. Therefore, the following analysis focuses on compliance with City standards for exterior noise levels.

Future Exterior Noise Levels

The City's acceptable exterior noise level standard is 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

[34] Fountain Alley Mixed-Use is also known as Energy Hub.

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). While the project proposes private outdoor balconies on the upper floors of the building, private balconies would not be subject to the City's exterior noise thresholds as they are not considered as common-use outdoor area.

Based on LT-1 and LT-2, existing ambient noise levels in the immediate project area range from 55 to 80 dBA L_{eq} during the day and 51 to 68 dBA L_{eq} at night.

Two amenity decks are proposed on the fifth floor. One amenity deck is proposed at the rear of the site, approximately 175 feet from the East Santa Clara Street centerline. Due to the location and elevation of this rooftop amenity deck from East Santa Clara Street, employees generated by the project would be adequately shielded (up to 20 dBA) from the surrounding traffic noise. Therefore, future exterior noise levels at the rear rooftop amenity deck would be below 70 dBA DNL towards the center of the amenity deck.

The second rooftop amenity deck is proposed along the northern façade of the building (adjacent to East Santa Clara Street). The center of the amenity deck would be approximately 50 feet from the East Santa Clara Street roadway. Due to the location and elevation of this amenity deck from East Santa Clara Street, the future exterior noise levels at the amenity deck would be below 70 dBA DNL. Therefore, the proposed project would be consistent with General Plan Policy EC-1.1.

Therefore, the future noise levels at the centers of the common outdoor use areas associated with the proposed project would meet the City's normally acceptable threshold of 70 dBA DNL for commercial land uses.

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3.7 TRIBAL CULTURAL RESOURCES

The archaeological discussion is based upon a Literature Search completed for a nearby project (Hotel Clariana Expansion Project, File No. H17-059). A copy of the Literature Search is on file at the Department of Planning, Building and Code Enforcement with appropriate credentials.

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 registered with the NAHC 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.

3.7.1.2 *Existing Conditions*

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 3000 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, located approximately 0.6 miles west of the project site.

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 a less than significant tribal cultural resources impact with mitigation incorporated, as described below.

3.7.2.1 *Project Impacts*

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.

Guadalupe River, located approximately 0.6 miles west of the project site, is considered a highly sensitive area for prehistoric and archaeological deposits including tribal cultural objects. Based on a literature search prepared for a nearby project[35], there is high potential for historic-era buried deposits to be uncovered during construction activities and a low to moderate potential for buried Native

[35] Holman & Associates, Inc. *Archaeological Literature Search (Hotel Clariana)*. October 2018.

American archaeological deposits. No documented tribal cultural features, including sites, features, places, cultural landscapes or sacred places have been identified based on available information.

Assembly Bill 52 requires lead agencies to complete formal consultations with California Native American tribes 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. 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 Report within the City of San José. At the time of preparation of this SEIR, Tamien Nation and Ohlone Tribe were the only two tribes that sent formal requests for notification of projects in the City of San José.

Accordingly, AB 52 notification was sent electronically via email to the Ohlone Tribe representative on Tuesday, July 13, 2021 and AB 52 notification was sent electronically via email and via certified mail to Tamien Nation Tribal representatives on July 13, 2021. No request for consultation was received in response to AB 52 notification from representatives of the Ohlone Tribe. However, representatives of the Tamien Nation confirmed receipt of the certified mailing on July 16, 2021, and the City received a formal request for consultation on August 16, 2021.

In response to Tamien Nation representatives' request for consultation, multiple consultation meetings were held between September 20, 2021 and March 10, 2022., and due to the close proximity of the proposed project to a known village site mitigation measures, drafted in consultation with representatives of the Tamien Nation, are required to be implemented to reduce potential impacts to tribal cultural resources:

Impact TCR-1: Based on Assembly Bill (AB) 52 Consultation with Tamien Nation and the City of San José, the project area is highly sensitive for previously undocumented tribal cultural resources due to proximity to a Native American village site.

Mitigation Measure

In addition to Mitigation Measures CUL-1.1 (monitoring) and CUL-1.2 (evaluation) previously identified in *Section 3.3, Cultural Resources* the project would be required to comply with the following mitigation measure to avoid potential impacts to TCRs.

MM TCR-1.1: **Tribal Cultural Awareness Training.** Prior to issuance of any demolition or grading permit, whichever occurs first, the project applicant shall be required to submit evidence that a Cultural Awareness Training will be provided to construction personnel prior to ground disturbance. The training shall be facilitated by a qualified archaeologist 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.

Although not required by AB 52, in addition to the 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 Draft SEIR on August 24, 2021. No requests for consultation were received by the City in response to this notification.

With implementation of the Standard Permit Conditions for Subsurface Cultural Resources and Human Remains provided in *Section 3.3, Cultural Resources*, and Mitigation Measures CUL-1.1, CUL-1.2, and TCR-1, potential impacts to TCRs would be reduced to less than significant. **[New Less Than Significant Impact with Mitigation Incorporated (Less than Significant Impact)]**

3.7.2.2 *Cumulative Impacts*

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

The geographic area for cumulative impacts to TCRs is the surrounding area (within 1,000 feet of the proposed 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 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]). 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 would construct a four- to six-story mixed-use, U-shaped building (approximately 75,251 square feet) on a 0.34-acre site in downtown San José, which is currently developed. 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 growth that could significantly affect the physical environment. The project would increase retail and office development on an underutilized site which would increase the employee population in the City. However, the proposed project is part of the planned growth in Downtown Strategy 2040, and the project would not require the expansion of utilities or roads.

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 develop commercial and retail space on an infill site in an urbanized area of the City of San José. 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 requires 75 percent diversion of nonhazardous construction and demolition debris for projects that quality under CALGreen, which is more stringent than the state requirement of 65 percent (San José Municipal Code Section 9.10.2480).

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 project 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 the project would be constructed in compliance with CALGreen requirements, the City of San José Private Sector Green Building Policy (Council Policy 6-32) and Green Building Ordinance and would also be required to comply with the City's Reach code and has committed to enroll in SJCE's default program (GreenSource), which currently provides 60 percent GHG emission-free electricity, and this percentage will increase in the future. The project would be constructed consistent with City's Post-Construction Urban Runoff (Council Policy 6-29) and the City's Grading Ordinance to avoid impacts to waterways. The project site is located in the downtown area which would provide future 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. For these reasons, 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:** By demolishing the interior, roof, and west and south walls of the building at 142-150 East Santa Clara Street, the project would cause a substantial adverse change in the significance of a designated City Landmark.
- **Land Use and Planning:** The proposed project would conflict with existing land use policies and regulations adopted for the purpose of avoiding or mitigating an environmental effect.

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 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 all relevant strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy Plan by providing commercial development in the Downtown Strategy Plan area on infill sites along transit corridors to foster transit use; contribute to a reduction of Citywide vehicle miles traveled by focusing commercial development in an area well served by transit and in proximity to services and housing within the Downtown Strategy Plan area; and; strengthen downtown as a regional job,

entertainment, and cultural destination and as the symbolic heart of San José.

2. Enter into a lease with the San José Department of Transportation for a nearby parking garage to rent parking stalls, which allows for a flexible long-term solution fostering long-term pedestrian utilization in a Focused Growth area of downtown.

3. Create a commercial development project in the Downtown Focused Growth area to further the San José 2040 General Plan goal of creating a central identity for San José.

4. Construct a commercial development that is marketable and produces a reasonable return on investment for the project sponsor and its investors and is able to attract investment capital and construction financing.

5. Create a modern Class A office project to attract tenants and support the City's economic development goals.

6. Promote the City's goal of a multi-modal future by enhancing existing pedestrian networks, enhancing the existing cycling network and providing secure bike storage and shower facilities.

7. Adding economic development growth in a transit centric location served by various modes of public transportation such as bikeways, VTA light rail and buses, and planned BART extension.

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.

Alternatives are discussed that could reduce the following identified significant and unavoidable impacts associated with the project as proposed.

- **Cultural Resources:** By demolishing the interior, roof, and west and south walls of the building at 142-150 East Santa Clara Street, the project would cause a substantial adverse change in the significance of a designated City Landmark.
- **Land Use and Planning:** The proposed project would conflict with existing land use policies and regulations adopted for the purpose of avoiding or mitigating an environmental effect.

Significant impacts that would be reduced to less than significant with mitigation include:

- **Air Quality:** Construction activities associated with the proposed project would expose the project MEIs to cancer risk and $PM_{2.5}$ emissions in excess of BAAQMD significance thresholds of 10 cases per one million for cancer risk and 0.3 $\mu g/m^3$ for $PM_{2.5}$, respectively.
- **Biological Resources:** Tree removal associated with construction of 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 MBTA and CDFW Code Sections 3503, 3503.5, and 3800.

- **Cultural Resources:** Construction activities on-site could impact previously undocumented historic-era and Native American archaeological resources, as the site is documented as being highly sensitive for historic-era archaeological resources and low to moderately sensitive for Native American archaeological resources.
- **Hazards and Hazardous Materials:** Construction activities associated with the proposed project could expose construction workers, the public, neighboring properties and the environment to hazardous materials in the form of impacted soil, soil vapor, and/or groundwater contamination above RWQCB environmental screening levels, due to historical use of the site. Fuel oil used for the boiler that was present on-site could have been stored on-site in above-ground and/or below-ground storage tanks, and the former laundry, auto repair, cleaning and drying, dry cleaning, and printing businesses on-site could have used and/or stored petroleum-based solvents, organic solvents, dry cleaning solvents, and/or volatile organic compounds.
- **Noise and Vibration:** Mechanical equipment for the project has the potential to exceed the 55 dBA DNL threshold defined in General Plan Policy EC-1.3 by 11 to 19 dBA DNL (depending on noise control features) at adjacent noise-sensitive residential land uses.
- **Noise and Vibration:** Construction noise would exceed the City thresholds defined in General Plan Policies EC-1.2 and EC-1.7 of an increase in ambient noise levels by five dBA or more for a period of more than one year.
- **Noise and Vibration:** Construction vibration levels would exceed the City's threshold of 0.08 in/sec PPV threshold for historic buildings within 60 feet and the 0.2 in/sec PPV threshold for conventional construction buildings within 25 feet of the project site, as provided in General Plan Policy EC-2.3.
- **Tribal Cultural Resources:** Based on AB 52 Consultation with Tamien Nation and the City of San José, the project area is highly sensitive for previously undocumented tribal cultural resources due to proximity to a Native American village site.

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." (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 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.)

The City considered the following alternatives to the proposed project:

- Location Alternative (Considered but rejected)
- No Project – No Development Alternative
- Preservation Alternative 1: Relocation of 142-150 East Santa Clara Street Building (Considered but rejected)
- Preservation Alternative 2: Complete Retention of the City Landmark Building at 142-150 East Santa Clara Street

7.3.1 Project Alternatives

7.3.1.1 *Considered & Rejected*

In accordance with CEQA Guidelines Section 15126.6(c), an EIR should identify alternatives that were considered for analysis but rejected as infeasible and briefly explain the reasons for their rejection. According to the CEQA Guidelines, the following factors may be used to eliminate alternatives from detailed consideration: the alternative's failure to meet most of the basic project objectives, the alternative's infeasibility, or the alternative's inability to avoid significant environmental impacts. Alternatives that have been considered and rejected as infeasible include:

Location Alternative (Considered but rejected)

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".[36] The proposed project would construct a four- to six-story mixed-use, U-shaped building (approximately 75,251 square feet) on an approximately 0.34-acre site in the downtown area. The identified significant impacts that cannot be mitigated to a less than significant level are cultural resources (impacts to a designated City Landmark) and land use and planning. Under this alternative, all construction-related impacts (air quality, noise and vibration, and disruption of nesting birds) would remain the same if sensitive receptors were located within 1,000 feet of the site and if trees are proposed for removal. The Downtown Strategy 2040 FEIR documents that there are reported hazardous materials spills and releases within the downtown area. A significant impact on hazards and hazardous materials could only be avoided if the alternative location did not have soil and groundwater contamination, which is common throughout the Downtown area due to previous uses. If the project were proposed on an alternate site within the downtown, it is likely that existing building(s) on that site would need to be demolished to accommodate the proposed development because there are limited undeveloped parcels downtown. San José's downtown core is located within the historical boundary of the City of San José as indicated on the Thomas White 1850 map. Therefore, it would be difficult to avoid impacts to historical resources since the downtown area contains a concentration of older buildings developed in the late 19th and early 20th centuries and downtown contains many designated historic districts and landmarks. Even if the project were developed on another site containing a historic resource and incorporated that resource as proposed through demolition of all but the façade of the building(s), the significant impact to cultural resources would remain the same as the proposed project. Under the Location Alternative, the project could result in the displacement of existing land uses and trigger

[36] CEQA Guidelines Section 15126.6(f)(2)(A)

secondary effects, such as those associated with the displacement of existing businesses and/or residents. In addition, the project applicant is already in possession of the project site and that investment precludes the purchase of another site of comparable size and physical characteristics on which the proposed uses could be constructed. For these reasons, this alternative was not considered further.

Preservation Alternative 1: Relocation of 142-150 East Santa Clara Street Building (Considered but rejected)

The building located at 142-150 East Santa Clara Street is a designated City Landmark and is listed in the NRHP and CRHR as a contributor to the San José Commercial District. It is also individually listed in the CRHR and is eligible for individual listing in the NRHP. Under this alternative, the building at 142-150 East Santa Clara Street would be relocated outside of the San José Commercial District. The project would be built as proposed, but relocating the building would remove the historical resource from the project site and the development would not incorporate the two historic street-facing facades of the building at 142-150 East Santa Clara Street.

In general, historic buildings can be relocated in many circumstances, depending on structural condition, building materials, location, and the availability of a receiver site with a compatible historic context. There are 21 surface parking lots within the downtown area which may be suitable for relocation of the City Landmark on the project site. Of the 21 identified sites, 10 sites maintain current planning project approvals or applications for new development on those sites are being processed by the City. Nine sites are associated with existing businesses and would not be available for redevelopment because they are necessary for operations. A potential receiver site at the northwest corner of West St. John Street and Notre Dame Avenue would not be suitable because the site is adjacent to a freeway on-ramp on the edge of the downtown area primarily surrounded by single-story industrial buildings with limited visibility and access. The setting of this site is not consistent with the existing setting of the project site which is located on the primary roadway through downtown in a mixed residential/commercial area and maintains a late 19th and early 20th century historic downtown context. The site at the southeast corner of West St. John Street and Market Street has a preliminary permit application on file indicating the site is likely planned for the future development. Furthermore, relocation of the two-story masonry building to this location may not be feasible due to the physical constraints of the light rail tracks and narrow streets. Therefore, it is likely that there would still be a significant impact to cultural resources (impacts to a designated City Landmark) under this alternative because the location, setting, feeling and association related to the historic integrity of the building would be impaired. The building would no longer be listed in the NRHP as a Contributing Building if it were relocated outside the San José Commercial District and an alternative location without a compatible historic context would likely result in the delisting of the building in the NRHP and CRHR under this alternative. Therefore, this alternative would not be feasible due to the lack of sites available in the downtown core that could provide an appropriate setting to retain the historic significance and integrity of the City Landmark.

Under this alternative, there could still be a significant impact to cultural resources if the building was significantly damaged in the relocation process. The City Landmark has a building footprint of approximately 5,760 square feet. An engineer's report provided by the applicant states that the brick masonry building is not seismically sound and it is constructed with a party wall related to the adjacent building on East Santa Clara Street. As a result, it may not be feasible to relocate the

building without causing substantial damage to or collapse of the historic resource. This alternative would continue to conflict with the Historic Preservation Ordinance and General Plan policies adopted for the purpose of avoiding or mitigating impacts to historic resources. Furthermore, this alternative would still be required to implement all other mitigation measures and Standard Permit Conditions identified for the proposed project. All identified impacts, including those for construction air quality, biological resources, cultural resources, hazards and hazardous materials, noise and vibration, and tribal cultural resources would remain as major construction activities would still occur due to relocation of the City Landmark building and construction activities associated with the project.

This alternative would meet all of the project objectives: 1) to provide commercial development in the Downtown Strategy Plan area on infill sites along transit corridors because the site would no longer contain a designated City Landmark and the site would be considered more suitable for infill development; 2) to achieve a flexible long-term solution fostering long-term pedestrian utilization in a Focused Growth area of downtown; 3) to create a commercial development project in the Downtown Focused Growth area; 4) to construct a commercial development that is marketable and has the potential able to attract investment capital and construction financing; 5) to create a modern Class A office project to attract tenants and support the City's economic development goals; 6) to promote the City's goal of a multi-modal future; and 7) to add economic development growth in a transit centric location served by various modes of public transportation.

For the reasons stated above, this alternative would not be feasible due to the lack of feasible sites available in the downtown core that could provide an appropriate setting to relocate the City Landmark while retaining the historic significance and integrity of the City Landmark. Therefore, relocation of the building was not considered further.

Relocation of the building within the San José Commercial District was also considered, but all potential sites[37] have pending or approved development projects and are, therefore, unavailable as receiver sites. As such, an alternative which relocates the building within the San José Commercial District is also considered infeasible.

7.3.1.2 *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."

The No Project – No Development Alternative would retain the existing buildings on-site. While this alternative would have no significant impacts, this alternative would not meet any of the project objectives, nor would this alternative meet the City's goal and vison of encouraging job growth in the downtown area.

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,

[37] Available sites are defined as surface parking lots within the District.

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, the site contains a two-story masonry City Landmark building which requires the issuance of a Historic Preservation Permit and conformance with the Secretary of the Interior's Standards for Rehabilitation. The compatibility of any proposed development with the City Landmark in terms of size, scale, proportion, and massing would be assessed, which would limit development to an addition and also the height of the addition in order to retain the building's 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 Secretary of the Interior's Standards for Rehabilitation. However, future proposals may be comparable or greater in density and scale or greater than what is currently proposed or could proposed complete demolition of the building, assuming that any proposed development would seek to maximize the potential of the site consistent with development generally anticipated in the *Downtown* General Plan and *DC* Zoning District.

7.3.1.3 *Preservation Alternative 2: Complete Retention of the City Landmark Building at 142-150 East Santa Clara Street*

Under this alternative, the entirety of the City Landmark building at 142-150 East Santa Clara Street would be retained on-site and the remainder of the site would be redeveloped. This alternative would avoid the significant unavoidable impact to the City Landmark building because it would not alter the building itself.

The distance between the City Landmark building and the southern property line of 142-150 East Santa Clara Street is approximately 40 feet. This would leave insufficient space to provide the 12-foot drive aisle, bicycle parking, and back of house functions and utilities as proposed by the project if the south and west walls and the roof of the building were also retained. These functional aspects of the project would need to be reconfigured or relocated.

As proposed, the project would construct an approximately 75,251 square foot building with 63,461 square feet of office space and 11,790 square feet of below-grade retail. Retention of the entire City Landmark building would preclude inclusion of the below-grade retail space in this alternative and would reduce new office space by approximately 34,560 square feet.[38] Further reductions in the new office space may also be required to accommodate the back of house functions and utilities as noted above. With this alternative, the new office space would be reduced to less than 30,000 square feet. The existing nine residential units and approximately 5,760 square feet of retail space would remain in the City Landmark building. In order to comply with the Secretary of the Interior's Standards for Rehabilitation, an addition to the City Landmark building would need to be set back from the two street-facing facades on East Santa Clara Street and South Fourth Street and likely limited to one story. Due these constraints, minimal additional square footage could be achieved by increasing the

[38] The existing City Landmark building has a footprint of approximately 5,760 square feet. The project proposes six floors of office space in this location. The loss of square footage within the existing building footprint under this alternative would be 5,760 x 6 = 34,560.

building height without the potential of impacting the integrity of the City Landmark building or the San José Commercial district. In addition, the new construction on-site would still need to conform to all applicable design guidelines and standards.

Because the cultural resources impact to the building would be avoided, the land use impact from inconsistency with the Historic Preservation Ordinance and General Plan policies adopted for the purpose of avoiding or mitigating impacts to historic resources would also be avoided.

Construction impacts (air quality, noise and vibration, and disruption of nesting birds) would be lessened due to the smaller size of the project and reduction in demolition activities. Potential impacts resulting from the exposure to soil and/or groundwater contamination and potential to encounter undocumented historic-era and Native American archaeological resources and tribal cultural resources would be lessened (and possibly avoided) due to the elimination of the proposed below-grade retail. However, this alternative would still be required to implement all other mitigation measures and Standard Permit Conditions identified for the proposed project.

This alternative would continue to meet project objectives 2, 3, 6 and 7 to: achieve a flexible long-term solution fostering long-term pedestrian utilization in a Focused Growth area of downtown; to create a commercial development project in the Downtown Focused Growth area; to promote the City's goal of a multi-modal future; and to add economic development growth in a transit centric location served by various modes of public transportation, including a future BART station within 1,000 feet of the site. The site remains in a central downtown located in proximity to transit, new construction could still occur and the interior spaces of the City Landmark could be reworked to reactivate the building and make it more commercially viable.

This alternative would not meet project objective 1 to provide commercial development in the Downtown Strategy Plan area on an infill site along transit corridors because the site contains a designated City Landmark and would not be considered suitable for infill development. This alternative would likely not meet project objectives 4 and 5 to construct a commercial development that is marketable and has the potential able to attract investment capital and construction financing and to create a modern Class A office project because the City Landmark could constrain the ability to provide large, open floor plates and would reduce the size of the interior spaces.

7.3.2 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€(2)). The environmentally superior alternative is the No Project – No Development Alternative which would avoid all project impacts; however, this alternative would not meet any of the project objectives.

Beyond the No Project – No Development Alternative, Preservation Alternative 2: Complete Retention of the City Landmark Building at 142-150 East Santa Clara Street would be the environmentally superior alternative as it would avoid a significant impact a City Landmark building and would reduce the identified construction air quality and noise and vibration impacts due to the smaller size of the project and reduced demolition activities. In addition, potential impacts associated with exposure to soil and/or groundwater contamination and potential to encounter undocumented

historic-era and Native American archaeological resources and tribal cultural resources would be lessened (and possibly avoided) due to the elimination of proposed below-grade retail.

SECTION 8.0 REFERENCES

The analysis in this SEIR is based on the professional judgement and expertise of the environmental specialists preparing this document, based upon review of the site, surrounding conditions, site plans, and the following references:

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SECTION 9.0 LEAD AGENCY AND CONSULTANTS

9.1 LEAD AGENCY

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David Keyon, *Principal Planner*
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Shannon George, *Principal Project Manager*
Fiona Phung, *Project Manager*
Ryan Osako, *Graphic Artist*

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Sunnyvale, CA
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Hexagon Transportation Consultants, Inc.
Gilroy, CA
Traffic

HortScience | Bartlett Consulting
Pleasanton, CA
Arborist Report

Illingworth & Rodkin, Inc.
Cotati, CA
Air Quality and Noise

Page & Turnbull, Inc.
San Francisco, CA
Historic