Draft Supplemental Environmental Impact Report

South Fourth Street Project

File Nos.: H17-004 & ER20-262

SCH No.: 2022020588

Prepared by

CITY OF SAN JOSE

CAPITAL OF SILICON VALLEY

In Consultation with

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ENVIRONMENTAL CONSULTANTS & PLANNERS

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SUMMARY

The project site is comprised of two parcels and is currently developed with a three-story apartment complex on the northern parcel and a two-story single-family residence on the southern parcel. The applicant proposes construction of a 25-story residential building with up to 210 residential units and rooftop amenities. 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.*

Significant Impacts	Mitigation Measures
Air Quality	
Impact AIR-1: Construction activities associated with the proposed project would result in an infant cancer risk of 103.35 cases per one million and an annual fine particulate matter where particles have a diameter of 2.5 micrometers or less ($PM_{2.5}$) of 1.12 micrograms per cubic meter air ($\mu g/m^3$) which exceeds the BAAQMD significance thresholds of 10 cases per one million and 0.3 $\mu g/m^3$, 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, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan for review and approval to the Director of Planning, Building and Code Enforcement or the Director's designee, demonstrating that the off-road equipment used for construction of the project would achieve a fleet-wide average of at least 90 percent reduction in diesel particulate matter (DPM) emissions. The plan to achieve the 90 percent reduction would include the following, or an equivalent alternative that meets the required reduction: • All diesel-powered off-road equipment (larger than 25 horsepower) operating on-site for more than two days continuously or 20 hours total shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 final emission standards for fine particulate matter ($PM_{2.5}$) and Coarse Particulate Matter (PM_{10}). o Alternatively, equipment that meet U.S. EPA emissions for Tier 3 engines and is equipped with California Air Resources Board-certified Level 3 Diesel Particulate Filters that altogether achieve a 90 percent reduction in diesel particulate matter emissions would meet this requirement. o Use of alternatively fueled or electric equipment. • Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary and

Significant Impacts	Mitigation Measures
	portable equipment, such as cranes, aerial lifts, cement and mortar mixers, concentrate/industrial saws, air compressors, and welders. As an alternative to the measures above, the project applicant could request a plan from a qualified air quality specialist that reduces on- and near-site construction DPM emissions by 90 percent or greater. The plan shall be submitted to the City of San José Director of Planning, Building and Code Enforcement ort the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).
Biological Resources	
Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**	**MM BIO-1.1:** Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive. If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest. The buffer would

Significant Impacts	Mitigation Measures
	ensure that raptor or migratory bird nests will not be disturbed during project construction. Prior to any tree removal, or approval of any demolition or grading permits (whichever occurs first), the applicant shall submit the ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.
Noise and Vibration	
Impact NOI-1: Construction noise levels would exceed the exterior threshold of 80 equivalent continuous noise level (dBA L_{eq}) at residential land uses to the south during demolition, grading, trenching, paving, and pile driving activities. The 90 dBA L_{eq} threshold for commercial land uses would be exceeded during pile driving activities. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**	**MM NOI-1.1:** Prior to issuance of a demolition, grading, or building permit whichever occurs earliest, and consistent with the Municipal Code and in accordance with the Downtown Strategy 2040 FEIR, particularly Policy EC-1.7, a qualified acoustic consultant shall prepare a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, and designation of a noise disturbance coordinator, to the Director of Planning, Building and Code Enforcement or the Director's Designee. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The contact information for the noise disturbance coordinator shall be prominently posted on the project site. The best available noise suppression devices and techniques shall include, but is not limited to, the following: • Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence (San José Municipal Code Section 20.100.450). Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise

Significant Impacts	Mitigation Measures
	mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses. • Construct solid plywood fencing around construction sites adjacent to operational business, residences, or other noise-sensitive land uses. A temporary eight-foot noise barrier shall be constructed along the southern property line of the project site to shield adjacent residential land uses from ground-level construction equipment and activities. The noise barrier shall be solid over the face and at the base of the barrier in order to provide a five dBA noise reduction. • Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. • Prohibit unnecessary idling of internal combustion engines. • Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. • Use 'quiet' models of air compressors and other stationary noise sources where technology exists. • Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site. • Notify all adjacent businesses, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences. • If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.

Significant Impacts	Mitigation Measures
	• Designate a "noise disturbance coordinator" to respond to any local complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., beginning work too early, bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. A telephone number for the noise disturbance coordinator shall be conspicuously posted at the construction site. The notice sent to neighbors regarding the construction schedule shall be included in the posted sign. As a part of the noise logistic plan and project, construction activities for the proposed project shall include, but are not limited to, the following best management practices to achieve an exterior threshold of 80 dBA L_{eq} at adjacent residential land uses and 90 dBA L_{eq} at adjacent commercial land uses as feasible: • Utilize the best available noise suppression devices and techniques during construction activities (per General Plan Policy EC-1.7). • If impact pile driving is proposed, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile. • If impact driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced. • Material stockpiles, as well as maintenance/equipment staging and parking areas, shall be located as far as feasible from residential receptors. • The project applicant shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential

Significant Impacts	Mitigation Measures
	land uses so that construction activities can be scheduled to minimize noise disturbance. • In order to minimize negative effects of construction noise on the surrounding neighborhoods near the project site, the following measures will be utilized to identify, mitigate, respond to and track any complaints that may arise pertaining to construction noise: o Property owners and occupants located within 500 feet of construction activities shall be notified at least 14 calendar days prior to commencement of construction by posting signs around the perimeter of the project site and/or flyers mailed to nearby receptors. o A large on-site sign near the public right-of-way containing permitted construction days/hours, complaint procedures, and phone numbers for the project's complaint manager and City Code Enforcement unit shall be posted. o A complaint log that records received complaints and how complaints were addressed shall be maintained and submitted to the City for review upon the City's request. All complaints shall be responded to within 24 hours. o If reliable noise complaints are received during demolition, excavation, and/or construction activities, noise levels shall be monitored at the location from which the noise complaints originated by a qualified acoustical professional. Integrated average (L_{eq}) noise level measurements on an hourly basis should be made of activities representative of those that generated the complaint. If the measured noise levels during this test are found to exceed 80 dBA L_{eq} at residential property lines or 90 dBA L_{eq} at commercial property lines, the acoustical professional should

Significant Impacts	Mitigation Measures
	specify additional noise attenuation measures to reduce noise the construction levels to the noise limits established by the Federal Transit Administration (FTA). These measures may include operational considerations, the use of additional ground level noise barriers or noise control blanketing of the building structure.
Impact NOI-2: Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings and 0.2 in/sec PPV for buildings of normal conventional construction within 50 feet and 25 feet of the project site, respectively. In addition, impact and vibratory pile driving would exceed the City's thresholds at historic buildings located within 290 and 190 feet of the pile driving activities, respectively, and at conventional buildings located within 125 and 85 feet of the pile driving activities, respectively. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**	**MM NOI-2.1:** Prior to the issuance of a demolition, grading, or building permit, which occurs earliest, the applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The Plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City of San José's Historic Preservation Officer, or equivalent for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earlier. Since exposure to excessive vibration levels could potentially damage historic buildings and buildings of conventional construction, the Plan shall include, but not be limited to, the following measures to ensure that the project-generated vibration levels would not exceed the General Plan thresholds of 0.08 in/sec PPV for historic buildings and 0.2 in/sec PPV for buildings of normal conventional construction: • 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 that are known to produce high vibration levels (e.g., jackhammers, hoe rams, clam shovel drop, large bulldozers, caisson drillings, loaded trucks, and vibratory roller, etc.) shall be submitted to the Director of Planning, Building and Code

Significant Impacts	Mitigation Measures
	Enforcement or the Director's designee for review and approval prior to issuance of demolition or grading permits. This Plan shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Demolition, earth-moving, and ground impacting operations shall be phased so that it does not occur during the same time period. • Where possible, the use of heavy vibration-generating construction equipment shall be prohibited within 20 feet of any adjacent building. • Document conditions at all structures located within 125 feet of construction and at historic structures located within 300 feet of construction prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically: o Vibration limits shall be applied to vibration-sensitive structures located within 300 feet of any high impact construction activities, such as pile driving, and 75 feet of other construction activities identified as sources of high vibration levels. o Performance of a photo survey, elevation survey, and crack monitoring survey for each structure of normal construction within 125 feet of any high impact construction activities and/or within 30 feet of other construction activities identified as sources of high vibration levels and each historic structure within 300 feet of pile driving activities and/or within 75 feet of other construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, and shall

Significant Impacts	Mitigation Measures
	include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures. • Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits. • At a minimum, vibration monitoring shall be conducted during demolition and excavation activities. • If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the 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 post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. • Regular monitoring reports during construction shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the HPO as outlined in the monitoring schedule. **MM NOI-2.2:** The project applicant shall prepare preconstruction documentation of the nearby historic resources as part of project start-up. Prior to issuance of a demolition, grading,

Significant Impacts	Mitigation Measures
	or building permit, whichever occurs earliest, a qualified historic architect shall undertake an existing visual conditions study of the nearby historic resources within 290 feet of the project site. The purpose of the study would be to establish the baseline conditions of the neighboring historic buildings prior to construction, including the location and extent of any visible cracks or spalls. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including those physical characteristics of the resources that convey their historic significance. The documentation shall be reviewed and approved by the City of San José's Historic Preservation Officer, or equivalent prior to issuance of a demolition, grading, or building permit, whichever occurs earliest. **MM NOI-2.3:** Once the baseline conditions of the neighboring historical resources within 290 feet of the project site are determined (refer to MM NOI-2.2), 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). If pile driving is used, a qualified geologist, or other professional with expertise in ground vibration and its effect on existing structures, shall prepare a study of the potential vibration caused by construction activities associated with the proposed project. Based on the results of the study, specifications regarding the restriction and monitoring of pile-driving shall be incorporated into the construction contract to manage the mean and methods of construction. Any initial pile driving shall be monitored and if vibrations levels exceed the threshold, modifications shall be made to reduce vibration levels below the established threshold. A copy of the study, contract specifications, and monitoring reports shall be provided to the Historic Preservation Officer of the City of San

Significant Impacts	Mitigation Measures
	José Department of Planning, Building and Code Enforcement. The HRRP shall be prepared by a qualified Historic Architect and reviewed and approved by the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to Public Works clearance, including any ground-disturbing work. The project applicant shall ensure the 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 from excavation and construction; • Requirements for monitoring and documenting compliance with the plan; and • Education/training of construction workers about the significance of the historical resources around which they would be working. **MM NOI-2.4:** 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. During the demolition and construction phases, the Monitoring Team shall make periodic site visits to monitor the condition of the property, including monitoring of any instruments such as crack gauges, if necessary, or reviewing vibration monitoring required by other construction monitoring processes required under the City's permit processes. Site visit reports and documents shall be provided to the City's Historic Preservation Officer on a quarterly basis. The Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement may request any additional number of site visits at their discretion.

Significant Impacts	Mitigation Measures
	If, in the opinion of the Monitoring Team, substantial adverse impacts related to construction activities are found during construction, a representative of the Monitoring Team shall inform the project applicant (or the applicant's designated representative responsible for construction activities), the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the potential impacts. The project applicant shall implement the Monitoring Team's recommendations for corrective measures, including halting construction in situations where construction activities would imminently endanger 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 Team shall prepare a report documenting all site visits. The reporting period shall be a minimum of once every three months. The Monitoring Team, or its representative, shall prepare a report documenting all site visits. The reporting period shall be a minimum of once every three months. The Monitoring Team or its representative, shall submit the site visit reports to the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer no later than one week after each reporting period. The Monitoring Report shall also include, but is not limited to, the following: • Summary of the demolition and construction progress; • Identification of substantial adverse impacts related to construction activities; • Problems and potential impacts to the historical resources and adjacent buildings during construction activities; • Recommendations to avoid any potential impacts;

Significant Impacts	Mitigation Measures
	• 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 Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to the issuance of any Certificate of Occupancy (temporary of final).
Impact C-NOI-1: The proposed project, by itself, would contribute to the overall cumulative construction noise impact from development within the vicinity of the project site. **[New Significant Unavoidable Impact (Less Than Significant Cumulative Impact)]**	**MM C-NOI-1.1:** As part of the construction noise logistics plan (refer to MM NOI-1.1), the project applicant shall eliminate pile driving and limit the number of drilling days.

Summary of Alternatives to the Proposed Project

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

<u>No Project – No Development Alternative</u>

The No Project – No Development Alternative would retain the existing apartment complex and single-family residence on-site.

Preservation Alternative/Reduced Development Redesign

The Preservation Alternative/Reduced Development Redesign would reduce the height of the building from 25 stories to six stories. Under this alternative, two levels of above-grade parking are proposed. The remaining floors (floors three to six) would consist of 34 dwelling units.

Areas of Public Controversy

Areas of public concern include:

- Impacts to known tribal cultural resources and Assembly Bill 52
- Traffic congestion along Fourth Street
- Parking
- Construction and operational noise
- Building height and design
- Impacts on surrounding historical buildings

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) (SCH #2003042127) for the South Fourth 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 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 Draft 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 Draft SEIR tiers from the Downtown Strategy 2040 FEIR because the project was included in the overall development that was analyzed for that document at a program level. An SEIR is required for this project because project-specific information was not available at the time the Downtown Strategy 2040 FEIR was prepared. An Initial Study prepared for the proposed project (see Appendix A) identified significant impacts to air quality, cultural resources, and noise and vibration. The other resources sections, including biological resources and land use and planning were included in the Draft SEIR because the project has the potential to result in impacts to these resource areas. Thus, this Draft SEIR to the Downtown Strategy 2040 FEIR has been prepared to address these potential new significant impacts. The SEIR process is outlined below.

1.2 DRAFT SEIR PROCESS

1.2.1 Notice of Preparation and Scoping

In accordance with Section 15082 of the CEQA Guidelines, the City prepared a Notice of Preparation (NOP) for this EIR which was circulated to local, State, and federal agencies in June 2019. Due to the length of time that had passed since circulation of the NOP and redesign of the project, the NOP was republished and recirculated to local, State, and federal agencies on February 23, 2022 and comments were accepted through April 1, 2022. 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 March 21, 2022 to discuss the project and solicit public input as to the scope and contents of this EIR. The meeting was held virtually over Zoom. Appendix J of this Draft SEIR includes the NOP and comments received on the NOP.

1.2.2 Draft SEIR Public Review and Comment Period

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

Reema Mahamood, Planner III
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, 3rd Floor Tower
San José, CA 95113
Phone: (408) 535-6872, Email: Reema.Mahamood@sanjoseca.gov

1.3 FINAL SEIR/RESPONSES TO COMMENTS

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

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

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

1.3.1 Notice of Determination

If the project is approved, City will file a Notice of Determination (NOD), which will be available for public inspection and posted within 24 hours of receipt at the County Clerk's Office and 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 DESCRIPTION

The 0.52 gross-acre project site is located on two parcels (Assessor's Parcel Numbers [APNs] 467-47-058 and 467-47-096) at 439 and 451 South Fourth Street in the City of San José. The project site is currently developed with a three-story apartment complex on the northern parcel and a two-story single-family residence on the southern parcel. Vehicular access to both parcels is provided via four driveways along South Fourth Street. The project site is designated as *Downtown* under the City's Envision San José 2040 General Plan and is zoned *DC – Downtown Primary Commercial.* Refer to Figures 2.0-1 to 2.0-3 for the Regional, Vicinity, and Aerial maps.

2.1 PROPOSED PROJECT

The applicant proposes to demolish the existing buildings and construct a 25-story residential building totaling 430,738[1] square feet. The project includes 210 residential units and rooftop amenities. The rooftop amenity would include: a community room, dog park, common open space and pool, and fitness space. Parking for the residents would be provided in the basement and on floors one to four of the proposed building via a mechanical-stack parking system and tandem parking. The proposed building would be up to 246 feet to the rooftop and 261 feet to the top of the parapet. Site plans and elevations of the proposed building are shown in Figures 2.1-1 to 2.1-5.

The applicant proposes to remove all existing driveways and construct two full access driveways along the South Fourth Street project frontage. The applicant proposes a total of 168 parking spaces and 70 bicycle parking spaces. Of the 168 parking spaces, 40 would be tandem spaces.

2.2 MECHANICAL EQUIPMENT

The applicant would install one 1,000-kilowatt (kW) emergency generator powered by a 1,340-horsepower (hp) diesel engine on the ground floor and a fire pump with a 150 hp diesel engine in the basement. Additionally, a cooling tower room, which would include heating pumps, is proposed on the roof.

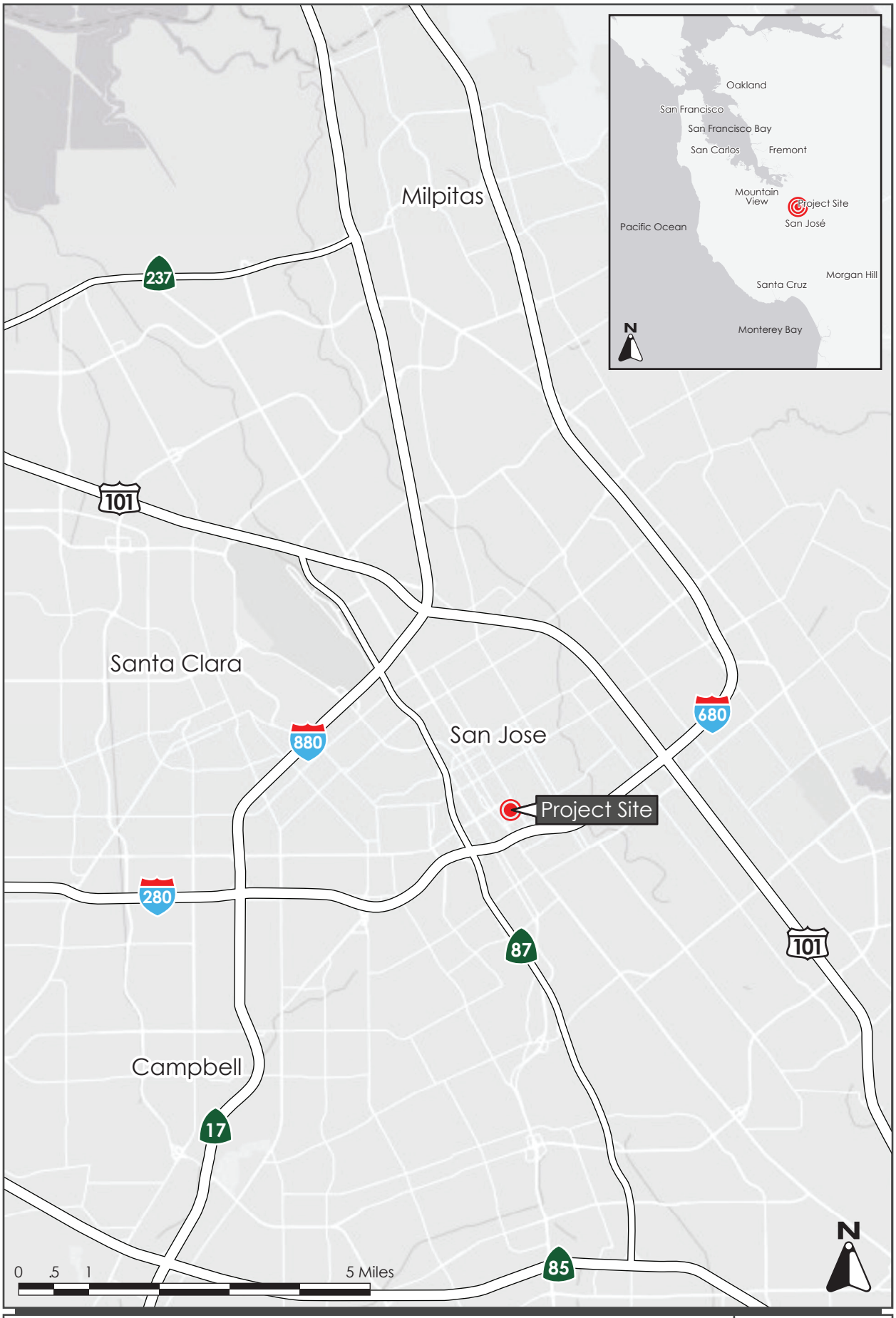
2.3 GREEN BUILDING MEASURES

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. The proposed development would be constructed in compliance with the City's Council Policy 6-32, the most recent California Building Code (CBC), and the City's Green Building Ordinance. The proposed development would be designed to achieve LEED Silver certification, though no specific building measures have been identified at this time.

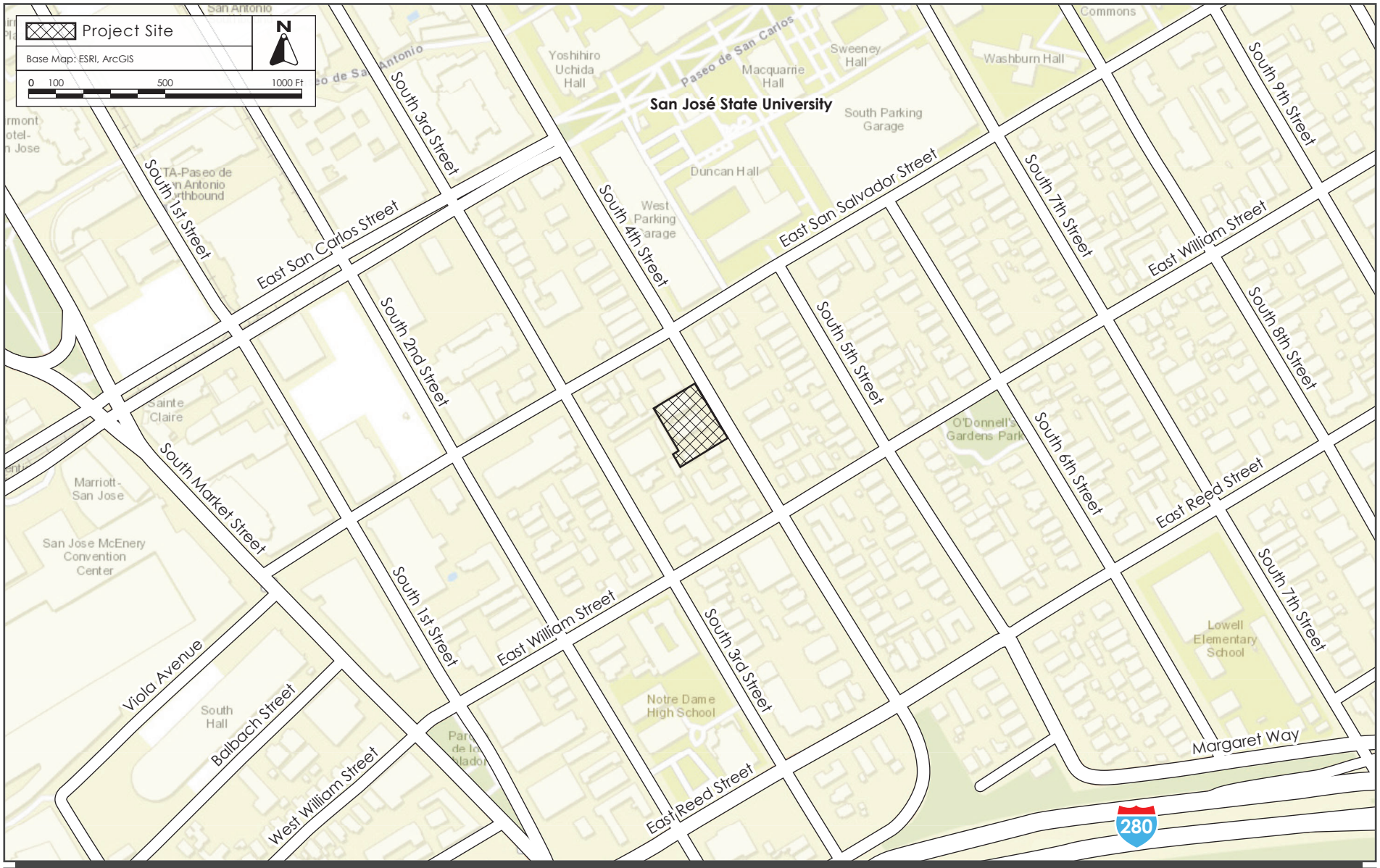
2.4 GENERAL PLAN AND ZONING DESIGNATIONS

The *Downtown* designation includes office, retail, service, residential, and entertainment uses in the downtown area. All developments within this designation should enhance the "complete community" in downtown, support pedestrian and bicycle circulation, and increase transit ridership. The residential component within the *Downtown* designation should incorporate ground floor commercial

[1] With the basement, the total square footage would be 448,474 square feet.

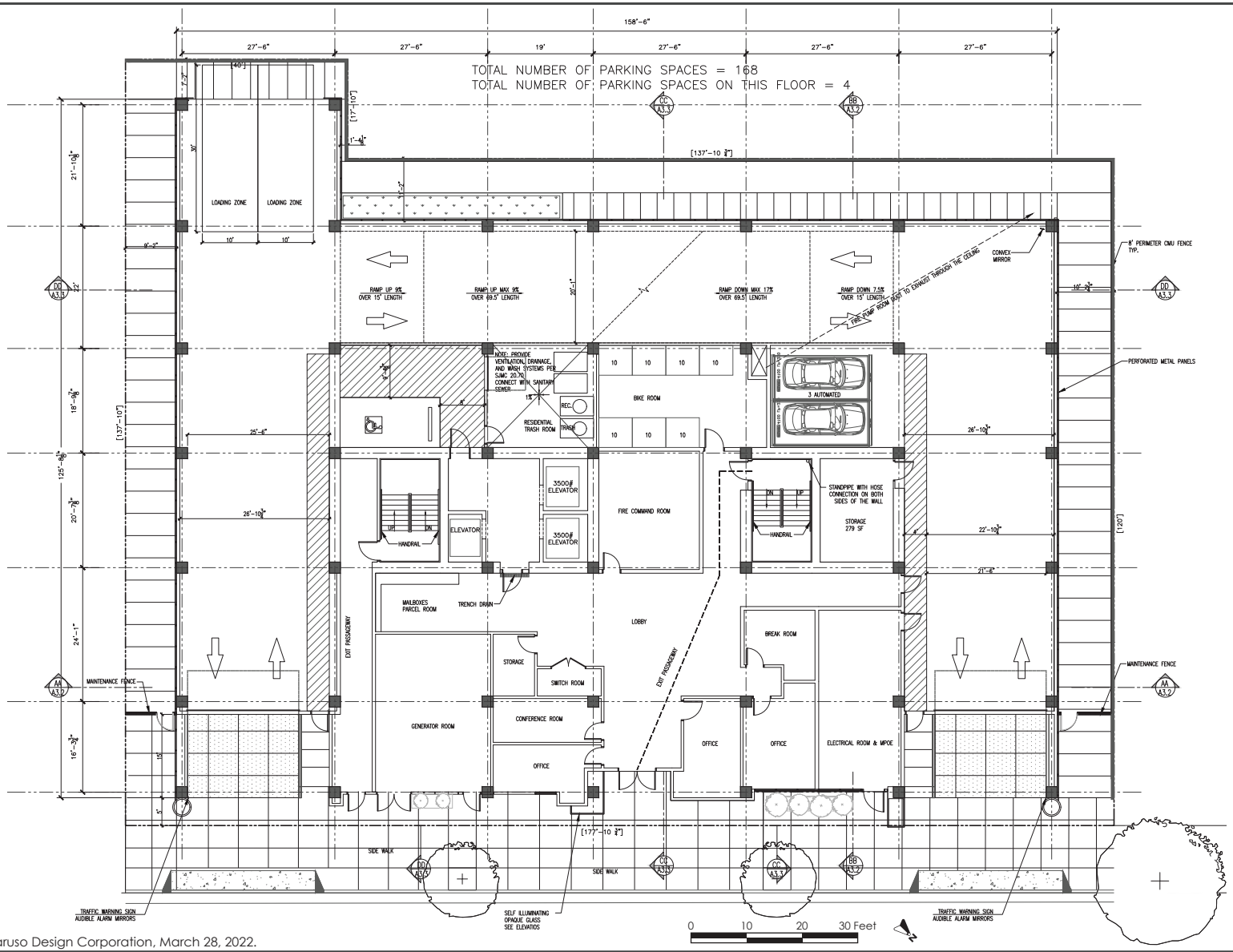


REGIONAL MAP | FIGURE 2.0-1



VICINITY MAP | FIGURE 2.0-2

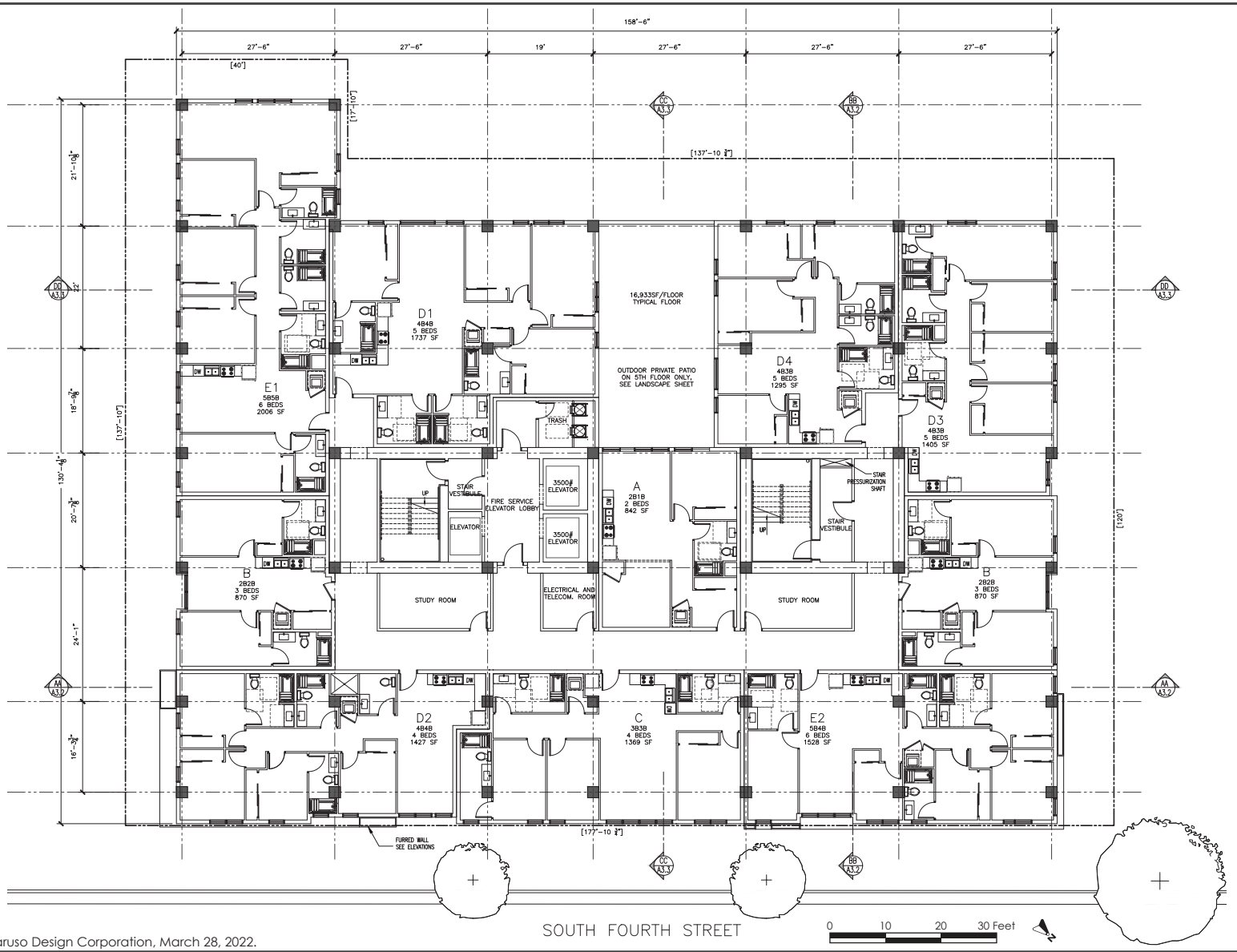
AERIAL PHOTOGRAPH AND SURROUNDING LAND USES | FIGURE 2.0-3



Source: Salvatore Caruso Design Corporation, March 28, 2022.

SITE PLAN – GROUND FLOOR

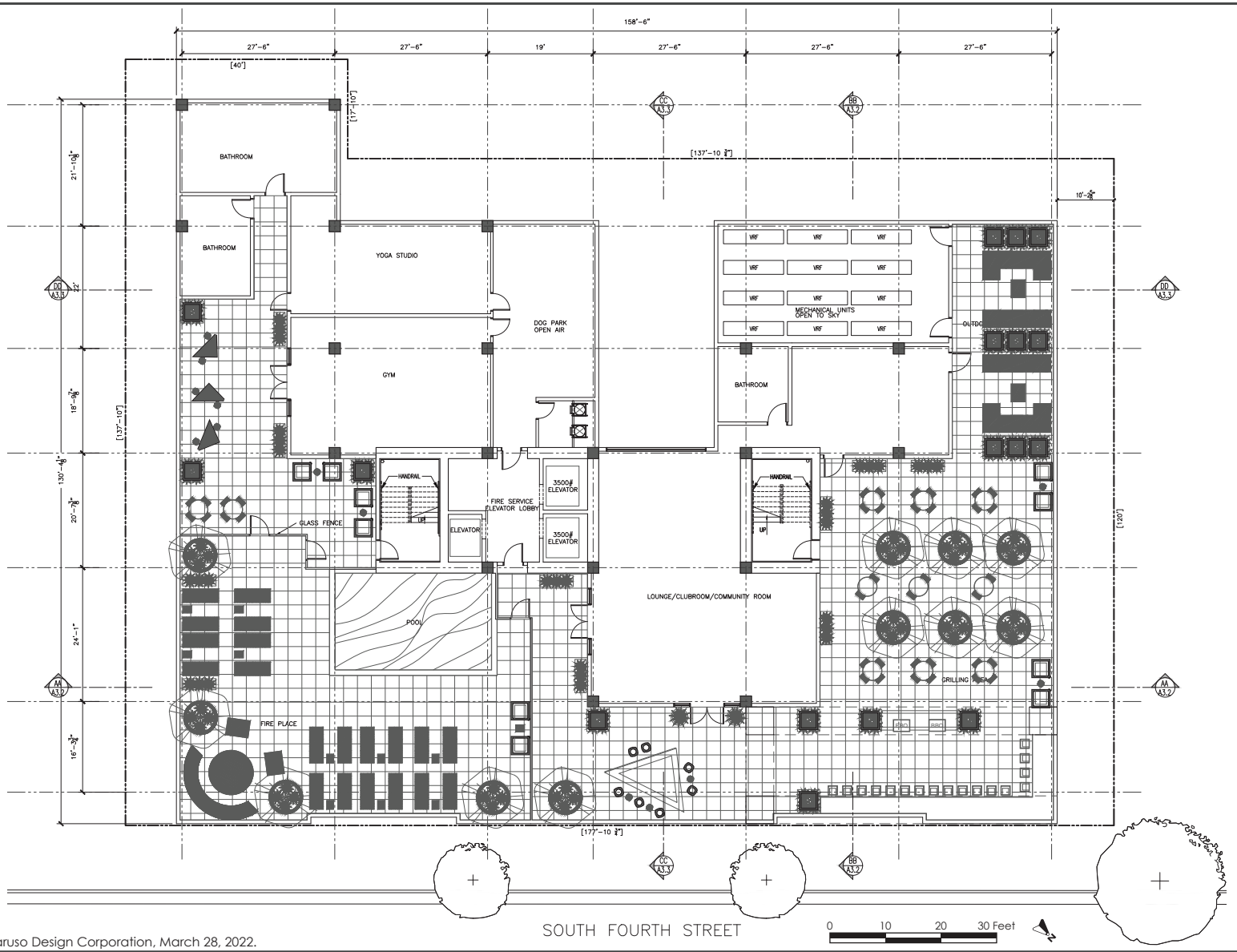
FIGURE 2.1-1



Source: Salvatore Caruso Design Corporation, March 28, 2022.

SITE PLAN – RESIDENTIAL FLOOR PLAN (FIFTH FLOOR)

FIGURE 2.1-2



Source: Salvatore Caruso Design Corporation, March 28, 2022.

SITE PLAN – ROOFTOP

FIGURE 2.1-3

Source: Salvatore Caruso Design Corporation, March 30, 2022.

ELEVATIONS – EAST & WEST

FIGURE 2.1-4

Source: Salvatore Caruso Design Corporation, March 30, 2022.

ELEVATIONS – SOUTH & NORTH

FIGURE 2.1-5

uses. Under this designation, projects can have a maximum floor area ratio (FAR) of 30.0 and up to 800 dwelling units per acre (du/ac). The applicant proposes a residential development of 210 units (approximately 404 du/ac) with an FAR of 19.0[2]; therefore, the project is consistent with the General Plan land use designation. Under the *DC – Downtown Primary Commercial* Zoning District, development shall only be subject to the height limitations necessary for the safe operation of Norman Y. Mineta San José International Airport. Developments located in this Zoning District shall not be subject to any minimum setback requirements.

2.5 CONSTRUCTION

It is anticipated that the project would be constructed over an approximately 23-month period.

2.6 PROJECT OBJECTIVES

The objectives of the project are:

1. Provide up to 210 housing units in the City of San José which would aid the City in addressing the current housing shortage.

2. Provide high-density housing in the downtown, that are accessible to downtown jobs, retail and entertainment and various modes of public transit, consistent with the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 Plan of locating high-density development on infill sites along transit corridors to foster transit use and the efficiency of urban services.

3. Maximize use of an infill site by providing residences in an area served by various modes of public transportation such as VTA light rail and buses and the planned BART extension to downtown; thereby creating opportunities to reduce vehicle miles travelled.

4. Create a high quality, well designed, high-density, high-rise residential development project in the downtown focus area to further the Envision San José 2040 General Plan goal of creating a central identity for San José as well as adding a sense of permanency and stature to the downtown skyline.

5. Provide bicycle parking for residents to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community.

6. Provide the required number of affordable housing units mandated by the City's Inclusionary Housing Ordinance and Ellis Act Ordinance requirements.

[2] 430,738 square feet of proposed development / 22,651 square feet of lot area = 19.0 FAR

2.7 USES OF THE DRAFT SEIR

This Draft 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 Draft SEIR:

- Site Development Permit
- Demolition and Grading Permits
- Other Public Works Clearances

SECTION 3.0 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION

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

- Aesthetics
- Agricultural and Forestry Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Mineral Resources
- Population and Housing
- Public Services
- Recreation
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire
- Mandatory Findings

This section presents the impact discussions related to the following environmental subjects in their respective subsections:

3.1	Air Quality	3.4	Land Use and Planning
3.2	Biological Resources	3.5	Noise and Vibration
3.3	Cultural Resources		

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

The discussion for each environmental subject includes the following subsections:

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). Each impact is numbered to correspond to the checklist question being answered. For example, Impact BIO-1 answers the first checklist question in the Biological Resources section. Mitigation measures are also numbered to correspond to the impact they address. For example, MM BIO-1.3 refers to the third mitigation measure for the first impact in the Biological Resources section.
- **Impact Conclusions** – Because the analysis in this Draft 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 EIR.

  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 EIR 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?

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

  Table 3.0-1 provides a list of the approved but not yet constructed/occupied and pending projects within 0.5-mile radius of the project site that were considered in the cumulative impact analysis of the project.

Table 3.0-1: List of Projects Within Half-Mile Radius of the Project Site

Project Name	Location	Description
Approved But Not Yet Constructed/Occupied		
Greyhound Residential[3]	70 South Almaden Boulevard	Construction of up to 781 residential units with approximately 20,000 square feet of

[3] The Greyhound Residential project was approved in May 2017.

Table 3.0-1: List of Projects Within Half-Mile Radius of the Project Site		
Project Name	**Location**	**Description**
		ground floor retail in two high rise towers (up to 24 stories).
Museum Place[4]	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.
200 Park Avenue Office[5]	200 Park Avenue	Construction of a 20-story office building (approximately 1,055,000 square feet) with 840,000 square feet of office space, and 229,200 square feet of above-grade parking.
Spartan Keyes Senior Housing	295 East Virginia Street	Construction of a six-story below market rate senior housing with 301 studio units
Gateway Tower	455 South First Street	Construction of a 25-story building with up to 308 residential units and approximately 8,000 square feet of ground floor retail.
San Pedro Square	195 West Julian Street	Construction of up to 357 multi-family residential units in a five-story building over two-story podium garage.
Second Street Hotel	605 South Second Street	Construction of a seven-story hotel with 106 guest rooms.
The Mark Residential[6]	459, 465-469, and 475 South Fourth Street	Construction of a 23-story multi-family residential building with up to 240 dwelling units.
CityView Plaza[7]	Northeast corner of Almaden Boulevard/Park Avenue intersection.	Construction of three new 19-story office buildings (totaling 3,574,533 of leasable office space) with 65,500 square feet of ground floor retail.
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.
Balbach Affordable Housing	Southeast corner of Balbach Street/South	Construction of an eight-story building with 87 residential units.

[4] The Museum Place project was approved in August 2017. Modifications to the original project were proposed and have been approved.
[5] The 200 Park Office project was approved in October 2019.
[6] The Mark Residential project was approved in July 2021.
[7] The CityView Plaza project was approved in June 2020.

Table 3.0-1: List of Projects Within Half-Mile Radius of the Project Site		
Project Name	**Location**	**Description**
	Almaden Boulevard intersection	
Tribute Hotel	211 South First Street	Construction of a 24-story, 274 room hotel addition to an existing hotel.
South Almaden Office	Northwest corner of Almaden Boulevard/Woz Way intersection	Construction of two 16-story towers for a combined total of 1.7 million square feet of office.
Project Applications Pending City Approval		
3rd Street Mixed Use	420 South Third Street/420 Second Street	Construction of a 20-story, mixed-use building at 420 Third Street with up to 152 residential units and approximately 3,000 square feet of retail space and construction of two mixed-use towers with up to 254 residential units and approximately 8,000 square feet of ground floor commercial space at 420 Second Street.
BoTown Residential[8]	409 South Second Street	Construction of a 30-story, mixed-use building with up to 540 residential units and approximately 5,491 square feet of ground floor retail space.
Valley Title Commercial[9]	345 South Second Street	Construction of a 20-story commercial building within two towers with a five-level below grading parking garage.
San José Stage/Home 2	490 South First Street	Construction of a seven-story, mixed-use building with up to 144 hotel rooms and approximately 18,000 square feet of performance theater/auditorium space.

Project Baseline – The environmental baseline for this CEQA analysis is existing conditions as of republication of the Notice of Preparation (NOP). The NOP was republished in February 2022.

[8] The BoTown Residential project was approved in November 2022.
[9] The Valley Title Commercial project was approved in September 2022.

3.1 AIR QUALITY

The following discussion is based on an Air Quality Assessment prepared by *Illingworth & Rodkin, Inc.* in March 2023. The discussion is also based upon an Air Quality Cumulative Memorandum prepared by *Illingworth & Rodkin, Inc.* in September 2021. A copy of this report and memorandum is included as Appendix B of the Draft SEIR.

Approach: While The Mark Residential project (File No. SP20-021), approximately 10 feet south of the project site, has been approved, no work has occurred since approval of the project. Therefore, this analysis assumes that the existing apartment buildings and single-family residence at The Mark Residential site are currently occupied. Construction and operational health risk and hazard levels for the future residences at The Mark Residential site are included for informational purposes in Appendix B of this Draft 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.[10] Criteria pollutants are regulated because they result in health effects. An overview of the sources of criteria pollutants and their associated health are summarized in Table 3.1-1. The most commonly regulated criteria pollutants in the Bay Area are discussed further below.

Table 3.1-1: Health Effects of Air Pollutants

Pollutants	Sources	Primary Effects
O_3	Atmospheric reaction of organic gases with nitrogen oxides in sunlight	• Aggravation of respiratory and cardiovascular diseases • Irritation of eyes • Cardiopulmonary function impairment
Nitrogen Dioxide (NO_2)	Motor vehicle exhaust, high temperature stationary combustion, atmospheric reactions	• Aggravation of respiratory illness • Reduced visibility

[10] 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).[11] Chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the California Air Resources Board (CARB).

[11] California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed March 21, 2022. https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.

Sensitive Receptors

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

3.1.1.2 *Regulatory Framework*

Federal and State

Clean Air Act

At the federal level, the United States Environmental Protection Agency (U.S. 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.[12]

CEQA Air Quality Guidelines

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

City of San José

Envision San José 2040 General Plan

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

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-11.1	Require completion of air quality modeling for sensitive land uses such as new residential developments that are located near sources of pollution such as freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs or be located an adequate distance from sources of toxic air contaminants (TACs) to avoid significant risks to health and safety.
MS-11.2	For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to,

[12] BAAQMD. *Final 2017 Clean Air Plan.* April 19, 2017. Accessed March 21, 2022. http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans.

General Plan Policies - Air Quality	
	industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.
MS-11.3	Review projects generating significant heavy duty truck traffic to designate truck routes that minimize exposure of sensitive receptors to TACs and particulate matter.
MS-11.5	Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.
MS-12.2	Require new residential development projects and projects categorized as sensitive receptors to be located an adequate distance from facilities that are existing and potential sources of odor. An adequate separation distance will be determined based upon the type, size and operations of the facility.
MS-13.1	Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At 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 toxics control measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.
MS-13.3	Require subdivision designs and site planning to minimize grading and use landform grading in hillside areas.

3.1.1.3 *Existing Conditions*

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

BAAQMD is responsible for assuring that the national and State ambient air quality standards are attained and maintained in the Bay Area. Air quality studies generally focus on four criteria pollutants that are most commonly measured and regulated: CO, O_3, NO_2, PM_{10}, and $PM_{2.5}$. These pollutants are considered criteria pollutants by the 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).[13]

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

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

Source: Bay Area Air Quality Management District. "Annual Bay Area Air Quality Summaries." Accessed March 21, 2022. http://www.baaqmd.gov/about-air-quality/air-quality-summaries.

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

3.1.1.4 *Sensitive Receptors*

The closest sensitive receptors are residents in an adjacent apartment building north of the project site (approximately five feet) and a single-family residence adjacent to the southern site boundary (approximately 10 feet). Additional residences are located at farther distances from the project site in all directions. In addition, Norte Dame High School is located approximately 687 feet southwest of the project site.

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

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

3.1.2.1 *Thresholds of Significance*

Impacts from the Project

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

Table 3.1-3: BAAQMD Air Quality Significance Thresholds

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

3.1.2.2 *Project Impacts*

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

The proposed project would not conflict with the 2017 CAP because it would be smaller than the BAAQMD CEQA Air Quality Guidelines Operational Criteria Pollutant Screening Size (shown in Table 3-1 of BAAQMD's CEQA Air Quality Guidelines[14]), is considered urban infill and is consistent with the General Plan, and would be located near bike paths and transit with regional connections. Because the project would not exceed the BAAQMD screening criteria, it would not result in the generation of operational-related criteria air pollutants and/or precursors that exceed the thresholds shown in Table 3.1-3. Thus, the project is not required to incorporate project-specific control measures listed in the 2017 CAP. Further, implementation of the project would not inhibit BAAQMD or partner agencies from continuing progress toward attaining State and federal air quality standards and eliminating health-risk disparities from exposure to air pollution among Bay Area communities, as described within the 2017 CAP.

Construction Period Emissions – Criteria Pollutants

The California Emissions Estimator model (CalEEMod) Version 2020.4.0 was used to estimate annual emissions from construction activities. The proposed projects land uses were input into CalEEMod, which included 210 dwelling units and 376,323 entered as "Apartment High-Rise" and 72,151 square feet and 168 parking spaces entered as "Enclosed Parking with Elevator". Demolition of existing buildings on-site and soil export were also input into CalEEMod (refer to Appendix B).

The project construction schedule assumes that the project would be built out over a period of approximately 23 months, or an estimated 495 construction workdays.[15] Table 3.1-4 shows the estimated daily air emissions from construction of the proposed project.

Table 3.1-4: Construction Period Emissions

Year	ROG	NOx	PM_{10} Exhaust	$PM_{2.5}$ Exhaust
Construction Emissions Per Year (tons)				
2023	0.77	1.61	0.08	0.07
2024	2.27	1.41	0.06	0.05
Average Daily Construction Emissions Per Year (pounds/day)				
2023 (261 construction workdays)	5.93	12.33	0.61	0.53
2024 (234 construction workdays)	19.37	12.02	0.53	0.46
BAAQMD Thresholds (pounds per day)	*54* lbs./day	*54* lbs./day	*82* lbs./day	*54* lbs./day
Exceeds Threshold?	*No*	*No*	*No*	*No*

[14] Bay Area Air Quality Management District. *California Environmental Quality Act Air Quality Guidelines*. May 2017.

[15] Note that project construction was assumed to begin January 2023. Analyzing construction emissions for January 2023 would be more conservative as efficiencies are assumed over time and the January 2023 start date assumes older construction equipment usage, which would have high emissions concentrations, than construction that would start after January 2023. Refer to Appendix B of this document.

As shown above, construction period criteria pollutant emissions associated with the project would not exceed the BAAQMD significance thresholds. Therefore, the project would not result in a significant impact from construction criteria pollutant emissions.

Operational Period Emissions - Criteria Pollutants

Operational emissions from the project would be generated primarily from vehicles driven by future residents. Operation of the project was assumed to begin in 2025. Based on the Air Quality Assessment, any emissions associated with project build out later than 2025 would be lower due to cleaner construction equipment in future years.[16] CalEEMod was used to estimate emissions from operation of the proposed project. The project would install one 1,000-kW emergency generator powered by a 1,340-hp diesel engine on the ground floor and a fire pump with a 150 hp diesel engine in the basement. The CalEEMod model assumed 50 hours of annual operation for testing and maintenance purposes per year. The assumptions and results are described further in Appendix B of this document.

Table 3.1-5 summarizes the estimated daily operational period emissions from the proposed project.

Table 3.1-5: Operational Period Emissions

Scenario	ROG	NOx	PM_{10} Exhaust	$PM_{2.5}$ Exhaust
2025 Project Operational Emissions (tons/year)	2.22	0.32	0.51	0.14
BAAQMD Thresholds (tons/year)	*10*	*10*	*15*	*10*
Exceed Threshold?	*No*	*No*	*No*	*No*
2025 Project Operational Emissions (pounds/day)[1]	12.16	1.75	2.77	0.75
BAAQMD Thresholds (pounds/year)	54	54	82	54
Exceed Threshold?	*No*	*No*	*No*	*No*

Note: [1]Assumes 365-day operation.

Operational criteria pollutant emissions associated with the proposed project, when considered individually, would not result in emissions above established thresholds. The project is, however, part of the planned growth in the downtown area and would contribute to the significant operational emissions forecast identified the Downtown Strategy 2040 FEIR. The proposed project is located in the downtown area which has the lowest VMT of any plan area in the City and is located in proximity to public transit and other services and amenities which would reduce the project's VMT. Therefore, implementation of the project would not conflict with or obstruct implementation of the 2017 CAP.

The proposed project would not exceed the BAAQMD significance threshold for construction and operational criteria emissions nor would the project conflict with the 2017 CAP. **[Less Impact than Approved Project (Significant Unavoidable Impact)]**

[16] Construction emissions resulting from a later project construction start year would be less than what was analyzed because the modeling assumes cleaner construction equipment in future years.

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

The Downtown Strategy 2040 FEIR concluded that 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 ozone standards. As stated in the BAAQMD CEQA Air Quality Guidelines, air pollution by its nature is largely a cumulative impact. No single project is sufficient in size to, by itself, result in nonattainment 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.

The proposed project would not, by itself, result in any air pollutant emissions exceeding BAAQMD's significance thresholds as discussed above. The project, by itself, would not result in a cumulatively considerable net increase of any criteria pollutant for which the region is in nonattainment. **[Less Impact than Approved Project (Significant Unavoidable Impact)]**

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

Construction Dust Emissions

Construction activities, particularly during site preparation and grading, would temporarily generate fugitive dust in the form of PM_{10} and $PM_{2.5}$. Sources of fugitive dust would include disturbed soils at the construction site and trucks carrying uncovered loads of soils. Unless properly controlled, vehicles leaving the site would deposit mud on local streets, which could be an additional source of airborne dust after it dries. Nearby land uses, particularly sensitive receptors to the north and south of the project site, could be affected by dust generated during construction activities.

Consistent with the Downtown Strategy 2040 FEIR and City policies, the applicant shall implement the following Standard Permit Conditions during all phases of construction to reduce dust and other particulate matter emissions.

Standard Permit Conditions:

Construction-related Air Quality. 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.).

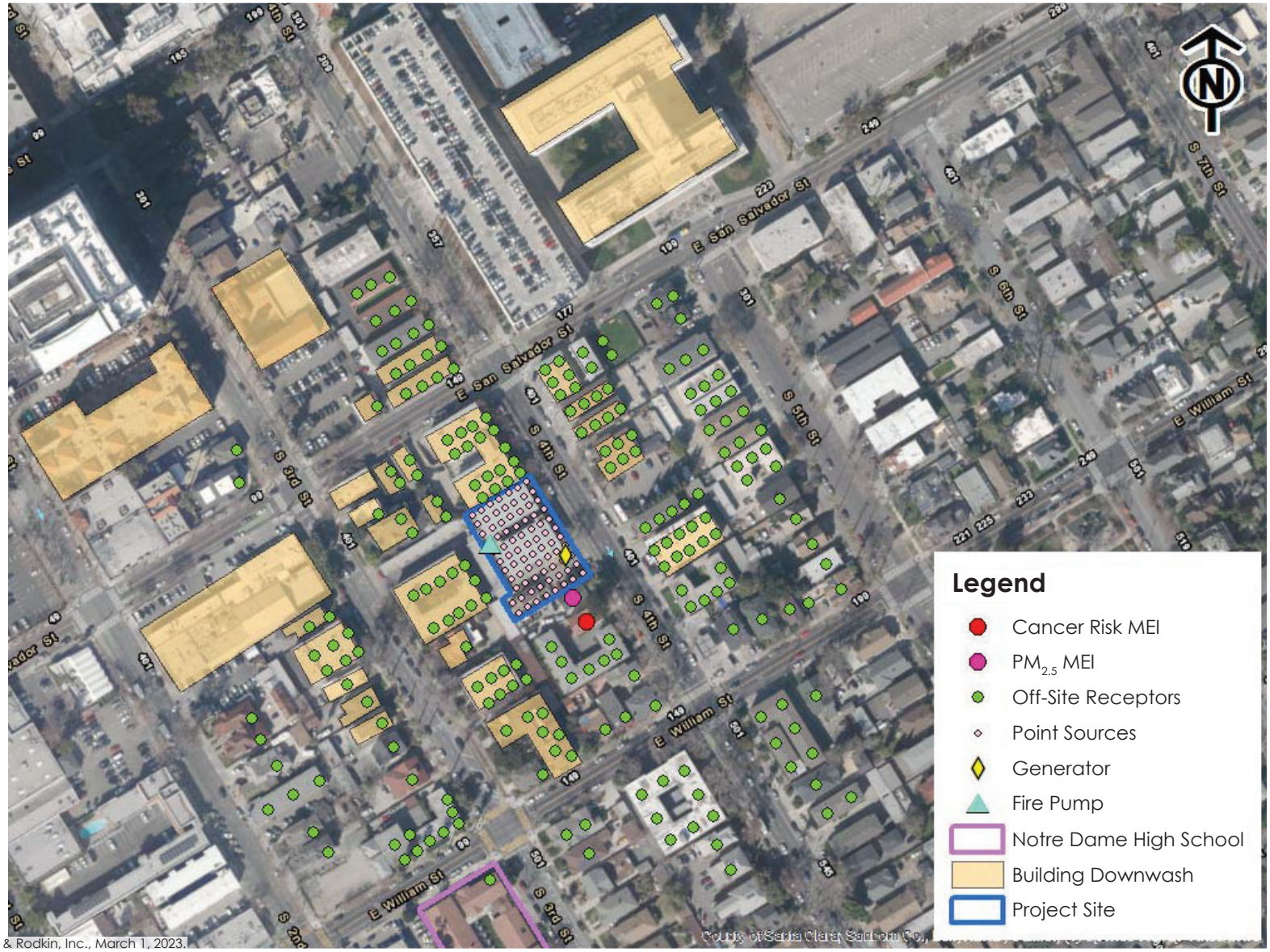
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and properly tune construction equipment in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person at the lead agency to contact regarding dust complaints.

In addition to the Standard Permit Conditions above, the project applicant shall implement these additional measures recommended by BAAQMD to control dust and exhaust as Conditions of Approval.

Conditions of Approval:

- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph and visible dust extends beyond site boundaries.
- Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction adjacent to sensitive receptors. Wind breaks should have at maximum 50 percent air porosity.
- Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- Avoid tracking of visible soil material on to public roadways by employing the following measures if necessary: (1) Site accesses to a distance of 100 feet from public paved roads shall be treated with a 6 to 12-inch compacted layer of wood chips, mulch, or gravel and (2) washing truck tires and construction equipment of prior to leaving the site.
- Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.

With implementation of the Standard Permit Conditions and identified Conditions of Approval listed above, construction dust and other particulate matter would have a less than significant construction air quality impact.



Source: Illingworth & Rodkin, Inc., March 1, 2023.

LOCATIONS OF OFF-SITE RECEPTORS AND MAXIMUM EXPOSED INDIVIDUALS | FIGURE 3.1-1

Project Construction – Community Risk Impacts

Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC. The closest sensitive receptors are residents in an adjacent apartment building north of the project site (approximately five feet) and a single-family residence adjacent to the southern site boundary (approximately 10 feet). Additional residences are located at farther distances from the project site. A community risk assessment of the project construction activities was completed that evaluated potential health effects to sensitive receptors from construction emissions of DPM and $PM_{2.5}$.[17] Community risk impacts were also analyzed for students at Notre Dame High School. To quantify the effects of DPM on the nearby sensitive receptors, construction period exhaust emissions were computed using the CalEEMod and CARB Emission FACtors 2021 (EMFAC2021) models. The U.S. EPA AERMOD dispersion model was used to predict construction-related concentrations of DPM and $PM_{2.5}$ concentrations at existing sensitive receptors in the vicinity of the project site. The U.S. EPA AERMOD dispersion model, assumptions, and results are described in Appendix B of this document.

Neither BAAQMD nor the City of San José have significance criteria for construction TAC impacts. For this analysis, the BAAQMD criteria for operational TAC impacts are used by the City. Based on the BAAQMD Guidelines (2017), a project would result in a significant construction TAC or $PM_{2.5}$ impact if:

- An excess cancer risk level of more than 10 in one million, or a non-cancer (chronic or acute) Hazard Index greater than 1.0.
- An incremental increase of more than 0.3 micrograms per cubic meter ($\mu g/m^3$) annual average $PM_{2.5}$.

The maximum exposed individual (MEI) was identified at two different locations. The $PM_{2.5}$ concentration MEI is located on the first floor of the single-family residence south of the site while the cancer risk MEI is located on the second floor of the multi-family apartment building south of the $PM_{2.5}$ concentration MEI. Figure 3.1-1 shows the maximum exposed individuals most affected by construction. Sensitive receptors are designated in green, the $PM_{2.5}$ MEI is circled in pink, and the cancer risk MEI is circled in red. The maximum annual $PM_{2.5}$ concentration would be 1.12 $\mu g/m^3$ which exceed the BAAQMD significance threshold of 0.3 $\mu g/m^3$. The maximum cancer risk would be 103.35 cases per one million cases for infants which would exceed the BAAQMD significance threshold of 10 cases per one million. The cancer risk for adults would be 1.73 cases per one million and would not exceed the BAAQMD significance threshold. The maximum hazard index (HI) concentration is 0.07, which is below the HI of greater than 0.1. Students attending Notre Dame High School located at 596 South Second Street would not be exposed to a cancer risk, $PM_{2.5}$ concentration, or HI exceeding BAAQMD thresholds.

Impact AIR-1: Construction activities associated with the proposed project would result in an infant cancer risk of 103.35 cases per one million and an annual fine particulate matter where particles have a diameter of 2.5 micrometers or less ($PM_{2.5}$) of 1.12 micrograms per cubic meter air ($\mu g/m^3$) which exceeds the

[17] DPM is identified by California as a toxic air contaminant due to the potential to cause cancer.

BAAQMD significance thresholds of 10 cases per one million and 0.3 µg/m^3, respectively.

Mitigation Measures

In addition to the Standard Permit Conditions and Conditions of Approval listed above under checklist question c 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, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan for review and approval to the Director of Planning, Building and Code Enforcement or the Director's designee, demonstrating that the off-road equipment used for construction of the project would achieve a fleet-wide average of at least 90 percent reduction in diesel particulate matter (DPM) emissions. The plan to achieve the 90 percent reduction would include the following, or an equivalent alternative that meets the required reduction:

- All diesel-powered off-road equipment (larger than 25 horsepower) operating on-site for more than two days continuously or 20 hours total shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 final emission standards for fine particulate matter ($PM_{2.5}$) and Coarse Particulate Matter (PM_{10}).
    - Alternatively, equipment that meet U.S. EPA emissions for Tier 3 engines and is equipped with California Air Resources Board-certified Level 3 Diesel Particulate Filters that altogether achieve a 90 percent reduction in diesel particulate matter emissions would meet this requirement.
    - Use of alternatively fueled or electric equipment.
- Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary and portable equipment, such as cranes, aerial lifts, cement and mortar mixers, concentrate/industrial saws, air compressors, and welders.

As an alternative to the measures above, the project applicant could request a plan from a qualified air quality specialist that reduces on- and near-site construction DPM emissions by 90 percent or greater. The plan shall be submitted to the City of San José Director of Planning, Building and Code Enforcement ort the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

With implementation of Mitigation Measure AIR-1.1, and the Standard Permit Conditions and Conditions of Approval listed above under checklist question c, the infant residential cancer risk would be reduced to 3.95 cases per one million and the maximum $PM_{2.5}$ concentration would be

reduced to 0.21 µg/m^3 which would be below the BAAQMD significance thresholds of 10 cases per one million and $PM_{2.5}$ of 0.3 µg/m^3, respectively. The HI would be less than 0.01.

Project Operation – Community Risk Impacts

Project traffic, emergency generators, and fire pumps associated with the project's operation could result in community risk impacts.

Project Traffic

Per BAAQMD, roadways with less than 10,000 total vehicles per day would be considered a low-impact source of TACs. 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 proposed project would generate 644 new daily trips, which is a fraction (approximately six percent) of the 10,000 daily vehicle tips threshold for potential TAC impacts. Additionally, projects with the potential to cause or contribute to increased cancer risk from traffic include those that use high numbers of diesel-powered on-road trucks or off-road diesel equipment on-site (e.g., a distribution center, a quarry, or a manufacturing facility). The project applicant would construct a residential building and would not generate enough trips to be a significant TAC source; therefore, the project traffic emissions would be negligible and is not included in this analysis.

Stand-by Generator and Fire Pump

As proposed, the project would include one 1,000-kW stand-by diesel generator (approximately 1,340 HP) and a fire pump with a 150-HP diesel engine. The diesel generator would be located at the ground floor while the fire pump would be located in the basement. The fire pump and emergency generators would be operated for testing and maintenance purposes for a maximum of 50 hours per year of non-emergency operations. During the testing periods, the engines would run for less than one hour under light engine loads. During emergency situations, BAAQMD has no hour restrictions on the engine run time.

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 generator and fire pump. To estimate the increased cancer risk from the generator and fire pump at the MEI, the cancer risk exposure duration was adjusted to account for the cancer risk MEI being exposed to construction for the first two years of the 30-year period. Cancer risk adjustments were also made for the students attending Notre Dame High School. The U.S. EPA AERMOD dispersion model, assumptions, and results are described further in Appendix B of the Draft SEIR.
Refer to Figure 3.1-1 above for the location of the stand-by generator and fire pump and off-site receptors. Table 3.1-6 provides a summary of construction and operation risk impacts at the off-site MEIs.

Table 3.1-6: Construction and Operation Risk Impacts at the Off-Site Project MEIs			
Source	**Cancer Risk** (per million)**	**Annual $PM_{2.5}$** ($\mu g/m^3$)**	**Hazard Index**
Residential Sensitive Receptors (MEIs)			
Project Construction (Years 0-2) Mitigated*	3.95 (infant)	0.21	<0.01
Project Generator and Fire Pump (Years 3-30)	0.51 (child)	<0.01	<0.01
Total/Maximum Project (Years 0-30) Mitigated*	4.46 (infant)	0.21	<0.01
BAAQMD Single-Source Threshold	***>10.0***	***>0.3***	***>1.0***
Exceed Threshold? Mitigated*	*No*	*No*	*No*
Notre Dame High School Student Receptors[1]			
Project Construction (Years 1-3) Unmitigated	0.87 (child)	0.01	<0.01
Project Generator and Fire Pump (Years 3-4)	<0.01 (child)	<0.01	<0.01
Total/Maximum Project (Years 0-4) Unmitigated	<0.88 (child)	0.01	<0.01
BAAQMD Single-Source Threshold	***>10.0***	***>0.3***	***>1.0***
Exceed Threshold? Unmitigated	*No*	*No*	*No*

Notes: ***** Construction equipment with Tier 4 final engines, electric portable equipment, electric aerial lifts, electric cranes, the City's Standard Permit Conditions, and enhanced best management practices (BMPs) as identified above under checklist question c.

** The maximum cancer risk and $PM_{2.5}$ concentration occur at different locations.

[1] For informational purposes.

The maximum cancer risk MEI and the annual $PM_{2.5}$ concentration MEI from construction and operation of the project (without mitigation) would exceed BAAQMD's significance thresholds of 10 cases per one million and 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 Mitigation Measure AQ-1.1, and the Standard Permit Conditions and Conditions of Approval identified under checklist question c, the total cancer risk (years 0-30) would be reduced to 4.46 cases per one million and the annual $PM_{2.5}$ would be reduced to 0.21 $\mu g/m^3$ which would be below the BAAQMD significance thresholds for cancer risk and annual $PM_{2.5}$ concentration. Additionally, the total maximum project impact to school-aged children (without mitigation) would not exceed the BAAQMD significance thresholds for cancer risk, $PM_{2.5}$ concentration, and HI. The project would have a less than significant impact to the off-site MEIs and all nearby sensitive receptors with implementation of the identified Standard Permit Conditions, Conditions of Approval, 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.

The proposed project would result in a less than significant project-level operational and construction criteria pollutant impact as discussed above under checklist question a. Therefore, the project would not expose sensitive receptors to substantial criteria pollutant concentrations. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

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

The project would generate localized emissions of diesel exhaust during construction equipment operation and truck activity. These emissions may be noticeable from time to time by adjacent receptors; however, the odors would be localized and temporary and would not adversely affect a substantial number of people off-site. The project applicant would be required to abide by policies including General Plan Policy MS-12.2 which require adequate buffers between sources of odors and sensitive receptors. Additionally, 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. Operation of the project would not generate odors that would affect people off-site. Therefore, implementation of the proposed project would not result in odors that would adversely affect a substantial number of people. **[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 defined as the San Francisco Bay 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.

Community health risk assessments typically look at all substantial sources of TACs that can affect sensitive receptors located within 1,000 feet of the project site. These sources include rail lines, freeways or highways, streets, and stationary sources identified by BAAQMD.

Mobile Sources

A review of the area indicates that South Third Street and South Fourth Street are the only substantial source of mobile TAC emissions within 1,000 feet of the project site and have average daily traffic (ADT) above 10,000 vehicles. The ADT on South Third Street and South Fourth Street was estimated to be 12,607 and 11,455 vehicles, respectively.

Stationary Sources

Nearby stationary sources were identified using BAAQMD's *Permitted Stationary Sources 2018* geographic information system website which identifies the location of nearby stationary sources and their estimated risk and hazard impacts. Six stationary sources were identified; five of which are generators and one being a gas station.

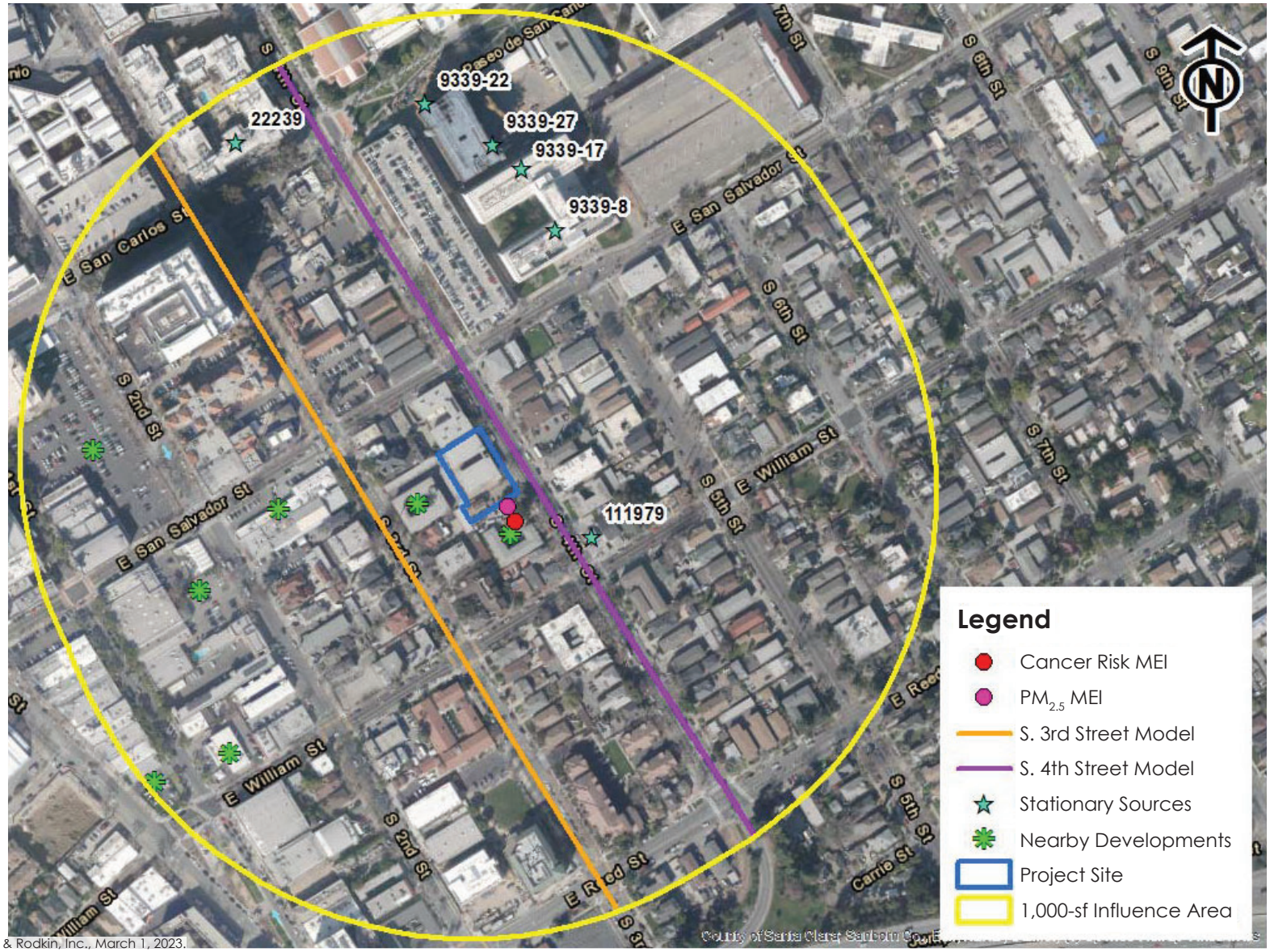
Construction Risk Impacts from Nearby Development[18]

Within 1,000 feet of project site, there are six proposed projects at various stages of the entitlement approval process (The Mark Residential File No. SP20-021, 3rd Street Mixed Use File Nos. SP21-019 & SP21-020, BoTown Residential File Nos. H20-038 & ER20-243, Valley Title Commercial File Nos. H21-012 & ER21-026, San José Stage/Home 2 File Nos. CP20-008 & ER20-079, and Gateway Tower File No. H15-047). As of March 2023, none of these projects have started construction. However, since it is reasonably foreseeable that these projects may all be approved and may all have overlapping construction schedules, in order to be conservative, these projects were included in the cumulative discussion.

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.

Figure 3.1-2 shows the project site and the nearby TAC and $PM_{2.5}$ sources and Table 3.1-7 summarizes the cumulative TAC sources of air pollution near the project site, as well as nearby development included in the analysis.

[18] A cumulative community risk impacts analysis at the location of The Mark MEI is included in Appendix B of this Draft SEIR for informational purposes.



Source: Illingworth & Rodkin, Inc., March 1, 2023.

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

Table 3.1-7: Combined Sources at Project MEIs			
Source	**Maximum Cancer Risk** (per million)**	**Maximum Annual $PM_{2.5}$ Concentration** ($\mu g/m^3$)**	**Maximum Hazard Index**
Total/Maximum Project Impact (construction and operation) Mitigated	4.46 (infant)	0.21	<0.01
South Third Street	0.93	0.08	<0.01
South Fourth Street	1.39	0.11	<0.01
Plant #22239	0.04	--	--
Plant #111979	0.86	--	<0.01
Plant #9339-8	<0.01	--	--
Plant #9339-17	1.39	<0.01	<0.01
Plant #9339-27	0.37	<0.01	<0.01
Plant #9339-22	0.01	--	--
Nearby Developments[1]			
3rd Street Mixed Use, 225 feet west	<10.0	<0.30	<1.00
BoTown Residential, 580 feet west	<10.0	<0.08	<0.01
Valley Title Commercial, 610 feet northwest	<8.21	<0.09	<0.01
San José Stage/Home 2, 800 feet southwest	<3.20	<0.17	<0.01
Gateway Tower, 985 feet southwest	<6.50	<0.10	<0.01
Combined Sources Mitigated	<47.37	**<1.16**	<1.10
BAAQMD Combined Source Threshold	***>100***	***>0.8***	***>10.0***
Significant?	*No*	***Yes***	*No*

Notes: [1] 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.
** The maximum cancer risk and $PM_{2.5}$ concentration occur at different locations.

BAAQMD CEQA Guidelines state that in instances where a pre-existing cumulative health risk impact exists, the project's individual contribution to that cumulative impact should be analyzed.[19] 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.[20]

The combined cancer risk and $PM_{2.5}$ concentration from existing sources and construction of nearby projects would be <42.91 and <0.95 $\mu g/m^3$ (unmitigated). While the BAAQMD significance cumulative threshold for cancer risk would not be exceeded, the $PM_{2.5}$ would be exceeded. When

[19] 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
[20] Illingworth & Rodkin, Inc. *Icon-Echo Mixed-Use Towers Air Quality Cumulative Memo*. September 23, 2021.

combined with the proposed project, the $PM_{2.5}$ concentration would be <1.16 µg/m^3, even after implementation of Mitigation Measure AIR-1.1, and the identified Standard Permit Conditions and Conditions of Approval listed under checklist question c. However, as shown in Table 3.1-7, the project's annual $PM_{2.5}$ concentration would be 0.21 (with the required mitigation) which would reduce the project-level annual $PM_{2.5}$ concentration to below the single-source threshold. Therefore, the project's contribution to existing cumulative impacts from cumulative construction sources would not be cumulatively considerable. **[Same Impact as Approved Project (Less Than Significant Cumulative Impact)]**

3.1.3 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 air quality conditions affecting a proposed project. Pursuant to General Plan policies MS-10.1, MS-11.1, and MS-11.2, a health risk assessment was prepared to ensure sensitive receptors introduced onto the project site are not exposed to substantial TAC emissions.

Operational Community Risk Impacts – New Residences

Mobile Sources

As mentioned previously, South Third Street and South Fourth Street are the only substantial source of mobile TAC emissions within 1,000 feet of the project site and have average daily traffic (ADT) above 10,000 vehicles. A conservative analysis of 2025 (operational year) was used to determine the ADT on South Third Street and South Fourth Street. The ADT on South Third Street and South Fourth Street was estimated to be 12,854 and 11,679 vehicles, respectively.

Stationary Sources

The stationary source screening analysis for the new receptors were analyzed the same way as the project MEI.

Construction Risk Impacts from Nearby Development

The same mitigated construction risks from the nearby developments were included in the cumulative table for the on-site project sensitive receptors. The future residences would, however, only be exposed to a portion of the construction from the nearby developments, as opposed to the project's MEIs which could be exposed to the entire portion of the nearby developments' construction. Therefore, the construction risks from the nearby developments would be lower at the proposed on-site project sensitive receptors.

Figure 3.1-2 above shows the project site and the nearby TAC and $PM_{2.5}$ sources and Table 3.1-8 summarizes nearby TAC and $PM_{2.5}$ sources of air pollution near the project site.

Table 3.1-8: Community Risk Levels to Future Project Residences			
Source	**Maximum Cancer Risk (per million)**	**Maximum Annual $PM_{2.5}$ Concentration ($\mu g/m^3$)**	**Maximum Hazard Index**
Fixed Operational Sources			
South Third Street	0.35	0.03	<0.01
South Fourth Street	0.25	0.02	<0.01
Plant #22239	0.05	--	--
Plant #111979	0.72	--	<0.01
Plant #9339-8	<0.01	--	--
Plant #9339-17	2.09	<0.01	<0.01
Plant #9339-27	0.50	<0.01	<0.01
Plant #9339-22	0.02	--	--
Temporary Construction Sources			
3rd Street Mixed Use, 225 feet west	<10.0	<0.30	<1.00
BoTown Residential, 580 feet west	<10.0	<0.08	<0.01
Valley Title Commercial, 610 feet northwest	<8.21	<0.09	<0.01
San José Stage/Home 2, 800 feet southwest	<3.20	<0.17	<0.01
Gateway Tower, 985 feet southwest	<6.50	<0.10	<0.01
BAAQMD Single-Source Threshold	***>10.0***	***>0.3***	***>1.0***
Significant?	*No*	*No*	*No*
Combined Sources	<41.90	**<0.81**	<1.09
BAAQMD Combined Source Threshold	***>100***	***>0.8***	***>10.0***
Significant?	*No*	***Yes***	*No*

The sum of impacts from single and combined sources (i.e., sources within 1,000 feet of the project) from nearby fixed sources would be below the BAAQMD thresholds of significance. The maximum cancer risk, annual $PM_{2.5}$ concentrations, and HI from nearby temporary sources (e.g., nearby developments) would not exceed the single-source thresholds, but the combined temporary sources would almost exceed the $PM_{2.5}$ concentration threshold. Because construction of the nearby developments would be temporary and the construction schedule of these developments are unknown and may not overlap with the proposed project, the impacts to future site receptors would be less than what is shown in the table. No additional project design features are required since the project would comply with applicable Downtown Strategy 2040 policies and regulations.

3.2 BIOLOGICAL RESOURCES

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, Section 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 and Birds of Prey Protections

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade in 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.[21] 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 Habitats

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

[21] United States Department of the Interior. "Memorandum M-37050. The Migratory Bird Treaty Act Does Not Prohibit Incidental Take." Accessed March 10, 2022. https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf.

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

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

General Plan Policies – Biological Resources	
ER-6.5	Prohibit use of invasive species, citywide, in required landscaping as part of the discretionary review of proposed development.
ER-6.8	Design and construct development to avoid changes in drainage patterns across adjacent natural areas and for adjacent native trees, such as oaks.
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 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.
CD-1.24	Within new development projects, include preservation of ordinance-sized and other significant trees, particularly natives. Avoid any adverse effect on the health and longevity of such trees through design measures, construction, and best maintenance practices. When tree preservation is not feasible, include replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest.

3.2.1.2 *Existing Conditions*

The project site is fully developed with a two-story, single-family residence and a three-story apartment complex. There are trees, shrubs, and other vegetation located on-site and along the street frontages. There is no native vegetation present on-site.

Special-Status Species

Most special-status animal species in the Bay Area use habitats that are not present on the project site including salt marsh, freshwater marsh, and serpentine grassland habitats. Since the native vegetation of the area is no long present on-site, native wildlife species have been supplanted by species that are more compatible with an urbanized area.

Trees

Trees (both native and non-native) are valuable to the human environment for the benefits they provide including resistance to global climate change (i.e., carbon dioxide absorption), protection from weather, nesting and foraging habitat for raptors and other migratory birds, and as a visual enhancement to the urban environment. A total of 15 trees were surveyed which include 10 on-site

trees, three street trees, and two off-site trees). Table 3.2-1 lists all trees identified on and adjacent to the site as part of a tree survey completed by David J. Powers & Associates, Inc. on September 2015.[22] The location of the trees is shown in Figure 3.2-1.

Table 3.2-1: Trees Species Observed

Tree No.	Scientific Name	Common Name	Size*
1	*Platanus x acerifolia*	London plane tree	67+
2	*Pistacia chinesis*	Chinese Pistache	17+
3	*Pistacia chinesis*	Chinese Pistache	27+
4	*Robinia sp.*	Locust	12.5
5	*Ailanthus altissima*	Tree of Heaven	14**
6	*Phoenix canariensis*	Canary Island Date Palm	46
7	*Prunus 'Shirotae'*	Mt. Fuji Flowering Cherry	17
8	*Prunus 'Shirotae'*	Mt. Fuji Flowering Cherry	12
9	*Prunus sp.*	Fruit Plum Tree	17
10	*Citrus sp.*	Lemon Tree	10
11	*Prunus laurocerasus*	English Laurel	24
12	*Prunus laurocerasus*	English Laurel	21
13	*Prunus laurocerasus*	English Laurel	40
14	Pittisporum sp.	Variegated Pittisporum	46
15	*Abies sp.*	Fir Tree	37**

Notes: Ordinance sized trees are 38+ inches in circumference (12.1+ inches in diameter)
*Circumference measured in inches
**Off-site Tree
+ Street Tree

[22] Since completion of the tree survey in September 2015, the City has adopted new tree ordinance guidelines (February 9th, 2018). The previous guidelines protected all trees having a trunk that measures 56 inches or more in circumference (18 inches in diameter) at a height of two feet above natural grade. As such, the data in the tree survey was based on measurements taken at two feet above natural grade. The new guidelines protect all trees having a trunk measuring 38 inches or more in circumference (12.1 inches in diameter) at a height of 4.5 feet above natural grade. The analysis provides tree replacement ratios based on the current guidelines. It should be noted that trees are typically wider near the base of the truck and decrease in size near the canopy. Because the tree survey was completed on the lower section of the trees, the measurements used to determine the replacement ratios are conservative.

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 site development evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant biological resources impact, 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?

Due to the fact that no sensitive or natural habitats currently exist on-site, no significant impacts to natural plant communities or special-status or endangered species would result from the project. It is assumed that the project would remove all 10 on-site trees and one street tree (Tree No. 2) which could provide nesting and/or foraging habitat for migratory birds including raptors.

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

Mitigation Measure

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

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

If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest. The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.

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

With implementation of Mitigation Measure BIO-1.1, the project would not have a significant impact on the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment. **[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?

The only natural habitats in the vicinity of the downtown area are the Los Gatos Creek and Guadalupe River riparian corridors.[23] The closest riparian corridor to the project site is Guadalupe

[23] City of San José *San José Downtown Strategy 2040 Integrated Final EIR.* December 2018.

River, located approximately 0.5 mile west. Based on the distance of the closest riparian corridor from the project site, implementation of the proposed project would not result in a substantial adverse effect on any riparian habitat or sensitive natural community. **[Same Impact as Approved Project (Less Than Significant Impact)]**

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

There are no federally protected wetlands within, or adjacent, to the project site. Therefore, the proposed project would not adversely affect protected wetlands through construction activities. **[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 a developed, urbanized area of downtown. 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?

As discussed in the Downtown Strategy 2040 FEIR, development within Growth Areas could result in direct and indirect impacts to the City's "community forest," which consists of the ornamental trees, stands of native trees, and remnant orchard trees found in developed areas of San José. Within the City of San José, the "community forest" is considered an important biological resource because most mature trees provide some nesting, cover, and foraging habitat for a variety of birds (including raptors) and mammals, as well as providing necessary habitat for beneficial insects. Redevelopment of areas within the downtown would not, however, substantially affect the community forest due to the relatively low value of existing habitat. For the purposes of this analysis, it is assumed that all trees surveyed, except for the one off-site tree, would be removed. Consistent with the Downtown Strategy 2040 FEIR, the project would be required to conform to the following Standard Permit Conditions.

Standard Permit Conditions:

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
Note: 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.

The proposed project would remove all 10 on-site trees and one street tree (Tree No. 2). Tree replacement ratios for street trees would not apply as street trees are overseen by the Department of Transportation (DOT). Of the 10 on-site trees, five trees would be replaced at a 1:1 ratio and two trees would be replaced at a 2:1 ratio with 15-gallon containers. The remaining three trees would be replaced at a 4:1 ratio with 15-gallon containers. The total number of trees required to be planted on-site would be 21. The species of trees to be planted would be determined in consultation with the City Arborist and staff from the Department of Planning, Building and Code Enforcement.

If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. 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 building 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.

The proposed project would be required to comply with the above Standard Permit Conditions. Therefore, the proposed project would not conflict with any ordinance protecting biological resources and would not conflict with a tree preservation policy or ordinance. **[Same Impact as Approved Project (Less Than Significant Impact)]**

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

The project site is located within the SCVHP[24] 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*;[25]
- In Figure 2-5 of the SCVHP, the activity is located in an area identified as "Private Development is Covered," or the activity is equal to or greater than two acres and;
    - The project is located in an area identified as "Rural Development Equal to or Greater than Two Acres is Covered," or "Urban Development Equal to or Greater than Two Acres is Covered" or,
    - The activity is located in an area identified as "Rural Development is not Covered" but, based on land cover verification of the parcel (inside the Urban Service Area) or development area, the project is found to impact serpentine, wetland, stream, riparian, or pond land cover types; or the project is located in occupied or occupied nesting habitat for western burrowing owl.

The proposed project would require discretionary approval by the City and is consistent with the activity described in *Section 2.3.2* of the SCVHP. The project site is, however, 0.52 acre in size (below the 2.0-acre threshold) and is not subject to any land cover fee. Consistent with the SCVHP, the project applicant shall implement the following Standard Permit Condition.

Standard Permit Condition:

- **Santa Clara Valley Habitat Plan.** The project is 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 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.

With implementation of the above Standard Permit Condition, the project would be consistent with the provisions of the SCVHP. **[Same Impact as Approved Project (Less Than Significant Impact)]**

[24] Santa Clara Valley Habitat Agency. "GIS Data & Key Maps." Accessed June 23, 2022. http://www.hcpmaps.com/habitat/.

[25] 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).

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 the downtown. The project site and the downtown is fully developed and generally do not contain sensitive, wetland, or riparian habitat with the exception of the Guadalupe River which is channelized through the downtown with some riparian vegetation along the banks. The project site is approximately 0.5 miles from this riparian area and would not have any impact on those resources. The applicant would be required to replace the 10 on-site trees that would be removed with 21 trees which would increase the City's overall greening. Because the project would not impact wetland or riparian habitat, the project's impact on biological resources would not be cumulatively considerable.

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

3.3 CULTURAL RESOURCES

Public comments received during the NOP scoping process pertained to impacts on surrounding historical buildings. Comments received from the Historic Landmarks Commission on March 2, 2022 pertained to the project's design (height and design materials) in relation to the adjacent historic resources, tree replacement, relocation of the 451 South Fourth Street building, and preparation of project renderings in relation to the surrounding historic resources. The project's impacts on the surrounding buildings are addressed in *Section 3.3.2.1* below. Tree replacement is addressed under checklist question e of *Section 3.2.2.1* of this Draft SEIR and photo simulations of the project from six key viewpoints are provided in *Section 4.1* of Appendix A of this document. As a Condition of Approval, the City will offer the single-family residence at 451 South Fourth Street for relocation (refer to checklist question a of this section).

Archaeological Resources

The following discussion is based upon a Literature Search completed by *Holman & Associates* in June 2016. A copy of the Archaeological Literature Review is on file at the Department of Planning, Building and Code Enforcement.

Historical Resources

The following information is based on three reports which are outlined below.

1. A Historic Resource Evaluation (HRE) was previously prepared by *Archives & Architecture* in February 2019 to document and evaluate the historical significance of existing buildings 50 years or older on the project site that are proposed for demolition. This report analyzed the existing buildings on-site under the State criteria. A Historic Resources Project Assessment was previously prepared by *Archives & Architecture* in January 2020 which assessed the proposed project for consistency with the 2004 Downtown Design Guidelines and Standards. The 2004 Guidelines and Standards analysis is, however, outdated as it was based on a previous design of the project.

2. The updated project design, as outlined in the revised NOP, was evaluated to assess potential impacts on adjacent historic resources that could result from the proposed project. *TreanorHL* reviewed the 2019 HRE prepared by *Archives & Architecture* and prepared a report verifying the previous 2019 documentation and conditions of the project site, providing a reconnaissance survey of surrounding properties within 200 feet of the site, and analyzing the modified project design. *TreanorHL* prepared the Downtown Design Guidelines and Standards Compliance Review and Impacts Analysis in May 2022 using the 2019 San José Downtown Design Guidelines and Standards (2019 Design Guidelines and Standards) which had been adopted prior to release of the revised NOP. A copy of the Downtown Design Guidelines and Standards Compliance Review and Impacts Analysis can be found in Appendix C of this document. The relevant sections of the previously referenced 2019 HRE completed by *Archives & Architecture* is included as an appendix in the Downtown Design Guidelines and Standards Compliance Review and Impacts Analysis.

3. *TreanorHL* prepared a City Landmarks Evaluation in March 2023 to evaluate the 439 and 451 South Fourth Street buildings for their potential eligibility to be listed as a Candidate City Landmark under San José Municipal Code Section 13.48.100.H. The City Landmarks

Evaluation prepared by *TreanorHL* can be found in Appendix D of this document.

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.

The NRHP is the nation's master inventory of historic resources that are considered significant at the national, state, or local level. The minimum criteria for determining NRHP eligibility include:

- The property is at least 50 years old (properties under 50 years of age that are of exceptional importance or are contributors to a district can also be included in the NRHP);
- It retains integrity of location, design, setting, materials, workmanship, feeling, and associations; and
- It possesses at least one of the following characteristics:
    - Association with events that have made a significant contribution to the broad patterns of history;
    - Association with the lives of persons significant in the past;
    - Distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant, distinguishable entity whose components may lack individual distinction; or
    - Has yielded, or may yield, information important to prehistory or history.

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.[26]

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

[26] 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.

resources and to convey the reasons for their significance. A resource that has lost its historic character or appearance may still have sufficient integrity for the CRHR if it maintains the potential to yield significant scientific or historical information or specific data.

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

California Native American Historical, Cultural, and Sacred Sites Act

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

Public Resources Code Sections 5097 and 5097.98

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

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

Regional and Local

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

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

General Plan Policies - Cultural Resource	
LU-13.1	Preserve the integrity and fabric of candidate or designated Historic Districts.
LU-13.2	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-13.13	Foster the rehabilitation of buildings, structures, areas, places, and districts of historic significance. Utilize incentives permitting flexibility as to their uses; transfer of

	development rights; tax relief for designated landmarks and districts; easements; alternative building code provisions for the reuse of historic structures; and financial incentives.
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.
LU-14.4	Discourage demolition of any building or structure listed on or eligible for the Historic Resources Inventory as a Structure of Merit by pursuing the alternatives of rehabilitation, re-use on the subject site, and/or relocation of the resource.
LU-16.4	Require development approvals that include demolition of a structure eligible for or listed on the Historic Resources Inventory to salvage the resource's building materials and architectural elements to allow re-use of those elements and materials and avoid the energy costs of producing new and disposing of old building materials.
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-10.2	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-10.3	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

Historic Context

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. The nearest waterway to the project site is Guadalupe River, located approximately 0.5 mile west.

Literature Search

Based on the literature review, no recorded prehistoric archaeological sites were identified on or within 1,000 feet of the project site.

Historic Resources

Historic Context

(as excerpted from the HRE prepared by Archives & Architecture in February 2019, as revised)

The site is east of the area that was once the Pueblo de San José de Guadalupe. The pueblo was originally established in November of 1777, when Spanish colonists from España Nuevą (New Spain) settled north of present-day downtown San José around what is now Hobson and San Pedro Streets. The pueblo was relocated in the late 1780s or early 1790s about 1.0 mile south, centered at what is now the intersection of Santa Clara and Market Streets. Each of the colonists was assigned a solare (house lot) and a suerte (agricultural plot).

During the colonial period, as well as during the era that Mexico had jurisdiction over the region from 1821 to 1846, the lands east of the pueblo, known as the ejidos, were used for grazing of cattle and were not individually owned.

During American territorial control prior to the concession of California by Mexico in the Treaty of Guadalupe Hidalgo, residents in San José began to plan the future City along a traditional grid pattern. By 1847, the grid had been formally established based on the work of William Campbell and Chester Lyman. It extended from Market Street to Eighth Street and Julian Street to Reed Street and included the subject property. The completion of these surveys paved the way for future land ownership, development, traffic flow, and expansion.

The block that contains the subject property, Block 4 Range 4 South (B4R4S) was first developed with residential structures by the 1860s. This Early American period saw the construction of small wood structures, most of which were removed or demolished as “modern” late-nineteenth and early-to-mid twentieth-century buildings built out the Downtown Frame beyond what we now call the Downtown Core. The original lots, based on the Spanish solare (around 137.5 feet by 137.5 feet in size), were re-subdivided as infill development densified the center part of the City. By 1868, the Southern Pacific Railroad laid tracks down Fourth Street adjacent to the project site where it connected the Santa Clara and Pajaro Valley line. The railroad line resulted in an intensification of industrial development in the area, and a railroad station was established on Fourth Street in the block north of East San Salvador Street. The station also served the new State Normal School at

Washington Square beginning a few years later, which began the neighborhood's long association with the school that continues to influence development patterns into the present time.

One of the first mill and brewery facilities in San José was established in this area in 1854 near South Seventh Street by Gordon Cottrell. Later run by Adolf Pfister until 1883, it sparked an influx of similar breweries started by German immigrants during the Early American period in San José's history.

Around 1870, Phillip Doerr established San José Brewery on the north side of William Street between Third and Fourth Streets, moving operations from where he first started his business on First Street. Doerr's brewery, like the Cottrell/Pfister's Vineyard Mill, was soon surrounded by small cottages built by the brewery proprietors which likely served as worker housing.

As industrial uses such as the breweries phased out of the downtown in the early years of the twentieth century, the block, as with most of the area around San José Normal School, was infilled with single-family residential development and some multi-family apartment buildings.

By 1929, the City of San José was formally encouraging high density infill development in the downtown with the enactment of its first zoning overlay, but it was after World War II that the State College expansion program and changes to off-site student housing policies resulted in the growth of multi-family housing that is evident throughout neighborhood today.

Early multi-family residential development in the Downtown Frame after World War II is associated with local architects who were advocates for innovative Modern design concepts. Many of these early designs, such as the adjacent Griffiths Apartments at 405 South Fourth Street designed by architect Donnell Jaekle, are works of artistic merit, and reflect the sense of quality design that permeated among the architects who founded the local chapter of the American Institute of Architects in the late 1940s. By the mid-1960s however, much of the high-density residential development that was being constructed in the downtown reflected the rapid suburbanization that had impacted the region, and the fast and furious pace of new development had lost its connection to sensitive quality design that had earlier characterized mid-century architect-designed buildings. By the late 1960s, changes to City-mandated parking requirements, as well as reduced demand for student housing near the campus, had brought high density residential development in the Downtown Core and Downtown Frame to a halt.

Properties Located Within Project Site

The project site consists of two parcels which contain Metro Station Apartments (at 439 South Fourth Street) and a small residential structure most recently known as Discount Photo (at 451 South Fourth Street). The buildings proposed for demolition are more than 50 years in age. These properties were evaluated under the State criteria in the HRE prepared by *Archives & Architecture* in February 2019 (as revised). The HRE concluded that 439 South Fourth and 451 South Fourth Street did not qualify for listing in the CRHR. These properties were also evaluated for potential individual significance as Candidate City Landmarks under San José Municipal Code Section 13.48.100.H in the City Landmarks Evaluation prepared by *TreanorHL* in March 2023. The properties are individually described and a summary of their evaluations is provided below.

Refer to Figure 3.3-1 below for photos of the 439 South Fourth Street and 451 South Fourth Street buildings.

439 South Fourth Street

Summary Description

439 South Fourth Street is not listed in the City's HRI.

The 0.38-acre parcel at 439 South Fourth Street is the easterly portion of Lot 4 of B.4R.4S of San Jose's Original City. Subdivided into three lots with four houses facing South Fourth Street by the early twentieth century, Lot 4 had been reduced in size by then at the rear by 1,784 square feet. The reduction in size at the rear of the existing parcel from the original rear lot line of Lot 4 appears to have been the result of the establishment of a rear alleyway that connected the worker housing that had existed along South Fourth Street associated with San José Brewery. The southerly portion of the alleyway connected to the brewery site on East William Street.

The property was developed with the 30-unit multi-family residential building in 1965. The property owner, Charles Lane, was also general contractor for the building at the time as noted on the building permit. Lane had initially planned a 60-unit hotel for the site and had prepared plans, obtained a building permit, and apparently began construction in early 1964. That permit was later voided and substituted with a new permit in early 1965 to construct the 30-unit apartment building that exists today. The building is one of the last apartment buildings constructed during this post-war era.

While the designer of the Metro Station Apartments has not been identified, the building is representative of this later phase of post-war era construction and is not a building of distinctive architectural merit. The stucco-clad structure lacks any sculptural qualities, and the surface treatments, such as the front wood panels that frame the windows, are applied rather than growing out of the design. The window placement is utilitarian rather than studied, and the window treatment lack character. Rather than concealing the related parking, garages line the street. Entry to the units between the two buildings provides no sense of privacy, and open space on the site is paved with excess space containing hard space for additional parking.

Historic Significance Evaluation

California Register of Historical Resources Criteria

Criterion 1
Metro Station Apartments at 439 South Fourth Street is not individually representative of any important patterns of development within San José or the greater Downtown Core and Downtown Frame. The immediate neighborhood is a mix of older buildings, some of historic significance, and more recent multi-family development, most built during the first two decades after World War II. The neighborhood has not been found to be historically significant as a whole, although the City of San José has recognized the historic importance of local landmarks, such as the Rucker Mansion and the Mojmir Apartments. Metro Station Apartments is not a part of any identified historic area, and it is not associated with significant events under Criterion 1 of the CRHR.

439 South Fourth Street

451 South Fourth Street

PROPERTIES LOCATED ON-SITE | FIGURE 3.3-1

Criterion 2
Metro Station Apartments is not known to be associated with persons of local significance. The property would, therefore, not be eligible under Criterion 2 of the CRHR based on personages.

Criterion 3
The Metro Station Apartment building is a vernacular 1960s design, and is not a distinguished example among modern apartment buildings from this period. The designer of the building was not identified. While the building has integrity to its original construction, it does not exemplify a distinctive design within the context of modern residential apartment style. The property would, therefore, not qualify under Criterion 3 of the CRHR.

City of San José City Landmark Evaluation

The documentation and assessment of the building located at 439 South Fourth Street concluded that it does not meet any of the City of San José's criteria for individual designation as a Candidate City Landmark as discussed below.

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

   The building does not possess special character, interest, or value to the local, regional, State, or national history, trends in history, or culture of the community. While the building was developed during the urbanization period of San José (1960s), it is one of the many properties that illustrates the development trends of San José and is not associated with the residential development of downtown San José in an individually significant way. Therefore, the building is not eligible for listing 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. Therefore, the building is not eligible under this criterion.

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

   While the building is associated with residential development in the downtown area and development during the mid-twentieth century, it does not exemplify cultural, economic, social, or historic heritage of San José. Therefore, the building is not

eligible under this criterion.

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

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

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

   The apartment complex at 439 South Fourth Street is of common construction with no notable features. The building consists of a flat roof, two-part windows, and stucco cladding and is one of the many multi-family residences constructed during the 1960s in San José. Therefore, the building is not eligible under this criterion.

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

   The building was not built by a notable architect or master building and is not eligible under this criterion. While the building was constructed by Charles Lane, who has worked on another apartment complex in the neighborhood prior to the Metro Station Apartments, he is not considered an architect or master builder whose individual work has influenced the development of San José. Therefore, the building is not eligible under this criterion.

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

   The building does not contain any unique or architectural innovations and is not eligible under this criterion.

In summary, the building at 439 South Fourth Street is not eligible for listing in the CRHR and is not eligible for listing as a Candidate City Landmark.

Aspects of Integrity

The building retains its integrity of location, association, and feeling since it has not been moved and it has been used as a multi-family residence since its construction. The building consists of vernacular architecture of the 1960s in San José and retains its integrity of design, materials, and workmanship. The physical environment of this site has been retained since the surrounding blocks have remained a mix of residential and commercial. While the building has retained sufficient integrity to convey its significance, it is not eligible as a Candidate City Landmark as discussed above.

451 South Fourth Street

Summary Description

451 South Fourth Street is listed in the City's HRI as a Structure of Merit.

The 0.13-acre parcel at 451 South Fourth Street is the northerly portion of Lot 5 of B.4R.4S of San Jose's Original City. It was developed with the current building around 1870 or earlier, which was relocated to the rear of the parcel in 1978/1979. The building was converted from residential use to retail in 1983, and was known for a time as Discount Photo.

In 1871, Philip Doerr moved his San José Brewery to Lot 8 at the northwest corner of Fourth and William Streets. Doerr had founded San José Brewery on First Street in the downtown and relocated his operations to William Street in 1871. The complex extended northward into the block and was associated with a number of worker cottages along Fourth Street. The 1870s-1880s was the height of the local brewing boom, with around seven or more breweries competing in San José.

Philip Doerr was a German immigrant whose family would be prominent in the local economy and politics for almost a century. Doerr maintained ownership of the land until at least 1909 (Lots 4, 5, and 8) that also included the site of present Metro Station Apartments, but he sold the brewery to Bode and Stafford in 1880, who changed the name to the Lion (or Lyon) Brewery. Sanborn maps continue to associate the name of San José Brewery to the property into the 1890s. By the time of the printing of the 1915 Sanborn map, the brewery building was vacant and the central part of the block was used as a horse corral.

During the early 1890s, the building was occupied by John Wright, an agent for Singer Manufacturing Company. By the late 1890s, Mary Milleman and her daughter Catherine were occupants followed by James W. Lauriston, a basket maker, who shared the residence with his three daughters, Helen, Jean, and Mima. Between at least 1907 and 1917, Isabel Barron, widow of Zeb Barron, lived at 451 South Fourth Street. By 1918 Henderson Glover, a chauffeur, purchased the residence and owned the property until at least 1954. In later years, the residence was relocated to the rear of the parcel and converted to a commercial building. For many years it was the site of Discount Photo.

Historic Significance Evaluation

California Register of Historical Resources Criteria

The circa-1870 National Style residence at 451 South Fourth Street is a rare vernacular residence associated with early San José industrial development. However, it has been relocated on the site and remodeled, and is no longer representative of this era. The property was previously surveyed, evaluated, and rated as a part of the Downtown San José Survey 2000 and it was found to meet the minimum qualifications for listing on the City's HRI as a Structure of Merit, but it was not found to be eligible for listing in the CRHR in the Downtown Survey or the February 2019 analysis by *Archives & Architecture*. Therefore, the residence at 451 South Fourth Street is not eligible for listing in the CRHR under any of the applicable significance criteria.

City of San José City Landmark Evaluation

The documentation and assessment of the building located at 451 South Fourth Street concluded that it meets Criterions 1 and 6 of the City of San José's criteria for individual designation as a Candidate City Landmark as discussed below.

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

   The building, constructed circa 1870, was part of the early residential and industrial development in the City of San José. The residence was part of a block consisting of other single-family residences, some commercial buildings, and industrial buildings associated with the brewery industry of San José. In 1871, Philip Doerr relocated his brewery from its original location on First Street, and held ownership of other lots on the block until 1909. The brewery complex included worker housing. While it is unclear what purpose the property at 451 South Fourth Street served, it was associated with Doerr brewery until 1880 when he sold the business. Therefore, the building is eligible for listing 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;

   Phillip Doerr owned the land which consists of the single-family residence between 1871 and 1909. While Phillip Doerr established the San José Brewery and his family was prominent in the local economy and politics, he is not considered significant. Therefore, the building is not eligible under this criterion.

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

   While the building is associated with the German immigrant population of San José and Phillip Doerr, who contributed to the brewery boom of the mid- to late-nineteenth century, it does not exemplify the cultural, economic, social, or historic heritage of San José. Therefore, the building is not eligible under this criterion.

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

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

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

   The single-family residence at 451 South Fourth Street is of the National Style and consists of a wood frame, front gable, board and batten cladding, a one-story porch with a hipped roof, and a multi-lit paneled wood door. Most of the small wood-frame residential structures built in the 1860s were demolished in the late-nineteenth and mid-twentieth century; therefore, the residence at 451 South Fourth Street is considered a rare example of small wood frame residences and is eligible under this criterion.

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

   No architect or designer has been identified for the building. Therefore, the building is not eligible under this criterion.

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

   The building does not contain any unique workmanship or materials, or architectural innovations and is not eligible under this criterion.

In summary, the building at 451 South Fourth Street is not eligible for listing in the CRHR, but is potentially eligible for listing as a Candidate City Landmark.

Aspects of Integrity

The building has been relocated from its original location on the site from the front property line to the rear between 1973 and 1974; therefore, it does not retain its integrity of location. Its integrity of association and feeling have been compromised since the residence was converted for commercial use in the 1980s when Discount Photo occupied the building. The building's integrity of design, materials, and workmanship have been compromised due to major alterations to the exterior, including the replacement of the porch and windows. The physical environment of this site has been retained since the surrounding blocks have remained a mix of residential and commercial. While the building is potentially eligible as a Candidate City Landmark under Criterions 1 and 6, it has not retained sufficient integrity to convey its significance. As a result, the building is not eligible for listing as a Candidate City Landmark, but remains a Structure of Merit.

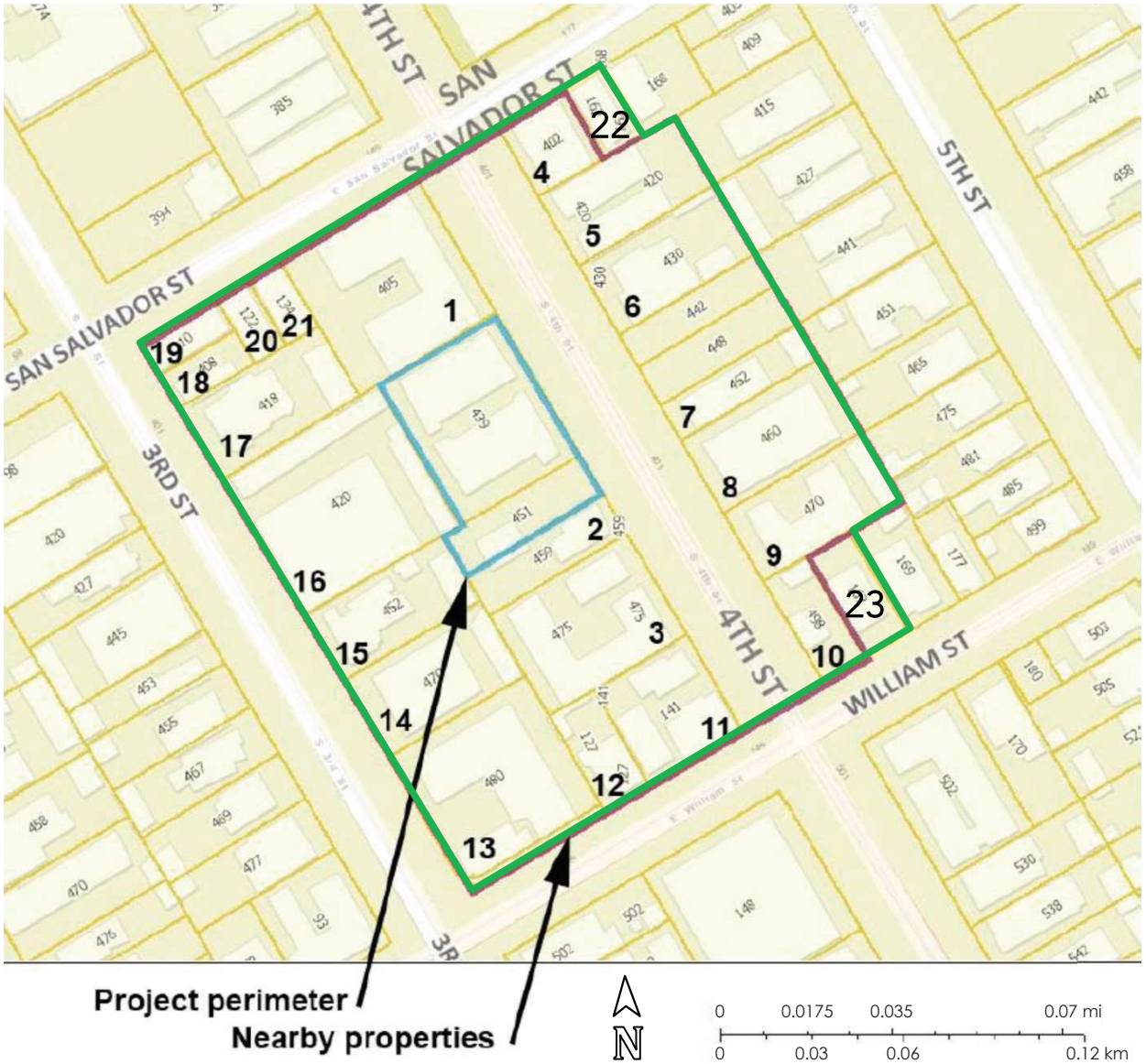
Off-Site Properties

The proposed project is located within a mostly residential, dense, multi-family neighborhood with almost all structures constructed over 50 years ago. There are 23 properties under private ownership located within 200 feet of the project that were evaluated for eligibility as a CEQA historical resource. These properties are shown on Figure 3.3-2 and summarized in Table 3.3-1 with assigned numbers for reference and identified with building name, address, year built and eligibility as a historic resource.

Table 3.3-1: Reconnaissance-Level Survey Properties				
Building No.	**Building Name**	**Address**	**Year Built**	**Eligibility**
1	Griffiths Apartments	405 South Fourth Street	1950	**Eligible** for CRHR and as a Candidate City Landmark
2	Doerr Rental	459 South Fourth Street	Circa 1880	Listed in HRI as **Structure of Merit** Not eligible for CRHR or City Landmark
3	Lewis Davis House & Davis	465-475 South Fourth Street	1920/ Circa 1957	Listed in HRI as **Structure of Merit** Not eligible for CRHR or City Landmark
4	Guerra Apartments	402 South Fourth Street	1960	**Not Eligible** for HRI
5	Ancara & Guerra Apartments	420 South Fourth Street	1957	**Not Eligible** for HRI
6	Veterans of Foreign Wars Hall	430 South Fourth Street	1950	**Eligible** for HRI as a **Structure of Merit**. Not eligible for CRHR or Candidate City Landmark
7	DiManto Apartment	452 South Fourth Street	1957	**Not Eligible** for HRI
8	Troy Apartments	460 South Fourth Street	1963-1964	**Not Eligible** for HRI
9	Alkakee Apartments	470 South Fourth Street	Circa 1954	**Not Eligible** for HRI
10	Spartan Station	498 South Fourth Street	1978	**Not Eligible** for HRI
11	Bicycle Express Triplex Apartments Spartan Barbershop	131-135 East William Street 137-141 East William Street 487 South Fourth Street	Circa 1956 1927 Circa 1956	**Eligible** for CRHR and as a Candidate City Landmark (141 East William Street)
12	Dr. Shottenhamer House	127 East William Street	1923	**Not Eligible** for HRI
13	Greeninger House	490 South Third Street	Circa 1903/2005	**Eligible** for NRHP, CRHR, and as a Candidate City Landmark
14	Mojmir Apartments	470 South Third Street	1922	**Designated City Landmark.** **Eligible** for NRHP and CRHR.
15	Casa Joya Apartments	452 South Third Street	Circa 1948	**Eligible** for HRI as a **Candidate Structure of Merit**

Table 3.3-1: Reconnaissance-Level Survey Properties				
Building No.	**Building Name**	**Address**	**Year Built**	**Eligibility**
16	Garden Patio Apartments	420 South Third Street	1956-1957	**Not Eligible** for HRI
17	Rucker Mansion	418 South Third Street	1891	**Designated City Landmark** **Eligible** for NRHP and CRHR.
18	Hanson House	408 South Third Street	1888	Listed in HRI as a **Structure of Merit**. **Eligible** for NRHP and CRHR.
19	Campus Building	110 East San Salvador Street	1955	**Not Eligible** for HRI
20	Eugene Prindiville House	122 East San Salvador Street	Circa 1905	**Not Eligible** for HRI
21	Campus Market	134 East San Salvador Street	1964	**Not Eligible** for HRI
22	Apartment	162 East San Salvador Street	1935	Listed in HRI as a **Structure of Merit**.
23	Wright Residence	167 East William Street	1924	Listed in HRI as **Contributing Structure** to the Reed City Landmark District.

The 23 properties in the reconnaissance-level survey contain 22 buildings that are age-eligible (over 50 years old). At the time of the survey, the building located at 498 South Fourth Street (Building No. 10) was 44 years old. Of the 22 age-eligible properties, the properties located at 470 South Third Street (Building No. 14) and 418 South Third Street (Building No. 17) are designated City Landmarks. The properties located at 127 East William Street (Building No. 12), 470 South Third Street (Building No. 14), 418 South Third Street (Building No. 17), and 408 South Third Street (Building No. 18) are individually eligible for listing in the NRHP and CRHR. The two properties located at 405 South Fourth Street (Building No. 1) and 141 East William Street (Building No. 11) are individually eligible for listing in the CRHR and as a Candidate City Landmark. One property, 167 East William Street (Building No. 23) is a contributing structure to the Reed City Landmark Historic District.



Source: TreanorHL, May 13, 2022.

PROPERTIES WITHIN 200 FEET OF PROJECT SITE

FIGURE 3.3-2

3.3.2 Impact Discussion

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

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

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

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?

Properties Located Within Project Site

Implementation of the project would result in the demolition of two existing buildings on-site which are over 50 years in age. The Metro Station Apartment building at 439 South Fourth Street did not meet any significance criteria and was determined to be ineligible for listing in the CRHR or the City's HRI as a Candidate City Landmark and demolition of the structure would be a less than significant because it is not a historic resource under CEQA.

The building at 451 South Fourth Street is currently listed in the City's HRI as a Structure of Merit, but it does not meet the significance criteria for listing in the CRHR. While an updated assessment of the single-family residence at 451 South Fourth Street found it to be potentially eligible for listing as a Candidate City Landmark under Criterions 1 and 6, the building has not retained integrity of location, association, feeling, design, materials, and workmanship. Therefore, based on the most recent assessment for local significance, demolition of the building at 451 South Fourth Street would be a less than significant impact because it is not considered a historic resource under CEQA.

Consistent with General Plan Policy LU-16.4 and the Downtown Strategy 2040 FEIR, the City of San José requires that any development that proposes demolition of a structure eligible for or listed in the City's HRI as a Structure of Merit shall be required to salvage the resource's building materials and architectural elements to allow re-use of those elements and materials and avoid the energy costs of producing new and disposing of old building materials. Therefore, the following measures are included as Conditions of Approval consistent with General Plan Policy LU-16.4. Consistent with the Downtown Strategy 2040 FEIR, the project shall include the following conditions.

Conditions of Approval:

- **Documentation.** Prior to the demolition of the Structure of Merit, located at 451 South Fourth Street, the structure shall be photo-documented to an archival level consisting of selected views of the building to the following standards:

    - Cover sheet - The documentation shall include a cover sheet identifying the photographer, providing the address of the building, common or historic name of the building, date of construction, date of photographs, and photograph descriptions.
    - Lenses - No soft focus lenses. Lenses may include normal focal length, wide angle and telephoto.
    - Filters – Photographer's choice. Use of a polarized screen is encouraged.
    - View - Perspective view-front and other elevations. All photographs shall be composed to give primary consideration to the architectural and/or engineering features of the structure with aesthetic considerations necessary, but secondary.
    - Lighting - Sunlight is usually preferred for exteriors, especially of the front facade. Light overcast days, however, may provide more satisfactory lighting for some structures. A flash may be needed to cast light into porch areas or overhangs.
    - Technical - All areas of the photograph must be in sharp focus.

    The project shall coordinate the submission of the photo-documentation, including the original prints and negatives, to History San José. Digital photos may be provided as a supplement to the above photo-documentation, but not in place of it. Digital photography shall be recorded on a CD and shall be submitted with the above documentation. The above documentation shall be accompanied by a transmittal stating that the documentation is submitted as a Standard Measure to address the loss of the historic resource which shall be named and the address stated and coordinated with the City's Historic Preservation Officer.

- **Relocation or Salvage.** Prior to demolition, the City will offer the single-family residence at 451 South Fourth Street for relocation. The City's "offer for relocation" will be placed in a newspaper of general circulation, posted on a website, and posted on the sites for a period of no less than 30 days. In the event that relocation is not possible, prior to demolition the structure and site shall be retained a reasonable period of time as determined by the Director of Planning, Building and Code Enforcement and made available for salvage to the general public and companies facilitating the reuse of historic building materials.

Implementation of the proposed project would have a less than significant impact on the properties located on-site.

Impacts to Off-Site Properties

The following properties located within 200 feet of the project site are historical resources under CEQA:

- Building No. 1 (405 South Fourth Street) is eligible for listing in the CRHR and as a Candidate City Landmark.
- Building No. 11 (141 East William Street) is eligible for listing in the CRHR and as a Candidate City Landmark.
- Building No. 13 (490 South Third Street) is eligible for listing in the NRHP, CRHR, and as a Candidate City Landmark.
- Building No. 14 (470 South Third Street) is a designated City Landmark and eligible for listing in the NRHP and CRHR.
- Building No. 17 (418 South Third Street) is a designated City Landmark and eligible for listing in the NRHP and CRHR.
- Building No. 18 (408 South Third Street) is eligible for listing in the NRHP and CRHR.
- Building No. 23 (167 East William Street) is listed as a Contributing Structure to the Reed City Landmark District.

Due to the concentration of historical resources near the project site, the design of the proposed project was evaluated for consistency with the 2019 Design Guidelines and Standards to help inform the analysis of potential impacts to evaluate whether the proposed project could have potential impacts to surrounding historical resources. The 2019 Design Guidelines and Standards had not been adopted by the San José City Council at the time of application; therefore, the project is not required to conform with any of the standards.

City of San José 2019 Downtown Design Guidelines

Similar to the Historic Guidelines, the 2019 Design Guidelines and Standards provides a framework for evaluating the compatibility of new construction adjacent to designated and eligible historic resources. The 2019 Design Guidelines and Standards include a series of "Framework Plans" that identify design constraints within the Downtown. As previously discussed, the project application was submitted to the City of San José in 2017 and the 2019 Design Guidelines and Standards do not apply to this project because they were not adopted by the San José City Council until 2019. However, the 2019 Design Guidelines and Standards were used as a guide to analyze any potential impacts to the adjacent historic resources because they include guidelines and standards for Historic Adjacency.

***Standard 4.2.2 – Massing Relationship to Context*.** The following discusses the height transition, width transition, and rear transition standards.

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

> Analysis: Due the project's adjacency to Building Nos. 1 and 2 and across the street from Building No. 6 which are all 45 feet tall or less. As currently proposed, the proposed building design (on the South Fourth Street-facing façade) does not step back in height between 25 and 50 feet. The building would be set back five to 15 feet from the property line at the first floor and

would be built out to the property line on the upper floors. Therefore, it would not be consistent with this Standard.

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

Analysis: The widest historic building on South Fourth Street is Building No. 1 which is approximately 135 feet wide. The majority of the buildings facing South Fourth Street are 30 to 60 feet wide. The proposed building would be approximately 158 feet and six inches wide and would not include any gaps above the ground floor. Therefore, the design is consistent with this Standard.

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

Analysis: The building would not be located across a parcel line interior to a block from a historic building. Therefore, this Standard is not applicable to the project.

***Standard 4.2.4 – Historic Adjacency*.** The massing, façade, elements, and ground floor standards are discussed below.

Massing

a) Relate *Podium Level*[27] building massing to the scale of *Historic Context*[28] buildings.

Analysis: The historic context buildings on South Fourth Street have widths ranging from approximately 30 to 135 feet. The podium level of the proposed building would be broken up into smaller, similar scale massing elements with the use of transparent and opaque glass, granite cladding, painted stucco, use of storefront divisions, and the deeper setbacks at the garage entrances. The proposed building design is consistent with this Standard.

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

Analysis: The proposed building design is consistent with this Standard.

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

Analysis: The proposed building would have a well-defined podium level without a typical cornice articulation. The podium level (at 25 feet and six inches) would be comparable to the height of the

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

historic context buildings and would include a glazed area and storefronts set back approximately five feet from the property line while the upper floors would consist of stucco cladding and rectangular openings. Therefore, the proposed building design is consistent with this Standard.

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

Analysis: The historic context buildings on the west side of South Fourth Street are set back approximately 15 feet from the property line and have landscaped areas along the sidewalk. As mentioned above, the proposed building would be set back approximately five feet from the property line (except for the 15-foot setbacks at the garage entrances). The proposed building is set at the property line inconsistent with the historic context buildings. Therefore, the design is not compatible with this Standard.

Façade

e) Use articulation that creates façade divisions with widths similar to *Historic Context* buildings on the same side of the street (if the new building is wider).

Analysis: The proposed building would be wider than the historic context buildings on the same side of the block. At the podium level, the front façade would be divided into three sections: 27-foot wide garage entrances at each end and a 100-foot wide central section. The central section is divided into narrower sections by a glazed curtain wall, storefronts, the building entrance, and granite cladding. Above the podium level, the front façade is broken up into multiple segments to create façade divisions. The divisions would be similar to the widths of the historic context buildings. Therefore, the proposed building design is consistent with this Standard.

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

Analysis: The proposed building does not simulate historic architecture. The proposed building design is consistent with this Standard.

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

Analysis: Building Nos. 1 and 2 have multiple windows facing the proposed building. On the northern and southern façades of the proposed building, the first two floors would have no windows as this section would be clad in perforated metal panels. The third floor of the southern façade facing Building No. 2 would have three windows at the eastern end. The northern façade facing Building No. 1 would not have any windows on the first three floors. Therefore, the existing windows of the historic context buildings would directly face the metal-clad walls. Therefore, the proposed building design is not consistent with this Standard.

Elements

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

Analysis: The proposed building would consist primarily of stucco, metal-framed windows and curtain walls, perforated metal panels, granite, and CMU consistent with many of the surrounding historic context buildings. Therefore, the proposed building is consistent with this standard.

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

Analysis: The proposed building materials would be compatible with the historic materials in scale, proportion, design, finish, texture, and durability. The proposed building design is consistent with this Standard.

Ground floor

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

Analysis: The historic context buildings on South Fourth Street have a single pedestrian entry. The proposed building would have one recessed pedestrian entry to the lobby near the center of the front façade. Therefore, the proposed project complies with the existing pattern and Standard.

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

Analysis: The historic context buildings on South Fourth Street are single- or multi-family residential buildings from one- to three-stories. The ground floor height of the proposed building would not be consistent with the historic context buildings. Therefore, the proposed project complies with this Standard.

2019 Design Guidelines Summary:
In summary, one standard (Rear Transition) is not applicable to the proposed project. The proposed project is consistent with ten standards including Section 4.2.2 Weight Transition, Section 4.2.4 Podium Level Massing (a), Design Massing (b), Cornice Articulation Massing (c), Façade Articulation (e), Architectural Differentiation (f), Historic Context Materials ((h), Compatible Materials (i), Pedestrian Entries (j), and Ground Floor Ceiling Height (k). The proposed project is inconsistent with three standards including Section 4.2.2 Height Transition, and Section 4.2.4 Streetwall Continuity (d) and Façade Window Placement (g).

CONCLUSION

For a project to cause a substantial adverse change in the significance of a historical resource, it must demolish or materially alter in an adverse manner those physical characteristics that convey the resources' historic significance and accounts for its identification as a City Landmark Structure, Candidate City Landmark, or Landmark District. The proposed project would be inconsistent with Section 4.2.2 Height Transition, and Section 4.2.4 Streetwall Continuity (d) and Façade Window Placement (g) under the 2019 Downtown Design and Standards. While not fully consistent with the

2019 Design Guidelines and Standards, on balance, the project was found to be substantially consistent with the compatibility guidelines and standards. As a result, the proposed project would not have an impact on the integrity of the adjacent historic resources because it would not demolish or materially alter surrounding historical resources and they would continue to convey their significance.

Off-Site Impacts Analysis Conclusion

The *TreanorHL* report identified numerous historical resources within 200 feet of the project site. Construction of the proposed project has the potential to affect the integrity of these resources, primarily as a result of vibration from construction activities. As discussed in *Section 3.5 Noise and Vibration* of the Draft SEIR, with implementation of Mitigation Measures NOI-1.1 and NOI-2.1 to NOI-2.4, groundborne vibration impacts associated with project-construction would be less than significant impact on adjacent historic resources.

Based on the previous 2020 documentation prepared by *Archives & Architecture* using the Historic Guidelines criteria, *Archives & Architecture* concluded that the project would not be compatible with its subarea or with its surrounding historic context buildings. As discussed above and per the 2019 Design Guidelines and Standards, *TreanorHL* concluded that the proposed project would not substantially impair the significance and integrity of the previously listed or potentially eligible historical resources adjacent to the site and these resources would continue to convey their significance to be listed on the City's HRI. Based on the discussion above, the City concurs with *TreanorHL's* analysis and conclusions and determined that the project would not physically impact the adjacent historic resources. **[Same Impact as Approved Project (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.

General Plan Policy ER-10.1 states that for proposed development sites that have been identified as archaeologically or paleontologically sensitive, the City will require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design. A literature review completed for the project found no recorded historic and/or prehistoric archaeological sites on or within 1,000 of the project site. There would be low to moderate potential for historic and/or prehistoric archaeological deposits to be found on-site. Nevertheless, the entire project site would be excavated to a depth of 21 feet for the below-grade parking which could damage potential unrecorded subsurface resources.

Consistent with the Downtown Strategy 2040 FEIR, the following Standard Permit Conditions shall be applied to the project to reduce and avoid impacts to as yet unidentified archaeological resources:

Standard Permit Conditions:

The project applicant shall implement the following measures during construction:

- **Supplemental Reviews/Subsurface Testing:** Sites in Downtown San José that are archaeological sensitive should in addition to the above conducted literature search, conduct exploratory trenching and borings on site/s to determine the extent of potential resources onsite. Subsurface testing methodologies and reporting will be based on the methodologies and best practices as described in the Secretary of Interior's Standards for Archaeological Documentation and conducted by a qualified archaeologist. A Native American Monitor, registered with the Native American Heritage Commissions (NAHC) for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code (PRC) Section 21080.3, shall also be present during the exploratory trenching and boring on-site.
- **Determine Regulatory Status of Resources:** A qualified archaeologist should determine the status of known resources and potential resources known through the measures (1) and (2) above. The above steps (1) through (3) will be formalized as the Archaeological Resources Assessment Report.
- **Stop Work and Evaluate Unanticipated Finds:** If buried cultural deposits are encountered during project activities, all work within 50 feet of the find should be halted and redirected. A qualified archaeologist in consultation with a Native American representative registered with the NAHC for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in PRC Section 21080.3, shall: (1) evaluate the find to determine if it meets the CEQA definition of a historical or archaeological resource; and (2) provide project-specific recommendations for data recovery and evaluation. The results of any archaeological investigation will be submitted to the Northwest Information Center (NWIC). The results of the archaeological investigation may:
    - Results in findings that does not meet the definition of a historical or archaeological resource, then no further study or protection is necessary prior to project implementation.
    - Results in findings that meets the definition of a historical or archaeological resource. In which case avoidance and preservation of the resources in place shall be examined. Avoidance may be accomplished through redesign, conservation easements for in situ burial, or site capping.
- **Dignified and Respectful Treatment:** Prior to issuance of the Grading Permit, the project applicant shall be required to submit evidence that an Archaeological Monitoring Contractor Awareness Training was held prior to ground disturbance. The training shall be facilitated by the project archaeologist in coordination with a Native American representative registered with the 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.
- **Determine Feasible Avoidance and Alternatives:** When an archaeological site meets the CEQA definition of a historical or archaeological resource and will be impacted by the proposed project, make reasonable efforts to feasibly avoid project impacts (e.g., project redesign, conservation easements, or site capping). The archeologist and Native American representative registered with the 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 review the project elements to determine ways to protect the cultural and natural context of the resources or to incorporate the resources with culturally appropriate protection and management criteria based on PRC Section 21084.3.

- **Determine Mitigation Measures:** When avoidance is not feasible, adverse effects to such resources shall be mitigated in accordance with the recommendations of the evaluating archaeologist and Native American representative registered with the 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. Upon completion of the archaeological evaluation, a report documenting the methods, results, and recommendations of the archaeologist shall be prepared and submitted to the NWIC.
- **Authorize Data Recovery and Curation:** To mitigate potential impacts to the buried resources and as part of (6 and) above, a data recovery program or a Tribal Cultural Resources Treatment Plan should be prepared by an approved archaeologist in consultation with the Native American representative registered with the NAHC for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in PRC Section 21080.3for review by the City. The data recovery shall involve implementation of surface collection and curation/repatriation of artifacts to prevent looting. To the extent feasible, and in consultation with the Native American representative, all recovered Native American artifacts shall be reburied on-site in an area that is unlikely to be disturbed again. All archaeological materials recovered during the data recovery efforts shall be cleaned, sorted, catalogued, and analyzed following standard archaeological procedures, and shall be documented in a report submitted to the Director of Planning, Building and Code Enforcement and the NWIC.
- **Stop Work/Follow Statutory Procedures when Human Remains are Encountered:** In the event of the discovery of human remains during ground disturbance activities, all activities within a 50-foot radius of the find shall be stopped. Pursuant to Health and Safety Code § 7050.5 and Public Resources Code § 5097.94 of the State of California, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains.
    - The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American origin or whether an investigation into the cause of death is required.
    - If the remains are determined to be Native American, the Coroner shall notify the NAHC within 24 hours of the identification. The NAHC shall identify the descendants of the deceased Native American, also known and designated as the most likely descendent (MLD).
    - The MLD will inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. The archaeologist should recover scientifically valuable information, as appropriate and in accordance with the recommendations of the Native Americans in accordance with CEQA Guidelines Section 15064.5 (e).
    - The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. A report of findings documenting data recovery, methodologies, and results shall be submitted to Director of Planning, Building and Code Enforcement and the NWIC.

- If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner/project applicant shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

With implementation of these Standard Permit Conditions above, impacts to unknown subsurface cultural resources would be less than significant. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

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

Refer to the discussion above. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

3.3.2.2 *Cumulative Impacts*

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

The geographic study area for loss of historic structures is the City of San José. For historic building adjacency, the geographic study area is the project site and the city block on which the site is located (bounded by South Fourth Street, East William Street, South Third Street, and East San Salvador Street). For subsurface resources, the geographic study area is 0.25-mile radius around the project site.

Historic Structures

As mentioned previously, the project would result in the loss of a Structure of Merit located at 451 South Fourth Street. While the residence at 451 South Fourth Street is a Structure of Merit under the City's guidelines, it would not qualify as a historic resource under CEQA. In addition, neither of the existing buildings on-site meet the criteria for listing on the CRHR or as a Candidate City Landmark. Therefore, the loss would not contribute to a cumulatively significant impact.

The development approved south of the project site, The Mark Residential development (File No. SP20-021), if developed, would construct a 23-story tower and would have adjacency to historic Buildings Nos. 13, 14, and the on-site structure located at 451 South Fourth Street. The proposed project would have adjacency to historic Building Nos. 2, 14, and 17. The Mark Residential development's SEIR concluded that the 23-story tower would be in substantial compliance with the applicable Historic Guidelines and 2019 Design Guidelines and Standards and, therefore, would have a less than significant impact on historical resources. The proposed project would not have a project-level impact on the adjacent historical resources (as discussed above in *Section 3.3.2.1*) While the proposed project would increase the visual effect of new development in the area, the project would not demolish or materially alter in an adverse manner those physical characteristics that convey the adjacent resources' historic significance and accounts for its identification as a City Landmark Structure, Candidate City Landmark, or Landmark District.

The proposed project and The Mark Residential development would result in the construction of a 25-story residential tower and a 23-story residential tower, respectively, in an area with a mix of existing historic and non-historic structures with heights of one to three stories. While the combined effect of these two projects, which have comparable height and massing, would change the visual character of the immediate area, the proposed project, by itself, would not demolish or materially alter the adjacent historical resources. Therefore, the proposed project would not result in a cumulatively considerable contribution to a cumulatively significant historical resources impact.

With the implementation of Mitigation Measures NOI-1.1 and NOI-2.1 to NOI-2.4, the project's construction vibration impacts to the adjacent historic buildings would be reduced to a less than significant level. Additionally, all projects within the downtown area would be subject to the same mitigation measures listed in *Section 3.5* to reduce construction noise vibration impacts to below 0.08 in/sec PPV to minimize the potential for cosmetic damage to sensitive historical structures (refer to General Plan Policy EC-2.3).

Subsurface Resources

Impacts to subsurface resources would be reduced to less than significant with implementation of the identified Standard Permit Conditions for the protection of subsurface resources listed above under checklist question b. Consistent with the findings of the Downtown Strategy 2040 FEIR, the project would not a have cumulatively considerable impact on subsurface archaeological resources.

As mentioned above, demolition of the buildings on-site would not be cumulatively considerable. The adjacent development was found to be substantially compliant with the Historic Guidelines and 2019 Design Guidelines and Standards; therefore, the proposed project would not result in a cumulatively considerable impact. As discussed under checklist question a, the proposed project would not have an impact the integrity of the adjacent historic resources because it would not demolish or materially alter surrounding historical resources and they would continue to convey their significance. With implementation of the Standard Permit Conditions listed under checklist question b, impacts to subsurface resources would be reduced to a less than significant level. Therefore, the impacts would not be cumulatively considerable. **[New Less Than Significant Cumulative Impact (Cumulative Significant Unavoidable Impact)]**

3.4 LAND USE AND PLANNING

3.4.1 Environmental Setting

3.4.1.1 *Regulatory Framework*

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 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.
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-through 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.

General Plan Policies – Land Use	
	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 applicable 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-4.5	For new development in transition areas between identified Growth Areas and non-growth areas, use a combination of building setbacks, building step-backs, materials, building orientation, landscaping, and other design techniques to provide a consistent streetscape that buffers lower-intensity areas from higher-intensity areas and that reduces potential shade, shadow, massing, viewshed, or other land use compatibility concerns.
CD-4.9	For development subject to design review, ensure the design of new or remodeled structures is 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.
CD-5.9	To promote safety and to minimize noise and vibration impacts in residential and working environments, design development that is proposed adjacent to railroad lines to provide the maximum separation feasible between the rail line and dwelling units, yards, or common open space areas, offices and other job locations, facilities for the storage of toxic or explosive materials and the like. To the extent possible, devote areas of development closest to an adjacent railroad line to use as parking lots, public streets, peripheral landscaping, the storage of non-hazardous materials and so forth. In industrial facilities, where the primary function is the production, processing or storage of hazardous materials, for new development follow the setback guidelines and other protective measures called for in the City's Industrial Design Guidelines when such facilities are to be located adjacent to or near a main railroad line.
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 the impacts of parking upon a vibrant pedestrian and transit-oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.
LU-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.

General Plan Policies – Land Use	
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-14.4	Require avigation and "no build" easement dedications, setting forth maximum elevation limits as well as for acceptable of noise or other aircraft related effects, as needed, as a condition of approval of development in the vicinity of airports.
IP-1.6	Maintain a Zoning Ordinance and Subdivision Ordinance that aligns with and supports the Land Use/Transportation Diagram and *Envision General Plan* goals and policies. Develop new Zoning Districts which enumerate uses and establish development standards, including heights, to achieve vital mixed-use complete communities and facilitate their implementation.
IP-1.8	Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics which require special consideration due to those constraints.
IP-1.9	Consider and address potential land use compatibility issues, the form of surrounding development, and the availability and timing of infrastructure to support the proposed land use when reviewing rezoning or proposals.

3.4.1.2 *Existing Conditions*

Existing Land Uses

The 0.52 gross-acre project site is comprised of two parcels (APNs 467-47-058 and -096) at 439 and 451 South Fourth Street in the City of San José. The site is currently developed with a single-family residence and a three-story apartment complex.

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

Zoning Code Section 20.70.110 states that new structures exceeding 150 feet and an FAR of 6:1 which are constructed within 100 feet of a City Landmark or contributing structure in a designated landmark district shall be reviewed by the Historic Landmarks Commission prior to consideration or approval of a development permit for new construction. The comments of the Historic Landmarks Commission shall be included in any development permit staff report subsequently presented to the Executive Director of the Redevelopment Agency, Director of Planning, Building and Code Enforcement, Planning Commission, or City Council.

Surrounding Land Uses

Development in the project area consists of single-family residences, small apartment complexes, and commercial uses that vary in height from one to six stories. The project site is bounded by South Fourth Street to the east, a single-family residence to the south and one to two-story multi-family residences to the west and north. SJSU's main campus is located northeast of the project site on the northeast corner of South Fourth Street and East San Salvador Street. The SJSU Duncan Hall (located on San Fernando Street) is six-stories tall and is partially visible from the project site. Duncan Hall is the tallest building in the immediate project area. There are one- to two-story commercial businesses located south and northwest of the project site. Additionally, a 23-story residential tower was approved (File No. SP20-021) south of the project site. Once constructed, the 23-story tower would be the tallest building in the project area.

3.4.2 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)?

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

3.4.2.1 *Project Impacts*

a) Would the project physically divide an established community?

Changes in land use are not adverse environmental impacts in and of themselves, however, they may create conditions that adversely affect existing uses in the immediate vicinity. As mentioned previously, the site is currently occupied with a single-family residence and an apartment complex. As proposed, the project would construct a 25-story residential building within an area developed with residences and commercial uses. The proposed project would not introduce a new or incompatible land use to the area. Based on the Downtown Strategy 2040, no new land uses are proposed for the greater downtown area that would conflict with established or proposed uses. As a result, the project would not physically 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*, the proposed project would not be compatible with Section 4.2.2 Height Transition; and Section 4.2.4 Streetwall Continuity (d) and Façade Window Placement (g) of the 2019 Design Guidelines and Standards. While not fully consistent with the 2019 Design Guidelines and Standards, on balance, the project was found to be substantially consistent with the compatibility guidelines and standards. As a result, the proposed project would not have an impact on the integrity of the adjacent historic resources because it would not demolish or materially alter surrounding historical resources and they would continue to convey their significance. Therefore, the proposed project would not result in a significant impact from conflict with any land use plan, policy, or regulation adopted to mitigate and environmental effect. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

The proposed building would be 25 stories tall (approximately 274 feet). According to the Downtown Strategy 2040 FEIR, a significant shade and shadow impact occurs when a building or other structure located in the downtown area substantially reduces natural sunlight on public open spaces, measured on the winter solstice; the spring equinox; and the summer solstice. There are six major open space areas in downtown San José that are particularly sensitive to shade and shadow impacts: St. James Park, Plaza of Palms, Plaza de César Chávez, Paseo de San Antonio, Guadalupe River Park and McEnery Park. None of the six major open space areas are located in proximity to the project site and would not be affected by the shadows of the project.

Nevertheless, a shade and shadow analysis was completed for the project (see Figure 3.4-1 below). Shade and shadow analyses are typically prepared for March 21, June 21, and December 21. This provides an analysis of each season as well as the longest and shortest days of the year, covering the full spectrum of possible shade and shadow issues. The analysis provides data for 9:00 AM, noon, and 3:00 PM. As shown on Figure 3.4-1, the maximum shading from the project would occur in the winter months during morning and afternoon hours. In the winter morning hours, the project would cast shadows to the northwest, extending onto existing residential and commercial development. In the afternoon, the project would cast shadows to the northeast, extending onto the existing residences. As of July 2022, there were no existing solar collectors seen on the roofs of the adjacent properties that would be affected by shading from the project. Shading from the project would not occur year-round on any of the adjacent properties and would not substantially impair the use of adjacent land uses. While the proposed project would shade the adjacent residences and commercial uses, it would not shade any existing public parks or open space areas in proximity to the site. As a result, the proposed project would result in a less than significant shade and shadow impact. **[New Less Than Significant Impact (Significant Unavoidable Impact)]**

EXISTING

PROPOSED

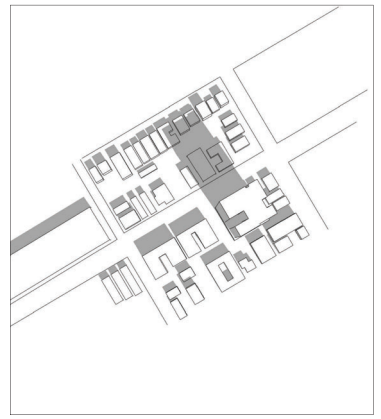
EXISTING

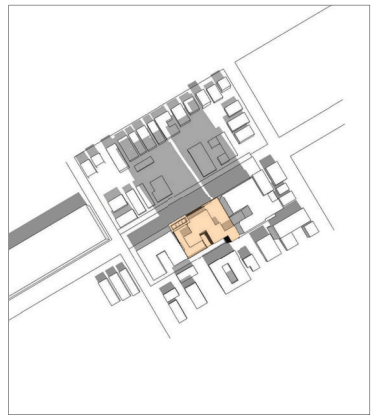
PROPOSED

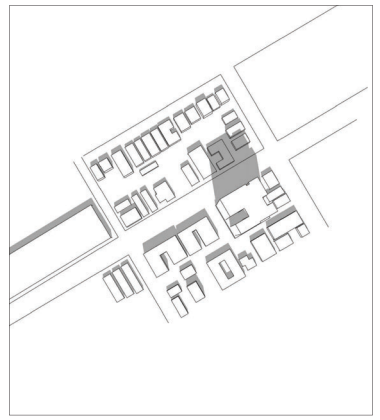
EXISTING

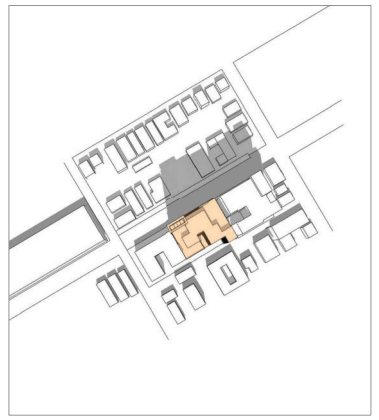
PROPOSED

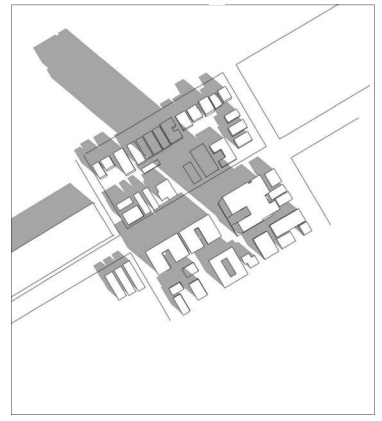
3PM











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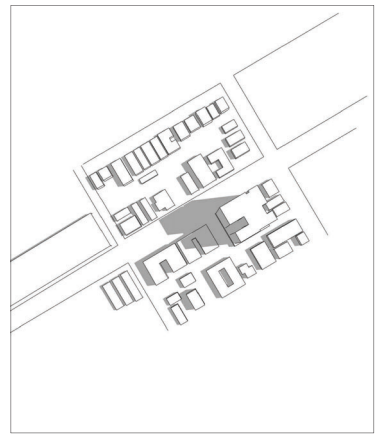
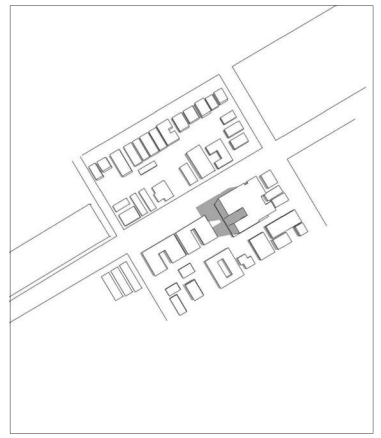
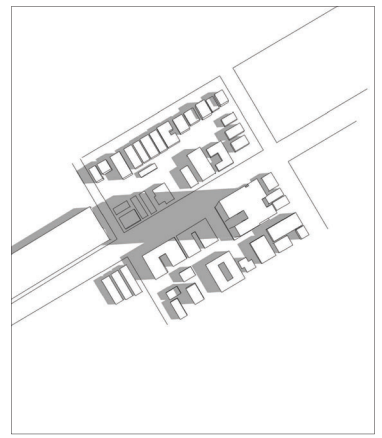
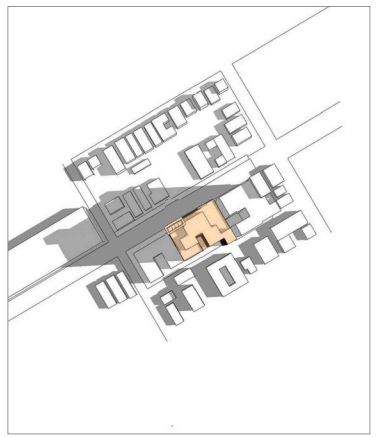




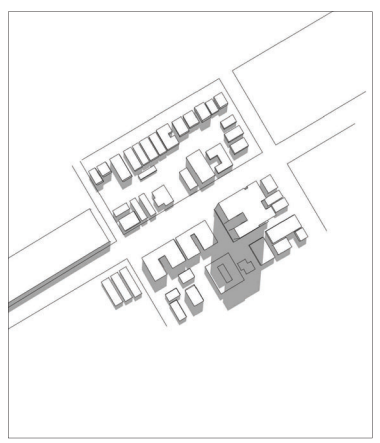


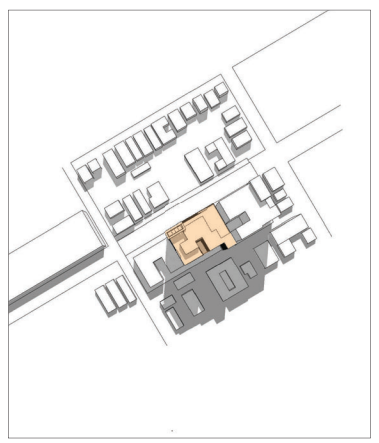


9AM

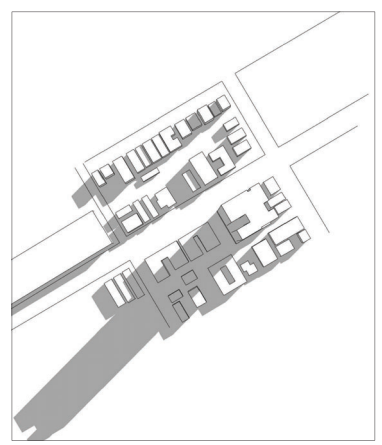
MARCH/SEPTEMBER

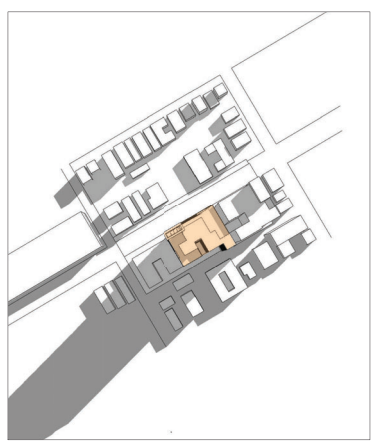
JUNE





DECEMBER





Source: Salvatore Caruso Design Corporation, October 8, 2021.

SHADE AND SHADOW STUDY

FIGURE 3.4-1

3.4.2.2 *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 broader downtown area. As discussed above under checklist question b, the project would not conflict with any land use plan, policy, or regulation adopted to mitigate and environmental effect; 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)]**

3.5 NOISE AND VIBRATION

Public comments received during the NOP scoping process pertained to construction and operational noise. Construction and operational impacts are discussed below in *Section 3.5.2.1*.

The following discussion is based on a Noise and Vibration Assessment prepared by *Illingworth & Rodkin, Inc.* in January 2023. A copy of this report is included as Appendix E of the Draft SEIR.

Approach: The City of San José does not have noise level thresholds for construction activities; therefore, this analysis uses noise limits established by the Federal Transit Administration (FTA). Per FTA's *Transit Noise and Vibration Impact Assessment Manual*, an exterior threshold of 80 equivalent continuous noise level (dBA L_{eq}) shall be applied at residential land uses and an exterior threshold of 90 dBA L_{eq} shall be applied at commercial and industrial land uses during daytime hours. To assess vibration impacts, a continuous vibration limit of 0.08 inches/second (in/sec) peak particle velocity (PPV) was used to minimize the potential for cosmetic damage to sensitive historical structures, and a continuous vibration limit of 0.20 in/sec PPV was used to minimize damage at buildings of normal conventional construction (refer to General Plan Policy EC-2.3).

3.5.1 Environmental Setting

3.5.1.1 *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.[29] 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). L_{max} is the maximum A-weighted noise level during a measurement period.

[29] L_{eq} is a measurement of average energy level intensity of noise over a given period of time. Day-Night Level (DNL) is a 24-hour average of noise levels, with a 10 dB penalty applied to noise occurring between 10:00 PM and 7:00 AM. Community Noise Equivalent Level (CNEL) includes an additional five dB applied to noise occurring between 7:00 PM and 10:00 PM. Where traffic noise predominates, the CNEL and DNL are typically within two dBA of the peak-hour L_{eq}.

Vibration

Ground vibration consists of rapidly fluctuating motions or waves with an average motion of zero. Vibration amplitude can be quantified using 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 in/sec PPV.

3.5.1.2 *Regulatory Framework*

State

California Building Standards Code

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

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 3.5-1: 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.

Table 3.5-1: Land Use Compatibility Guidelines for Community Noise in San José						
Land Use Category	**Exterior DNL Value in Decibels**					
	55	**60**	**65**	**70**	**75**	**80**
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 will 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 *Envision General Plan* traffic volumes to ensure land use compatibility and 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 San José International Airport and the Downtown, as described below: – 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. Some common use areas that meet the 60 dBA DNL exterior standard will be available to all residents. Use noise attenuation techniques such as shielding by buildings and structures for outdoor common use areas. On sites subject to aircraft overflights or adjacent to elevated roadways, use noise attenuation techniques to achieve the 60 dBA DNL standard for noise from sources other than aircraft and elevated roadway segments. – For single-family residential uses, use a standard of 60 dBA DNL for exterior noise in private usable outdoor activity areas, such as backyards.
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

General Plan Policies – Noise and Vibration	
	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-1.7	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	Require noise studies 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, implement mitigation 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	Require safe and compatible land uses within the 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-2.1	Near light and heavy rail lines or other sources of ground-borne vibration, minimize vibration impacts on people, residences, and businesses through the use of setbacks and/or structural design features that reduce vibration to levels at or below the guidelines of the Federal Transit Administration. Require new development within 100 feet of rail lines to demonstrate prior to project approval that vibration experienced by residents and vibration sensitive uses would not exceed these guidelines.
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 building that are documented to be structurally weakened, a continuous vibration limit of 0.08 in/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 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of

General Plan Policies – Noise and Vibration	
	normal conventional construction. Equipment or activities typical of generating continuous vibration include but are not limited to: excavation equipment; static compaction equipment; vibratory pile drivers; pile-extraction equipment; and vibratory compaction equipment. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of historical buildings, or buildings 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. Transient vibration impacts may exceed a vibration limit of 0.08 in/sec PPV only when and where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction.

City of San José Municipal Code

The Municipal Code restricts construction hours within 500 feet of a residential unit to 7:00 AM to 7:00 PM Monday through Friday, unless otherwise expressly allowed in a Development Permit or other planning approval.[30]

The Municipal Code limits noise levels to 55 dBA L_{eq} at any residential property line and 60 dBA L_{eq} at commercial property lines, unless otherwise expressly allowed in a Development Permit or other planning approval.

Chapter 20.40.500 of the Municipal Code prohibits outdoor activity, including loading, sweeping, landscaping or maintenance that occurs within 150 feet of any residentially zoned property between the hours of 12:00 AM (midnight) and 6:00 AM.

3.5.1.3 *Existing Noise Conditions*

The project site is located on the west side of South Fourth Street between East San Salvador Street and East William Street in San José, California. Adjacent to the property to the north, south, and west are existing residential and commercial land uses. There are residences and commercial businesses on the east side of South Fourth Street. Interstate 280 (I-280) is located approximately 1,250 feet to the south of the project site.

A noise monitoring survey was performed in the vicinity of the project site from September 16, 2015 to September 18, 2015. The monitoring survey included three long-term noise measurements (LT-1 to LT-3) as shown below in Figure 3.5-1. The noise environment at the site and in the surrounding areas results primarily from vehicular traffic along South Fourth Street, East Salvador Street, and East William Street. Traffic noise from I-280 and occasional overhead aircraft associated with the Norman Y. Mineta San José International Airport also affect the noise environment in the vicinity of the project site.

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

Table 3.5-2 below summarizes the long-term acoustical locations and measurements and Figure 3.5-1 shows the noise monitoring locations.

Table 3.5-2: Existing Long-Term Noise Measurements

Measurement	Location	Daytime Level (dBA L_{eq})	Nighttime Level (dBA L_{eq})	Average Noise Level (dBA DNL)
LT-1	At the rear of 405 South Fourth Street on the shared property line with 439 South Fourth Street, approximately 160 feet from the centerline of East San Salvador Street.	55-75	46-61	62
LT-2	At the intersection of East San Salvador and South Fourth Street, approximately 25 feet south of the centerline of East San Salvador Street and 65 feet west of the centerline on South Fourth Street.	62-75	54-67	69
LT-3	Along the sidewalk of South Fourth Street near the northeastern corner of the project site, approximately 40 feet west of the centerline of South Fourth Street.	63-70	52-65	68

Sensitive Receptors

Residences are located adjacent to the project's northern, western, and southern boundaries. The closest sensitive receptors are residences located approximately five feet north and 10 feet south of the site. Additional residences are located at farther distances from the project site in all directions.

NOISE MEASUREMENT LOCATIONS | FIGURE 3.5-1

3.5.2 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?

In conformance with the Downtown Strategy 2040 FEIR, the project would be required to be constructed according to General Plan policies and Zoning Ordinance requirements. The project would result in a new significant construction noise impact as described below.

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 3.0 dBA noise level increase is considered the minimum increase that is perceptible to the human ear. Typically, project-generated noise level increases of 3.0 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 5.0 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

The City considers significant construction noise impacts to occur if a project is located within 500 feet of residential uses or 200 feet of commercial or office uses and 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 (refer to General Plan Policy EC-1.7). The City of San José does not have noise level thresholds for construction activities; therefore, this analysis uses noise limits established by the FTA. Per FTA's *Transit Noise and Vibration Impact Assessment Manual*, an exterior threshold of 80 dBA L_{eq} shall be applied at residential land uses and an exterior threshold of 90 dBA L_{eq} shall be applied at commercial and industrial land uses during daytime hours.

Operational or Permanent Noise

Development allowed by the General Plan would result in increased traffic volumes along roadways 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 3.0 dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level, or 5.0 dBA DNL or more where noise levels would remain "Normally Acceptable".

Construction Vibration

The City of San José relies on guidance developed by Caltrans[31] 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 continuous vibration limit of 5.0 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 continuous limit of 2.0 mm/sec (0.08 inches/sec) PPV is used to provide the highest level of protection.

3.5.2.1 *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?

Operational Noise Impacts

Project-Generated Traffic Noise

A significant impact would result if traffic generated by the project would substantially increase noise levels at sensitive receptors in the vicinity. A substantial increase would occur if: a) the noise level increase is 5.0 dBA DNL or greater, with a future noise level of less than 60 dBA DNL, or b) the noise level increase is 3.0 dBA DNL or greater, with a future noise level of 60 dBA DNL or greater. The existing ambient noise levels at the residences surrounding the project site are 62 dBA DNL or greater; therefore, a significant impact would occur if project-generated traffic would permanently increase noise levels by 3.0 dBA DNL.

[31] California Department of Transportation. *Transportation and Construction Vibration Guidance Manual.* September 2013. Accessed February 6, 2020. http://website.dot.ca.gov/env/noise/docs/tcvgm-sep2013.pdf.

A Local Transportation Analysis was prepared by *Hexagon Transportation Consultants, Inc.* (refer to Appendix I of the Draft SEIR) which included a study of the peak hour traffic turning movements for four intersections (South Third Street/East San Salvador Street, South Third Street/East William Street, South Fourth Street/San Salvador Street, and South Fourth Street/East William Street) in the project vicinity. The existing plus project traffic volumes were compared to existing volumes to determine the project's contribution to the permanent noise level increase. A traffic noise increase of less than 1.0 dBA was estimated for each roadway segment. The peak hour trips would result in a less than 1.0 dB increase over the peak hour traffic volumes under existing and background conditions; therefore, the proposed project would have a less than significant traffic noise impact.

Mechanical Equipment

Based on the site plan provided by the applicant, an emergency generator and electrical equipment is proposed on the ground floor while the pump room is proposed in the basement. Additionally, a cooling tower room, which would include heating pumps, is proposed on the roof. At the time the noise and vibration assessment was completed, specific details such as manufacturer's noise data and quantity and size for such equipment was not available. Typical heating pumps would generate noise levels ranging from 56 to 66 dBA at a distance of three feet. Assuming up to 10 heating pumps would run simultaneously at any given time at a distance of three feet, the hourly average noise levels would range from 66 to 76 dBA L_{eq}. Cooling towers would include fan operations with noise levels up to 74 dBA at a distance of 50 feet. When combined with the heating pumps at a distance of three feet, the total mechanical equipment noise generated on the rooftop would be 89 dBA. Additionally, due to the elevation of the rooftop equipment and it being located within a room, a minimum noise level reduction of 20 dBA would be provided for the surrounding land uses. Table 3.5-3 below provides a summary of the estimated operational noise levels from the center of the rooftop equipment.

Table 3.5-3: Estimated Operational Noise from the Center of the Rooftop Equipment

Receptor	Distance from the Center of the Rooftop Equipment	Hourly L_{eq}, dBA	DNL, dBA	Noise Level Increase ,dBA DNL
Existing Res – south	125 feet	36	43	0
Existing Res & Comm – east	175 feet	33	40	0
Existing Res & Comm – north	50 feet	44	51	0
Existing Comm-west	25 feet	50	57	1

Notes: Res – residential
Comm – commercial
A conservative 20 dBA reduction was applied to the noise levels due to the wall façade of the cooling tower room and elevation of the rooftop equipment.

Based on the table above, noise levels from the rooftop equipment would not exceed the 55 dBA L_{eq} at any residential property line and 60 dBA L_{eq} at commercial property lines.

Additionally, the ground-level emergency generator would have a minimum noise level reduction of 20 dBA from the proposed building façades. The proposed emergency generator is expected to have a capacity of 1,000 kW. Generators of this size would typically generate noise levels up to 89 dBA at a distance of 50 feet (with a standard weather enclosure). At a distance of 50 feet from the generator room, noise levels would be reduced to 65 dBA with a Level 1 or Level 2 sound enclosure. Emergency generators would be tested monthly for an hour between 7:00 AM and 10:00 PM.

Table 3.5-4 below provides a summary of the estimated operational noise levels from the generator (with inclusion of sound enclosures).

Table 3.5-4: Estimated Operational Noise from Generator (with Sound Enclosures)

Receptor	Distance from the Center of the Generator Room	Weather Enclosure			Level 1 or Level 2 Sound Enclosure		
		Hourly L_{eq}, dBA	DNL, dBA	Noise Level Increase, dBA DNL	Hourly L_{eq}, dBA	DNL, dBA	Noise Level Increase, dBA DNL
Existing Res – south	60 feet	67[1]	54[1]	0	43[1]	30[1]	0
Existing Res & Comm – east	90 feet	64[1]	50[1]	0	40[1]	26[1]	0
Existing Res & Comm – north	115 feet	62[1]	48[1]	0	38[1]	24[1]	0
Existing Comm- west	105 feet	63[1]	49	0	39[1]	25[1]	0

Notes: Res – residential
Comm – commercial
[1] A conservative 20 dBA reduction was applied to the noise levels due to the wall façade of the generator room.

The hourly average noise levels during emergency generator testing would exceed the 55 dBA noise level at residential uses or 60 dBA noise level at commercial uses (with the use of a weather enclosure). If a Level 1 or Level 2 sound enclosure is selected, the thresholds would not be exceeded. As mentioned previously, emergency generator testing would only occur for an hour every month. In accordance with the Downtown Strategy 2040 FEIR, the proposed project would be required to implement the following measure as a Condition of Approval.

Condition of Approval:

- Prior to the issuance of building permits, mechanical equipment shall be selected and designed to meet the City's 55 dBA DNL noise level requirement at the nearby noise-sensitive land uses. The applicant shall retain a qualified acoustical consultant to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise

levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building façades farthest from the nearest residences), where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval, prior to the issuance of any building permits.

With implementation of the Condition of Approval, the project would have a less than significant operational noise impact from mechanical equipment.

Construction Noise Impacts

Noise impacts resulting from construction depend upon the noise generated by various pieces of construction equipment, the timing and duration of noise-generating activities, and the distance between construction noise sources and noise-sensitive areas. Construction noise impacts primarily result when construction activities occur during noise-sensitive times of the day (e.g., early morning, evening, or nighttime hours), the construction occurs in areas immediately adjoining noise-sensitive land uses, or when construction lasts over extended periods of time. The project would be constructed in approximately 23 months.

Construction activities generate considerable amounts of noise, especially during earth-moving activities when heavy equipment is used. General Plan Policy EC-1.7 requires that all construction operations within the City use best available noise suppression devices and techniques and limit construction hours near residential uses per the Municipal Code allowable hours. Additionally, the City considers significant construction noise impacts to occur if a project is located within 500 feet of residential uses or 200 feet of commercial or office uses and 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. The City of San José does not have noise level thresholds for construction activities. For the purposes of this analysis, noise limits established by the FTA were used to identify the potential impacts from temporary construction noise. During daytime hours, an exterior threshold of 80 dBA L_{eq} shall be applied at residential land uses and 90 dBA L_{eq} shall be applied at commercial and industrial land uses.[32]

Construction of the proposed project would include demolition of existing structures and pavement, excavation for the below-grade parking garage, building erection, paving, and landscaping. Truck trips would be generated from hauling excavated materials and construction materials. For the purposes of this analysis, it is assumed that impact pile driving would be required.

The highest noise levels would be generated during grading, excavation, and foundation construction. At 50 feet, maximum noise levels generated by impact pile driving would be 105 dBA L_{max}. At a distance of 50 feet from the noise source, other project construction equipment would typically range from 85 to 95 dBA L_{max}. Construction-generated noise levels drop off at a rate of about 6.0 dBA per

[32] Federal Transit Administration, *Transit Noise and Vibration Impact Assessment Manual*, FTA Report No. 0123, September 2018.

doubling of the distance between the source and receptor. Shielding by buildings or terrain can provide an additional 5.0 to 10.0 dBA noise reduction at distant receptors.

Table 3.5-5 below lists the phases of construction and the estimated construction noise levels at the nearest property lines from the center of the construction activity by phase, as well as the reference noise level at 50 feet (assuming operation of the two loudest pieces of construction equipment). The hourly average noise levels for each construction phase was calculated with the assumption that the two loudest pieces of equipment would operate simultaneously.

Table 3.5-5: Estimated Construction Noise Levels at Nearby Land Uses

Phase of Construction	Calculated Hourly Average Noise Levels, L_{eq} (dBA)				
	Noise Level at 50 feet	Res. – South (85 feet)	Res. & Comm. – East (140 feet)	Res. & Comm. – North (95 feet)	Comm. – West (80 feet)
Demolition	86	81	77	80	82
Site Preparation	84	80	75	79	80
Grading/Excavation	86	81	77	80	82
Trenching	85	81	77	80	81
Building Exterior	73	79	74	78	79
Building Interior/ Architectural Coating	80	75	71	74	76
Paving	86	81	77	80	82

Notes: Res – residential
Comm – commercial

Construction noise levels would range from 73 to 86 dBA L_{eq} at approximately 50 feet from nearby receptors and 71 to 82 dBA L_{eq} from the center of the construction activity. Pile driving was not included in the hourly average noise estimates as it is typically analyzed independently from other construction activities. Pile driving would occur more than 25 feet from the nearest residence and would result in noise levels up to 100 dBA L_{eq} for no more than 30 days.

As shown in the table above, construction noise levels would exceed the exterior threshold of 80 dBA L_{eq} at residential land uses to the south. The 90 dBA L_{eq} threshold for commercial land uses would be exceeded during pile driving activities. Since project construction would last for a period of more than 12 months and is located within 500 feet of existing residential land uses and 200 feet of existing commercial land uses, construction of the proposed project would result in a noise impact.

Impact NOI-1: Construction noise levels would exceed the exterior threshold of 80 equivalent continuous noise level (dBA L_{eq}) at residential land uses to the south during demolition, grading, trenching, paving, and pile driving activities. The 90 dBA L_{eq} threshold for commercial land uses would be exceeded during pile driving activities.

Mitigation Measure

MM NOI-1.1: Prior to issuance of a demolition, grading, or building permit whichever occurs earliest, and consistent with the Municipal Code and in accordance with the Downtown Strategy 2040 FEIR, particularly Policy EC-1.7, a qualified acoustic consultant shall prepare a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, and designation of a noise disturbance coordinator, to the Director of Planning, Building and Code Enforcement or the Director's Designee. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The contact information for the noise disturbance coordinator shall be prominently posted on the project site. The best available noise suppression devices and techniques shall include, but is not limited to, the following:

- Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence (San José Municipal Code Section 20.100.450). Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- Construct solid plywood fencing around construction sites adjacent to operational business, residences, or other noise-sensitive land uses. A temporary eight-foot noise barrier shall be constructed along the southern property line of the project site to shield adjacent residential land uses from ground-level construction equipment and activities. The noise barrier shall be solid over the face and at the base of the barrier in order to provide a five dBA noise reduction.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Prohibit unnecessary idling of internal combustion engines.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Use 'quiet' models of air compressors and other stationary noise sources where technology exists.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.

- Notify all adjacent businesses, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
- If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- Designate a "noise disturbance coordinator" to respond to any local complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., beginning work too early, bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. A telephone number for the noise disturbance coordinator shall be conspicuously posted at the construction site. The notice sent to neighbors regarding the construction schedule shall be included in the posted sign.

As a part of the noise logistic plan and project, construction activities for the proposed project shall include, but are not limited to, the following best management practices to achieve an exterior threshold of 80 dBA L_{eq} at adjacent residential land uses and 90 dBA L_{eq} at adjacent commercial land uses as feasible:

- Utilize the best available noise suppression devices and techniques during construction activities (per General Plan Policy EC-1.7).
- If impact pile driving is proposed, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile.
- If impact driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced.
- Material stockpiles, as well as maintenance/equipment staging and parking areas, shall be located as far as feasible from residential receptors.
- The project applicant shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
- In order to minimize negative effects of construction noise on the surrounding neighborhoods near the project site, the following measures will be utilized to identify, mitigate, respond to and track any complaints that may arise pertaining to construction noise:
    - Property owners and occupants located within 500 feet of construction activities shall be notified at least 14 calendar

days prior to commencement of construction by posting signs around the perimeter of the project site and/or flyers mailed to nearby receptors.

- A large on-site sign near the public right-of-way containing permitted construction days/hours, complaint procedures, and phone numbers for the project's complaint manager and City Code Enforcement unit shall be posted.
- A complaint log that records received complaints and how complaints were addressed shall be maintained and submitted to the City for review upon the City's request. All complaints shall be responded to within 24 hours.
- If reliable noise complaints are received during demolition, excavation, and/or construction activities, noise levels shall be monitored at the location from which the noise complaints originated by a qualified acoustical professional. Integrated average (L_{eq}) noise level measurements on an hourly basis should be made of activities representative of those that generated the complaint. If the measured noise levels during this test are found to exceed 80 dBA L_{eq} at residential property lines or 90 dBA L_{eq} at commercial property lines, the acoustical professional should specify additional noise attenuation measures to reduce noise the construction levels to the noise limits established by the Federal Transit Administration (FTA). These measures may include operational considerations, the use of additional ground level noise barriers or noise control blanketing of the building structure.

While implementation of the Mitigation Measure NOI-1.1 would lessen most construction noise impacts to adjacent sensitive receptors, some construction activities, such as pile driving, would exceed the exterior threshold of 80 dBA L_{eq} at adjacent residential land uses and the 90 dBA L_{eq} threshold for commercial land uses. The project's impact from construction generated noise would remain significant and unavoidable.

With implementation of the identified Condition of Approval, the proposed project would have a less than significant operational noise impact from mechanical equipment; however, even with implementation of Mitigation Measures NOI-1.1, the project would have significant unavoidable impact from construction noise. **[New Significant Unavoidable Impact (Less Than Significant Impact)]**

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

According to Policy EC-2.3 of the City's General Plan, a continuous vibration limit of 0.08 in/sec PPV shall be used to minimize the potential for cosmetic damage to sensitive historical structures, and a continuous vibration limit of 0.20 in/sec PPV shall be used to minimize damage at buildings of

normal conventional construction. As described in *Section 3.1 Cultural Resources* of the Draft SEIR, there are several historic structures located near the project site, including Building Nos. 1, 11, 13, 14, 17, and 18, which are eligible for listing under the CRHR and/or NRHP and/or as a City Landmark. Additionally, Building No. 23 is a Contributing Structure to the Reed City Landmark District. The remaining buildings are either eligible as a Structure of Merit or not eligible as historic resources. Refer to the Figure 3.3-1 for the building locations.

Construction activities would include site demolition work, preparation work, excavation of below-grade parking garage, foundation work, and new building framing and finishing. As mentioned previously, impact pile driving, which produces substantial vibrations, may be used. It is assumed that pile driving would occur for a total of 30 days, up to eight hours per day. The specific locations for pile driving activities and vibration exposure estimates at the surrounding buildings are unknown; therefore, the vibration levels at each surrounding building cannot be estimated.

Building Nos. 1, 11, 13, 14, 17, and 18 are within 190 feet of the project site and would be susceptible to cosmetic damage from pile driving. Under typical impact pile driving levels, damage would not be expected at Building No. 11, but could occur at the other historic buildings. Typical vibratory pile driving levels would potentially result in damage at Building No.1 only. Table 3.5-6 below provides a summary of typical vibration levels from impact and vibratory pile driving at a distance of 25 feet.

Table 3.5-6: Vibration Levels for Pile Driving (within 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)
Impact Pile Driving	Upper range	1.158	290	125
	Typical	0.644	170	75
Sonic Pile Driving	Upper range	0.734	190	85
	Typical	0.170	50	25

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. January 2022.

Pile driving activities would have the potential to generate vibration levels of 0.08 in/sec PPV or more at each of the historic buildings within 290 and 190 feet for impact and vibratory driving, respectively, or to generate vibration levels of 0.2 in/sec PPV or more buildings of normal conventional construction located within 125 and 85 feet for impact and vibratory driving, respectively.

Table 3.5-7 below provides a summary of construction equipment vibration levels at nearby historic buildings.

Table 3.5-7: Impacts to Historic Buildings Surrounding the Project Site								
Equipment		**PPV at 25 feet**	**Vibration Levels Nearby (in/sec PPV)**					
			PPV at 5 feet Building 1	**PPV at 190 feet Building 11**	**PPV at 110 feet Building 13**	**PPV at 50 feet Building 14**	**PPV at 80 feet Building 17**	**PPV at 130 feet Building 18**
Clam shovel drop		0.202	**1.186**	0.022	0.040	0.094	0.056	0.033
Hydromill	soil	0.008	0.047	0.001	0.002	0.004	0.002	0.001
	rock	0.017	**0.100**	0.002	0.003	0.008	0.005	0.003
Vibratory Roller		0.210	**1.233**	0.023	0.041	**0.098**	0.058	0.034
Hoe Ram		0.089	**0.523**	0.010	0.017	0.042	0.025	0.015
Large bulldozer		0.089	**0.523**	0.010	0.017	0.042	0.025	0.015
Caisson drilling		0.089	**0.523**	0.010	0.017	0.042	0.025	0.015
Loaded trucks		0.076	**0.446**	0.008	0.015	0.035	0.021	0.012
Jackhammer		0.035	**0.206**	0.004	0.007	0.016	0.010	0.006
Small bulldozer		0.003	0.018	0.0003	0.001	0.001	0.001	0.0005

Notes: Illingworth & Rodkin, Inc. *439 & 451 South 4th Street Project Noise And Vibration Assessment*. January 11, 2023. Building No. 23 was not included in this analysis as the building is located approximately 250 feet southeast of the project site. Since the 0.08 in/sec PPV at 190 feet (Building No. 11) would not be exceeded as shown in the table above, it can be assumed that the historical building vibration threshold would not be exceeded at Building No. 23.

As shown in the table above, the nearest historic building (Building No. 1) is located approximately five feet north from the project site and would be exposed to vibration levels ranging from 0.1 to 1.233 in/sec PPV at five feet which exceeds the 0.08 in/sec PPV threshold for historic buildings. Additionally, the use of a vibratory roller along the southeastern boundary of the project site adjacent to Building 14 would generate vibration levels exceeding 0.08 in/sec PPV at the building façade. Table 3.5-8 below provides a summary of construction equipment vibration levels at nearby buildings and the vibration levels generated by typical construction equipment at 25 feet.

Table 3.5-8: Impacts to Nearest Buildings					
Equipment		**PPV at 25 feet**	**Vibration Levels To Nearest Buildings (in/sec PPV)**		
			PPV at 20 feet west	**PPV at 10 feet south**	**PPV at 100 feet east**
Clam shovel drop		0.202	**0.258**	**0.553**	0.044
Hydromill	soil	0.008	0.010	0.022	0.02
	rock	0.017	0.022	0.047	0.04
Vibratory Roller		0.210	**0.268**	**0.575**	0.046
Hoe Ram		0.089	0.114	**0.244**	0.019
Large bulldozer		0.089	0.114	**0.244**	0.019
Caisson drilling		0.089	0.114	**0.244**	0.019
Loaded trucks		0.076	0.097	**0.208**	0.017
Jackhammer		0.035	0.045	0.096	0.008
Small bulldozer		0.003	0.004	0.008	0.001

Note: Illingworth & Rodkin, Inc. *439 & 451 South 4th Street Project Noise And Vibration Assessment*. January 11, 2023.

Project construction would generate vibration levels exceeding the General Plan threshold of 0.08 in/sec PPV or more at historic buildings within 50 feet of the project site and 0.2 in/sec PPV or more at buildings of normal conventional construction located within 25 feet of the project site. Impact and vibratory pile driving would potentially exceed the City's thresholds at historic buildings located within 290 and 190 feet of the pile driving activities, respectively, and at conventional buildings located within 125 and 85 feet of the pile driving activities, respectively. As a result, cosmetic or minor damage could potentially occur.

Impact NOI-2: Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings and 0.2 inches/second (in/sec) peak particle velocity (PPV) for buildings of normal conventional construction within 50 feet and 25 feet of the project site, respectively. In addition, impact and vibratory pile driving would exceed the City's thresholds at historic buildings located within 290 and 190 feet of the pile driving activities, respectively, and at conventional buildings located within 125 and 85 feet of the pile driving activities, respectively.

Mitigation Measures

The Downtown Strategy 2040 FEIR recognized that construction vibration for future projects in downtown could exceed these thresholds and included mandatory measures to be implemented by future projects to reduce vibration impacts. Consistent with General Plan Policy EC-2.3, the proposed project would implement Mitigation Measure NOI-1.1 and the following measures during all phases of construction on-site.

MM NOI-2.1: Prior to the issuance of a demolition, grading, or building permit, which occurs earliest, the applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The Plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City of San José's Historic Preservation Officer, or equivalent for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earlier. Since exposure to excessive vibration levels could potentially damage historic buildings and buildings of conventional construction, the Plan shall include, but not be limited to, the following measures to ensure that the project-generated vibration levels would not exceed the General Plan thresholds of 0.08 in/sec PPV for historic buildings and 0.2 in/sec PPV for buildings of normal conventional construction:

- 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 that are known to produce high vibration levels (e.g., jackhammers, hoe rams, clam shovel drop, large bulldozers, caisson drillings, loaded trucks, and vibratory roller, etc.) shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to issuance of demolition or grading permits. This Plan shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Demolition, earth-moving, and ground impacting operations shall be phased so that it does not occur during the same time period.
- Where possible, the use of heavy vibration-generating construction equipment shall be prohibited within 20 feet of any adjacent building.
- Document conditions at all structures located within 125 feet of construction and at historic structures located within 300 feet of construction prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically:
    - Vibration limits shall be applied to vibration-sensitive structures located within 300 feet of any high impact construction activities, such as pile driving, and 75 feet of other construction activities identified as sources of high vibration levels.
    - Performance of a photo survey, elevation survey, and crack monitoring survey for each structure of normal construction within 125 feet of any high impact construction activities and/or within 30 feet of other construction activities identified as sources of high vibration levels and each historic structure within 300 feet of pile driving activities and/or within 75 feet of other construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, and shall include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures.
- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.
- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.

- If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the 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 post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.
- Regular monitoring reports during construction shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the HPO as outlined in the monitoring schedule.

MM NOI-2.2: The project applicant shall prepare preconstruction documentation of the nearby historic resources as part of project start-up. Prior to issuance of a demolition, grading, or building permit, whichever occurs earliest, a qualified historic architect shall undertake an existing visual conditions study of the nearby historic resources within 290 feet of the project site. The purpose of the study would be to establish the baseline conditions of the neighboring historic buildings prior to construction, including the location and extent of any visible cracks or spalls. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including those physical characteristics of the resources that convey their historic significance. The documentation shall be reviewed and approved by the City of San José's Historic Preservation Officer, or equivalent prior to issuance of a demolition, grading, or building permit, whichever occurs earliest.

MM NOI-2.3: Once the baseline conditions of the neighboring historical resources within 290 feet of the project site are determined (refer to MM NOI-2.2), 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).

If pile driving is used, a qualified geologist, or other professional with expertise in ground vibration and its effect on existing structures, shall prepare a study of the potential vibration caused by construction activities associated with the proposed project. Based on the results of the study, specifications regarding the restriction and monitoring of pile-driving shall be incorporated into the construction contract to manage the mean and methods of construction. Any initial pile driving shall be monitored and if vibrations levels exceed the threshold, modifications shall be made to reduce vibration levels below the established threshold. A copy of the study, contract specifications, and monitoring reports shall be provided to the Historic

Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement.

The HRRP shall be prepared by a qualified Historic Architect and reviewed and approved by the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to Public Works clearance, including any ground-disturbing work. The project applicant shall ensure the 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 from excavation and construction;
- Requirements for monitoring and documenting compliance with the plan; and
- Education/training of construction workers about the significance of the historical resources around which they would be working.

MM NOI-2.4: 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. During the demolition and construction phases, the Monitoring Team shall make periodic site visits to monitor the condition of the property, including monitoring of any instruments such as crack gauges, if necessary, or reviewing vibration monitoring required by other construction monitoring processes required under the City's permit processes. Site visit reports and documents shall be provided to the City's Historic Preservation Officer on a quarterly basis. The Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement 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, a representative of the Monitoring Team shall inform the project applicant (or the applicant's designated representative responsible for construction activities), the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the potential impacts. The project applicant shall implement the Monitoring Team's recommendations for corrective measures, including halting construction in situations where construction activities would imminently endanger 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 Team shall prepare a report documenting all site visits. The reporting period shall be a minimum of once every three months. The Monitoring Team, or its representative, shall prepare a report documenting all site visits. The reporting period shall be a minimum of once every three months. The Monitoring Team or its representative, shall submit the site visit reports to the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer no later than one week after each reporting period. The Monitoring Report shall also include, but is not limited to, the following:

- Summary of the demolition and construction progress;
- Identification of substantial adverse impacts related to construction activities;
- Problems and potential impacts to the historical resources and adjacent buildings 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 Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to the issuance of any Certificate of Occupancy (temporary of final).

With implementation of Mitigation Measures NOI-1.1 and NOI-2.1 to NOI-2.4 identified above, groundborne vibration impacts associated with project construction would be less than significant. **[Same as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

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 Norman Y. Mineta San José International Airport is located approximately 2.3 miles northwest of the project site. According to the City's projected aircraft noise contours, the project site lies outside the 60 dBA CNEL impact area. The required safe and compatible threshold for exterior noise levels would be at or below 65 dBA CNEL/DNL for aircrafts (General Plan Policy EC-1.11);

therefore, the proposed project would be compatible with the City's exterior noise standards for aircraft noise. **[Same Impact as Approved Project (Less than Significant Impact)]**

3.5.2.2 *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). The following six projects which are at varying stages of the entitlement process, are located within 1,000 feet of the project site:

- The Mark Residential File No. SP20-021
- 3rd Street Mixed Use File Nos. SP21-019 & SP21-020
- BoTown Residential File Nos. H20-038 & ER20-243
- Valley Title Commercial File Nos. H21-012 & ER21-026
- San José Stage/Home 2 File Nos. CP20-008 & ER20-079
- Gateway Tower File No. H15-047

For the purposes of this analysis, it was assumed that sensitive receptors would be exposed to construction activities associated with the proposed project and The Mark Residential. It was also assumed that sensitive receptors would be exposed to construction of the proposed project and 3rd Street Mixed Use development simultaneously or consecutively. The other four nearby developments would have no receptors that have a direct line-of-sight[33] to both the project site and the BoTown Residential, Valley Title Commercial, San José Stage/Home 2, and/or Gateway Tower sites.

Pursuant to CEQA Guidelines Section 15130, an individual project would result in a significant cumulative impact if the project's contribution to the overall cumulative impact is cumulatively considerable. Section 15130 also states that a project need only mitigate its own contribution to a cumulative impact.

The project would be required to implement Mitigation Measures NOI-1.1, NOI-2.1, NOI-2.2, NOI-2.3, and NOI-2.4 to reduce construction noise and vibration levels. Similar to the proposed project, each individual project, including The Mark Residential and 3rd Street Mixed Use, is required to include measures, as applicable, to reduce construction noise and vibration impacts to below City thresholds.

Impact C-NOI-1: The proposed project, by itself, would contribute to the overall cumulative construction noise impact from development within the vicinity of the project site.

[33] Any intervening structure would provide noise attenuation. Direct line-of-sight means no intervening buildings.

Mitigation Measure

In addition to Mitigation Measure NOI-1.1, the proposed project would need to implement the following measures[34] to reduce the individual contributions to the significant cumulative noise impact from construction.

MM C-NOI-1.1: As part of the construction noise logistics plan (refer to Mitigation Measure NOI-1.1), the project applicant shall eliminate pile driving and limit the number of drilling days.

As proposed, the project would include pile driving for up to 30 days and would not comply with the identified mitigation. The project does not propose extended construction hours. Furthermore, the limitation of construction hours and acoustical shielding are already incorporated in Mitigation Measure NOI-1.1. Even with implementation of Mitigation Measure NOI-1.1, the project would result in a cumulatively considerable contribution to a significant cumulative noise impact due to pile driving. **[New Significant Unavoidable Impact (Less Than Significant Cumulative Impact)]**

3.5.3 Non-CEQA Effects

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

Future Exterior Noise Impacts

The future noise environment at the project site would continue to result primarily from traffic along South Fourth Street and the surrounding roadways. As mentioned previously, it is estimated that noise levels in the downtown area would increase by one dB by 2035. Per General Plan Policy EC-1.1, the City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most noise-sensitive land uses except in the environs of the Norman Y. Mineta San José International Airport and the Downtown. Based on the site plan provided by the applicant, a dog park, pool deck, and an outdoor dining area is proposed on the rooftop. In addition, an outdoor patio is proposed on the fifth floor.

The dog park and fifth floor outdoor patio would be located along the western building façade and would be shielded from the traffic noise by the proposed building and existing buildings surrounding the site. Therefore, future exterior noise levels at the dog park and fifth floor outdoor patio would be below 60 dBA DNL.

[34] City of San José. *The Mark Residential Project Draft Supplemental Environmental Impact Report*. April 2021.

The pool and outdoor dining area would be located along the southeastern and northeastern corners of the building, respectively. The center of both areas would be set back approximately 65 feet from the South Fourth Street centerline. The elevation of the rooftop would be 246 feet above ground and would provide a 15 dBA reduction in noise. Therefore, the future exterior noise levels at these areas would be below 60 dBA DNL. The acceptable exterior noise level has not been established for the Norman Y. Mineta San José International Airport and the downtown area; therefore, the proposed project would be consistent with General Plan Policy EC-1.1

Future Interior Noise Impacts

The City of San José requires that interior noise levels be maintained at 45 dBA DNL or less for residences. The eastern façade of the proposed building would place residences as close as 35 feet from the South Fourth Street centerline. At this distance, the residences would be exposed to future exterior noise levels ranging up to 69 dBA DNL.

The northern and southern façades of the proposed building would be shielded from traffic noise along East San Salvador Street and East William Street by the adjacent buildings, which would also provide partial shielding from South Fourth Street. With setbacks ranging from 35 to 165 feet, the exterior-facing residences along the northern and southern building façades would be exposed to exterior noise levels ranging from 63 to 69 dBA DNL from traffic noise on South Fourth Street. While the western façade would be shielded from traffic noise along South Fourth Street, these residences would be exposed to exterior noise levels up to 64 dBA DNL.

Interior noise levels would vary depending upon the design of the building (relative window area to wall area) and the selected construction materials and methods. Standard residential construction provides approximately 15 dBA of exterior-to-interior noise reduction, assuming the windows are partially open for ventilation. Standard construction with the windows closed provides approximately 20 to 25 dBA of noise reduction in interior spaces. Where exterior noise levels range from 60 to 65 dBA DNL, the inclusion of adequate forced-air mechanical ventilation is often the method selected to reduce interior noise levels to acceptable levels by closing the windows to control noise. Where noise levels exceed 65 dBA DNL, forced-air mechanical ventilation systems and sound-rated construction methods would be required. Sound-rated construction methods or materials may include a combination of smaller window and door sizes as a percentage of the total building façade facing the noise source, sound-rated windows and doors, sound-rated exterior wall assemblies, and mechanical ventilation so windows may be kept closed at the occupant's discretion.

For the proposed project, the interior noise levels would be up to 54 dBA DNL, which exceeds the City's 45 dBA DNL interior noise threshold. In accordance with General Plan Policy EC-1.1, the proposed project will be required, as a Condition of Approval, to implement the following measures.

Conditions of Approval:

- Residential units along the eastern building façade facing South Fourth Street shall require windows and doors with a minimum Sound Transmission Class (STC) rating of 31 (with the incorporation of adequate forced-air mechanical ventilation) to meet the interior noise threshold of 45 dBA DNL.

- Residential units along the northern and southern building façades within 120 feet of the centerline of South Fourth Street, the windows and doors shall have a minimum STC rating of 28 to 31 (with the incorporation of adequate forced-air mechanical ventilation).
- The project's design shall provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on-site, so windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
- A qualified acoustical specialist shall review the final site plan, building elevations, and floor plans to ensure compliance with the most recent California Building Code and City noise standards prior to construction. A project-specific acoustical analysis shall be prepared to ensure that interior noise levels are reduced to 45 dBA or lower within the residential units. The project applicant shall conform with any special building construction techniques requested by the Director of Planning, Building and Code Enforcement or the Director's designee, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

With implementation of the above Conditions of Approval, the project would meet the City's interior noise standards consistent with General Plan Policy EC-1.1.

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 obstacles 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 applicant proposes a residential development on an underutilized site and is consistent with planned growth in the Downtown Strategy 2040. The growth inducing effects of the planned development were already analyzed in the Downtown Strategy 2040 FEIR.

The project site is in a developed area fully served by public utilities. There are no undeveloped areas adjacent or in the immediate vicinity of the project site. The project would not remove any obstacles that would help facilitate growth that could significantly affect the physical environment.

The project would place new residences in the downtown adjacent to housing and commercial development. The project would be compatible with the adjacent land uses and would not require the expansion of utilities or roads. Therefore, the proposed project, by itself, would not have a significant growth inducing impact.

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)]

Future development on-site would involve the use of non-renewable resources both during construction phases and future operations of the site. Construction would use building materials such as petroleum-based products and metals that cannot reasonably be re-created. Construction of the project also involves significant consumption of energy, usually petroleum-based fuels that deplete supplies of non-renewable resources. Upon completion of the project, occupants would use non-renewable fuels to heat and light the buildings. The proposed project would also result in the increased consumption of water.

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 new buildings would be built to current codes, which require insulation and design to minimize wasteful energy consumption. The proposed project would be constructed in compliance with CALGreen requirements, the City's Council Policy 6-32 and the City's Green Building Ordinance. In addition, the project would be constructed consistent with City Council Policy 6-29 and the Regional Water Quality Control Board Municipal Regional Stormwater National Pollution Discharge Elimination System Permit to avoid impacts to waterways. The project site is located in the downtown area which provides future residents 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.

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:

- **Noise and Vibration:** Construction noise levels would exceed the exterior threshold of 80 dBA L_{eq} at residential land uses to the south during demolition, grading, trenching, paving, and pile driving activities. The 90 dBA L_{eq} threshold for commercial land uses would be exceeded during pile driving activities.
- **Cumulative Noise and Vibration:** The proposed project, by itself, would contribute to the overall cumulative construction noise impact from development within the vicinity of the project site.

SECTION 7.0 ALTERNATIVES

7.1 OVERVIEW

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.

The stated objectives of the project applicant are to:

1. Provide up to 210 housing units in the City of San José which would aid the City in addressing the current housing shortage.

2. Provide high-density housing in the downtown, that are accessible to downtown jobs, retail and entertainment and various modes of public transit, consistent with the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 Plan of locating high-density development on infill sites along transit corridors to foster transit use and the efficiency of urban services.

3. Maximize use of an infill site by providing residences in an area served by various modes of public transportation such as VTA light rail and buses and the planned BART extension to downtown; thereby creating opportunities to reduce vehicle miles travelled.

4. Create a high quality, well designed, high-density, high-rise residential development project in the downtown focus area to further the Envision San José 2040 General Plan goal of creating a central identity for San José as well as adding a sense of permanency and stature to the downtown skyline.

5. Provide bicycle parking for residents to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community.

7. Provide the required number of affordable housing units mandated by the City's Inclusionary Housing Ordinance and Ellis Act Ordinance requirements.

7.2 SIGNIFICANT IMPACTS OF THE PROJECT

The CEQA Guidelines advise that the alternatives analysis in an EIR should be limited to alternatives that would avoid or substantially lessen any of the significant effects of the project and would achieve most of the project objectives. Impacts that would be significant include:

- **Air Quality:** Construction activities associated with the proposed project would result in an infant cancer risk of 103.35 cases per one million and an annual fine particulate matter where particles have a diameter of 2.5 micrometers or less ($PM_{2.5}$) of 1.12 micrograms per cubic meter air ($\mu g/m^3$) which exceeds the BAAQMD significance thresholds of 10 cases per one million and 0.3 $\mu g/m^3$, respectively.
- **Biological Resources:** Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.
- **Noise and Vibration:** Construction noise levels would exceed the exterior threshold of 80 equivalent continuous noise level (dBA L_{eq}) at residential land uses to the south during demolition, grading, trenching, paving, and pile driving activities. The 90 dBA L_{eq} threshold for commercial land uses would be exceeded during pile driving activities.
- **Noise and Vibration:** Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings and 0.2 inches/second (in/sec) peak particle velocity (PPV) for buildings of normal conventional construction within 50 feet and 25 feet of the project site, respectively. In addition, impact and vibratory pile driving would exceed the City's thresholds at historic buildings located within 290 and 190 feet of the pile driving activities, respectively, and at conventional buildings located within 125 and 85 feet of the pile driving activities, respectively.
- **Cumulative Noise and Vibration:** The proposed project, by itself, would contribute to the overall cumulative construction noise impact from development within the vicinity of the project site.

7.3 ALTERNATIVES

The City considered the following alternatives to the proposed project:

- Location Alternative
- No Project – No Development Alternative
- Preservation Alternative/Reduced Development Redesign

7.3.1 Project Alternatives

7.3.1.1 *Considered & Rejected*

Location Alternative

In considering an alternative location in an EIR, the CEQA Guidelines advise that the key question is "whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location".[35] The applicant proposes to construct a residential building with up to 210 residential units on an approximately 0.52-acre site in the downtown area.

As there are historic buildings throughout the downtown, it is unlikely that a new location would avoid the significant unavoidable impacts to historic buildings due to incompatible design relative to historic adjacencies. 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. Under the Location Alternative, displacement of existing land uses could trigger secondary effects, such as those associated with the displacement of existing businesses and/or residents. All construction-related impacts would remain the same if sensitive receptors were located within 1,000 feet of the site and if trees are proposed for removal. This alternative was not considered further because of the lack of available land to support the proposed project within the downtown area that would avoid both the construction and historic impacts and because the applicant does not own or control any other properties.

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 apartment complex and single-family residence as is. If the project site were to remain as is, there would be no significant impacts. Bicycle storage is provided on-site for existing residents; therefore, the current development on-site meets project objective 5. All other project objectives would not be met. In addition, the City would lose the opportunity to redevelop an underutilized site downtown and to meet the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 by locating high density development on a downtown site.

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

Based on the zoning district for the project site, *DC – Downtown Commercial*, permitted uses include offices and financial services, general retail, education and training, entertainment and recreation, food services, general services, public and quasi-public uses such as religious assembly and community centers, and residential. It is possible that in the future an alternative development proposal, such as another mixed-use building or a residential building, may be presented for the project site. Any future development proposals for the site would require review and approval by the City of San José and is likely to have similar impacts as the proposed project in terms of construction air quality, cultural resources. biological resources, and noise and vibration.

7.3.1.3 *Preservation Alternative/Reduced Development Redesign*

The proposed project would not comply with Section 4.2.2 Height Transition; and Section 4.2.4 Streetwall Continuity (d) and Façade Window Placement (g) of the 2019 Design Guidelines and Standards.

The Preservation Alternative/Reduced Development Redesign would reduce the height of the building from 25 stories to six stories (refer to Figure 7.3-1). Under this alternative, two levels of above-grade parking are proposed. The remaining floors (floors three to six) would consist of 34 dwelling units, a reduction of 176 units when compared to the proposed project. With this reduction in height, the project would be constructed in a shorter timeframe and pile driving would not be required. Therefore, it is reasonable to assume that the project-level and cumulative-level construction noise impacts would be avoided.

In regard to impacts to historic resources, the reduced height and massing would comply with more elements of the 2019 Design Guidelines and Standards. In addition, this alternative would not impact the integrity of the adjacent historic structures. The new construction on-site would still need to conform to all applicable design guidelines and standards which includes Section 4.2.2 Height Transition; and Section 4.2.4 Streetwall Continuity (d) and Façade Window Placement (g) of the 2019 Design Guidelines and Standards.

All other impacts, including those for construction air quality, biological resources, and noise and vibration would be the same as the proposed project with all identified mitigation measures, Conditions of Approval, and Standard Permit Conditions. Any development scenario with a smaller project would have a shorter construction timeframe, which would lessen the air quality and noise impacts. Impacts from ground disturbance and tree removal would be comparable to the proposed project for impacts related to biological resources. This alternative would not meet project objectives 1, 2, and 4 to provide high-rise housing in the downtown or maximizing the use of an infill site.

PRESERVATION ALTERNATIVE/REDUCED DEVELOPMENT REDESIGN | FIGURE 7.3-1

7.3.2 Comparison of Environmental Impacts for Alternatives to the Project

A comparison of alternatives based upon whether they avoid or substantially lessen the significant environmental effects is shown in the table below.

Significant Project Impacts	Proposed Project	No Development Alternative	Preservation Alternative/Reduced Development Redesign
Construction activities associated with the proposed project would result in an infant cancer risk of 103.35 cases per one million and an annual fine particulate matter where particles have a diameter of 2.5 micrometers or less ($PM_{2.5}$) of 1.12 micrograms per cubic meter air ($\mu g/m^3$) which exceeds the BAAQMD significance thresholds of 10 cases per one million and 0.3 $\mu g/m^3$, respectively.	LTSM	**NI**	LTSM
Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.	LTSM	**NI**	LTSM
Construction noise levels would exceed the exterior threshold of 80 equivalent continuous noise level (dBA L_{eq}) at residential land uses to the south during demolition, grading, trenching, paving, and pile driving activities. The 90 dBA L_{eq} threshold for commercial land uses would be exceeded during pile driving activities.	SU	**NI**	**LTS**
Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings and 0.2 inches/second (in/sec) peak particle velocity (PPV) for buildings of normal conventional construction within 50 feet and 25 feet of the project site, respectively. In addition, impact and vibratory pile driving would exceed the City's thresholds at historic buildings located within 290 and 190 feet of the pile driving activities, respectively, and at conventional buildings located within 125 and 85 feet of the pile driving activities, respectively.	LTSM	**NI**	LTSM
The proposed project, by itself, would contribute to the overall cumulative construction noise impact from development within the vicinity of the project site.	**SU**	**NI**	**LTSM**

NI – No Impact
LTS – Less Than Significant Impact
LTSM – Less Than Significant Impact with Mitigation
SU – Significant Unavoidable

Bolded text indicates impacts that are lesser than the impacts of the proposed project.

7.3.3 Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. If the environmentally superior alternative is the "No Project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives (Section 15126.6(e)(2)).

Based on the above discussion, the environmentally superior alternative is the No Project Alternative – No Development Alternative. However, this alternative would achieve none of the project objectives. Beyond the No Project – No Development Alternative, the Preservation Alternative/Reduced Development Redesign would be the environmentally superior alternative.

Although all construction-related impacts would remain the same, the Preservation Alternative/Reduced Development Redesign would avoid the significant unavoidable impact to the adjacent historic structures. The building, under this alternative, would be designed to be more compatible with the 2019 Design Guidelines and Standards. Additionally, since this alternative would be constructed in a shorter timeframe and pile driving would not be required, the project-level and cumulative-level construction noise impacts would be avoided. This alternative would meet project objective 5 by providing bicycle parking for residents.

SECTION 8.0 REFERENCES

The analysis in this Draft 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

City of San José
Department of Planning, Building and Code Enforcement
- Christopher Burton, *Director*
- David Keyon, *Principal Planner*
- Dana Peak, *Historic Preservation Officer*
- Cassandra van der Zweep, *Supervising Planner*
- Reema Mahamood, *Planner III*

9.2 CONSULTANTS

David J. Powers & Associates, Inc.
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- Shannon George, *Principal Project Manager*
- Fiona Phung, *Project Manager*
- Ryan Osako, *Graphic Artist*

AEI Consultants
Phase I Environmental Site Assessment
- Katie Hindt, *Senior Author*
- Max Martinez, *Project Manager*

Hexagon Transportation Consultants
Transportation
- Brian Jackson, *Senior Associate*

Holman Associates
Literature Search
- Miley Holman, *Principal*

Illingworth & Rodkin
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- Michael S. Thill, *Principal*
- Carrie J. Janello, *Senior Consultant*
- Casey Divine, *Consultant*

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- Kimberly Butt, *Principal*
- Elizabeth Graux, *Architect*