

**NOTICE OF PREPARATION OF A  
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR THE  
SOUTH 4<sup>th</sup> STREET PROJECT**

FILE NO: H17-004  
PROJECT APPLICANT: 439 South 4<sup>th</sup> Street, LLC (Attn: Nelly Amas)  
APNs: 467-47-058 and 467-47-096

**Project Description:** A Site Development Permit to allow the applicant to demolish the existing buildings and hardscape on the project site and to construct a 25-story, 448,474-square-foot multi-family residential building. The project would provide up to 210 residential units. The proposed building would have a maximum height of 274 feet, and a floor area ratio (FAR) of approximately 18.7.

**Location:** The project site is located at 439 South 4<sup>th</sup> Street, on the west side of South 4<sup>th</sup> Street approximately 170 feet south of East San Salvador Street.

As the Lead Agency, the City of San José will prepare a Supplemental Environmental Impact Report (SEIR) for the project summarized above. The City welcomes your input regarding the scope and content of the environmental information that is relevant to your area of interest, or to your agency's statutory responsibilities in connection with the proposed project. If you are affiliated with a public agency, this EIR may be used by your agency when considering subsequent approvals related to the project.

A **joint community and environmental public scoping meeting** for this project will be held:

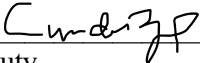
**When:** Monday, March 21, 2022 from 6:00 to 7:30 p.m.

**Where:** Via Zoom (see [www.sanjoseca.gov/activeeirs](http://www.sanjoseca.gov/activeeirs))

The project description, location, and probable environmental effects to be analyzed in the SEIR for the project can be found on the City's Active EIRs website at [www.sanjoseca.gov/activeeirs](http://www.sanjoseca.gov/activeeirs), including the SEIR Scoping Meeting information. According to State law, the deadline for your response is 30 days after receipt of this notice, and responses provided before the 30-day deadline are always welcome. The City will accept comments on the scope of the EIR until **5:00 p.m. on Friday, March 25, 2022**. If you have comments on this Notice of Preparation (NOP), please identify a contact person from your organization, and send your response via mail or email to:

City of San José, Department of Planning, Building and Code Enforcement  
Attn: Reema Mahamood, Environmental Project Manager  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San José, CA 95113-1905  
E-mail: [reema.mahamood@sanjoseca.gov](mailto:reema.mahamood@sanjoseca.gov)

Christopher Burton, Director  
Planning, Building and Code Enforcement

  
\_\_\_\_\_  
Deputy

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**February 2022**

***Introduction***

The purpose of an EIR is to inform decision makers and the general public of the environmental effects of a proposed project that an agency may approve. The EIR process is intended to provide information sufficient to evaluate a project and its potential for significant impacts on the environment; to examine methods of reducing adverse impacts; and to consider alternatives to the project.

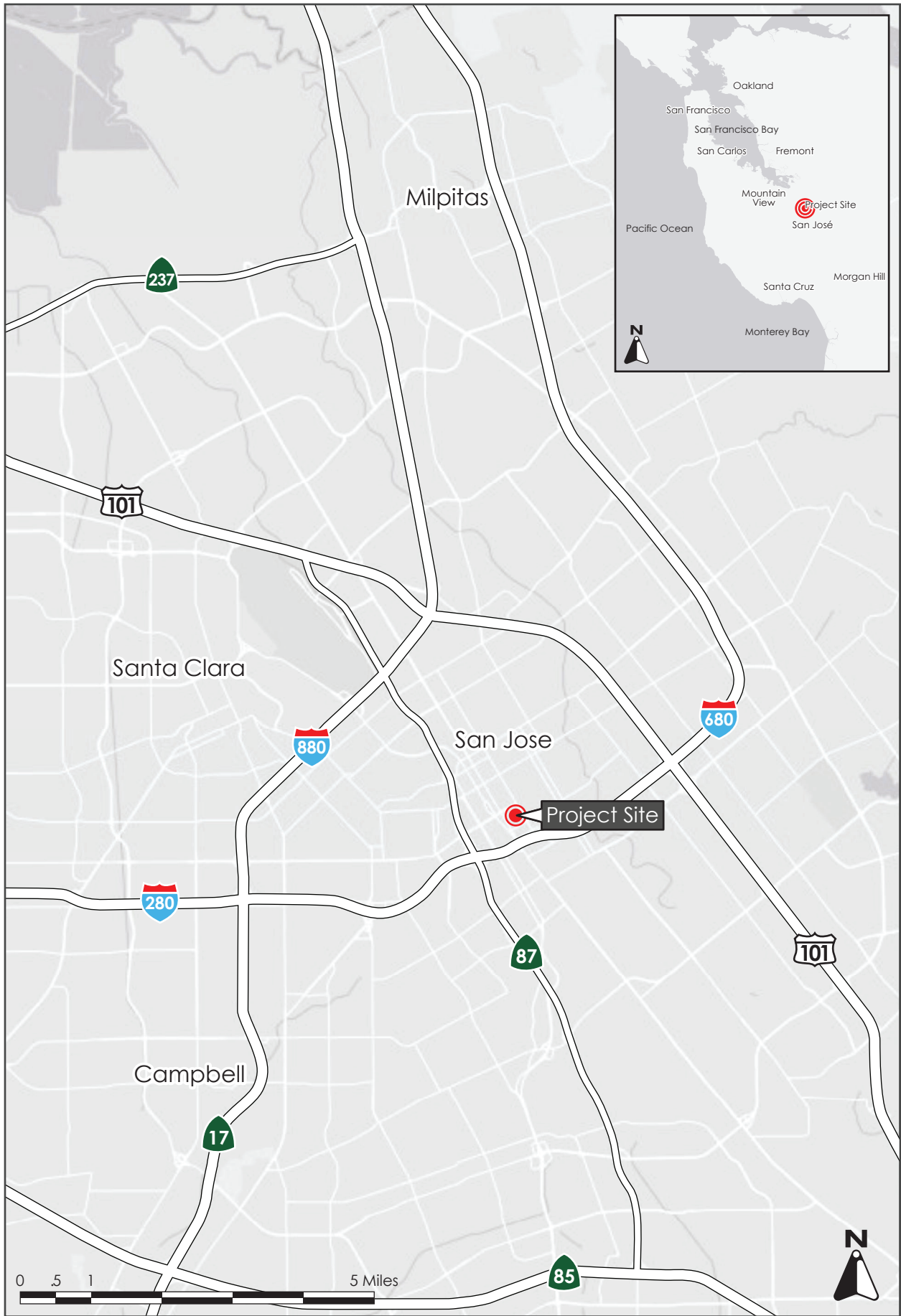
An SEIR is prepared when it is determined by the discretionary authority that changes proposed in an approved project will require revisions to the previous EIR because of possible new impacts or an increase in severity of previously identified impacts. Based on the proximity of historic resources and sensitive receptors to the project site, there is a possibility that one or more significant, unavoidable impacts could result from project construction. Specifically, air quality, cultural resources, and/or noise impacts. Because of this, the City of San José as the Lead Agency, will prepare an SEIR to the Downtown Strategy 2040 Final EIR to address the environmental effects of the proposed South 4th Street project.

The SEIR for the proposed project will be prepared and processed in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended. An Initial Study will be prepared (which will be incorporated into the SEIR as an appendix) to focus the SEIR on potentially significant issues pursuant to CEQA Guidelines Section 15178. In accordance with the requirements of CEQA, the SEIR will include the following:

- A summary of the project;
- A project description;
- A description of the existing environmental setting, environmental impacts, and mitigation measures for the project;
- Alternatives to the project as proposed; and
- Environmental consequences, including (a) any significant environmental effects which cannot be avoided if the project is implemented; (b) any significant irreversible and irretrievable commitments of resources; (c) the growth inducing impacts of the proposed project; and (d) cumulative impacts

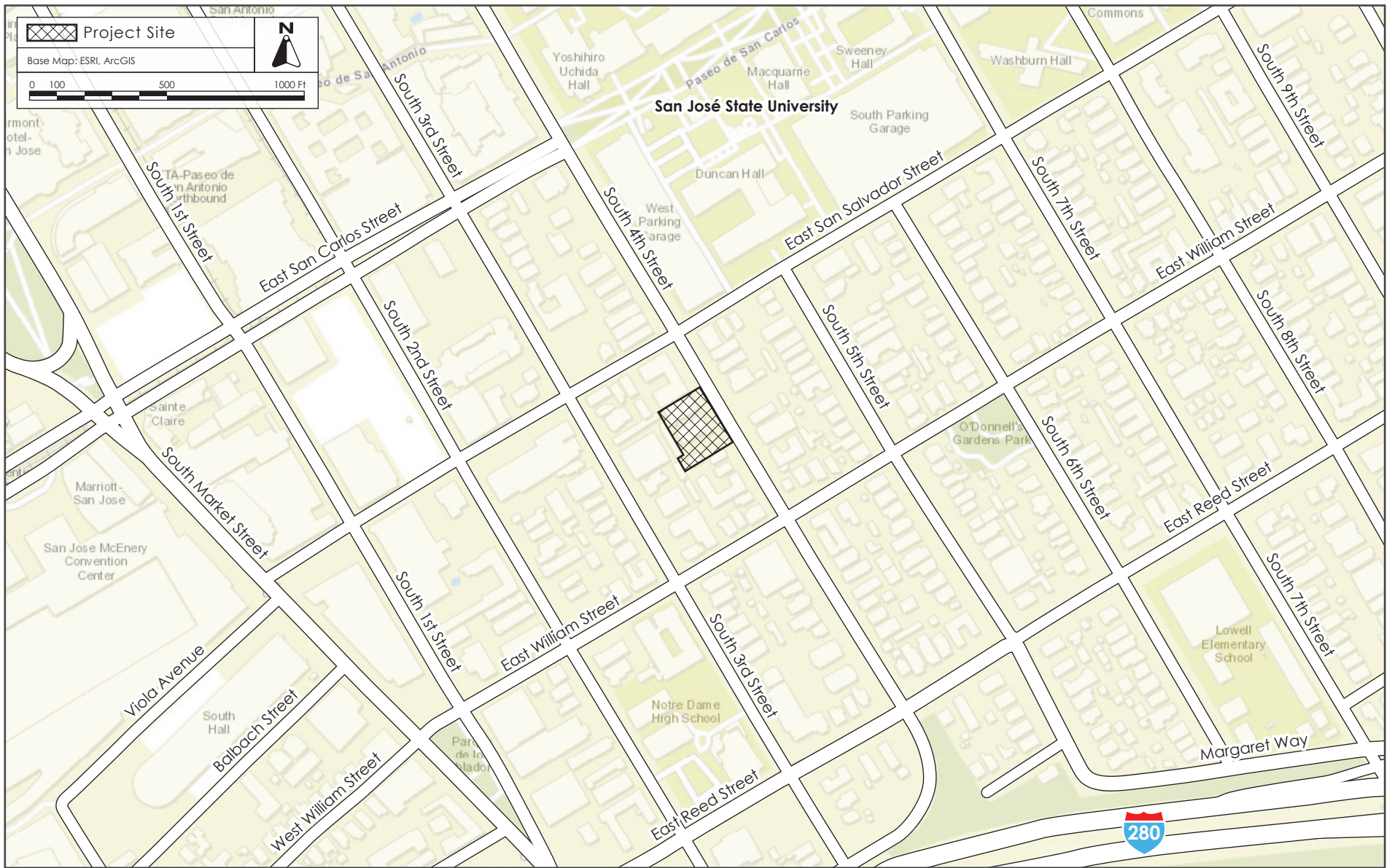
***Project Location***

The approximately 0.52-acre project site is located on two parcels (APNs 467-47-058 and 467-47-096) at 439 and 451 South 4th Street in the City of San José. Regional and vicinity maps of the project site are shown in Figure 1 and Figure 2, respectively.



REGIONAL MAP

FIGURE 1



VICINITY MAP

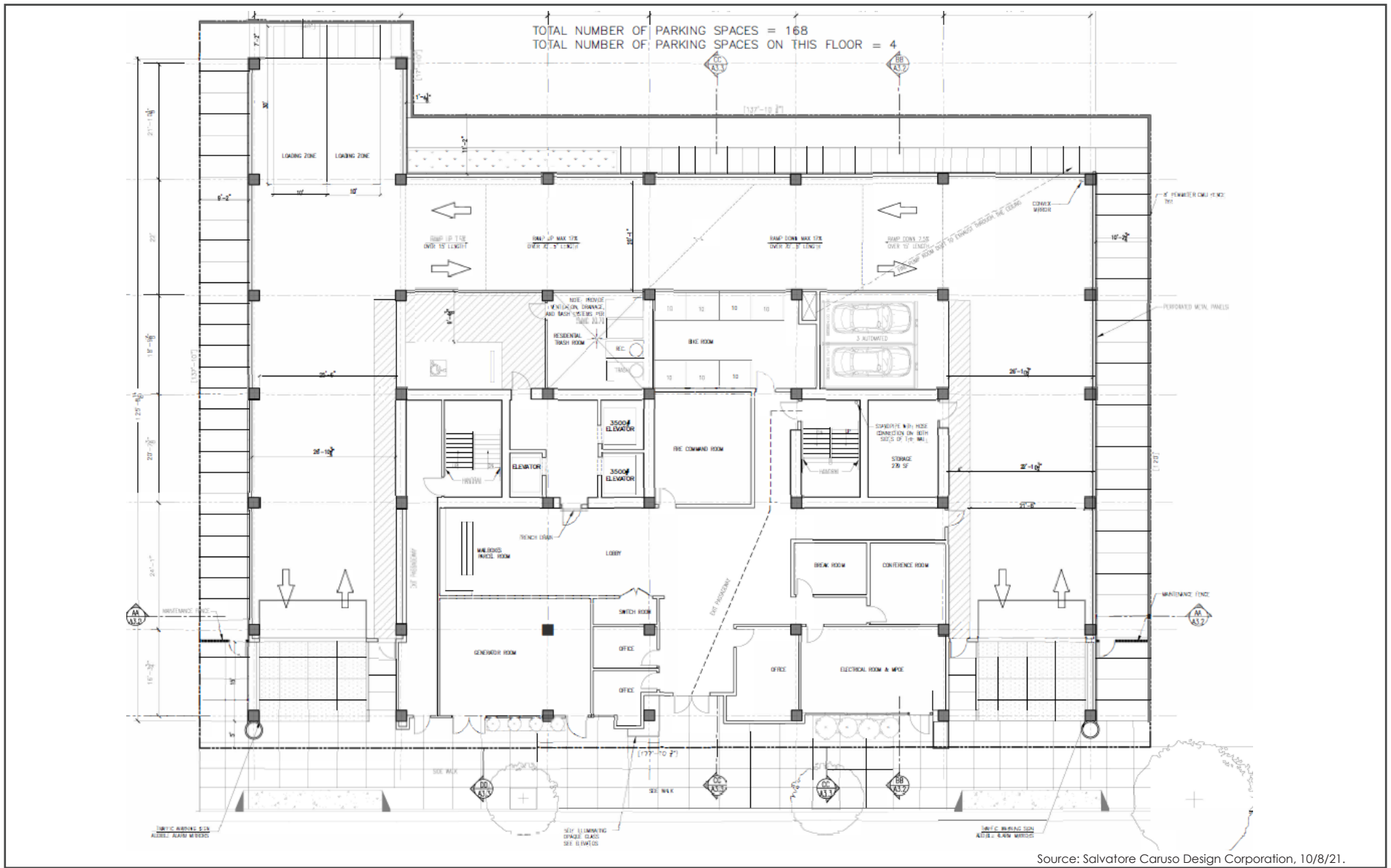
FIGURE 2



PHOTO 1 - View of project site at 451 South Fourth Street



PHOTO 2 - View of project site at 439 South Fourth Street



Source: Salvatore Caruso Design Corporation, 10/8/21.

CONCEPTUAL SITE PLAN - GROUND FLOOR

FIGURE 3



Source: Salvatore Caruso Design Corporation. 10/8/21.

CONCEPTUAL VIEW OF SITE FROM SOUTH FOURTH STREET

FIGURE 4



## ***Project Description***

The project site is currently developed with a large three-story apartment complex with a gated driveway on the northern parcel and a two-story single-family residence with a surface parking lot and a gated front driveway on the southern parcel (please refer to Photos 1 and 2 above). As proposed, the project would demolish the existing buildings and hardscape on-site and construct a 25-story multi-family residential building totaling 448,474<sup>1</sup> square feet. The project includes up to 210 residential units. The proposed building would have a maximum height of 274 feet. The project would have a floor area ratio (FAR) of approximately 18.7.<sup>2</sup>

The project proposes a five-level parking garage with one level underground and four levels above grade on floors one to four. The parking garage would have a total of 168 parking spaces. The project site can currently be accessed via four existing driveways along 4th Street. The project proposes to remove all existing driveways and construct one right-turn in/out driveway on 4th Street, approximately 150 feet south of San Salvador Street. Please refer to Figures 3 and 4 above for the conceptual site plan and conceptual rendering.

The project site is designated *Downtown* under the City's General Plan and is zoned *DC – Downtown Primary Commercial*.

### ***Possible Required Project Approvals:***

1. Site Development Permit
2. Tentative Map
3. Tree Removal Permit

### ***Potential Environmental Impacts of the Project***

The SEIR will identify the significant environmental effects anticipated to result from development of the project as proposed. Mitigation measures will be identified for significant impacts, as warranted. The SEIR will include the following specific environmental categories as related to the proposed project:

#### *1. Aesthetics*

The proposed development will demolish the existing buildings on-site and construct a 25-story, multi-family residential building in the downtown area of San José. The SEIR will describe the existing visual setting of the project area and the visual changes that are anticipated to occur as a result of the proposed project. The SEIR will also discuss possible light and glare issues from the development.

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<sup>1</sup> This total includes approximately 17,736 square feet of basement.

<sup>2</sup> 424,606 square feet of proposed development (without basement and rooftop) / 22,651 square feet of lot area = 18.7 FAR

## 2. *Air Quality*

The SEIR will address the regional air quality conditions in the Bay Area and discuss the proposed project's construction and operational emissions impacts to local and regional air quality in accordance with the 2017 Bay Area Air Quality Management District (BAAQMD) CEQA guidelines and thresholds.

## 3. *Biological Resources*

Habitats in the project area are low in species diversity and include predominately urban-adapted birds and animals. The SEIR will address the loss of trees on and adjacent to the site and will identify and discuss potential impacts to biological resources resulting from construction of the project.

## 4. *Cultural Resources*

Due to the site's location to Guadalupe River and the Second Pueblo de San José de Guadalupe, there would be a moderate potential for encountering historic and/or prehistoric archaeological deposits during construction activities. The project site is located on a block with six historic and potentially historic buildings, including two City Landmarks on South Third Street.

The SEIR will address the potential impacts to unknown buried archaeological resources on-site, as well as impacts to historic structures near the site.

## 5. *Energy*

Implementation of the proposed project would result in an increased demand for energy on-site. The SEIR will address the increase in energy usage on-site and proposed design measures to reduce energy consumption.

## 6. *Geology*

The project site is located in a seismically active region of the United States. The SEIR will discuss the possible geological hazards associated with seismic activity and the existing on-site soil conditions.

## 7. *Greenhouse Gas Emissions*

The SEIR will address the project's consistency with the City's 2030 Greenhouse Gas Reduction Strategy (GHGRS). Proposed design measures to reduce energy consumption, which in turn would reduce GHG emissions, will also be discussed.

## 8. *Hazards and Hazardous Materials*

Development in the project area consists of retail/commercial and residential land uses. The SEIR will summarize known hazardous materials conditions on and adjacent to the project site and will

address the potential for hazardous materials impacts to result from implementation of the proposed project.

#### *9. Hydrology and Water Quality*

The SEIR will evaluate the project's consistency with water quality standards and waste discharge requirements. Based on the Federal Emergency Management Agency (FEMA) flood insurance rate maps, the SEIR will address the potential for flooding at the site as well as the effectiveness of the proposed storm drainage system consistent with the requirements of the San Francisco Bay Regional Water Quality Control Board.

#### *10. Land Use*

The project site is located in a developed urbanized area surrounded by a mix of retail/commercial and residential land uses. The SEIR will describe the existing land uses adjacent to and within the project area and analyze the land use impacts that would occur as a result of the proposed project. The SEIR will also address the project's consistency with the City's General Plan and zoning code and compatibility of the proposed and existing land uses in the project area.

#### *11. Noise and Vibration*

The SEIR will discuss noise that would result from construction and operation of the proposed project. Noise levels will be evaluated for consistency with applicable standards and guidelines in the City of San José.

Due to the size of the proposed building, it is reasonable to assume that construction of the project would require the use of heavy equipment. The SEIR will evaluate the effects of vibration during project construction on nearby historic structures and adjacent buildings of normal conventional construction.

#### *12. Public Services*

Implementation of the proposed project will increase the resident population of the City which could result in an increased demand on police and fire protection, schools, libraries, and recreational facilities. The SEIR will address the availability of public facilities and service systems and the potential for the project to require the construction of new facilities.

#### *13. Transportation*

The project site is located within the Downtown Core. As a result, transportation impacts in the project area were previously evaluated in the Downtown Strategy 2040 Final EIR and a full transportation impact analysis is not necessary. A transportation analysis will be completed to evaluate the proposed site access/circulation and intersections in the project area to identify any necessary improvements that may be required as a result of the proposed project.

14. *Tribal Cultural Resources*

The SEIR will discuss the project's potential for impacts to tribal cultural resources.

15. *Utilities*

Implementation of the proposed project could result in an increased demand on utilities and public facilities compared to existing conditions. The SEIR will examine the impacts of the project on sanitary sewer and storm drains, water supply/demand, and solid waste management.

16. *Wildfire*

The proposed project is located within a developed area of downtown San José. The SEIR will discuss the potential for impacts on the project from wildfire.

17. *Alternatives*

The SEIR will examine alternatives to the proposed project including a "No Project" alternative and one or more alternative development scenarios depending on the impacts identified. Other alternatives that may be discussed could include a reduced development alternative (e.g., smaller project), alternative land uses, and/or alternative locations. Alternatives discussed will be chosen based on their ability to reduce or avoid identified significant impacts of the proposed project while achieving most of the identified objectives of the project.

18. *Significant Unavoidable Impacts*

The SEIR will identify those significant impacts that cannot be avoided, if the project is implemented as proposed.

19. *Cumulative Impacts*

The SEIR will assess the potentially significant cumulative impacts of the project when considered with other past, present, and reasonably foreseeable future projects in the development area and build out of the Downtown Strategy 2040 Plan.

In conformance with the CEQA Guidelines, the SEIR will also include the following sections: 1) consistency with local and regional plans and policies, 2) growth inducing impacts, 3) significant irreversible environmental changes, 4) references and organizations/persons consulted, and 5) EIR authors.

An Initial Study will be prepared and provided as an appendix to the SEIR. The Initial Study will include an analysis of the resource areas that have no new significant impacts or no increase in previously identified impacts.

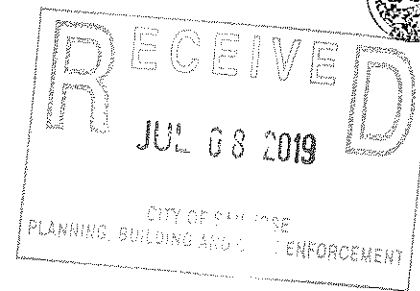
**NATIVE AMERICAN HERITAGE COMMISSION**  
Cultural and Environmental Department

1550 Harbor Blvd., Suite 100

West Sacramento, CA 95691 Phone (916) 373-3710

Email: [nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)Website: <http://www.nahc.ca.gov>

Twitter: @CA\_NAHC



July 1, 2019

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

RE: SCH# 2003042127 South Fourth Mixed-Use Project, Santa Clara County

Dear Ms. Mahamood:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b))). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1))). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

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

## AB 52

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

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
  - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
  - a. Avoidance and preservation of the resources in place, including, but not limited to:
    - i. Planning and construction to avoid the resources and protect the cultural and natural context.
    - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - i. Protecting the cultural character and integrity of the resource.
    - ii. Protecting the traditional use of the resource.
    - iii. Protecting the confidentiality of the resource.
  - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
  - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
  - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
  - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
  - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf)

Some of SB 18's provisions include:

1. **Tribal Consultation**: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation**. There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality**: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation**: Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

### NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.



3. Contact the NAHC for:
  - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place; or, failing both, mitigation measures.
  
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
  - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email

address: [Gayle.Totton@nahc.ca.gov](mailto:Gayle.Totton@nahc.ca.gov).

Sincerely,



for  
Gayle Totton  
Associate Governmental Program Analyst

cc: State Clearinghouse

## **Mahamood, Reema**

---

**From:** Ray Chamaki [REDACTED]  
**Sent:** Thursday, July 25, 2019 5:00 PM  
**To:** Farmer, Stefanie; Mahamood, Reema  
**Subject:** 4th Street Metro Station Apartments

Date: July 25, 2019

Ramiel Chamaki  
405 south 4th Street. #209  
San Jose, CA 95112  
rchamaki@yahoo.com

Ref: Building Project Proposal H17-004,

I attended the 7/11/2019 Environmental Impact meeting (project H17-004) and agree with the general consensus that this project is not a good fit for location. As a tenant living adjacent to this project (405 south 4<sup>th</sup> street), I foresee huge impact both aesthetically and practicality to all residents on this block. Below I've made a few remarks:

### Traffic congestion –

4<sup>th</sup> street is a one way street and a major thoroughfare providing direct access to the freeway less than 1.5 blocks away. During school sessions and major university events (10 months / year), traffic is already at standstill. It's also a major artery for emergency vehicles (police, fire, ambulance). Adding 200 – 300 vehicles from the proposed project would effectively shut down traffic on ordinary days; now imagine an emergency event, such as fire or earthquake. We nearly had an evacuation event due to coyote creek floods in 2017 (water came to within 10 blocks). All this traffic during business hours creates excessive vehicle noise, loud engines, horn, screeching brakes and accidents. The intersection of 4<sup>th</sup> and San Salvador is a regular accident scene, especially vehicle vs pedestrian (students).

### Parking –

Project provides 110 parking spaces on premises for possible tenancy of 200 – 400. Clearly the spillover parking will end up on 4<sup>th</sup>, 3<sup>rd</sup> and surrounding streets. Currently there are approximately 20 street parking available on 4<sup>th</sup> and about the same on 3<sup>rd</sup>. This is insufficient to accommodate another 100 – 200 vehicles. During busy hours (8 – 5p), all drop-offs and short term parking ends up on bike lanes and double park, blocking 1 of 2 lanes.

Noise and vibration –

In past 2 – 3 years, as tenants, we've endured continuous construction noise from underground piping on 4<sup>th</sup> street, sidewalk repairs and new building projects within 2 – 3 blocks away. The older buildings do not have double pane windows and all noises are heard. This project would greatly add to noise pollution both during construction and upon occupancy. Additionally, excavation required for parking would adversely cause vibrations to the adjacent building where I reside. Needless to say, living exactly 50 feet away from this massive construction site would negatively affect the quality of life.

Aesthetics and historical –

Griffith apartment on 405 south 4<sup>th</sup> street where I reside is adjacent to the proposed project and eligible to be registered as historical resource. In fact the historical and cultural characteristics of all building on 4<sup>th</sup> & 3<sup>rd</sup> streets will be permanently altered and thus not consistent with San Jose Historical Ordinance. Additionally, the vertical size of the new building (18 story) overshadows the smaller (3 story) and minimizes it's appeal. In daytime the taller building would cast shadow onto the smaller building and obstruct the open sky.

It was discussed at the meeting, the preference in building heights were the taper down approach as they get closer to the freeway. AT 18 story, this project is not consistent with that ideology. This would effectively protrude through a uniform series of surrounding apartments and seem awkward and noticeable.

In lieu of the above reasons, I believe the negative impact on the surrounding resources and the diminishing effect on the historical nature of the block far outweighs the additional residential occupancy.

Regards,

Ramiel Chamaki

## **Mahamood, Reema**

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**From:** Christine Kraft [REDACTED]  
**Sent:** Thursday, July 25, 2019 6:20 PM  
**To:** Mahamood, Reema; Farmer, Stefanie  
**Subject:** S 4th Street Mixed Use - Citizen Input

Dear Reema and Stefanie:

I am writing as a citizen of San Jose with no official affiliation to any group. As you move into your supplemental EIR, I urge you to consider your power and influence as stewards of the overall downtown experience. I would be happy to help you articulate this power if ever you call on me.

As you know, many American cities have been short-sighted in their moment of renewal. Do not let that happen to San Jose on your watch.

We --a society of diverse people here in San Jose -- cherish the past, the present and a future that is inclusive and visionary. The Department of Planning is the principal visionary of our future and it impacts every aspect of our lives -- from our our homes to our parks, our groceries, our traffic, sidewalks and overall lifestyle.

City Planners hold a great deal of power. Their agency is the agency that must mitigate the perennial tension between business interests (seeking to maximize ROI) and community interests (the concerns of people who are stewards of critical value in downtown urban neighborhoods).

In that spirit, I appeal to you to request from the developers of S 4th a much bolder and more innovative vision for the mixed use aspects of the proposed building. We need abundant housing downtown. But it is not adequate to have ground floor parking with a 1500 s.f. commercial space for the neighborhood. It is not adequate for the city to build another "20,000+ s.f. eatery" lacking vision for downtown; an area where booze and nonsense after hours offers an anemic and out of date vision for downtown nightlife. (Just check disturbances for alcohol, drugs and noise in the well-logged SJPD crime reports.)

The City must create a vision for healthy downtown living that gets specific and extends beyond short term goals. It must identify the specific vendors, visionaries, collaborators, and institutions that will truly make mixed use buildings come to life ... and earn awards for the City of San Jose. Put the parking underground (for residents and anyone doing business in the neighborhood) and give us a reason to come see S 4th.

The time is now. Start with this project. Make it much better . . . don't just rename it S 4th Metro Apts.

City Planners own the keys to the San Jose kingdom.

So, in closing, I recap:

I write today to urge your team to seek award-winning visions for designing the future-- building by building -- all over in San Jose. Do not quietly get by with the lowest denominator of American cities. . .

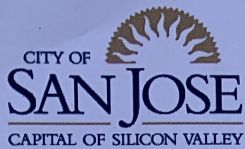
As the sole Civic advocate for the City of San Jose, we taxpayers trust that you, our City Planners, provide both a sophisticated understanding of American Architectural and Urban History as well as robust, visionary thinking about energy, the environment, and humanity.

You alone are the department that is positioned to create a city of the future that has soul, music and light. We trust that with this S 4th St Supplemental EIR you will slow down and work to create a vision for this building that is in line with its international significance and economic power.

Sincerely,

Christine Kraft, MS  
San Jose

H: Staff and Room:  
Sorry for the poor quality photos with our input on the scoping meeting for this project, but we wanted to get this to you for your consideration.



*Department of Planning, Building and Code Enforcement*

**4<sup>TH</sup> STREET METRO STATION APARTMENTS  
SITE DEVELOPMENT PERMIT  
FILE NO. H17-004**

**Community and EIR Scoping Meeting  
Thursday, July 11, 2019**

**PUBLIC COMMENT**

To be included in the public record for this project, all comments on the project must be made in writing and submitted to the City. You can use this form or send an e-mail or letter to the contacts listed below. Comments on the scope of the EIR must be submitted by **July 25, 2019**. Please send comments to the following people: Stefanie Farmer, Project Manager and Reema Mahamood, Environmental Project Manager, via the following:

By Mail: 200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower, San José CA 95113-1905  
By Email: [Stefanie.Farmer@sanjoseca.gov](mailto:Stefanie.Farmer@sanjoseca.gov) and [Reema.Mahamood@sanjoseca.gov](mailto:Reema.Mahamood@sanjoseca.gov)  
(include "4<sup>th</sup> Street Metro Station Apartments" in the subject line)

Name: J. Michael Sodergren VP PACT SJ Email: mike@preservation.org

Address: 6517 Trinidad Court, San Jose 95120 Phone: 408-930-2561

Comments:  
The Preservation Action Council \* San Jose (PACT SJ) requests that a full EIR be conducted on each of the historic properties within the shadow of this proposed 18 story mixed use project. From the community meeting, it was unclear that the project will materially address the Envision 2040 objectives. However it is apparent that the cumulative impact of this project and those which will follow based on its precedence, will be significant to San Jose's dwindling historic inventory and existing historic fabric. The following properties should be included at minimum:

451 So. 4th Street	467-47-058	Hollister Residence	National style	1864 (Struct. of Merit)
459 So. 4th Street	467-47-057	Doerr/Hollister Rental	National style	c.1880 (Struct. of Merit)
427 So 3rd Street	467-47-025	Fuller Residence	Italian Victorian	1884 (Elig. Nat./Cal Reg)
467 So 3rd Street	467-47-029	Reardon Residence	Queen Anne Victorian	1891 (Elig. Nat./Cal Reg)
470 So 3rd Street	467-47-050	Mojmir Apt	Renaissance Revival	1922 (Elig. Nat./Cal Reg)
488 So 3rd Street	467-47-103	Greeninger Residence	Prairie style	1903 (Elig. CAL Reg)

The impact of this project to the surrounding historic buildings does not justify its approval.  
*Written comments will be included in the public record.*

File: 34034  
Guadalupe River

July 30, 2019

Ms. Reema Mahamood  
City of San Jose  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, CA 95113

Subject: Notice of Preparation of a Supplemental EIR: South Fourth Mixed-Use Project – H17-004

Dear Ms. Mahamood:

The Santa Clara Valley Water District (Valley Water) has reviewed the Notice of Preparation (NOP) of a Supplemental EIR for the South Fourth Mixed-Use Project – H17-004 (APN 467-47-058, -096) dated June 24, 2019.

The proposal is not large enough to trigger the preparation of a Water Supply Assessment (WSA); however, the City should still determine if the additional growth is accounted for in the City's General Plan and San Jose Water Company's Urban Water Management Plan.

Re-development of the site provides opportunities to minimize water and associated energy use by using recycled water, incorporating on-site reuse for both storm and graywater, and requiring water conservation measures above State standards (i.e., CALGreen). To reduce or avoid adverse impacts to water supply, the City and applicant should consider the following:

- Require landscaping that exceeds the requirements of the City's water efficient landscape regulations;
- Weather- or soil-based irrigation controllers;
- Dedicated landscape meters;
- The installation of dual plumbing to facilitate and maximize the use of alternative water sources for irrigation, toilet flushing, cooling towers, and other non-potable water uses should recycled water lines be extended in the future to serve the site. In addition, onsite reuse of water may be appropriate now or in the future.



- Maximize the use of alternative water sources for non-potable uses including stormwater, rainwater, and graywater.
- Installation of separate submeters to each residential unit and individual spaces within commercial buildings to encourage efficient water use.
- Be consistent with the City's Green Vision to reduce water use and associated greenhouse gas emissions

Valley Water records do not show any wells on the project site; however, it is always possible that a well exists that is not in Valley Water records. Abandoned or unused wells can provide a vertical conduit for contaminants to pollute groundwater. To avoid impacts to groundwater quality any wells found on-site that will not be used must be properly destroyed in accordance with Ordinance 90-1, which requires issuance of a well destruction permit or registered with

Valley Water and protected during construction. Property owners or their representatives should call the Wells and Water Measurement Unit at (408) 630-2660 for more information regarding well permits and registration for the destruction of wells.

According to the Federal Emergency Management Agency Flood Insurance Rate Map (FIRM) 06085C0234H, effective May 18, 2009, the entire site is located within Zone D, an area in which flood hazards are undetermined, but possible.

There is no Valley Water right of way or facilities at the project site; therefore, in accordance with Valley Water's Water Resources Protection Ordinance, a Valley Water encroachment permit is not required for the proposed improvements.

We appreciate the opportunity to review this document. If you have any questions, please contact me at (408) 630-2479 or [lbrancatelli@valleywater.org](mailto:lbrancatelli@valleywater.org).

Sincerely,



Lisa Brancatelli  
Assistant Engineer II  
Community Projects Review Unit

cc: U. Chatwani, C. Haggerty, M. Richert, M. Martin, L. Brancatelli, File



# NATIVE AMERICAN HERITAGE COMMISSION

February 28, 2022

Governor's Office of Planning &amp; Research

Mar 04 2022

Reema Mahamood, Planner III  
City of San Jose  
200 E. Santa Clara Street  
San Jose, CA 95113

## STATE CLEARINGHOUSE

**Re: 2022020588, South 4<sup>th</sup> Street Project, Santa Clara County**

Dear Ms. Mahamood:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b))). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1))). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

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



CHAIRPERSON  
**Laura Miranda**  
Luiseño

VICE CHAIRPERSON  
**Reginald Pagaling**  
Chumash

PARLIAMENTARIAN  
**Russell Attebery**  
Karuk

SECRETARY  
**Sara Dutschke**  
Miwok

COMMISSIONER  
**William Hungary**  
Paiute/White Mountain  
Apache

COMMISSIONER  
**Isaac Bojorquez**  
Ohlone-Costanoan

COMMISSIONER  
**Buffy McQuillen**  
Yokayo Pomo, Yuki,  
Nomlaki

COMMISSIONER  
**Wayne Nelson**  
Luiseño

COMMISSIONER  
**Stanley Rodriguez**  
Kumeyaay

EXECUTIVE SECRETARY  
**Christina Snider**  
Pomo

**NAHC HEADQUARTERS**  
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California 95691  
(916) 373-3710  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
[NAHC.ca.gov](http://NAHC.ca.gov)

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

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
  - a.** A brief description of the project.
  - b.** The lead agency contact information.
  - c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
  
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).
  - a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
  
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
  - a.** Alternatives to the project.
  - b.** Recommended mitigation measures.
  - c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).
  
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:
  - a.** Type of environmental review necessary.
  - b.** Significance of the tribal cultural resources.
  - c.** Significance of the project's impacts on tribal cultural resources.
  - d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
  
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
  
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
  - a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
    - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
    - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - i.** Protecting the cultural character and integrity of the resource.
    - ii.** Protecting the traditional use of the resource.
    - iii.** Protecting the confidentiality of the resource.
  - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
  - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
  - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
  - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf).

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

### NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
  - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
  
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
  - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:  
[Cody.Campagne@nahc.ca.gov](mailto:Cody.Campagne@nahc.ca.gov).

Sincerely,

*Cody Campagne*

Cody Campagne  
Cultural Resources Analyst

cc: State Clearinghouse

## Mahamood, Reema

---

**From:** Karen Lipscomb [REDACTED]  
**Sent:** Wednesday, March 23, 2022 12:15 PM  
**To:** Atienza, Manuel; Mahamood, Reema  
**Subject:** 439 and 451 So. 4th Street File No. H17-004

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[External Email]

Hello...

I am the property owner of 452 S. 4th Street located directly across from the proposed development at 439 and 451 S. 4th Street. I want the record to reflect I am expressing concerns about this project.

I'm very concerned about a "20% parking reduction" for this huge 24 story tower of multi family residential apartments. It is my understanding that there will only be 168 on-site parking spaces for the residents and their guests with 735 bedrooms & 903 beds in 210 units. That is a ridiculous lack of on-site parking spaces & will definitely negatively impact the neighborhood. Parking is already difficult to find on the neighborhood streets in the area for existing residents & will be impossible when that huge tower is built and can not re-do it later when it proves true that more on-site spaces for parking should have been required. If approved without adequate parking this huge tower will adversely affect the downtown area in the future. I don't understand... Why is this developer getting special privileges and getting a 20% parking reduction? I have other concerns & questions...can someone please call Me at (408) 497-4916.

Sincerely, Karen Chubb Lipscomb - property owner of  
452 S. 4th Street

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March 29, 2022

Reema Mahamood  
City of San Jose  
200 E Santa Clara Street  
San Jose, CA 95113

Re: H17-004 South 4th Street Project  
439 South 4th Street, San Jose, CA

Dear Reema Mahamood,

Thank you for giving us the opportunity to review the subject plans. The proposed H17-004 South 4th Street Project is within the same vicinity of PG&E's existing facilities that impact this property.

PG&E operates underground gas and electric distribution facilities currently serving these properties in the area of the proposed development. Please contact PG&E's Service Planning department at [www.pge.com/cco](http://www.pge.com/cco) for any modification or relocation requests, or for any additional services you may require.

You may also contact the Building and Renovation Center (BRSC) for facility map requests by calling 1-877-743-7782 and

As a reminder, before any digging or excavation occurs, please contact Underground Service Alert (USA) by dialing 811 a minimum of 2 working days prior to commencing any work. This free and independent service will ensure that all existing underground utilities are identified and marked on-site.

If you have any questions regarding our response, please contact me at [alexa.gardea@pge.com](mailto:alexa.gardea@pge.com).

Sincerely,



Alexa Gardea  
Land Management  
916-760-5738

H17-004

- 1- Aesthetics: The front entrance area does not reflect any of the elements of the existing historic properties. The project with granite, stainless steel, metal and glass reflects no existing building elements.

10-Land Use: the allotment of 30 affordable housing units is not compliant with the mandates from the city and state.

11- Noise and vibration: intrusion on existing properties with the 4<sup>th</sup> floor deck looking into the existing properties and the noise element. Also, the party area on the roof, should have a barrier for sound and visual privacy of the surrounding properties.

13-Transportation. There needs to be parking consideration for the staff and workers of the property. There also needs to be consideration for deliveries and guest parking off the street.



We ask the City to Mitigate the Extraordinary impact on Parking resulting in further pressures on low income families who currently live in SUN. We ask the City to Carve-out these 3 Projects (including all 5 Towers from the SUN RPP. All of them access the SUN RPP on the 400 Block of S. 4<sup>th</sup> & S. 3<sup>rd</sup>.

Concerning Metro Station

Potential **1050 extra SUN Permits competing for 965 SUN RPP On-Street Spaces**. At, **735 bedrooms & 903 Beds in 210 Units**, it would appear that a substantial portion of the 1050 SUN Permits will be purchased. There will only be 168 Parking Spaces provided for the residents.

SUN RPP only has **965 On-Street Parking Spaces**. That's 1050 new Permits vs. 965 current already parked spaces.

The target renters are SJSU Students. So, all are of driving age.

**Per Reema during meeting: a purpose was to Identify Mitigation Measures**

- Carve-Out?

- As Fall back: Lease Restrictions preventing residents from purchasing SUN Permits? One Developer will. Another will not.

**Cumulative Impacts**

Referring to the phrase from the "Notice of Preparation" which states, "**Cumulative Impacts The SEIR will assess the potentially significant cumulative impacts of the project when considered with other past, present, and reasonably foreseeable future projects in the development area.**"

- Cumulative Impact on SUN RPP of the 3 Development Projects with 5 Towers & **857 new Units**.

a. Potential for **4285 Additional SUN Parking Permits**.

b. The two projects on S. 4<sup>th</sup> alone have 450 Bedrooms with 1653 beds targeting SJSU Students – all residents will be of driving age. So, it would appear that a substantial portion of the 1050 SUN Permits will be purchased.

c. SUN RPP Only has **965 On-Street Parking Spaces**. (Counted all spaces where a sign was posted - block by block & each side of the street.) These spaces are already highly contested.

d. Please Carve-Out these developments: All 3 Developments (including all 5 Towers) access the SUN RPP on the 400 Block of S. 4th & 3rd Streets.

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e. All 3 Developments plan to supply some new parking, but all plan to supply less than 1 space per unit. Generalizing, the number appears to be 20% less than 1 space per unit. There are caveats to listed numbers since terms such as - "assumed" to be for residents - are used in the Mixed-Use Towers or the split between Residential & Mixed-Use Parking is left undefined. Some parking is Off-Site - Half-A-Mile Walk away specifically for The Mark Residential (up to 172 off-site of the 192 spaces per project documents).

f. City's interpretation of a State Decision is that the City can not carve-out these Towers from the SUN RPP. Both Metro Station & The Mark Residential stated that they wanted to be removed from SUN RPP. Extra-Ordinary situation here.

g. Lease Restrictions preventing residents from purchasing SUN Permits? Two Developers will. Another will not (420 S. 3<sup>rd</sup> & 420 S. 2<sup>nd</sup>).

h. All 3 Developments access the SUN RPP on the 400 Block of S. 4th & 3rd Streets.

i..Please bring Infrastructure both Public & Private including Transportation, Groceries, etc.

j..SUN currently has a diverse population with a large segment speaking a First Language other than English including Spanish & Vietnamese speakers. It is a low-income neighborhood with a large number of people who have to appear in-person to work. During the Pandemic, these jobs have become known as Front-Line Workers. Please do not make it even more difficult to live here for families. Some state that they support building housing for SJSU Students. Many of whom, they state, do not need cars. Ok, build housing for people who do not need cars, but don't force low income families out by taking the already impacted parking away.

Keep Parking for the Old Neighborhood built over 100 years ago. As the City builds Housing for Students & Google Employees please mitigate negative consequences of the development - by not further impacting parking it will alleviate one. Please allow the Families currently living here to stay.

Personally, I believe Climate Change is real and major changes are needed impacting all of us. Having said that - if these On-Street Parking Spaces will be used either way, please preserve them for the Families that currently live here.

Roof Top Noise carries...please have hours restrictions for use.

Note: Please include the file named, "Impact on SUN RPP of Tower Dev's March 2022" in comments".

			<u>Units</u>	<u>Beds</u>	<u>Potential Permits</u>	<u>Target Resident</u>	<u>Use</u>	<u>Notes</u>
Metro Station Project	439 S. 4th	H17-004	210	903	1050	SJSU Students	Residential?	
The Mark Residential	459, 465-469, 475 S. 4th	SP20-021	240	750	1200	SJSU Students	Residential	As few as 20 On-Site with the Remaining 172 a 1/2 Mike Walk
<b>SubTotal of Potential Permits The Mark &amp; Metro Station</b>				<b>1653</b>	<b>2250</b>			
420 S. 3rd St (Tower C)	420 S. 3rd	SP21-019	152		760	4-Sale Condo?	Mixed	
<b>SubTotal of Potential Permits with Tower C</b>					<b>3010</b>			
420 S. 2nd St (Tower A)	420 S. 2nd (Close to 3rd)	SP21-020	88		440	4-Sale Condo?	Mixed	
<b>SubTotal of Potential Permits with Tower C &amp; A</b>					<b>3450</b>			
420 S. 2nd St (Tower B)	420 S. 2nd (Close to 2nd)	SP21-020	167		835	4-Sale Condo?	Mixed	
<b>Total All 3 Projects (including All 5 Towers)</b>			<b>857</b>		<b>4285</b>			

Total On-Street SUN Permitted Spaces is **965**

Counted Block by Blocked by looking for Posted Signs