Draft Supplemental Environmental Impact Report

Bo Town Mixed Use

Prepared by

CITY OF SAN JOSE

CAPITAL OF SILICON VALLEY

In Consultation with

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

ENVIRONMENTAL CONSULTANTS & PLANNERS

April 2022

TABLE OF CONTENTS

Figures

Tables

Appendices

EXECUTIVE SUMMARY

Project Overview

The 32,737 square foot (0.75-acre) project site is a located at 409 & 425 South 2nd Street, in downtown San José (Assessor Parcel Number [APN] 467-47-019, -020, and 097). The site is zoned Downtown Primary Commercial and is designated Downtown in the General Plan. The existing on-site structures are a 5,283 square foot restaurant building with a 55-space parking lot that is accessible by a driveway on East San Salvador and a driveway on South 2nd Street and a two-story storage structure. The project proposes to demolish the existing buildings to redevelop the site with a 30-story mixed-use building with up to 540 residential units.

Summary of Significant Impacts

The following table summarizes the significant effects and mitigation measures addressed within this Supplemental Environmental Impact Report (SEIR) (including the Initial Study in Appendix A). The project description and full discussion of impacts and mitigation measures can be found in *Section 2.0 Project Information and Description* and *Section 3.0 Environmental Setting, Impacts, & Mitigation.*

Significant Impacts	Mitigation and Avoidance Measures
Air Quality	
Impact AIR-1: Construction activities associated with the proposed project would expose sensitive receptors to toxic air contaminant emissions (203.41 cancer cases and 0.61 μg/m3 pf PM2.5) in excess of BAAQMD thresholds (cancer risk [greater than 10 cancer cases] and PM2.5 concentration [greater than 0.3 μg/m3]).	**MM AIR-1.1:** Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan to the Director of Planning, Building and Code Enforcement or Director's designee that includes specifications of the equipment to be used during construction. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below. • All construction equipment larger than 25 horsepower operating at the site for more than two continuous days or 20 hours total shall meet U.S. Environmental Protection Agency (EPA) Tier 4 final emission standards for particulate matter (PM10 and PM2.5). • If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower operating at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 2 or 3

	engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that together achieve an 85 percent or greater reduction in particulate matter exhaust in comparison to uncontrolled equipment. • 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 equipment. • Stationary cranes, personnel/material hoist, and welders shall be powered by electricity. Alternatively, the project applicant could develop a plan that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 85 percent or greater. The construction operations plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).
Impact AIR-2: The proposed project could result in odors leading to odor complaints due to the presence of the wastewater treatment facility on-site. (Significant Impact)	**MM AIR-2.1:** Prior to issuance of any building permits, the project applicant shall develop an odor control plan that addresses plant design issues to control odors, operating, and maintenance procedures to prevent odors, and an action plan to respond to upset conditions that could cause odors and measures to respond to odor complaints. The odor control plan shall describe the design elements and best management practices built into the facility that include: • Ventilation of the system using carbon absorption, biofiltration, ammonia scrubbers, or other effective means to treat exhausted air from the enclosed facility; • Odor proofing of refuse containers used to store and transport grit and screenings or biosolids; and • Injection of chemicals to control hydrogen sulfide.

	The plan shall describe procedures to address upset conditions caused by equipment failures, power outages, flow control, or treatment issues. The plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's Designee and the Bay Area Air Quality Management District (BAAQMD) prior to issuance of any building permits. **MM AIR-2.2:** A publicly visible sign with the telephone number and applicant designated person to contact regarding odor complaints shall be posted at the project site, outside in public view and in the lobby. This person shall respond and take corrective action within 48 hours of a complaint. BAAQMD's phone number shall also be posted on the sign to ensure compliance with applicable regulations. A log of odor complaints and procedures implemented to respond to complaints shall be maintained in perpetuity and provided to the City upon request.
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.	**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 shall inspect all trees and other

	possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the qualified ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). 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 grading or demolition permits, the project applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.
Cultural Resources	
Impact CUL-1: Implementation of the proposed project would result in the demolition of an eligible Candidate City Landmark at 409 South 2nd Street.	**MM CUL-1.1:** Prior to issuance of any grading, demolition, or building permits the project applicant shall prepare and submit, for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee in coordination with the City's Historic Preservation Officer, a Historic Resources Mitigation Action Plan (Action Plan) demonstrating that the following steps, actions, and documents have been satisfied for the historic structure in accordance with the Action Plan timeline. The Action Plan shall include roles and responsibilities between the project applicant, City staff, and outside individuals, groups, firms, and consultants. Documentation (HABS): The structure and associated features on the project site shall be documented in accordance with the guidelines established for the Level III Historic American Building Survey (HABS) consistent with the Secretary of the Interior's Standards for Architectural and Engineering Documentation and shall consist of the following components: • Drawings – Prepare sketch floor plans of the buildings and site plan.

	• Photographs – 35 mm digital photographs meeting the digital photography specifications. • Written Data – a historical report with the history of the property, property description and historical significance. A qualified architectural historian meeting the Secretary of the Interior's Professional Qualification Standards shall oversee the preparation of the sketch plans, photographs, research and written data. The documentation shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval. After approval, the required documentation shall be filed with the San José Library's California Room and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System. **MM CUL-1.2:** Documentation (Digital Scans): Prior to issuance of any certificates of occupancy, the structure and associated features on the project site shall be documented by a qualified architectural historian through a series of digital scans and video production. The architectural historian shall meet the Secretary of the Interior's Professional Qualification Standards. A plan of the proposed procedures for the digital scans shall be submitted to the City's Historic Preservation Officer or equivalent prior to commencement of preparing the digital scans for review and approval. **MM CUL-1.3:** Relocation by the Project applicant and/or a Third Party: Prior to issuance of any demolition permits, the project applicant, or an interested third party, shall be required to advertise the availability of the structures for relocation for a period of no less than 60 days. The advertisements must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The project applicant shall provide evidence (i.e., receipts, date and time stamped photographs, etc.) to the City's Historic

	Preservation Officer that this condition has been met prior to the issuance of demolition permits. If the project applicant or third party agrees to relocate the structure, the following measures must be followed: • The Director of Planning, Building and Code Enforcement or Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is feasible for the building. • Prior to relocation, the project applicant or third party shall hire a historic preservation architect and a structural engineer to undertake an existing condition study that establishes the baseline condition of the restaurant structure prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to the structure being moved. • To protect the building during relocation, the project applicant shall engage a building mover who has experience moving similar historic structures. A structural engineer shall also be engaged to determine how the building needs to be reinforced/stabilized before the move. • Once moved, the building shall be repaired and rehabilitated, as needed, by the project applicant or third party in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. In particular, the character-defining features shall be retained in a manner that preserves the integrity of the building for the long-term preservation and reuse. Upon completion of the repairs, a qualified architectural historian shall document and

	confirm that work to the structure were completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and character-defining features were preserved. The project applicant shall submit a memo report supplement to the Action Plan to the City's Historic Preservation Officer documenting the relocation, repair, and reuse prior to issuance of any occupancy permits for the proposed project. **MM CUL-1.4:** Salvage: If the project applicant and/or a third party cannot agree to relocate the structure within the specified time, the structure shall be made available for salvage to companies facilitating the reuse of historic building materials prior to the issuance of any demolition permits. The time frame available for salvage shall be established by the City's Historic Preservation Officer in accordance with the Action Plan. The project applicant must provide evidence to the City's Historic Preservation Officer and Director of Planning, Building, and Code Enforcement, or Director's designee, that this condition has been met prior to the issuance of any demolition permits. **MM CUL-1.5:** Deconstruction/Reverse Construction: Prior to and during demolition activities, all structures and associated features being salvaged and demolished shall be documented, photographed, and videoed by a qualified architectural historian showing in reverse the original methods of construction and use of materials. The project applicant must provide evidence to the City's Historic Preservation Officer and Director of Planning, Building, and Code Enforcement, or Director's designee, that this documentation has been completed prior to the issuance of occupancy permits.
Impact CUL-2: The project would result in significant construction-vibration related impacts to nearby historic resources.	See mitigation measure MM NOI-2. With implementation of mitigation measure MM NOI-2, which is consistent with measures identified and required of development in the Downtown Strategy 2040 FEIR, project-related construction-vibration impacts on adjacent historic structures would be reduced to a less than significant level.

Impact CUL-3: Project ground disturbing activities could result in a substantial adverse change in the significance of an archaeological resource.	**MM CUL-3.1: Cultural Sensitivity Training**. Prior to issuance of any grading permit, the project applicant shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee. **MM CUL-3.2**: **Preliminary Investigation.** Prior to the issuance of any demolition, grading, or building permits, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall complete a subsurface exploration at the site, to determine if there are any indications of discrete historic-era subsurface archaeological features. Exploring for historic-era features shall consist of at least one trench mechanically excavated below existing stratigraphic layers to evaluate the potential for Native American and historic era resources. If any archeological resources are exposed, these should be briefly documented, tarped for protection, and left in place. The results of the presence/absence exploration, including any treatment recommendations, shall be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval prior to issuance of any grading permit. If deemed necessary, based on the findings of the subsurface testing, an archaeological resources treatment plan (as described in MM CUL-3.4) shall be prepared by a qualified archaeologist, in consultation with a Native American

	representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. If no evidence of historic era resources are found during the preliminary investigation, then monitoring of all construction-related ground disturbing activities will be required as described in MM CUL-3.3. **MM CUL-3.3**: **Sub-Surface Monitoring**. If no evidence of historic era resources are found during the preliminary investigation, a qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping. Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities, if evidence of historic era resources are found during monitoring, then an archaeological resources treatment plan (as described in MM CUL-3.4) shall be prepared by a qualified archaeologist, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. **MM CUL-3.4: Treatment Plan**. If required pursuant to MM CUL-3.2 or CUL-3.3, a qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building, and Code

	Enforcement or Director's designee prior to the issuance of any grading permits. The treatment plan shall contain, at a minimum: • Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations. • Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found). • Monitoring schedules and individuals • Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information) • Detailed field strategy to record, recover, or avoid the finds and address research goals. • Analytical methods. • Report structure and outline of document contents. • Disposition of the artifacts. • Security approaches or protocols for finds. • Appendices: all site records, correspondence, and consultation with Native Americans, etc. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. Once implementation of the Treatment Plan is complete, no further mitigation is required on the project site. **MM CUL-3.5: Evaluation**. The project applicant shall notify the Director of Planning, Building, and Code Enforcement or Director's designee of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units,

	hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. All documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission (NAHC) Sacred Land Files, and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee.
Hazardous Materials	
Impact HAZ-1: Development of the proposed project could potential expose construction workers and the public to soil, soil vapor and groundwater contamination from an off-site source during the excavation/constructions phase of the project, and future users to soil and soil vapor contamination after construction.	**MM HAZ-1.1:**Prior to issuance of any demolition or grading permits, the project applicant shall retain a qualified environmental professional to evaluate potential contamination issues identified in the Phase I Environmental Site Assessment by performing a Phase II soil, soil gas and groundwater contamination investigation. The results shall be compared to established construction worker safety and residential regulatory environmental screening levels. If the Phase II results indicate soil, soil gas, and/or groundwater contamination above the appropriate regulatory environmental screening levels for the proposed project the applicant shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health, Department of Toxic Substances Control or Regional Water quality Control Board under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document must be prepared by a qualified hazardous materials consultant. The Plan must establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors. The results of Phase II investigation and evidence of regulatory oversight, if required, and the appropriate plan such as an SMP, RAP or equivalent document shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, and the City's Municipal Environmental Compliance Officer.

NOISE	
Impact NOI-1: Construction noise would exceed ambient levels by five dBA or more for a period of more than one year in the vicinity of residential and commercial uses. (Significant Impact)	**MM NOI-1.1:** Prior to the issuance of any grading or demolition permits, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The logistics plan shall be prepared by a qualified acoustics professional. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and during construction to respond to noise complaints from neighbors. The noise logistic plan 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 grading or demolition permits. As part of the noise logistics plan, construction activities for the proposed project shall include, but are not limited to, the following best management practices: • Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses. • Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists. • Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment. • The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices.

	• Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. • Prohibit all unnecessary idling of internal combustion engines. • Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site. • Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences, two weeks prior to the start of each construction phase. • 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. • A "noise disturbance coordinator" shall be designated to respond to any 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 disturbance coordinator shall be conspicuously posted at the construction site and include it in the notice sent to neighbors regarding the construction schedule.
Impact NOI-2: Construction vibration activity associated with the proposed project may impact adjacent commercial, residential, and historic structures within five feet of the project site. (Significant Impact)	**MM NOI-2.1:** Prior to issuance of any demolition, grading, or building permits, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction

	activities. All Plan tasks shall be conducted 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 for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earliest. The Plan shall include, but not be limited to, the following measures: • The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. • A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period. • Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent building. • Document conditions at all historic structures located within 60 feet of construction and at all other buildings located within 25 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 60 feet of any construction activities identified as sources of high vibration levels. o Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 60 feet of construction activities and all other buildings within 25 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, 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. The survey shall be submitted to the Director of Planning, Building, and Code Enforcement or the Director's designee.

SUMMARY OF ALTERNATIVES

CEQA requires that an EIR identify alternatives to the project as proposed. The CEQA Guidelines specify that an EIR identify alternatives which "would feasibly attain the most basic objectives of the project but avoid or substantially lessen many of the significant environmental effects of the project," or would further reduce impacts that are considered less than significant with the incorporation of identified mitigation. As detailed in the table above, the significant impacts of the project occur during construction and affect air quality, biological resources, hazards and hazardous materials, and noise. The project would result in the demolition of structures eligible for consideration as candidate City Landmarks resulting in a significant and unavoidable impact to cultural resources. The alternatives have been developed to reduce one or more of the significant impacts of the proposed project.

No Project

The No Project – No Development Alternative would retain the existing land uses on-site as is. The significant impacts of the project resulting during construction of the proposed project would not occur, however, this alternative would not meet any of the project objectives. 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 residential development on a downtown site near transit.

Reduced Development

The Reduced Development Alternative would relocate the underground parking for the residential units that encompasses the entire project site to above grade podium parking within the envelope of the proposed building. The height of the building would be the same as the proposed project and the massing would not change for the residential floors. Occupation of the first five floors of the building with parking would reduce the number of residential units proposed from 540 units to 481 units. This alternative would result in 481 dwelling units, no restaurant space, and removal of the first-floor

cycling club and amenity space. This is a loss of 59 dwelling units, 5,530 square feet of restaurant, and approximately 14,000 square feet of amenities.

Preservation Alternative 2

Under this alternative, the historic resource would be retained on-site, all other structures on-site would be demolished, and a new mixed-use building would be constructed on the remaining areas on-site. The mixed-use building would be the same height and massing as the proposed project. Because eligible Candidate City Landmark would be retained on-site, no parking could be constructed under the existing building, reducing the size of the below-grade parking structure equating to a loss of approximately 70 parking spaces and 195 dwelling units. With retention of the existing restaurant building, Preservation Alternative 2 would result in 5,283 square feet of restaurant area, 345 dwelling units, and 124 parking stalls, and would retain all amenities proposed by the project.

Reduced Density/Preservation

The Reduced Density and Preservation Alternative would be a hybrid of the other alternatives which would retain the eligible Candidate City Landmark and construct the proposed residential tower. The tower would be the same height and massing as the proposed project, but there would be no below-grade parking. All parking would be located above-grade within the tower.

By keeping all aspects of the project within the footprint of the proposed tower, this alternative would result in 4.5 levels of above grade parking, 24 floors of residential units, and would not contain any of the proposed amenity space. Specifically, parking would be provided on the first four floors of the building and half of the fifth floor for approximately 180 parking spaces. The other half of the fifth floor would be amenity space. The upper 24 floors would have up to 504 residential units. This alternative would result in a reduction of approximately 36 units and approximately 9,000 square feet of amenity space.

AREAS OF KNOWN CONTROVERSY

Section 15123 of the State CEQA Guidelines requires the summary section of a Draft EIR to identify areas of controversy known to the Lead Agency, including issues raised by agencies and the public. Area of public concern include:

The comment letters received in response to the Notice of Preparation are included in Appendix I of this document. No major areas of concern were identified.

All substantive environmental issues raised in the Notice of Preparation comment letters have been addressed in this Draft SEIR.

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 SEIR to the Downtown Strategy 2040 Final Environmental Impact Report (FEIR) for the Bo Town Mixed Use Project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines (Title 14, California Code of Regulations §15000 et seq.), and the regulation and policies of the City of San José.

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 this SEIR 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.

This SEIR tiers from the Downtown Strategy 2040 FEIR because the project was included in the overall development that was analyzed for that document at a program level. Subsequent CEQA documentation was required because project-specific information was not available at the time the Downtown Strategy 2040 FEIR was prepared. In the scoping process, the project team found that a structure was old enough to warrant further historic investigation. An SEIR is required for this project because there is a significant and unavoidable impact to a potentially historic resource. The SEIR evaluation process is the same as the EIR process as outlined below.

1.1.1 Downtown Strategy 2040

On December 18, 2018, the City Council certified the Downtown Strategy 2040 FEIR (Resolution No. 78942) and adopted the Downtown Strategy 2040 which provides a vision for future housing, office, commercial, and hotel development within the Downtown area. The Downtown Strategy 2040 has a development capacity of 14,360 dwelling units, 14.2 million square feet of office uses, 1.4 million square feet of retail uses, and 3,600 hotel rooms. The proposed 175 hotel rooms would help to accomplish the City's goal of providing more hotel rooms to support the commercial development occurring within the Downtown area. The Downtown Strategy 2040 FEIR provides project-level clearance for impacts related to vehicle miles traveled (VMT), traffic noise, and operational emissions of criteria pollutants associated with Downtown development. All other environmental impacts were evaluated at a program level.

The Downtown Strategy 2040 FEIR analysis assumed that project-level, site-specific environmental issues for a given parcel proposed for redevelopment would require additional review. This SEIR provides that subsequent project-level environmental review.

1.1.2 Notice of Preparation and Scoping

In accordance with Section 15082 of the CEQA Guidelines, the City prepared a Notice of Preparation (NOP) for this SEIR. The NOP was circulated to local, State, and federal agencies on September 7, 2021. The standard 30-day comment period concluded on October 7, 2021. The NOP provided a general description of the proposed project and identified possible environmental impacts that could result from implementation of the project. The City also held a public scoping meeting on September 9, 2021 to discuss the project and solicit public input as to the scope and content of this SEIR. The meeting was held live via Zoom virtual conference platform. Appendix I of this EIR includes the NOP and comments received on the NOP. A brief summary of relevant comments that were received during the scoping period is included at the beginning of each resource discussion.

1.1.3 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:

Kara Hawkins, Environmental Project Planner
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, 3rd Floor Tower
San José, CA 95113
Phone: (408) 535-7852, Email: kara.hawkins@sanjoseca.gov

1.2 FINAL SEIR/RESPONSES TO COMMENTS

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

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

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.

1.2.1 Notice of Determination

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

SECTION 2.0 PROJECT INFORMATION AND DESCRIPTION

2.1 PROJECT OVERVIEW

The 32,737 square foot (0.75 acre) project site is a located at 409 & 425 South 2nd Street, in downtown San José (Assessor Parcel Number [APN] 467-47-097, 467-47-020, and 467-47-019). The site is zoned Downtown Primary Commercial and is designated Downtown in the General Plan. The existing on-site structures are a 5,283 square foot restaurant building with a 55-space parking lot that is accessible by a driveway on East San Salvador and a driveway on South Second Street and a two-story storage structure.

The existing on-site structure located at 409 S. 2nd Street appears eligible to be listed as a San Jose City Landmark under criterion 6 as one of the only extant examples of a Googie style building in downtown San Jose. Regional, vicinity and aerial maps of the project site are shown in Figures 2.1-1, 2.1-2 and 2.1-3. The project site is currently developed and is located within the boundaries of the Downtown Strategy 2040 Plan area. The project site is zoned *Downtown Primary Commercial* and is under the General Plan *Downtown* designation. Downtown General Plan designation allows for a mix of office, retail, service, residential, and entertainment uses in the Downtown area. This allows for up to 800 dwelling units per acre and a FAR of up to 30.0 for buildings three to 30 stories tall. All development within this designation should enhance the "complete community" in downtown, support pedestrian and bicycle circulation, and increase transit ridership. The Downtown Primary Commercial zone provides permitted uses for general retail, food services, and offices/financial services; among other uses.

2.2 PROPOSED DEVELOPMENT

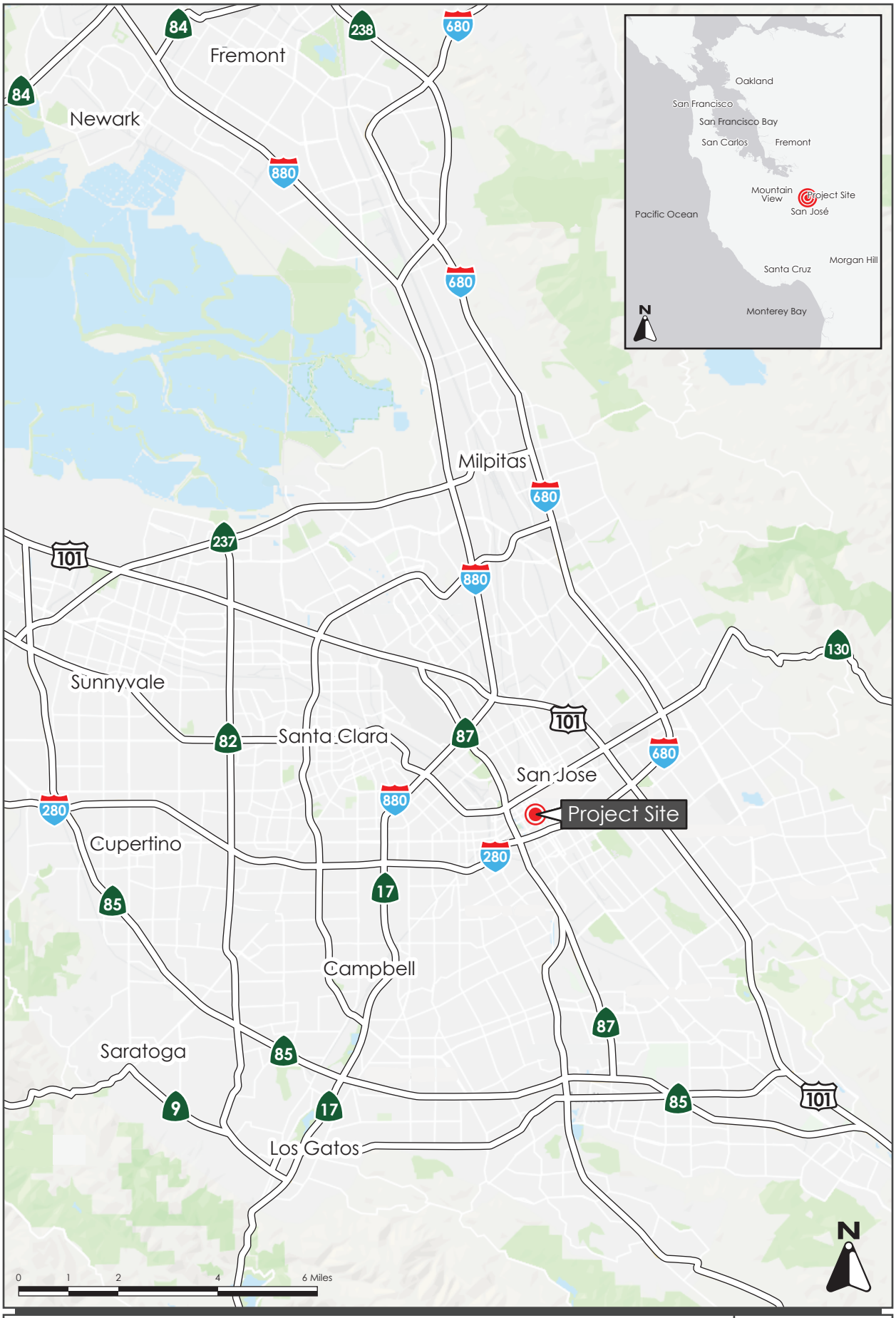
The project proposes to redevelop the site with 30-story mixed use building with up to 540 residential units and a 5,491 square foot ground floor retail space (see Figure 2.2-1). The maximum height of the building would be approximately 293 feet to the rooftop. Conceptual building elevations of the proposed project are shown in Figure 2.2-2. The residential density would be 719 dwelling units/acre (DU/AC).

2.2.1 Common Areas and Landscaping

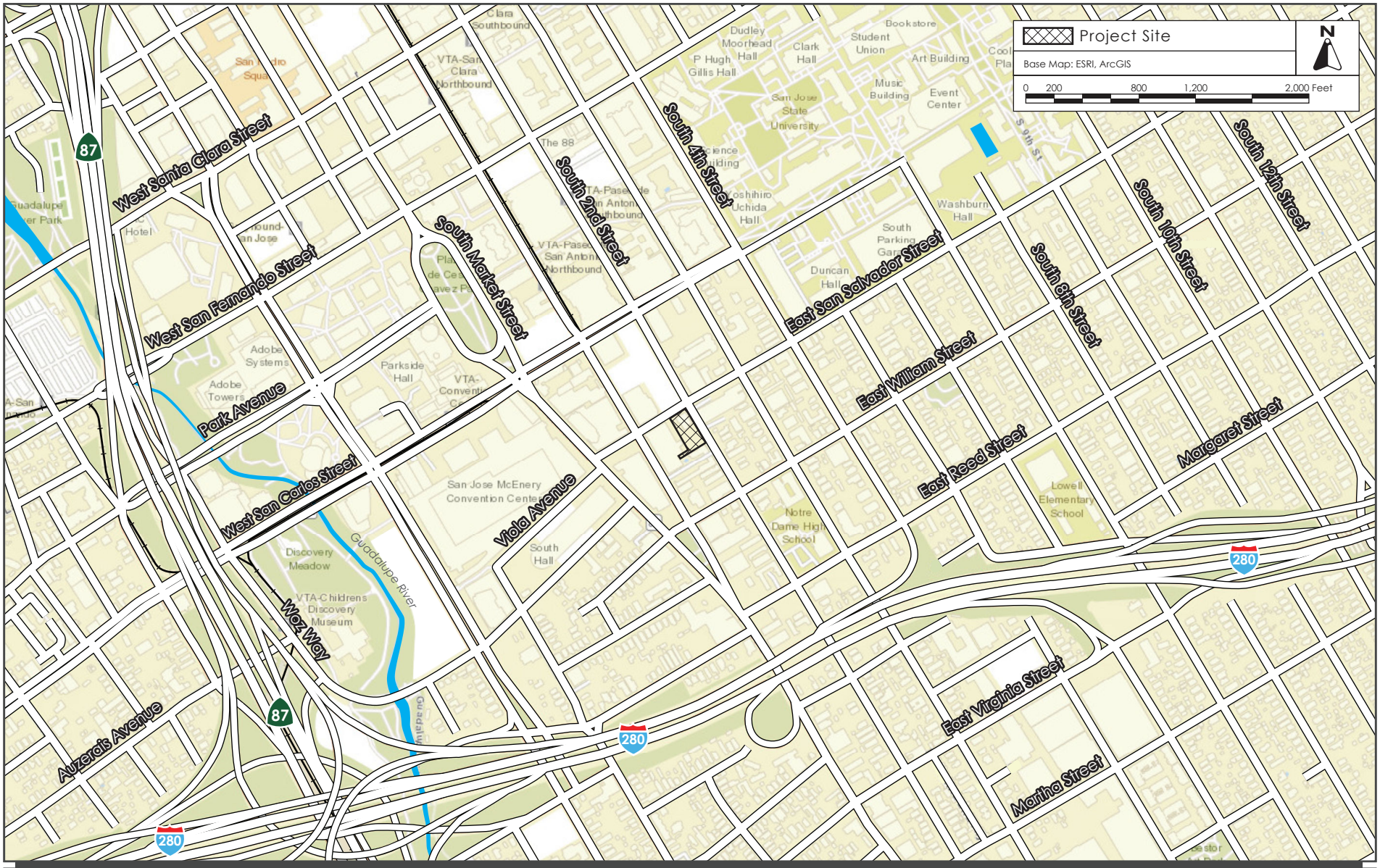
The building would provide multiple residential amenities including active and passive interior communal spaces on the first floor, and meeting rooms and additional communal spaces on the second floor. The top floor of the building would include a pool, gym, and common open space. Parking would be provided in four below grade levels of parking accessible from a driveway on East San Salvador. As proposed, the facades on all sides of the structure would have trees planted in raised planter boxes on balconies associated with each of the residences.

2.2.2 Site Access and Parking

Parking for the residential units would be provided in a four-level, below-grade parking garage containing 175 parking stalls and 176 bicycle parking spaces. No parking would be provided for the commercial uses. The parking garage for the proposed project would be accessible by a two-way driveway located along the western property line on East San Salvador Street.



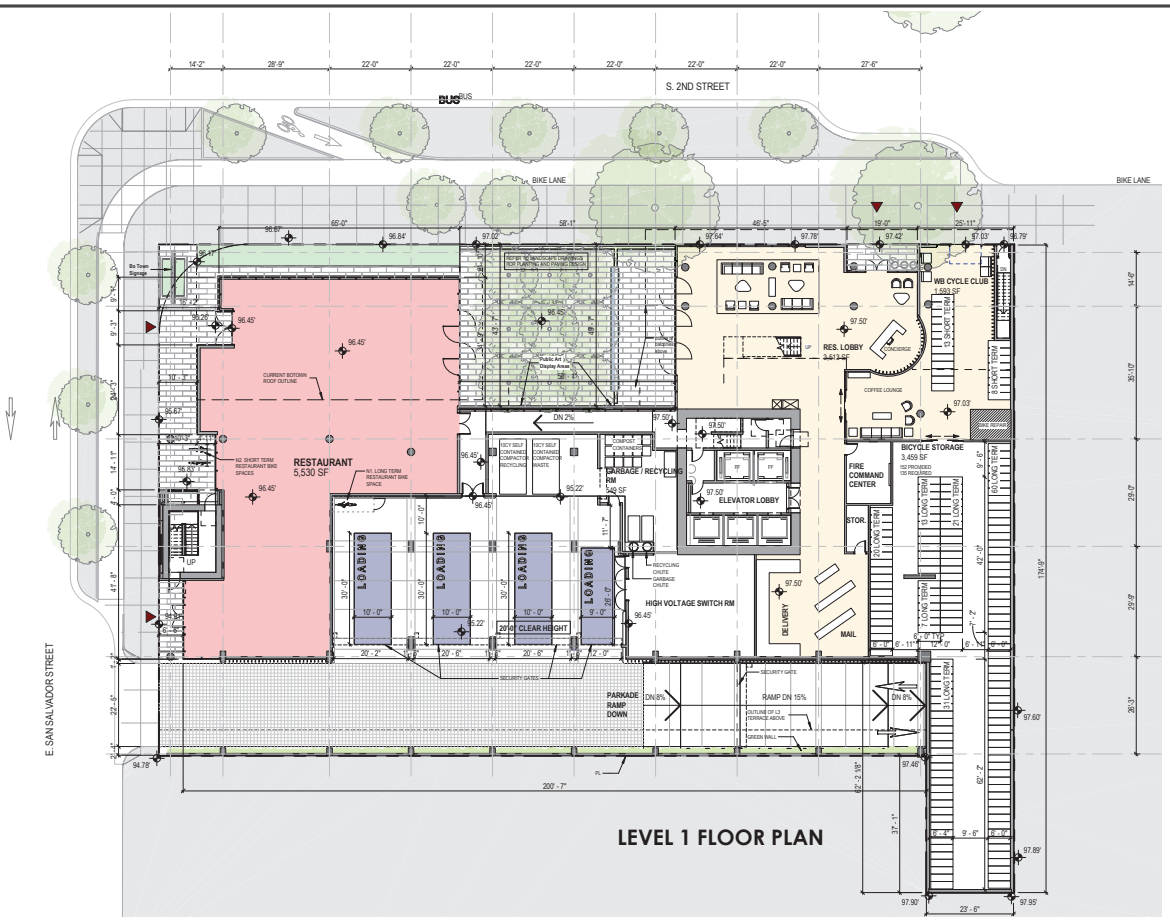
REGIONAL MAP | FIGURE 2.1-1



VICINITY MAP

FIGURE 2.1-2

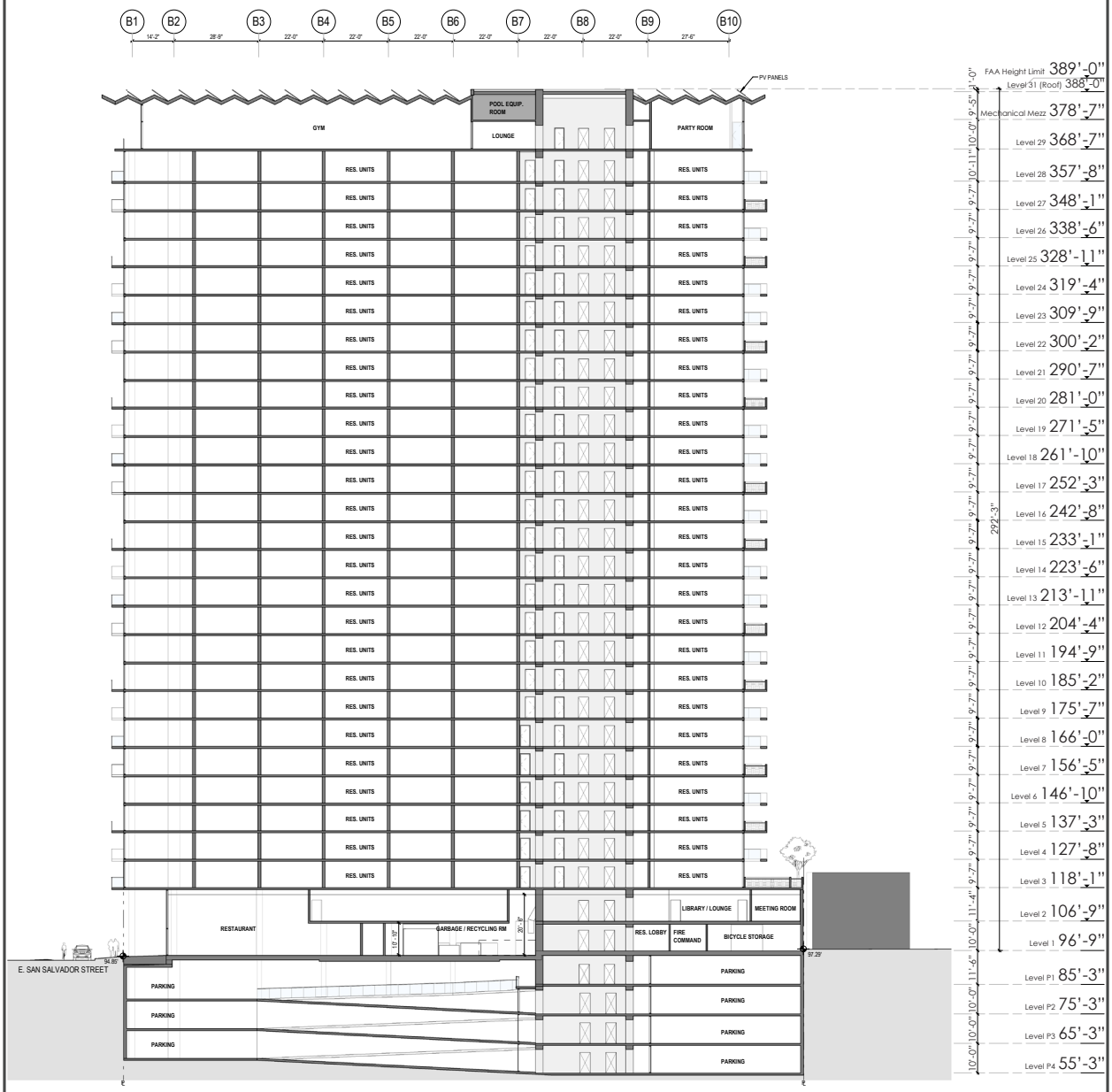
AERIAL PHOTOGRAPH AND SURROUNDING LAND USES | FIGURE 2.1-3



Source: James KM Cheng Architects, Inc., September 2, 2021.

PROJECT PLANS

FIGURE 2.2-1



Source: James KM Cheng Architects, Inc., May 25, 2021.

ELEVATION DIAGRAM | FIGURE 2.2-2

2.2.3 Public Right-Of-Way and Utility Improvements

Stormwater runoff from this project site would be collected and routed for treatment by either biotreatment through the Biotreatment Flow-Through Planters deck, planter areas which allow for water filtration before it enters the storm drain system, or through Media Filter Treatment vaults which provide water treatment by allowing pollutants to filter out of runoff by deposition and active filtration. The proposed project would integrate an on-site wastewater recycling facility to provide treatment for wastewater produced by the proposed project to divert some wastewater away from the existing wastewater facilities. The proposed project would also provide an option for wastewater treatment for the Valley Title Project located at a site to the north of the proposed project across San Salvador Street. Under this project option, the independent wastewater treatment plant would be located within the below-grade parking garage of the Bo Town project. A 12-inch pipe located approximately 10-20 feet below grade would convey wastewater from the Valley Title site to the wastewater treatment facility on the Bo Town site. Additionally, a six-inch pipe at the same depth would return recycled water from the Bo Town site to the Valley Title site for non-potable uses. It is estimated that approximately 21,820 gpd would be treated on the project site and returned to the proposed project as recycled water for non-potable uses.

2.2.4 Green Building Measures

Consistent with the City's Private Sector Green Building Policy, the proposed project would be designed to achieve, at a minimum, CAL Green Code requirements. This would be met by incorporating a variety of design features including community design and planning, site design, landscape design, building envelope performance, and material selections. The project is required to comply with City of San José Reach Code and would also be implementing sustainability measures equivalent to Leadership in Energy and Environmental Design (LEED) Silver. The proposed project would enroll in SJCE Greensource to procure 100 percent renewable energy sources on-site beyond what EV panels can provide.[1]

2.2.5 Construction

The project would excavate approximately 50 feet below grade for the underground parking and would remove approximately 61,000 cubic yards of soil. This excavation activity would take approximately 10 to 15 months. The remaining the construction activities would take an additional 18 months for a total of approximately 33 months of construction. As proposed, construction would take place six days a week (7:00 am to 10:00 PM), which is outside the standard construction hours of Monday through Friday, 7:00 am to 7:00 pm).

Construction activities associated with the proposed project include utility connections, building construction, frontage improvements (e.g., new street trees, new curb, gutter, sidewalk and driveway construction and placing existing overhead utility lines underground), and landscaping on the site.

2.2.6 Transportation Demand Management Program

The proposed project would provide transportation demand management (TDM) measures for residents at the Bo Town site.

[1] EV panels are glass panels which convert sunlight into electrical energy, also known as solar panels

Because of the project's location near Santa Clara Valley Transportation Authority (VTA) light rail and bus stops and Caltrain service at Diridon Station, the project proposes to require that property management provide transit subsidies and/or transit passes to all residents. This requirement could be fulfilled by participation in VTA's SmartPass program and/or the Clipper Direct program.

In addition to providing either a transit use incentive program or a carpool/vanpool matching program, the proposed project would provide at least two additional TDM measures to qualify for a reduced parking requirement. These measures are described below.

The property manager would provide TDM program information to residents through a variety of means to ensure that they are aware of transit and alternative transportation options.

To support the TDM program, the property manager may appoint an on-site commute coordinator to manage and monitor commute-alternative programs, including, but not limited to, the following:

- Develop commute-alternative programs for residents, which could include a telecommute program, a Guaranteed Ride Home Program; One-Way Carshare Program; and Commute Rewards Program
- Create and maintain travel information, emergency ride-home information, transit subsidy and/or transit pass information, transit schedules, bicycle maps, 511.org match information and transit alerts
- Participate in the Bay Area Air Quality Management District (BAAQMD) Spare the Air Program
- Monitor and enforce the TDM program
- Market, evaluate, and adjust TDM program
- Handle transactions on-site related to shuttle, vanpool, transit, etc.
- Match carpools or find regionally available vanpools; provide or utilize an existing web platform to assist in matching carpools and vanpools
- Implement pilot projects to test new modes and technologies, such as e-bike charging, ridesharing apps, etc.
- Conduct a regular review of resident travel patterns through the monitoring process

The property manager would be required to provide a free ride or reimburse costs for residents who commute using alternative modes and need a ride home. These programs cover rides from work to an employee's home in the event of illness or crisis of the employee or immediate family member, if a carpool or vanpool ride is unavailable due to unexpected changes in the driver's schedule or vehicle breakdown, if the employee's bicycle is not usable (flat tire, mechanical failure, vandalism, theft), or if the employee is required to work late unexpectedly.

2.3 PROJECT OBJECTIVES

The objectives of the project are:

1. Provide a project that meets the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 Plan of locating high density development on infill sites to strengthen the downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José. Specifically, provide high density, high-rise housing and ground floor retail in the downtown area that is accessible to downtown jobs, retail and entertainment and various modes of public transit.

2. Support the growth strategies by increasing the housing base in the downtown in order to reduce the overall amount of vehicle miles traveled by placing housing in proximity to jobs.

3. Create and raise the quality of downtown housing with a high quality, well designed, high-density, high-rise residential development project in the downtown focus area to further the 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.

4. Construct a high density residential and ground floor retail development that is marketable and produces a reasonable return on investment for the project sponsor and its investors.

5. Provide biking amenities on-site including bicycle parking, bicycle club, and bicycle repair and lounges for residents and neighbors to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community along one of the major bicycle streets within the downtown.

6. Provide a project which draws upon the past heritage of the region's orchards, and the reconstruction of a restaurant frequented in its history in the downtown by the local community and provides an example of integrating these elements into the project and the architectural design.

7. Provide a project which is an example of sustainable design, incorporating environments with enhanced air quality and energy conservation including active solar and higher efficiency systems that save energy and improve the living conditions for its residents and guests.

2.4 USES OF THE EIR

This EIR 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 the following discretionary approvals will be required to implement the project addressed in this SEIR:

- Demolition, Grading, and Building Permit(s)
- Tree Removal Permit
- Site Development Permit
- Parcel Map
- Department of 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
- Hydrology and Water Quality
- Mineral Resources
- Population and Housing
- Land Use and Planning
- Public Services
- Recreation
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire
- Mandatory Findings of Significance

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

3.1	Air Quality	3.3	Hazards and Hazardous Materials
3.2	Biological Resources	3.4	Noise
3.3	Cultural Resources		

The discussion for each environmental subject includes the following subsections:

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

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

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

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

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

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

  Table 3.0-1 provides a list of the approved but not yet constructed/occupied and pending projects within one-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		
Fountain Alley Office	26 South First Street	Construction of an approximately 91,992-square foot, six-story commercial building with office and retail uses.
Parkview Towers	Northeast corner of First Street and St. James Street intersection	Construction of two towers (up to 220 units) and up to 18,000 square feet of commercial space.
NSP3 Tower	201 West Julian Street	Construction of an 18-story residential tower with up to 314 residential units and retail space.
Starcity	199 Bassett Street	Construction of 803 co-living units with 3,800 square feet of retail space.

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

[2] There is an entitlement for construction of Hotel Clariana that could move forward at any time. Modifications to the original project were proposed and have been approved.
[3] There is an entitlement for construction of Museum Place that could move forward at any time. Modifications to the original project are currently under review.

Post & San Pedro Tower	171 Post Street	Construction of a 21-story mixed-use building with up to 230 residential units. And ground floor retail.
Greyhound Station	70 South Almaden Avenue	Construction of up to 781 residential units with approximately 20,000 square feet of ground floor retail in two high rise towers.
Pending		
Fountain Alley Mixed-Use	35 South Second Street	Construction of a 21-story mixed-use building with up to 194 residential dwelling units, approximately 31,959 square feet of ground floor retail, and approximately 405,924 square feet of office space.
Eterna Tower	17 East Santa Clara Street	Construction of a new mixed-use project with approximately 2,500 square feet of commercial space and 200 multi-family residential units (including 25% restricted affordable units for low-income residents) and no proposed parking
North Second Affordable Senior Housing	19 North Second Street	Construction of a 22-story mixed-use project with approximately 18,643 square feet of commercial space and up to 220 units of senior housing.
Valley Title	300 South First Street	Construction of a 20-story office mixed-use building with two towers and ground floor retail (totaling 1,397,321 square feet).
Davidson Towers	255 West Julian Street	Construction of a new 14-story office building with approximately 12,908 of ground floor retail and approximately 448,159 square feet of office space. In addition, modification of an existing six-story office building to change the existing office use to 6,317 square feet of retail use on the ground floor, retain 50,470 square feet of office use on the upper floors, and make changes to the exterior façade, with associated below-grade connection and a pedestrian bridge connection between the two buildings.
BDG Mixed-Use	150 East Santa Clara Street	Construction of a six-story mixed-use building (approximately 76,298 square feet). Retail/restaurant space is proposed at the ground level and the remaining floors would consist of office space. A portion of the 150 East Santa Clara Street building façade would be retained.

The geographic area that could be affected by the proposed project varies depending upon the type of environmental issue being considered. For each resource area, cumulative impacts may occur over 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. Section 15130(b)(3) of the CEQA Guidelines states that lead agencies should define the geographic scope of the area affected by the cumulative effect. Table 3.0-2 provides a summary of the different geographic areas used to evaluate cumulative impacts.

Table 3.0-2: Geographic Considerations in Cumulative Analysis	
Resource Area	**Geographic Area**
Aesthetics	Project site and adjacent parcels
Agriculture and Forestry Resources	City
Air Quality	San Francisco Bay Area Air Basin
Biological Resources	Project site and adjacent parcels
Cultural Resources	Project site and adjacent parcels
Energy	Energy provider's territory
Geology and Soils	Project site and adjacent parcels
GHGs	San Francisco Bay Area Air Basin
Hazards and Hazardous Materials	Project site and adjacent parcels
Hydrology and Water Quality	Guadalupe River watershed
Land Use and Planning/Population and Housing	Citywide
Minerals	Identified mineral recovery or resource area
Noise and Vibration	Project site and adjacent parcels
Public Services and Recreation	Project site and vicinity
Transportation/Traffic	Project site and vicinity
Tribal Cultural Resources	Project site and adjacent parcels
Utilities and Service Systems	Citywide
Wildfire	Within or adjacent to the wildfire hazard zone

SEIR Baseline

The baseline for the analysis in this SEIR is the existing conditions at the time the NOP was released. While the document tiers from the Downtown Strategy 2040 FEIR, the baseline condition identified in the Downtown Strategy 2040 FEIR is no longer representative due to new development within the plan area.

3.1 AIR QUALITY

3.1.1 Environmental Setting

The following discussion is based, in part, on an Air Quality Assessment prepared by *Illingworth & Rodkin, Inc.* in November 2021. A copy of this assessment is attached as Appendix F to the SEIR.

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. Criteria pollutants are regulated because they result in health effects. An overview of the sources of criteria pollutants and their associated health are summarized in Table 3.1-1**.** The most commonly regulated criteria pollutants in the Bay Area are discussed further below.

Table 3.1-1: Health Effects of Air Pollutants

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

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

Sensitive Receptors

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

3.1.1.2 *Regulatory Framework*

Federal and State

Clean Air Act

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

CARB is the State agency that regulates mobile sources throughout the State and oversees implementation of the State air quality laws and regulations, including the California Clean Air Act.

[4] California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed September 10, 2021. https://www.arb.ca.gov/research/diesel/diesel-health.htm.

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 and Local

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 would 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 gasses (GHGs) that are potent climate pollutants in the near-term, and to decrease emissions of carbon dioxide by reducing fossil fuel combustion.[5]

Envision San José 2040 General Plan

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

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

General Plan Policies - Air Quality	
Air Pollutant Emission Reduction Policies	
Policy MS-10.1	Assess projected air emissions from new development in conformance with the BAAQMD CEQA Guidelines and relative to state and federal standards. Identify and implement feasible air emission reduction measures.
Policy MS-10.2	Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's Clean Air Plan and State law.
Policy MS-10.3	Promote the expansion and improvement of public transportation services and facilities, where appropriate, to both encourage energy conservation and reduce air pollution.
Toxic Air Contaminants Policies	
Policy MS-11.2	For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.
Policy MS-11.4	Encourage the installation of air filtration, to be installed at existing schools, residences, and other sensitive receptor uses adversely affected by pollution sources.
Policy MS-11.5	Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.
Policy MS-11.7	Consult with BAAQMD to identify stationary and mobile TAC sources and determine the need for and requirements of a health risk assessment for proposed developments.
Policy MS-11.8	For new projects that generate truck traffic, require signage which reminds drivers that the State truck idling law limits truck idling to five minutes.
Construction Air Emission Minimization Policies	
Policy MS-13.1	Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At a minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.
Policy 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.
Policy MS-13.4	Adopt and periodically update dust, particulate, and exhaust control standard measures for demolition and grading activities to include on project plans as conditions of approval based upon construction mitigation measures in the BAAQMD CEQA Guidelines.

3.1.1.3 *Existing Conditions*

The project is located in Santa Clara County, which is in the San Francisco Bay Area Air Basin. The Bay Area is considered a non-attainment area for ground-level O_3 and $PM_{2.5}$ under both the federal Clean Air Act and the California Clean Air Act. The area is also considered non-attainment for PM_{10} under the California Clean Air Act, but not the federal act. The area has attained both State and federal ambient air quality standards for CO. 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).[6]

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 November 15, 2021. Available at: http://www.baaqmd.gov/about-air-quality/air-quality-summaries.

The closest sensitive receptors to the project site are the single- and multi-family residences to the south and to the southeast of the site across South 2nd Street, approximately 75 feet from 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?

[6] 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.

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would not result in a significant impact due to construction-related emissions of criteria pollutants or odors, however the intensity of construction on-site would expose sensitive receptors to a significant risk associated with TACs. The Downtown Strategy 2040 FEIR also identified a significant unavoidable cumulative regional air quality impact, as discussed below.

3.1.2.1 *Project Impacts*

As discussed in CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the lead agency and must be based to the extent possible on scientific and factual data.

The analysis in this SEIR is based upon the general methodologies in the most recent BAAQMD *CEQA Air Quality Guidelines* and numeric thresholds identified for the San Francisco Bay Area Air Basin in the May 2017 *BAAQMD CEQA Air Quality Guidelines*, as shown in Table 3.1-3. BAAQMD recommends that projects be evaluated for community risk when they are located within 1,000 feet of freeways, high traffic volume roadways (10,000 average annual daily trips or more), and/or stationary permitted sources of TACs because chronic exposure to diesel emissions can cause adverse health effects. A review of the project area indicates Market Street, a high-volume roadway, is within 1,000 feet of the site. Lastly, there are five listed stationary sources of air pollution (four generators and a gas station) within 1,000 feet of the project site.

Table 3.1-3: Project-Level Significance Thresholds			
Pollutant	Construction	Operation-Related	
	Average Daily Emissions (pounds/day)	Average Daily Emissions (pounds/day)	Maximum Annual Emissions (tons/year)
ROG, NO_x	54	54	10
PM_{10}	82 (exhaust)	82	15
$PM_{2.5}$	54 (exhaust)	54	10
Fugitive Dust ($PM_{10}/PM_{2.5}$)	Best Management Practices	None	None
Local CO	None	9.0 ppm (8-hr average)	20.0 ppm (1-hr average)
Risk and Hazards for New Sources and Receptors (Project)	Same as Operational Threshold	• Increased cancer risk of >10.0 in one million • Increased non-cancer risk of > 1.0 Hazard Index (chronic or acute) • Ambient $PM_{2.5}$ increase: > 0.3 μ/m^3 [Zone of influence: 1,000-foot radius from property line of source or receptor]	
Risk and Hazards for New Sources and Receptors (Cumulative)	Same as Operational Threshold	• Increased cancer risk of >100 in one million • Increased non-cancer risk of > 10.0 Hazard Index (chronic or acute) • Ambient $PM_{2.5}$ increase: > 0.8 μ/m^3 [Zone of influence: 1,000-foot radius from property line of source or receptor]	
Accidental Release of Acutely Hazardous Materials	None	Storage or use of acutely hazardous materials locating near receptors or new receptors locating near stored or used acutely hazardous materials considered significant	
Odors	None	5 confirmed complaints per year averaged over three years	
Note: μ/m^3 = micrograms per cubic meter.			

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

2017 Clean Air Plan

The proposed project would not conflict with the 2017 CAP because it was consistent with the adopted San José Downtown Strategy 2040 Plan, is considered urban infill, and would be located near employment centers and near regional transit. Based on the construction and operational emissions calculated for the proposed project (see Tables 3.1-4 and 3.1-5 below) 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. The project would comply with the 2017 Clean Air Plan.

Construction Period Emissions – Criteria Pollutants

The California Emissions Estimator model (CalEEMod) Version 2016.3.2 was used to estimate annual emissions from construction activities. The proposed land uses of the project were input into CalEEMod, which included 520 dwelling units and 6,416 square feet entered as "High Turnover (Sit Down Restaurant)" on 0.75 acres, and 240 parking spaces and 102,465 square feet entered as "Enclosed Parking with Elevator". This data was input prior to a change in the project which added 20 units and 1,014 square feet of restaurant area, however this change did not alter the overall massing of the structure and would not affect the construction emissions.[7] The construction schedule assumes that construction would occur six days a week (7:00 am to 10:00 pm) over a period of approximately 33 months, or 910 construction workdays. Table 3.1-4 shows the estimated daily air emissions from construction of the proposed project.

Table 3.1-4: Construction Emissions from the Project

Description	ROG	NO_x	PM_{10}	$PM_{2.5}$
Construction Emissions Per Year (Tons)				
2022-2023	0.70	5.15	0.27	0.19
2024	2.60	5.56	0.28	0.21
2025	2.8	2.81	0.15	0.10
Average Daily Construction Emissions Per Year (pounds/day)				
2022-2023 (365 construction workdays)	3.84	28.21	1.47	1.05
2024 (314 construction workdays)	16.57	35.41	1.79	1.36
2025 (231 construction workdays)	24.28	24.29	1.26	0.86
BAAQMD Thresholds (pounds per day)	*54*	*54*	*82*	*54*
Exceeds Threshold?	**No**	**No**	**No**	**No**

Source: Illingworth and Rodkin. Air Quality Assessment. November 2021.

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

Operational Period Emissions – Criteria Pollutants

The impact of operational emissions was addressed in the Downtown Strategy 2040 FEIR and found to be significant and unavoidable. Operational air emissions from the project would be generated primarily from autos driven by future residents, employees, and vendors.

CalEEMod was used to estimate emissions from operation of the proposed project assuming full build out. The earliest the project would be constructed and operational would be 2026. Any emissions associated with build out later than 2026 would be lower than the estimated emissions due

[7] Communication with Casey Divine, Illingworth and Rodkin. Email. November 12, 2021.

to assumed efficiencies over time. To estimate emissions CalEEMod defaults for energy use and emissions associated with solid waste generation and water/wastewater use were used in addition to project specific inputs including: trip generation rates from the Local Transportation Analysis prepared for the proposed project (refer to Appendix E of this document), generator emissions, and water treatment facility operations. The project would include one stand-by emergency diesel generator on the second floor in the southeastern corner of the building. The preliminary size of the generator would be approximately 1,000-kW and would be powered by an approximately 1,340-HP diesel engine. This generator would be tested periodically and power the buildings in the event of a power failure. For modeling purposes, it was assumed that the generator would be operated primarily for testing and maintenance purposes. CARB and BAAQMD requirements limit these engine operations to 50 hours each per year of non-emergency operation. During testing periods, the engine would typically be run for less than one hour. The engine would be required to meet CARB and EPA emission standards and consume commercially available California low-sulfur diesel fuel. The generator emissions and water treatment facility emissions were modeled using CalEEMod. The existing land uses on the project site include a restaurant building, surface parking lot, and two-story accessory storage structure.

Table 3.1-5: Operational Emissions for the Project

Description	ROG	NO_x	PM_{10}	$PM_{2.5}$
2026 Project Operational Emissions (tons/year)	4.32	0.97	1.63	0.44
Existing Uses (tons/year)	0.30	0.18	0.21	0.06
Net Annual Emissions (tons/year)	3.84	0.61	1.08	0.29
BAAQMD Thresholds (tons/year)	*10*	*10*	*15*	*10*
Threshold Exceeded?	**No**	**No**	**No**	**No**
2026 Project Operational Emissions (pounds/day)[1]	22.02	4.31	7.79	2.08
BAAQMD Thresholds (pounds/year)	54	54	82	54
Threshold Exceeded?	**No**	**No**	**No**	**No**

Source: Illingworth and Rodkin. Air Quality Assessment. November 2021.
Note: [1]Assumes 365-day operation.

Operational criteria pollutant emissions associated with the proposed project would not result in emissions above established BAAQMD thresholds (see Table 3.1-5 above). The project is part of the planned growth in the downtown area and would contribute to the significant operational emissions forecast from full build out of the Downtown Strategy 2040, which was found to result in a significant and unavoidable regional criteria pollutant impact. The project would not result in any new impacts or impacts of greater severity than were already disclosed in the Downtown Strategy 2040 FEIR.

The project would comply with the 2017 Clean Air Plan and would not exceed emissions thresholds for construction or operational criteria pollutants. Therefore, the project would not result in any new impacts or impacts of greater severity than were already disclosed in the Downtown Strategy 2040 FEIR. **[Less Impact than Approved Project (Significant and Unavoidable Impact)]**

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

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 O_3 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.

As discussed in a), operational criteria pollutant emissions associated with the proposed project would not result in emissions above established BAAQMD thresholds (see Table 3.1-5). The project is part of the planned growth in the downtown area and would contribute to the significant operational emissions forecast from full build out of the Downtown Strategy 2040, which was found to result in a significant and unavoidable regional criteria pollutant impact. The proposed project, by itself, would not result in a cumulatively considerable net increase of any criteria pollutant for which the region is in nonattainment. The project would not result in any new impacts or impacts of greater severity than were already disclosed in the Downtown Strategy 2040 FEIR. **[Less Impact than Approved Project (Significant Unavoidable Impact)]**

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

Dust Generation

Construction activities 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 loads of soils. Consistent with the Downtown Strategy 2040 and General Plan Policy MS-13.1, the following Standard Permit Conditions for controlling dust would be implemented during construction to reduce dust and other particulate matter.

Standard Permit Conditions

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

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

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

Due to the identified health risk impact (see below), additional enhanced measures are required to reduce dust emissions. In addition to the Standard Permit Conditions listed above, the project would be required as a Condition of Approval to implement the following measures.

Conditions of Approval

The project applicant shall implement the following measures.

- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- The Lead Agency personnel in charge of dust complaints shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- Site accesses to a distance of 100 feet from the paved road shall be treated with a six- to 12-inch compacted layer of wood chips, mulch, or gravel.

With the implementation of the Standard Permit Conditions and Conditions of Approval, particulate matter during construction would be reduced by approximately 85 percent and would have a less than significant air quality impact.

Community Risk Impacts - Project Construction

Construction activity and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC and could pose a health risk to nearby sensitive receptors. A construction community

health risk assessment was prepared to address project construction impacts on the surrounding off-site sensitive receptors within 1,000 feet of the project site.

Community Risk from Project Construction

The primary community risk impact issue associated with construction emissions are cancer risk and exposure to $PM_{2.5}$. Diesel exhaust poses both a potential health and nuisance impact to nearby receptors. The maximum-modeled annual DPM and $PM_{2.5}$ concentrations were identified at nearby sensitive receptors (as shown in Figure 3.1-1) to find the maximum exposed individuals (MEIs).

Results of this assessment concluded that the project MEI is located on the second floor (15 feet above ground) of the multi-family residence to the southeast of the project site opposite South 2nd Street, 75 feet from the site. For the purposes of this SEIR, in addition to the MEI, the analysis also quantified the effects of construction on the YWCA Childcare Center which is the nearest infant/child facility, approximately 220 feet northeast of the site.

The maximum increased cancer risk and maximum $PM_{2.5}$ concentrations from construction would exceed their respective BAAQMD single source thresholds of greater than 10.0 per million for cancer risk and greater than 0.3 $\mu g/m^3$ for $PM_{2.5}$ at the MEI and the cancer risk would exceed the threshold at the childcare center. The $PM_{2.5}$ exposure at the childcare center would be below the threshold. The Hazard Index (HI) would not exceed its BAAQMD single-source thresholds of 1.0 for any sensitive receptors. Table 3.1-6 summarizes the construction risk from construction activities.

Table 3.1-6: Construction Risk Impacts at the Off-Site Receptors

Source	Cancer Risk	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Project Construction (Years 0-3) at MEI	**169.31 (infant)**	**0.55**	0.10
Project Construction (Years 0-3) at YWCA Childcare Center	**34.10 (infant)**	0.06	0.01
BAAQMD Single-Source Threshold	***>10.0***	***>0.3***	***>1.0***
Exceeds Threshold?	***Yes***	***Yes***	No

Source: Illingworth and Rodkin. Air Quality Assessment. November 2021.

Impact AIR-1: Construction activities associated with the proposed project would expose sensitive receptors at the MEI to toxic air contaminant emissions resulting in cancer risk of 169.31 and 0.55 $\mu g/m^3$ of $PM_{2.5}$ at the MEI and cancer risk of 34.10 at the YWCA in excess of BAAQMD thresholds (cancer risk [greater than 10 cancer cases] and $PM_{2.5}$ concentration [greater than 0.3 $\mu g/m^3$]). **(Significant Impact)**

Mitigation Measures:
The proposed project would be required to implement the following mitigation measures during all phases of construction.

Source: Illingworth & Rodkin, Inc., November 12, 2021.

LOCATIONS OF OFF-SITE SENSITIVE RECEPTORS AND POINT SOURCE LOCATIONS | FIGURE 3.1-1

MM AIR-1.1: Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan to the Director Planning, Building and Code Enforcement or Director's designee that includes specifications of the equipment to be used during construction. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.

- All construction equipment larger than 25 horsepower operating at the site for more than two continuous days or 20 hours total shall meet U.S. Environmental Protection Agency (EPA) Tier 4 final emission standards for particulate matter (PM_{10} and $PM_{2.5}$).
  If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower operating at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 2 or 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that together achieve an 85 percent or greater reduction in particulate matter exhaust in comparison to uncontrolled equipment.

- 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 equipment.

- Stationary cranes, personnel/material hoist, and welders shall be powered by electricity.

Alternatively, the project applicant could develop a plan that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 85 percent or greater. The construction operations plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

With the implementation of mitigation MM AIR-1.1, the Standard Permit Conditions, and Conditions of Approval, the project's construction cancer risk levels would be reduced to 11.55 at the MEI and 2.30 at the childcare center. The project's annual $PM_{2.5}$ concentrations would be reduced to 0.08 $\mu g/m^3$ at the MEI and would not exceed the BAAQMD single-source significance threshold (cancer risk [greater than 10 cancer cases] and $PM_{2.5}$ concentration [greater than 0.3 $\mu g/m^3$]).

The proposed project would result in a significant and unavoidable construction TAC impact on sensitive receptors.

Community Risk from Project Operation

Operation of the project would generate long-term emissions from mobile sources (i.e., traffic) and stationary sources (i.e., emergency generator). Project generated traffic would consist mostly of light-duty vehicles that are not a source of substantial TACs or $PM_{2.5}$. Additionally, the wastewater treatment facility would be limited to assembly of pre-manufactured wastewater treatment plant components within the proposed project. The plant would be an enclosed system and also be electrically operated. Therefore, the plant would not be a source of operational TAC emissions.

Based on the project's trip generation estimates provided by the traffic study, the project would add 1,909 maximum daily trips distributed on the roadway system around the project site. The proposed project would not result in operations of vehicles which would contribute TACs or $PM_{2.5}$ in excess of established thresholds. Therefore, the project's increase in traffic would be a negligible source of TACs and $PM_{2.5}$.

The project would include a 1000-kW emergency generator with an approximately 1,340-HP diesel engine. The generator would be located on the second floor in the southeastern corner of the building. Figure 3.1-2 shows the location of the modeled emergency generator. To estimate the increased cancer risk from the generator at the MEI, the cancer risk exposure duration was adjusted to account for the MEI being exposed to construction for the first three years of the 30-year exposure period. Therefore, construction cancer risks would occur during the first three years and then operational cancer risks for the remaining 27 years.

As shown in 3.1-7, even with construction emissions mitigation, the combined 30-year exposure of construction and operation community risks would exceed the BAAQMD single-source thresholds for increased cancer risk.

While operation of the project, by itself, would not result in a significant TAC impact the combined 30-year exposure would be significant and unavoidable.

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

Source	Cancer Risk	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Project Construction (Years 0-3) at MEI (mitigated)	**11.55 (infant)**	0.08	0.01
Project Generator (Years 4-30) at MEI	0.08	<0.01	<0.01
Total Project Risk	**11.63**	0.08	0.01
BAAQMD Single-Source Threshold	***>10.0***	***>0.3***	***>1.0***
Exceeds Threshold?	***Yes***	*No*	No

Source: Illingworth and Rodkin. Air Quality Assessment. November 2021.

Source: Illingworth & Rodkin, Inc., November 12, 2021.

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

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 and cumulative operational and construction criteria pollutant impact as discussed previously. Dust emissions from the proposed project would be reduced to less than significant levels through Standard Permit Conditions and Conditions of Approval. The TAC emissions from construction of the proposed project would expose sensitive receptors to significant and unavoidable cancer risk impacts. Therefore, the project would result in a significant and unavoidable health impact to sensitive receptors. **(New Significant and Unavoidable Impact)**

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

The project proposes to have some of its wastewater treated at an independent wastewater treatment facility located in the first below-grade level of the proposed project. The wastewater treatment facility could generate odors from many phases of the treatment process. The anaerobic biological activity in the treatment system of the wastewater and solids produces most of the hydrogen sulfide and ammonia type odors.

Odors can be properly controlled through modern design, appropriate chemical treatment, proper ventilation, and facility maintenance. As proposed, the wastewater treatment facility is designed to be a completely enclosed system within the first below-grade level of the of the proposed site. The new pre-manufactured wastewater equipment would be equipped with modern technology that should minimize the release of any odors and the proposed treatment plant does not include any lagoons, exposed treatment water, or biosolid piles that would emit odors. The wastewater treatment odors would also be regulated by BAAQMD in the event of odor complaints.

Residences are located within the same building as well as nearby buildings that are within approximately 100 feet of the project. Residences who are subjected to objectionable odors are most likely to complain. The BAAQMD CEQA Air Quality Guidelines include screening distances for various odor sources. These screening distances identify two miles for wastewater treatment facilities. However, these are applied to traditional open municipal facilities that have exposed headworks, open-air ponds, and treat large volumes of wastewater. The screening distances would

not apply to this small, modern, enclosed system. Nonetheless, odor issues could occur if there are upset conditions or improper handling of odor-producing solids or wastewater, improper operations, or poor maintenance. Adequately controlling odors requires all components of the facility to work properly.

Given the close proximity of residences, the project could cause odors and result in odor complaints.

Impact AIR-2: The proposed project could result in odors leading to odor complaints due to the presence of the wastewater treatment facility on-site. **(Significant Impact)**

Mitigation Measures:

MM AIR-2.1: Prior to issuance of any building permits, the project applicant shall develop an odor control plan that addresses plant design issues to control odors, operating, and maintenance procedures to prevent odors, and an action plan to respond to upset conditions that could cause odors and measures to respond to odor complaints. The odor control plan shall describe the design elements and best management practices built into the facility that include:

- Ventilation of the system using carbon absorption, biofiltration, ammonia scrubbers, or other effective means to treat exhausted air from the enclosed facility;
- Odor proofing of refuse containers used to store and transport grit and screenings or biosolids; and
- Injection of chemicals to control hydrogen sulfide.

The plan shall describe procedures to address upset conditions caused by equipment failures, power outages, flow control, or treatment issues. The plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's Designee and the Bay Area Air Quality Management District (BAAQMD) prior to issuance of any building permits.

MM AIR-2.2: Prior to and during project operations, a publicly visible sign with the telephone number and project applicant designated person to contact regarding odor complaints shall be posted at the project site, in the lobby. This person shall respond and take corrective action within 48 hours of a complaint. BAAQMD's phone number shall also be posted on the sign to ensure compliance with applicable regulations. A log of odor complaints and procedures implemented to respond to complaints shall be maintained in perpetuity and provided to the City upon request.

Through implementation of MM AIR-2.1 – AIR-2.2 and compliance with BAAQMD regulations, the proposed project would limit the discharge of odorous substances and respond to odor complaints with an odor control plan. Therefore, the proposed project would result in a less than significant

impact with mitigation incorporated. **[New Less than Significant Impact with Mitigation Incorporated (Less Than Significant Impact)]**

3.1.2.2 *Cumulative Impacts*

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

As stated in Table 3.0-2, the geographic area for cumulative air quality impacts is the San Francisco Bay Area Air Basin. Past, present, and future development projects contribute to the region's adverse air quality impacts. No single project is sufficient in size, by itself, to result in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts.

Cumulative Impact on Off-Site MEI

Combined Impact of All TAC Sources on the Off-Site Construction MEI

A community health risk assessment typically considers all substantial sources of TACs located within 1,000 feet of a project site.[8] These sources can include rail lines, highways, busy surface streets, and stationary sources identified by BAAQMD. A review of the project area indicates that traffic on South Market Street has an average daily trip count (ADT) of over 10,000 vehicles. All other roadways within the area are assumed to have an ADT that is less than 10,000 vehicles. Five stationary sources were identified within the 1,000-foot influence area using BAAQMD's stationary source map website. Figure 3.1-1 shows the sources affecting the project site. Table 3.1-8 below shows the cumulative community risk impacts.

With the identified mitigation (MM AIR-1.1), the project's cancer risk would still exceed the single-source threshold. Under cumulative conditions, however, the combined sources of TACs would not exceed the cumulative cancer risk threshold.

With the identified mitigation measures (MM AIR-1.1), Standard Permit Conditions, and Conditions of Approval, the project's annual PM2.5 concentration would be below the single-source thresholds. The combined annual PM2.5 concentration, however, could exceed the cumulative threshold due to the concentration from the simultaneous construction of nearby developments. The cumulative threshold would be exceeded in the case where all construction activity occurs simultaneously. The HI does not exceed the single or cumulative thresholds.

[8] Developments under planning review are not included within the cumulative analysis since it is speculative to include construction emissions from projects that may or may not be approved.

Table 3.1-8: Cumulative Community Risk Impacts from Combined TAC Sources at MEI			
Source	**Maximum Cancer Risk (per million)**	**$PM_{2.5}$ Concentration ($\mu g/m^3$)**	**Hazard Index (HI)**
Project Impacts			
Total/Maximum Project Risks Mitigated	**11.63 (infant)**	0.08	0.01
Cumulative Operational Sources			
South Market Street, ADT 17,733	0.34	0.03	<0.01
Team San Jose (Facility ID #2060, Generator), MEI at 830 feet	1.00	0.03	<0.01
Robert F Peckham Federal Building (Facility ID #15031, Generator), MEI at +1,000 feet	0.06	0.01	<0.01
San Jose Marriott Hotel (Facility ID #15125, Generator), MEI at +1,000 feet	0.05	<0.01	<0.01
San Jose Redevelopment Agency (Facility ID #17018, Generator), MEI at 720 feet	0.01	--	--
Super Gas & Mart (Facility ID #111979, Gas Station), MEI at 715 feet	0.06	--	<0.01
Cumulative Temporary Construction Sources			
Gateway Tower Mitigated Construction Emissions – 205 feet southwest	<4.90	<0.06	<0.01
The Mark Mixed-use Mitigated Construction Emissions – 600 feet east	<9.45	<0.05	<0.01
Dot & Bar (Valley Title) Mitigated Construction Emissions – 50 feet north	<8.21	<0.09	<0.01
420 S. 2nd Street Mitigated Construction Emissions – 50 feet east	<10.00	<0.30	<1.00
420 S. 3rd Street Mitigated Construction Emissions – 440 feet east	<10.00	<0.30	<1.00
San José Stage/Home 2 Hotel Mitigated Construction Emissions – 180 feet south	<3.20	<0.17	<0.01
S. 4th Street Mixed-Use Mitigated Construction Emissions – 615 feet east	<8.60	<0.09	<0.03
Combined Sources Mitigated	<67.51 (infant)	**<1.22**	<2.13
BAAQMD Cumulative Source Thresholds	***>100***	***>0.8***	***>10.0***
Exceed Threshold? Mitigated	*No*	***Yes***	*No*

Notes:
*****Maximum cancer risk and maximum $PM_{2.5}$ concentration occur at same receptor on different floors.
**Construction equipment with Tier 4 Interim engines and electric generators, air compressors, and concrete/industrial saws are identified as Mitigation Measures.

The $PM_{2.5}$ concentration from existing sources alone exceeds the cumulative threshold at 1.14 $\mu g/m^3$. Cumulative risks exceed the $PM_{2.5}$ concentration threshold because of the overwhelming influence of the potentially simultaneous nearby developments at the MEI. The project's mitigated $PM_{2.5}$ concentration represents seven percent of the total mitigated cumulative concentration (0.08 $\mu g/m^3$

which is ten percent of the BAAQMD threshold). In addition, according to BAAQMD, health risks would be less than significant if the risks from the project are reduced below the single-source thresholds. Because the project would not represent an impact on its own and would not contribute particulate matter in sufficient quantity to be cumulatively considerable (i.e., a primary contributor). Therefore, the project would not result in a cumulatively considerable contribution to the total cumulative $PM_{2.5}$ impact. **[Same Impact as Approved Project (Less than Significant Cumulative Impact with Mitigation Incorporated)]**

3.1.3 Non CEQA Effects

CEQA does not require a project to analyze impacts of the proposed project on its own residents, nor does it analyze impacts of the off-site conditions on the future residents of the project. The City's General Plan Policy MS-11.1 requires new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs to avoid significant risks to health and safety required when new residential are proposed near existing sources of TACs. BAAQMD's recommended thresholds for health risks and hazards, shown in Table 3.1-3, are used to evaluate on-site exposure.

In addition to evaluating health impact from project construction, a health risk assessment was completed to assess the impact existing TAC sources would have on the new proposed sensitive receptors (residents) that that project would introduce. The same mobile and stationary TAC sources identified above were used in this health risk assessment, including nearby construction.

The roadway analysis was conducted in the same manner as described above for the off-site MEI. The operational year of 2026 was used for the analysis. By 2026, the ADT on South Market Street is expected to be 18,254. Residents of the project site would be located on the third through 29th floors of the proposed tower. The MEI for the project site was identified on the third and fourth floors of the building. Sensitive receptors higher than the fourth floor would have impacts less than those on the fourth floor.

Cumulative On-Site Health Risks

Community risk impacts from the combined sources upon the project site are reported in Table 3.1-9. The TAC sources were compared to the BAAQMD single-source threshold and then combined and compared to the BAAQMD cumulative-source threshold. As shown, the maximum cancer risk, annual $PM_{2.5}$ concentrations, and HI from the nearby fixed sources (roadways and stationary sources) do not exceed the single-source thresholds and the combined fixed group alone would not exceed the cumulative thresholds. The maximum cancer risk, annual $PM_{2.5}$ concentrations, and HI from nearby temporary sources (nearby developments construction) would not exceed the single-source thresholds, but the combined temporary group alone would exceed the $PM_{2.5}$ concentration threshold. Given that the construction of nearby developments is temporary and the construction schedules for many of these developments are not certain, impact from the nearby development would likely be less than what is shown in the table. As a result, no project design features (i.e., air filtration) would be required since the project would comply with City policies over the lifetime of the project.

Table 3.1-9: Impacts from Combined Sources to Project Site Receptors			
Source	**Cancer Risk (per million)**	**Annual $PM_{2.5}$ Concentration ($\mu g/m^3$)**	**Hazard Index (HI)**
Fixed Operational Sources			
South Market Street, ADT 17,733	0.42	0.04	<0.01
Team San Jose (Facility ID #2060, Generator), MEI at 830 feet	2.01	0.06	<0.01
Robert F Peckham Federal Building (Facility ID #15031, Generator), MEI at +1,000 feet	0.11	0.01	<0.01
San Jose Marriott Hotel (Facility ID #15125, Generator), MEI at +1,000 feet	0.09	0.01	<0.01
San Jose Redevelopment Agency (Facility ID #17018, Generator), MEI at 720 feet	0.02	--	--
Super Gas & Mart (Facility ID #111979, Gas Station), MEI at 715 feet	0.05	--	<0.01
Temporary Construction Sources			
Gateway Tower Mitigated Construction Emissions – 205 feet southwest	<4.90	<0.06	<0.01
The Mark Mixed-use Mitigated Construction Emissions – 600 feet east	<9.45	<0.05	<0.01
Dot & Bar (Valley Title) Mitigated Construction Emissions – 50 feet north	<8.21	<0.09	<0.01
420 S. 2nd Street Mitigated Construction Emissions – 50 feet east	<10.00	<0.30	<1.00
420 S. 3rd Street Mitigated Construction Emissions – 440 feet east	<10.00	<0.30	<1.00
San José Stage/Home 2 Hotel Mitigated Construction Emissions – 180 feet south	<3.20	<0.17	<0.01
S. 4th Street Mixed-Use Mitigated Construction Emissions – 615 feet east	<8.60	<0.09	<0.03
BAAQMD Single Source Thresholds	***10***	***0.3***	***1.0***
Exceed Threshold?	*No*	*No*	*No*
Cumulative Total	<57.06	**<1.18**	<2.12
BAAQMD Cumulative Source Thresholds	***>100***	***>0.8***	***>10.0***
Exceed Threshold?	*No*	***Yes***	*No*

Notes: *****Maximum cancer risk and maximum PM2.5 concentration occur at same receptor on different floors.

**Construction equipment with Tier 4 Interim engines and electric generators, air compressors, and concrete/industrial saws are identified as Mitigation Measures.

3.2 BIOLOGICAL RESOURCES

The information in this section is based in part on the Certified Tree Inventory prepared by HMH on December 28, 2020. This report is available in Appendix B of this Report.

3.2.1 Environmental Setting

3.2.1.1 *Regulatory Framework*

Federal and State

Endangered Species Act

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

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

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. Hunting and poaching are also prohibited. The taking and killing of birds resulting from an activity is not prohibited by the MBTA when the underlying purpose of that activity is not to take birds.10 Nesting birds are considered special-status species and are protected by the USFWS. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

Sensitive Habitat Regulations

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

Regional

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

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

City of San José

Tree Removal Ordinance

The City of San José Tree Removal Controls (San José Municipal Code, Sections 13.31.010 to 13.32.100) serve to protect all trees having a trunk that measures 38 inches or more in circumference (12.1 inches in diameter) at the height of 54 inches (4.5 feet) above the natural grade of slope. The ordinance protects both native and non-native tree species. 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. Removal of or modifications to all trees on public property (e.g., street trees within a parking strip or the area between the curb and sidewalk) are handled by the City Arborist.

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

Riparian Corridor and Bird-Safe Building Policy 6-34

The City of San José's Riparian Corridor and Bird Safe Building Policy, adopted in September 2016, provides guidance consistent with the goals, policies, and actions of the 2040 General Plan for: 1) protecting, preserving, or restoring riparian habitat; 2) limiting the creation of new impervious surface within Riparian Corridor setbacks to minimize flooding from urban runoff and control erosion; and 3) encouraging bird-safe design in baylands and riparian habitats of lower Coyote Creek, north of State Route 237. It supplements the regulations for riparian corridor protection in the Council-adopted Santa Clara Valley Habitat Plan, the Zoning Code (Title 20 of the San José Municipal Code), and other existing City policies that may provide for riparian protection and bird-safe design. The general guidelines for setbacks and lighting apply to development projects within 300 feet of riparian corridors. Bird-safe design guidance for buildings and structures includes avoidance of large areas of reflective glass, transparent building corners, up-lighting, and spotlights.

Envision San José 2040 General Plan

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

General Plan Policies – Biological Resources

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 to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
CD-1.25	Within new development projects, including preservation of ordinance-sized and other significant trees, particularly natives. Any adverse effect on the health and longevity of such trees should be avoided through design measures, construction, and best management practices. When tree preservation is not feasible include replacement or alternative mitigation measures in the project to maintain and enhance our Community Forest.
ER-2.1	Avoid implementing activities that result in 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.
MS-21.4	Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.
MS-21.5	As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
MS-21.6	As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies, and guidelines.

3.2.1.2 *Existing Conditions*

The project site is currently occupied by a commercial building that previously functioned as a restaurant, a storage structure, and two surface parking lots. There are trees and landscaping located in and around the site along East San Salvador Street and South 2nd Street.

Existing Natural Habitat

As stated in the Downtown Strategy 2040 FEIR, the downtown is a paved area with small pockets of vegetated or bare ground. There are small amounts of mature native vegetation primarily in the form

of park spaces, street trees, and in some parking lots. These areas provide habitat for common wildlife species tolerant of human disturbance such as squirrels, racoons, and small birds.

The nearest natural area to the project site is the Guadalupe River riparian area which contains mixed riparian forest, aquatic, and shaded riparian aquatic habitats. Riparian habitats generally support rich animal communities and serve as important corridors of movement, particularly for birds and fish. The project site is located approximately 0.35 miles to the east of this riparian area.

On-site Biological Resources

There are 10 trees on-site or adjacent to the site as street trees. The species of tree and specifications of each tree is summarized in Table 3.2-1 below and the locations of the trees are shown on Figure 3.2-1.

Table 3.2-1: Tree Characteristics

Tree Number	Scientific Name	Common Name	Circumference (inches)
1	Trachycarpus fortunei	Windmill Palm	25
2	Trachycarpus fortunei	Windmill Palm	22
3	Trachycarpus fortunei	Windmill Palm	25
4	Pistacia chinensis	Chinese Pistache	31
5	Pistacia chinensis	Chinese Pistache	31
6	Platanus × hispanica	London Plane	69
7	Platanus × hispanica	London Plane	53
8	Pyrus calleryana	Callery Pear	44
9	Sequoia sempervirens	Coast Redwood	85
10	Fraxinus Udehi	Ash Tree	57

Other than the on-site trees, the fully developed and paved site does not contain other biological habitats or resources and is considered an urban environment.

3.2.2 Impact Discussion

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

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

ON-SITE TREE LOCATIONS

FIGURE 3.2-1

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

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

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

The environment surrounding the project site consists of the fully developed downtown area which does not provide habitats suitable for species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS. The proposed project would remove the trees on-site which may provide nesting and/or foraging habitat for migratory birds, including raptors.

There are currently 10 on-site and street trees in and around the project site. Migratory birds, like nesting raptors, are protected under the Migratory Bird Treaty Act and CDFW Code Sections 3503, 3503.5, and 3800. The CDFW defines "taking" as causing abandonment and/or loss of reproductive efforts through disturbance. Construction activities on the project site could result in the loss of eggs or nests. Any loss of fertile eggs, nesting raptors, or any activities resulting in nest abandonment would constitute a significant impact.

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.

Mitigation Measures:

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

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

If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project

implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the qualified ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). 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 grading or demolition permits, the project applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.

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

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

There are no riparian habitats or other sensitive natural communities in the immediate project area. The only sensitive natural communities in the vicinity of the downtown area are the Los Gatos Creek and the Guadalupe River corridors, the latter of which is located 0.35 miles west of the project site.[9] The proposed project would replace the existing buildings and parking lot on-site with a 30-story mixed-use structure and would not adversely affect any riparian habitat or sensitive natural community. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

The project site is 93 percent impervious and does not contain state or federally protected wetland areas. The project would not impact areas outside of the immediate project site. Therefore, the project would not impact state or federally protected wetlands through direct removal, filling,

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

hydrological interruption, or other means. **[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 area of downtown where 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, implementation of 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?

Trees in the area provide biological value in the form of nesting, cover, and foraging habitat for a variety of birds, mammals, and insects. Two of the ordinance-sized trees surveyed would be removed as part of the project. The other eight trees would be retained. Consistent with the Downtown Strategy 2040 FEIR, any tree removed as a result of the project would be required to be replaced in accordance with all applicable laws, policies or guidelines, including:

- City of San José Tree Protection Ordinance
- San José Municipal Code Section 13.28
- General Plan Policies MS-21.4, MS-21.5, and MS-21.6

In addition, the project would be required to implement the following Standard Permit Conditions.

Standard Permit Conditions:

The project will be required to implement the following measures:

Replacement. Replace all trees to be removed at the following ratios:

Table 3.2-2: Tree Replacement Ratios				
Circumference of Tree to be Removed[1]	**Type of Tree to be Removed[2]**			**Minimum Size of Each Replacement Tree**
	Native	**Non-Native**	**Orchard**	
38 inches or more[3]	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

[1] As measured 4.5 feet above ground level

[2] X:X = tree replacement to tree loss ratio

[3] Ordinance-sized tree

Notes: Trees greater than or equal to 38 inches in circumference 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 Tree Removal Permit is required for removal of trees of any size.

One 24-inch box tree = two 15-gallon trees

The two trees would be replaced at a 5:1 and 2:1 ratio for a total of seven replacement trees. The species and of replacement trees to be planted would be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

In-Lieu Mitigation. In the event the project site does not have sufficient area to accommodate the required tree mitigation, implement one or more of the following measures, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:

- 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, at the development permit stage.
- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance with the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

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

With implementation of the identified Standard Permit Conditions, the proposed project would not conflict with any ordinance protecting biological resources and would not result in a significant impact to trees and the community forest. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

The project site is located within the SCVHP[10] 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;[11]
- In Figure 2-5 of the SCVHP, the activity is located in an area identified as "Private Development is Covered," or the activity is equal to or greater than two acres and;
    - The project is located in an area identified as "Rural Development Equal to or Greater than 2 Acres is Covered," or "Urban Development Equal to or Greater than 2 Acres is Covered" or,
    - The activity is located in an area identified as "Rural Development is not Covered" but, based on land cover verification of the parcel (inside the Urban Service Area) or development area, the project is found to impact serpentine, wetland, stream, riparian, or pond land cover types; or the project is located in occupied or occupied nesting habitat for western burrowing owl.

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

Standard Permit Condition:

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

[10] Santa Clara Valley Habitat Agency. "GIS Data & Key Maps." Accessed February 3, 2021. http://www.hcpmaps.com/habitat/.

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

The Habitat Plan and supporting materials can be viewed at https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan.

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

3.3 CULTURAL RESOURCES

The following discussion is based upon a Historic Resource Assessment completed by *Treanor HL* in October 2021 and a Literature Search prepared by Holman & Associates in March 2021. A copy of the historic resource assessment report is included in Appendix G of this SEIR. A copy of the Literature Search is on file at the City of San José Department of Planning, Building and Code Enforcement. Public comments received during the NOP scoping process pertained to the historic significance of the Bo Town Restaurant building that would be demolished as part of the proposed project.

3.3.1 Environmental Setting

3.3.1.1 *Regulatory Framework*

Federal

National Historic Preservation Act

Federal protection is legislated by the National Historic Preservation Act (NHPA) of 1966 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 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.

State

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.[12]

The guidelines for identifying historic resources during the project review process under CEQA are set forth in Public Resources Code Section 21084.1 and CEQA Guidelines Section 15064.5(a). These provisions of CEQA create three categories of historical resources: mandatory historical resources; presumptive historical resources; and resources that may be found historical at the discretion of the lead agency. These categories are described below.

- **Mandatory Historical Resources**. A resource the State Historical Resources Commission lists on the CRHR, or the State Historical Resources Commission determines to be eligible for listing in the CRHR, is defined by CEQA to be a historical resource. Resources are formally listed or determined eligible for listing by the State Historical Resources Commission in accordance with the procedures set forth in the provisions of state law relating to listing of historical resources.[13] If a resource has been listed in the CRHR, or formally determined to be eligible for listing by the State Historical Resources Commission under these procedures, it is conclusively presumed to be a historical resource under CEQA.
- **Presumptive Historical Resources**. A resource included in a local register of historic resources as defined by state law[14] or identified as significant in a historical resource survey meeting the requirements of state law,[15] shall be presumed to be historically or culturally significant. The lead agency must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.
- **Discretionary Historical Resources.** A resource that is not determined to be a significant historical resource under the criteria described above, may, in the discretion of the lead agency, be found to be a significant historical resource for purposes of CEQA, provided its determination is supported by substantial evidence in light of the whole record. The CEQA Guidelines further provide that generally, a lead agency should consider a resource

[12] California Office of Historic Preservation. "CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6." Accessed August 31, 2020. http://www.ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf.
[13] Set forth in Public Resources Code Section 5024.1 and 14 California Code of Regulations (CCR) Section 4850, et. seq.
[14] Set forth in Public Resources Code Section 5020.1(k), a local register of historical resources is a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution.
[15] Under Public Resources Code Section 5024.1(g), a resource can be identified as significant in a historical resources survey and found to be significant by the State Office of Historic Preservation (i.e., listed in the CRHR) if three criteria are met: (1) the survey has or will be included in the State Historic Resources Inventory; (2) the survey and documentation were prepared in accordance with State Office of Historic Preservation procedures and requirements; and (3) the State Office of Historic Preservation has determined the resource has a significance rating of Category 1 to 5 on Form 523.

historically significant if the resource is found to meet the criteria for listing on the CRHR, including the following:

- Criterion 1 (Events): The resource is associated with events or patterns of events that have made a significant contribution to the broad patterns of local or regional history and cultural heritage of California or the United States; or
- Criterion 2 (Persons): The resource is associated with the lives of persons important to local, California, or national history; or
- Criterion 3 (Architecture): The resource embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master, or possesses high artistic values, or
- Criterion 4 (Information Potential): The resource has the potential to yield information important to the prehistory or history of the local area, California, or the nation.[16]

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

The concept of integrity is essential to identifying the important physical characteristics of historical resources and 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 process of determining integrity is similar for both the California and National Registers, and the same seven variables or aspects to define integrity 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

[16] CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6. Accessed November 29, 2021. http://www.ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf.

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.

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 on May 23, 2006) calls for preservation of candidate or designated landmark structures, sites, or districts wherever possible.

The landmark designation process itself requires that findings be made that; proposed landmarks have special historical, architectural, cultural, aesthetic, or engineering interest or value of a historical nature, and that designation as a landmark conforms to the goals and polices of the Downtown Strategy 2040. The following factors can be considered to make those findings among other relevant factors:

1. Its character, interest or value as a part of the local, regional, State or national history, heritage or culture;
2. Its location as a site of a significant historic event;
3. Its identification with a person or persons who significantly contributed to the local, regional, State or national culture and history;
4. Its exemplification of the cultural, economic, social or historic heritage of the city of San José;
5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;
6. Its embodiment of distinguishing characteristics of an architectural type or specimen;
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;

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 City also has various historic design guidelines for restoration and rehabilitation and establish a general framework for the evaluation of applications involving historic resources. The City offers a number of historic preservation incentives, including use of the State Historic Building Code, Mills Act/Historical Property Contract, and various land use and zoning incentives.

Envision San José 2040 General Plan

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

General Plan Policies - Cultural Resource	
Landmarks and Districts	
Policy 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.
Policy LU-13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
Policy 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.
Policy 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.
Policy LU-13.11	Maintain and update an inventory of historic resources in order to promote awareness of these community resources and as a tool to further their preservation. Give priority to identifying and establishing Historic Districts.
Policy LU-13.15	Implement City, State, and Federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.
Archaeology	
Policy ER-9.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon their discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
Policy 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

General Plan Policies - Cultural Resource	
	information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
Policy 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*

Prehistoric Subsurface Resources

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

Artifacts pertaining to the Ohlone occupation of San José have been found primarily along the City's major waterways. The project site is located approximately 0.75 miles and 0.35 miles east of Los Gatos Creek and Guadalupe River, respectively.

A literature review completed for the proposed project identified the area to be moderately sensitive for Native American resources.

Historic Subsurface Resources

Mission Period

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

The pueblo was originally located northeast of the project site, near the old San José City Hall. This location was prone to flooding and the pueblo was relocated in the late 1780's or early 1790's south to what is now downtown San José. The current intersection of Santa Clara Street and Market Street in downtown San José was the center of the second pueblo. The second pueblo site is located approximately 0.5 miles northwest of the project site.

Post-Mission Period to Mid-Twentieth Century

In the mid-1800's, San José began to be redeveloped as America took over the territory from Mexico and new settlers began to arrive in California as a result of the gold rush and the expansion of business opportunities in the west.

The block where the project site is located was mostly developed by 1891 with one- and two-story wood frame dwellings and the Presbyterian Church along South 2nd Street, and light industrial and commercial uses on South 1st Street. Between 1901 and 1915 the eastern half of the block was mostly developed with residential uses and the western side developed with more heavily commercial uses. Most of the buildings were wood frame, but there were two concrete buildings and one brick store along South 1st Street. The uses on the block included an auto showroom, fuel and feed yards, sheet iron works, horseshoeing, and stables. The parcels at the intersection of East San Salvador Street and South 2nd Street featured four, two-story wood frame dwellings with accessory structures built in the late nineteenth century. The two-story garage at 425 South 2nd Street was constructed circa 1920 and replaced the former shed and corral on-site. By 1929, most all the small wood frame buildings along South 1st Street were replaced by more substantial concrete and brick structures with large footprints. The Sanborn maps identify the majority of buildings as auto repair and tire shops, and furniture stores. On the corner of South 2nd Street and East William Street the church was demolished, and a series of auto repair shops were constructed.

The eastern half of the block changed considerably in the 1960s with the development of the existing restaurant building and two hotels. The restaurant building was constructed in 1967 and replaced by two dwellings at 405 and 411 South 2nd Street. The building was occupied until at least 1979 by the chain restaurant Sambo's, a diner/pancake house. According to the building permits, the China Station restaurant subsequently operated at this location in the 1980s, and Bo Town occupied the building from approximately 1989 to 2019.

The residential building at 435 South 2nd Street was demolished in the 1970s, and the two-story house at 425 South 2nd Street was demolished in 1989. The demolition of these buildings eliminated the last remaining nineteenth century houses from the block. According to the building permits on file, the remaining two-story garage at 425 South 2nd Street was used as a residence from at least 1987 through 1996.

According to the Sanborn maps and literature searches performed for the project, the project site was determined to be highly sensitive for historic-era archaeological deposits potentially associated with late-1800s residences.

Project Site

According to the 1967 building permit, the building at 409 South 2nd Street was built by Sondeno Construction Company which was founded by Philip W. Sondeno (1921-2016). The architect of record for 409 South 2nd Street is David S. Smith. The location of the buildings on-site can be seen in Figure 3.3-1 below. The restaurant building is an example of the Googie architectural style. Googie describes modern buildings of futurist design influenced by the post-World War II boom and automobile culture. This architectural style includes the following design features:

- Abstract, curved or stylized organic shapes
- Multi-story sweeping and soaring lines
- Exaggerated rooflines in steel or concrete, often in repetitive folded or curved patterns
- Large expanses of glass in primary building, set within flush-mounted steel or aluminum frames

LOCATION OF STRUCTURES ON-SITE	FIGURE 3.3-1

- Use of modern materials of steel, concrete, porcelain enamel, ceramic tile, prismatic glass, and glass block
- Space-age motifs of rockets and aircraft

The wood frame structure at 425 South 2nd Street was constructed circa 1920 as a detached accessory structure (residential over garage) to a nineteenth century residence which is no longer on-site. This building does not have a distinct architectural style.

Building Descriptions

409 South 2nd Street

The building at 409 South 2nd Street was constructed in 1967. Although the subject building was constructed during the post-World War II and midcentury growth of San José, it is not individually representative of any important patterns of development within the greater downtown area or the City; the subject property followed an already established trend in downtown San José. The property was constructed as a Sambo's restaurant; a diner/pancake house chain which was established in 1957 in Santa Barbara. Apart from being one of many locations established, the subject property does not have any individually significant associations with the creation or growth of the Sambo's chain. By 1979, Sambo's had opened a total of five diners/pancake houses in San José, four of which are still standing. The property is neither the first nor the only standing building associated with the chain in San José. It did not continue operating as a diner/pancake house after Sambo's vacated the property and a Chinese restaurant, and later a seafood restaurant, occupied the building. Therefore, the building is not eligible for listing on the NRHP or CRHR under Criterion A/1.

None of the owners or occupants have been identified as important to the history of San Jose or California. Therefore, the building is not eligible for listing on the NRHP or CRHR under Criterion B/2.

The building exhibits some characteristics of the Googie architectural style with its exaggerated roofline in a repetitive folded pattern, large expanses of glass in metal frames (especially along the east façade), the perforated metal lighting at the roof reminiscent of the space-age theme, and the free-standing signage at the intersection of South 2nd and East San Salvador streets. Even though the building can be identified as an example of the Googie architectural style; it is not an outstanding illustration of this style. According to the National Park Service, to be eligible, "a property must clearly contain enough of [distinctive] characteristics to be considered a true representative of a particular type, period or a method of construction." The subject property does not include the more expressive characteristics of the style identified in the San José Modernism Historic Context

Statement that would elevate it to be considered a historically significant representative of the style at the federal or the state level such as abstract, curved or stylized organic shapes; multi-story sweeping and soaring lines or use of space-age motifs or rockets and aircraft. Furthermore, the building received an extensive exterior remodel in 2009 funded by the Façade Improvement Program grant from the City of San José.

Overall, the building does not contain enough character-defining features of the style to be considered a true representative of Googie architecture. Additionally, the building was designed by architect David S. Smith and constructed by Sondeno Construction Company, neither of whom are considered masters. Therefore, the building is not individually eligible for listing on the NRHP or CRHR under Criterion C/3.

Archival research provided no indication that the building has the potential to yield information important to the prehistory or history of the local area, California, or the nation. The building is not eligible for listing on the NRHP or CRHR under Criterion D/4.

425 South 2nd Street

The accessory structure at 425 South 2nd Street was constructed ca. 1920 replacing a shed and a corral associated with the 19th century single-family house that previously occupied the site. Many property owners added garages or carports during the early 20th century in response to growing automobile ownership. While indicative of the trend, the subject building is not individually representative of any important patterns of development within the greater downtown area or San José; the property followed an already established model in the area. Therefore, it is individually eligible for listing on the NRHP or CRHR under Criterion A/1.

No persons of known historical significance have been associated with the property. Therefore, the property is not individually eligible for listing on the NRHP or CRHR under Criterion B/2.

The property is a modest vernacular accessory structure. The building is of common construction and materials with no notable or special attributes, and the structure does not possess high artistic value. No architect, designer or builder has been identified. The subject property does not embody characteristic features of an architectural style. Therefore, the property is not individually eligible for listing on the NRHP or CRHR under Criterion C/3.

Archival research provided no indication that the property has the potential to yield information important to the prehistory or history of the local area, California, or the nation. The building is not individually eligible for listing on the NRHP or CRHR under Criterion D/4.

Aspects of Integrity

409 South 2nd Street

The building at 409 South 2nd Street retains integrity of location since it has not been moved. It retains its integrity of association and feeling since it had been used as a restaurant from its construction until 2019 and still communicates its mid-20th century character. The building has received exterior alterations and additions over time, including a major remodel in 2009; therefore, the integrity of design, materials, and workmanship has been considerably diminished. Integrity of setting has been slightly compromised since the 1980s by the demolition of immediately adjacent 19th century dwellings and more recent development at the surrounding blocks. Overall, the property retains sufficient integrity.

425 South 2nd Street

The building at 425 South 2nd Street retains integrity of location since it has not been moved. The integrity of association and feeling has been diminished as the single-family house on the parcel was demolished in 1989 and the remainder of the parcel has been used as paved surface parking since. The building has not received any major additions or alterations, so it retains sufficient integrity of design, materials, and workmanship. Integrity of setting has been significantly compromised by demolition of the single-family house on the parcel and the introduction of paved surface parking as well as nearby residential and commercial development.

City of San José City Landmark Evaluation

409 South 2nd Street

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

1. *Its character, interest or value as part of the local, regional, state or national history, heritage or culture;*
   The building does not have significant character, interest, or value to the commercial development of San José or the downtown area. This area of downtown San José was already established in the late nineteenth century as a residential and commercial area. The building is associated with the post-World War II and midcentury growth of San José and does not represent a pattern of development. Instead, historic development followed an established trend in downtown. Therefore, the property does not appear to be eligible under this criterion.

2. *Its location as a site of a significant historic event;*
   The building is not linked to any significant historic events. Therefore, the building is not eligible under Criterion 2.

3. *Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;*
   There is no person of significance individually associated with the building. Therefore, the building is not eligible under Criterion 3.

4. *Its exemplification of the cultural, economic, social or historic heritage of the City of San José;* the building does not individually reflect or exemplify the cultural, economic, social, or historic heritage of San José. The building is one of several mid-twentieth century commercial buildings in downtown.

   The property was used as a Sambo's restaurant from 1968 until at least 1979. Apart from being one of many locations established, the property does not have any individually significant associations with the creation or growth of the Sambo's chain in San José. The building was constructed in 1967 and Sambo's opened its restaurant in 1968.By that time, the chain had already opened its first Sambo's restaurant in San José (1860 The Alameda opened in 1966). By 1979, Sambo's had opened five diners/pancake houses in San José, four of which are still extant (no longer Sambo's). The building on site was not the first Sambo's restaurant established in San José and is not the last remaining Sambo's restaurant in San José.

   Fast-food restaurant development in San José, including franchise diners, pancake houses and coffee shops, boomed after World War II. The earliest coffee shops in the city opened in the 1930s.Numerous roadside or drive-in restaurants had opened by 1948. Diner and coffee shop chains in downtown and suburban San José such as Sambo's, Denny's, and the International House of Pancakes, gained popularity by the mid-1960s. By the time Sambo's opened at the project site, the diner/pancake house trend had already been established. The building is not individually representative of the post-war or mid-twentieth century development of fast-food restaurants or diners/pancake houses in San José. Sambo's restaurant did not continue operating on the site after it vacated the property around 1979. Therefore, the building is not eligible under Criterion 4.

5. *Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;*
   The building does not exhibit a particular architectural style that can be associated with a group of people during a particular period in history. Therefore, the building is not eligible under Criterion 5.

6. *Its embodiment of distinguishing characteristics of an architectural type or specimen;*
   The building exhibits distinguishing characteristics of the Googie architectural style including the folded-plate sloping roof, large glass windows in metal frames along the eastern façade, space age motifs seen in the perforated metal lighting on the roof, and free-standing signage. The building is one of the few existing Googie style buildings in downtown San José. Despite recent alterations to the building, it still exhibits a distinct architectural style and significance. Therefore, the building is eligible as a Candidate City Landmark under Criterion 6.

   Character-defining features:
   - Horizontal, one-story massing
   - Prominent folded-plate sloping roof
   - Large expanses of glass in metal frames, especially along S. 2nd Street
   - Perforated metal lighting at the roof
   - Free-standing signage

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;*
   Architect David S. Smith and Sondeno Construction Company are not considered masters in their trade. Therefore, the building is not eligible under Criterion 7.

8. *Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.*
   The building does not represent architectural innovation, and utilized typical building materials and details of the time. Therefore, the building is not eligible under Criterion 8.

In conclusion, the property is eligible as a San José Candidate City Landmark under Criterion 6 as one of the only extant examples of a Googie style commercial building in downtown San José.

425 South 2nd Street

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

1. *Its character, interest or value as part of the local, regional, state or national history, heritage or culture;*
   The structure does not have a significant character, interest, or value to residential development in the area or in downtown San José as a whole. The east side of the subject block was already established in the late nineteenth and early twentieth centuries by the time this building was constructed around 1920. Therefore, the building is not eligible under Criterion 1.

2. *Its location as a site of a significant historic event;*
   The building is not linked specifically to any significant historic events. Therefore, the building is not eligible under Criterion 2.

3. *Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;*
   There is no person of significance individually associated with the building. Therefore, the building is not eligible under Criterion 3.

4. *Its exemplification of the cultural, economic, social or historic heritage of the City of San José;*
   The building does not individually reflect or exemplify cultural, economic, social, or historic heritage of San José. The building is one of several early twentieth century accessory structures in the area. Therefore, the building is not eligible under Criterion 4.

5. *Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;*
   The building does not exhibit a particular architectural style that can be associated with a group of people during a particular period in history. Therefore, the building is not eligible under Criterion 5.

6. *Its embodiment of distinguishing characteristics of an architectural type or specimen;*
   The building does not embody distinguishing characteristics of an architectural type or specimen.

The vernacular building was constructed circa 1920 as a garage and is a modest building that is typical of its type and period in architecture. It was built with common construction methods and materials with no notable or special attributes. The building is not eligible under Criterion 6.

7. *Its identification as the work of an architect or master builder whose individual work has influenced the development of the City of San José;*
   No architect, designer or builder has been identified for the property. The building is not eligible under Criterion 7.

8. *Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.*
   The building does not exhibit any architectural innovations, and typical building materials and details of the time were employed. The building is not eligible under Criterion 8.

In conclusion, the building at 425 South 2nd Street is not eligible as a San José Candidate City Landmark as it does not have local significance under any criteria.

Off-Site Historic Resources

TreanorHL conducted a reconnaissance survey of 27 properties located within 200 feet of the project site that are 50 years or older. Ten of these properties were previously identified on the City of San José HRI. None of the previously identified properties are designated City Landmarks or Candidate City Landmarks, but three properties were previously determined individually eligible for listing on the CRHR. Refer to Appendix G for a photograph and brief description of each property.

3.3.2 Impact Discussion

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

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

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

The Downtown Strategy 2040 FEIR concluded that build out of the plan would result in a less than significant cultural resources impact. The proposed project would result in a significant unavoidable impact to historic structures and a less than significant impact to subsurface resources, as described below.

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

A resource is considered to be historically significant by the City of San José if it is a Candidate City Landmark, designated City Landmark and/or listed on or meets the criteria for listing on the NRHP and the CRHR. The property at 409 South 2nd Street (APN 467-47-097) was determined to be eligible as a San José Candidate City Landmark under criteria 6; and therefore, is considered a historical resource.

Within 200 feet of the project site, ten historic resources were previously identified on the City of San José HRI and three properties were previously determined to be individually eligible for listing on the CRHR.

The proposed project would demolish all existing structures on the project site, including 409 South 2nd Street, and construct a 30-story mixed use building adjacent to and across the street from properties listed in the City of San José HRI.

On-Site Historic Resources

Impact CUL-1: Implementation of the proposed project would result in the demolition of an eligible Candidate City Landmark at 409 South 2nd Street.

Mitigation Measures:

MM CUL-1.1: Prior to issuance of any grading, demolition, or building permits the project applicant shall prepare and submit, for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee in coordination with the City's Historic Preservation Officer, a Historic Resources Mitigation Action Plan (Action Plan) demonstrating that the following steps, actions, and documents have been satisfied for the historic structure in accordance with the Action Plan timeline. The Action Plan shall include roles and responsibilities between the project applicant, City staff, and outside individuals, groups, firms, and consultants.

Documentation (HABS): The structure and associated features on the project site shall be documented in accordance with the guidelines established for the Level III Historic American Building Survey (HABS) consistent with the Secretary of the Interior's Standards for Architectural and Engineering Documentation and shall consist of the following components:

A. Drawings – Prepare sketch floor plans of the buildings and site plan.

B. Photographs – 35 mm digital photographs meeting the digital photography specifications.

C. Written Data – a historical report with the history of the property, property description and historical significance.

A qualified architectural historian meeting the Secretary of the Interior's Professional Qualification Standards shall oversee the preparation of the sketch plans, photographs, research and written data.

The documentation shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval. After approval, the required documentation shall be filed with the San José Library's California Room and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System.

MM CUL-1.2: Documentation (Digital Scans): Prior to issuance of any certificates of occupancy, the structure and associated features on the project site shall be documented by a qualified architectural historian through a series of digital scans and video production. The architectural historian shall meet the Secretary of the Interior's Professional Qualification Standards. A plan of the proposed procedures for the digital scans shall be submitted to the City's Historic Preservation Officer or equivalent prior to commencement of preparing the digital scans for review and approval.

MM CUL-1.3: Relocation by the Project applicant and/or a Third Party: Prior to issuance of any demolition permits, the project applicant, or an interested third party, shall be required to advertise the availability of the structures for relocation for a period of no less than 60 days. The advertisements must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The project applicant shall provide evidence (i.e., receipts, date and time stamped photographs, etc.) to the City's Historic Preservation Officer that this condition has been met prior to the issuance of demolition permits.

If the project applicant or third party agrees to relocate the structure, the following measures must be followed:

1. The Director of Planning, Building and Code Enforcement or Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is feasible for the building.
2. Prior to relocation, the project applicant or third party shall hire a historic preservation architect and a structural engineer to undertake an existing condition study that establishes the baseline condition of the restaurant structure prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to the structure being moved.

3. To protect the building during relocation, the project applicant shall engage a building mover who has experience moving similar historic structures. A structural engineer shall also be engaged to determine how the building needs to be reinforced/stabilized before the move.

4. Once moved, the building shall be repaired and rehabilitated, as needed, by the project applicant or third party in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. In particular, the character-defining features shall be retained in a manner that preserves the integrity of the building for the long-term preservation and reuse.

   Upon completion of the repairs, a qualified architectural historian shall document and confirm that work to the structure were completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and character-defining features were preserved. The project applicant shall submit a memo report supplement to the Action Plan to the City's Historic Preservation Officer documenting the relocation, repair, and reuse prior to issuance of any occupancy permits for the proposed project.

MM CUL-1.4: Salvage: If the project applicant and/or a third party cannot agree to relocate the structure within the specified time, the structure shall be made available for salvage to companies facilitating the reuse of historic building materials prior to the issuance of any demolition permits. The time frame available for salvage shall be established by the City's Historic Preservation Officer in accordance with the Action Plan. The project applicant must provide evidence to the City's Historic Preservation Officer and Director of Planning, Building, and Code Enforcement, or Director's designee, that this condition has been met prior to the issuance of any demolition permits.

MM CUL-1.5: Deconstruction/Reverse Construction: Prior to and during demolition activities, all structures and associated features being salvaged and demolished shall be documented, photographed, and videoed by a qualified architectural historian showing in reverse the original methods of construction and use of materials. The project applicant must provide evidence to the City's Historic Preservation Officer and Director of Planning, Building, and Code Enforcement, or Director's designee, that this documentation has been completed prior to the issuance of occupancy permits.

Off-Site Resources

The impacts of project construction on historic resources are discussed in detail in Section 3.3 Noise of this SEIR and concluded that vibration impacts would be less than significant with implementation of measures identified in and required by the Downtown Strategy 2040 FEIR.

Impact CUL-2: The project would result in significant construction-vibration related impacts to nearby historic resources.

Mitigation Measure:

See mitigation measure MM NOI-2.

With implementation of mitigation measure MM NOI-2, which is consistent with measures identified and required of development in the Downtown Strategy 2040 FEIR, project-related construction-vibration impacts on adjacent historic structures would be reduced to a less than significant level.

Because the proposed project would result in the demolition of the eligible Candidate City Landmark on-site, the proposed project would result in a significant unavoidable impact to historical resources. **[Same impact as Approved Project (Significant Unavoidable Impact)]**

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

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.

Per the Downtown Strategy 2040 FEIR, most prehistoric archaeological sites have been found along or very near fresh water sources, adjacent to the major Native American trails, and near stone sources in the foothills. The subsurface sensitivity is moderate to high within the Downtown Strategy 2040 area. The site is located approximately 0.75 miles and 0.35 miles east of Los Gatos Creek and Guadalupe River, respectively. Demolition of existing structures and pavement, and excavation to 50 feet below the ground surface for the underground parking could damage as yet unrecorded subsurface resources. Based on available records, the site has a moderate potential for Native American resources and high potential for historic-era archaeological resources.

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

Standard Permit Condition

If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of

PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

Given the location of the site, and known historic development of the project area, the project has high potential for uncovering as yet unrecorded archaeological resources. Even with implementation of the above standard measures, the site-specific archaeological resources report prepared for the project identified the potential for archaeological resources to be found on-site and the following additional measures would be required to reduce potential impacts to unrecorded archaeological resources.

Impact CUL-3: Project ground disturbing activities could result in a substantial adverse change in the significance of an archaeological resource.

Mitigation Measure:

The following mitigation measures shall be implemented to reduce impacts to archaeological resources that may be present on the site.

MM CUL-3.1: **Cultural Sensitivity Training.** Prior to issuance of any grading permit, the project applicant shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commissions for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

MM CUL-3.2: **Preliminary Investigation.** Prior to the issuance of any demolition, grading, or building permits, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall complete a subsurface exploration at the site, to determine if there are any indications of discrete historic-era subsurface archaeological features. Exploring for historic-era features shall consist of at least one trench mechanically excavated below existing stratigraphic layers to evaluate the potential for Native American and historic era resources. If any archeological resources are exposed, these should be briefly documented, tarped for protection, and left in place. The results of the presence/absence exploration, including any treatment recommendations, shall be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval prior to issuance of any grading permit. If deemed necessary, based on the findings of the subsurface testing, an archaeological resources

treatment plan (as described in MM CUL-3.4) shall be prepared by a qualified archaeologist, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. If no evidence of historic era resources are found during the preliminary investigation, then monitoring of all construction-related ground disturbing activities will be required as described in MM CUL-3.3.

MM CUL-3.3: **Sub-Surface Monitoring.** If no evidence of historic era resources are found during the preliminary investigation, a qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping. Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities, if evidence of historic era resources are found during monitoring, then an archaeological resources treatment plan (as described in MM CUL-3.4) shall be prepared by a qualified archaeologist, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.

MM CUL-3.4: **Treatment Plan.** If required pursuant to MM CUL-3.2 or CUL-3.3, a qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building, and Code Enforcement or Director's designee prior to the issuance of any grading permits. The treatment plan shall contain, at a minimum:

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

- Detailed field strategy to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Security approaches or protocols for finds.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc.

The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. Once implementation of the Treatment Plan is complete, no further mitigation is required on the project site.

MM CUL-3.5: **Evaluation.** The project applicant shall notify the Director of Planning, Building, and Code Enforcement or Director's designee of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. All documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission (NAHC) Sacred Land Files, and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee.

With implementation of the Standard Permit Condition and Mitigation Measures MM CUL-3.1 through 3.5 listed above, impacts to unrecorded subsurface cultural resources would be less than significant. **[Same Impact as Approved Project (Less Than Significant Impact)]**

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

The proposed project would require 50 feet of subterranean excavation for underground parking which may result in the discovery and disturbance of human remains, including those interred outside of dedicated cemeteries. The proposed project would implement the following Standard Permit Conditions to reduce the impacts on human remains.

Standard Permit Conditions

- If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following condition occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
    a. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
    b. The MLD identified fails to make a recommendation; or
    c. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

With implementation of the Standard Permit Conditions listed above, redevelopment of the site would have a less than significant impact on human remains, including those interred outside of dedicated cemeteries. **[Same Impact as Approved Project (Less than Significant Impact)]**

3.3.2.1 *Cumulative Impacts*

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

Historic Structures

Implementation of the proposed project would result in the loss of the eligible Candidate City Landmark at 409 South 2nd Street. A review of the City's HRI does not show any specific buildings or group of buildings of the same Googie architectural style, period of significance, and purpose within downtown San José. Because. the project would demolish one of the few existing Googie style buildings in downtown San José, the loss of this building would be cumulatively considerable.

Subsurface Resources

The cumulative projects analyzed in this Draft SEIR (Table 3.0-1) may require excavation and grading or other activities that may affect unknown prehistoric cultural resources and/or historic

resources. Impacts to subsurface resources would be mitigated to less than significant with implementation of the Downtown Strategy 2040 FEIR measures and identified standard permit conditions. Consistent with the findings of the Downtown Strategy 2040 FEIR, the project would not a have cumulatively considerable impact on subsurface archaeological resources.

While the project would not have a cumulatively considerable impact on subsurface archaeological resources, the demolition of the restaurant building would be cumulatively considerable. **[New Cumulative Significant Unavoidable Impact (Cumulative Significant Unavoidable Impact)]**

3.4 HAZARDS AND HAZARDOUS MATERIALS

The information in this section is based in part on the Phase I Environmental Site Assessment prepared by AEI on January 25, 2021. This report is included in Appendix D.

3.4.1 Environmental Setting

3.4.1.1 *Regulatory Framework*

Overview

The storage, use, generation, transport, and disposal of hazardous materials and waste are highly regulated under federal and state laws. In California, the EPA has granted most enforcement authority over federal hazardous materials regulations to the California Environmental Protection Agency (CalEPA). In turn, local agencies have been granted responsibility for implementation and enforcement of many hazardous materials regulations under the Certified Unified Program Agency (CUPA) program.

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

Federal and State

Federal Aviation Regulations Part 77

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

Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress on December 11, 1980. This law created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Over five years, $1.6 billion was collected and the tax went to a trust fund for cleaning up abandoned or uncontrolled hazardous waste sites. CERCLA accomplished the following objectives:

- Established prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- Provided for liability of persons responsible for releases of hazardous waste at these sites; and
- Established a trust fund to provide for cleanup when no responsible party could be identified.

The law authorizes two kinds of response actions:

- Short-term removals, where actions may be taken to address releases or threatened releases requiring prompt response; and
- Long-term remedial response actions that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life-threatening. These actions can be completed only at sites listed on the EPA's National Priorities List.

CERCLA also enabled the revision of the National Contingency Plan (NCP). The NCP provided the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants. The NCP also established the National Priorities List. CERCLA was amended by the Superfund Amendments and Reauthorization Act on October 17, 1986.[17]

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA), enacted in 1976, is the principal federal law in the United States governing the disposal of solid waste and hazardous waste. RCRA gives the EPA the authority to control hazardous waste from the "cradle to the grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also sets forth a framework for the management of non-hazardous solid wastes.

The Federal Hazardous and Solid Waste Amendments (HSWA) are the 1984 amendments to RCRA that focused on waste minimization, phasing out land disposal of hazardous waste, and corrective action for releases. Some of the other mandates of this law include increased enforcement authority for the EPA, more stringent hazardous waste management standards, and a comprehensive underground storage tank program.[18]

Government Code Section 65962.5

Section 65962.5 of the Government Code requires CalEPA to develop and update a list of hazardous waste and substances sites, known as the Cortese List. The Cortese List is used by state and local agencies and developers to comply with CEQA requirements. The Cortese List includes hazardous

[17] United States Environmental Protection Agency. "Superfund: CERCLA Overview." Accessed May 11, 2020. https://www.epa.gov/superfund/superfund-cercla-overview.
[18] United States Environmental Protection Agency. "Summary of the Resource Conservation and Recovery Act." Accessed May 11, 2020. https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act.

substance release sites identified by the Department of Toxic Substances Control (DTSC) and State Water Resources Control Board (SWRCB).[19]

Toxic Substances Control Act

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

California Accidental Release Prevention Program

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

Asbestos-Containing Materials

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

CCR Title 8, Section 1532.1

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

Regional and Local

Municipal Regional Permit Provision C.12.f

Polychlorinated biphenyls (PCBs) were produced in the United States between 1955 and 1978 and used in hundreds of industrial and commercial applications, including building and structure

[19] California Environmental Protection Agency. "Cortese List Data Resources." Accessed May 28, 2020. https://calepa.ca.gov/sitecleanup/corteselist/.

materials such as plasticizers, paints, sealants, caulk, and wood floor finishes. In 1979, the EPA banned the production and use of PCBs due to their potential harmful health effects and persistence in the environment. PCBs can still be released to the environment today during demolition of buildings that contain legacy caulks, sealants, or other PCB-containing materials.

With the adoption of the San Francisco Bay Region Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (MRP) by the San Francisco Bay Regional Water Quality Control Board on November 19, 2015, Provision C.12.f requires that permittees develop an assessment methodology for applicable structures planned for demolition to ensure PCBs do not enter municipal storm drain systems.[20] Municipalities throughout the Bay Area are currently modifying demolition permit processes and implementing PCB screening protocols to comply with Provision C.12.f. Buildings constructed between 1950 and 1980 that are proposed for demolition must be screened for the presence of PCBs prior to the issuance of a demolition permit. Single family homes and wood-frame structures are exempt from these requirements.

City of San José

Envision San José 2040 General Plan

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

General Plan Policies – Hazards and Hazardous Materials	
EC-7.1	For development and redevelopment projects, require evaluation of the proposed site's historical and present use to determine if any potential environmental conditions exist that could adversely impact the community or environment.
EC-7.2	Identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for identified human health and environmental hazards to future users and provide as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and groundwater contamination shall be designed to avoid adverse human health or environmental risk, in conformance with regional, state and federal laws, regulations, guidelines and standards.
EC-7.3	Identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for identified human health and environmental hazards to future users and provide as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and groundwater contamination shall be designed to avoid adverse human health or environmental risk, in conformance with regional, state and federal laws, regulations, guidelines and standards.
EC-7.4	On redevelopment sites, determine the presence of hazardous building materials during the environmental review process or prior to project approval. Mitigation and remediation of hazardous building materials, such as lead-based paint and asbestos containing materials, shall be implemented in accordance with State and Federal laws and regulations.

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

EC-7.5	In development and redevelopment sites, require all sources of imported fill to have adequate documentation that it is clean and free of contamination and/or acceptable for the proposed land use considering appropriate environmental screening levels for contaminants. Disposal of groundwater from excavations on construction sites shall comply with local, regional, and State requirements.
EC-7.8	When an environmental review process identifies the presence of hazardous materials on a proposed development site, the City will ensure that feasible mitigation measures that will satisfactorily reduce impacts to human health and safety and to the environment are required of or incorporated into the projects. This applies to hazardous materials found in the soil, groundwater, soil vapor, or in existing structures.
EC-7.9	Ensure coordination with the County of Santa Clara Department of Environmental Health, Regional Water Quality Control Board, Department of Toxic Substances Control or other applicable regulatory agencies, as appropriate, on projects with contaminated soil and/or groundwater or where historical or active regulatory oversight exists.
EC-7.10	Require review and approval of grading, erosion control and dust control plans prior to issuance of a grading permit by the Director of Public Works on sites with known soil contamination. Construction operations shall be conducted to limit the creation of dispersion of dust and sediment runoff.
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 navigation.
TR-14.3	For development in the vicinity of airports, take into consideration the safety and noise policies identified in the Santa Clara County Airport Land Use Commission (ALUC) comprehensive land use plans for Mineta San Jose International and Reid-Hillview airports.
TR-14.4	Require avigation and “no build” easement dedications, setting forth maximum elevation limits as well as for acceptance of noise or other aircraft related effects, as needed, as a condition of approval of development in the vicinity of airports.
CD-5.8	Comply with applicable Federal Aviation Administration regulations identifying maximum heights for obstructions to promote air safety.

3.4.1.2 *Existing Conditions*

Historic Project Site Conditions

The project site had unknown use prior to 1884 due to a lack of information regarding the site at that time. From 1884 to 1891 the site was occupied by four residences and a tank house. By 1915, the site was developed with three residences, a "housekeeping rooms" building, a vacant building, sheds, corral, and the tank house. In 1930 the structures at 405 South 2nd Street served as a gasoline service station.

From 1939 to 1956 the site went through a variety of uses. The site continued to be occupied by three residences and a "housekeeping rooms" building along with the associated wood shed and corral. The current storage building (used for residential purposes/car garage) was constructed along with a

'store' building (occupied by a used tire shop in 1940, a glass installation company in 1960, and door service company in 1966), and an auto repair shop was located at 411 South 2nd Street from 1940-1966. In 1963 the site was still developed with three residences, a small 'store' building, and the current storage building (used for residential purposes/car garage), however the southern portion of the site was then vacant land.

In 1967, the existing Googie commercial structure was built and from 1968 to 1982 the site was occupied by this structure, a residence, the current storage building, and vacant land. From 1993 onward the site was developed with the current commercial building occupied as a restaurant, the current storage building (used for residential purposes/residential car garage and storage), and parking lots.

The project site did not appear on any Regulatory Database Records for past events of hazardous material exposure or release, including Geotracker, the California Department of Toxic Substances Control, EnviroStor, BAAQMD, and Valley Water Well Tracker.

Adjacent Site Conditions

Surrounding properties are primary commercial spaces and residential buildings. Multiple off-site conditions were identified in the Phase 1 prepared for the project site.

Five properties in the vicinity of the project site are listed on hazardous materials release and/or storage databases. The properties are not expected to present significant environmental concerns to the project site based on one or more of the following: (1) the listed property has received case closure by the appropriate regulatory agency; (2) the listed property is either cross gradient or down gradient of the project site with respect to the inferred groundwater flow direction; (3) the type of release (soils only and natural degradation processes of the contamination); and (4) the listed property is located at too great a distance to represent a significant environmental concern with respect to the project site. Refer to Appendix D for additional details about the database search results.

According to Sanborn Maps, the northeastern adjoining site at 402-404 S 2nd Street was previously developed with an auto repair shop and oil station in 1950, with the auto repair shop remaining on-site through at least 1969. Additionally, the southwestern adjoining site was occupied by an auto repair shop in 1915 and 1950. Hazardous substances and petroleum products were likely associated with the former auto repair operations and oil station. These sites were not listed as hazardous waste spill sites, however, based on the uses described there may have been hazardous materials handled during operations.

Asbestos Containing Building Materials and Lead Based Paint

Due to the age of structures on-site, the project site may contain structures with asbestos or lead in building materials or paint.

3.4.2 Impact Discussion

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

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

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

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

The Downtown Strategy 2040 FEIR identified that new residential and retail development in the downtown area may include the use, storage, or disposal of hazardous materials. The proposed mixed-use building would routinely use limited amounts of cleaning materials during project operations but would not pose a risk to adjacent land uses. Given the limited amount of common cleaning materials that would be used on-site, the project would not result in a significant hazard to the public. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

On-Site Contamination, ACMs, and LBP

The Phase I investigation indicates the presence of potential contamination from historic site operations associated with a gas station and auto repair. The potential exists that these historic operations may have resulted in releases to the subsurface and that UST(s) may remain in place.

Since the buildings on-site were constructed prior to 1978, it is reasonable to assume that Asbestos Containing Building Materials (ACMs) and Lead Based Paint (LBP) materials are present on-site. When the existing structures are demolished, asbestos particles could be released and expose construction workers and nearby building occupants to harmful levels of asbestos. If LBP is still bonded to the building materials, its removal is not required prior to demolition. If the LBP is flaking, peeling, or blistering, it shall be removed prior to demolition. It would be necessary to follow applicable Occupational Safety and Health Administration (OSHA) regulations and any debris containing lead must be disposed appropriately.

The project would be required to implement the following Standard Permit Conditions to reduce impacts due to the presence of ACMs and/or LBP:

Standard Permit Conditions:

- In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications. With implementation of the Standard Permit Conditions, the project would have a less than significant impact from ACMs and LBP. **[Same Impact as Approved Project (Less than Significant Impact)]**

Off-Site Contamination

According to the Sanborn maps, the northeastern adjoining site at 402-404 S 2nd Street was previously developed with an auto repair shop and oil station in 1950, with the auto repair shop remaining on-site through at least 1969. Additionally, the southwestern adjoining site was occupied by an auto repair shop in 1915 and 1950. Hazardous substances and petroleum products were likely associated with the former auto repair operations and oil station. The sites are not listed for any spills or releases in connection with the use or handling of these materials.

Given the time period of the auto repair operations (conducted during a time when no regulatory oversight with respect to hazardous substances would have been in place), duration of operations, and potential for use of hazardous substances on site associate with auto repairs in conjunction with the tire company. These operations may have resulted in releases to the subsurface and UST(s) may remain in place. Additionally, the permit issued to Seaside Oil Company for the service station on site may have related in the use as an oil dispensing site which would result in spills of hazardous materials. Based on available information, if contaminants from these sites impacted the groundwater and caused contaminants to migrate onto the project site, these historical uses would represent an REC.

Impact HAZ-1: Development of the proposed project could potential expose construction workers and the public to soil, soil vapor and groundwater contamination from an off-site source during the excavation/constructions phase of the project, and future users to soil and soil vapor contamination after construction.

Mitigation Measures:

MM HAZ-1.1: Prior to issuance of any demolition or grading permits, the project applicant shall retain a qualified environmental professional to evaluate potential contamination issues identified in the Phase I Environmental Site Assessment by performing a Phase II soil, soil gas and groundwater contamination investigation. The results shall be compared to established construction worker safety and residential regulatory environmental screening levels. If the Phase II results indicate soil, soil gas, and/or groundwater contamination above the appropriate regulatory environmental screening levels for the proposed project the applicant shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health, Department of Toxic Substances Control or Regional Water quality Control Board under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document must be prepared by a qualified hazardous materials consultant. The Plan must establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors.

The results of Phase II investigation and evidence of regulatory oversight, if required, and the appropriate plan such as an SMP, RAP or equivalent document shall be provided to the Director of Planning, Building and Code

Enforcement or the Director's designee, and the City's Municipal Environmental Compliance Officer.

With implementation of the above mitigation measure, consistent with the Downtown Strategy 2040 FEIR and Phase I ESA, the project would not create a significant hazard to the public or environment.

Based on the above discussion, the project would not result in new or substantially more severe hazard from the release of hazardous materials into the environment than disclosed in the Downtown Strategy 2040 FEIR. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

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

The project site is located within a quarter mile of the San José State College campus, Hyde Middle School, and Notre Dame High School. The project site would primarily utilize basic cleaning and maintenance supplies, similar to the previous operations on-site, which are not considered hazardous to off-site receptors. Therefore, the project would not expose nearby schools to hazardous materials handled on the project site. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

As stated above, the project site is not on any list of hazardous materials sites pursuant to Government Code Section 65962.5. Therefore, the project would have a less than significant impact to the public and/or environment. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

The project site is located approximately 2.1 miles southeast of the Norman Y. Mineta San José International Airport. The project site is not located within the Norman Y. Mineta San José International Airport CLUP-defined safety zone or the AIA. For the project site, any structure exceeding approximately 200 feet in height above grade would require submittal to the FAA for airspace safety review. The proposed project would have a maximum height of 293 feet and would be subject to FAA review under FAR Part 77. The applicant would be required to implement the following Standard Permit Conditions to ensure that the project does not result in a safety hazard or excessive noise due to airport activities.

Standard Permit Conditions:

- FAA Clearance Permit Adjustment. Prior to issuance of any Building Permit for construction, the permittee shall apply for and obtain a Permit Adjustment to incorporate any and all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting or construction-related notifications.

The project would be required to follow all applicable General Plan policies, regulations, and procedures outlined in the CLUP for the Norman Y. Mineta San José International Airport. Therefore, the proposed project would not create a significant hazard in relation to the airport. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

The proposed project is consistent with the General Plan land use of the project site and would not alter evacuation routes. In addition, the project would be constructed in accordance with current building and fire codes and would be required to be maintained in accordance with applicable City policies identified in the Downtown Strategy 2040 FEIR to avoid unsafe building conditions. Therefore, the proposed project would be consistent with existing emergency response plans and emergency evacuation plans and would have a less than significant impact. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

The proposed project would be constructed in the downtown San José area which is not located in a wildfire hazard severity zone. Therefore, the proposed project would not expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires. **[Same Impact as Approved Project (Less than Significant Impact)]**

3.4.3 Non-CEQA Effects

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

General Plan Policy EC-7.2 requires redevelopment projects to identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for the health of future users and provide as part of the environmental review process.

Based on the information above, soils on site would represent a risk of containing, ACM, LBP, and hazardous materials associated with operations of auto repair shops and gas stations. The Phase I

recommended that the project site be sampled to confirm the extent of hazardous materials in soils or groundwater on the project site.

In addition, the project site would be excavated to a depth of approximately 50 feet bgs which would encounter groundwater. The proposed project would be built and maintained in accordance with a site-specific geotechnical report which will be prepared and submitted to the City of San José Public Works Department for review and approval prior to the issuance of any grading or building permits. As a result, the proposed project would not result in human health and environmental hazards to future site users consistent with Policy EC-7.2.

3.5 NOISE

The following discussion is based upon a Noise and Vibration Assessment prepared by *Illingworth and Rodkin* in November 2021. A copy of this report is attached as Appendix H of this SEIR.

3.5.1 Environmental Setting

3.5.1.1 *Background Information*

Noise

Several factors influence sound as it is perceived by the human ear, including the actual level of sound, the period of exposure to the sound, the frequencies involved, and the 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 over a fairly wide range of intensities. 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 almost always expressed using one of several noise averaging methods, such as L_{eq}, DNL, or CNEL.[21] Using one of these descriptors is a way for a location's overall noise exposure to be measured, given that there are specific moments when noise levels are higher (e.g., when a jet is taking off from an airport or when a leaf blower is operating) and specific moments 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.

Vibration

Ground vibration consists of rapidly fluctuating motions or waves with an average motion of zero. Vibration amplitude can be quantified using Peak Particle Velocity (PPV), which is defined as the maximum instantaneous positive or negative peak of the vibration wave. Because of the impulsive nature of construction activities, the use of the PPV descriptor has been routinely used to measure and assess ground-borne 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.

[21] 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 p.m. and 7:00 a.m. Community Noise Equivalent Level (CNEL) includes an additional five dB applied to noise occurring between 7:00 p.m. and 10:00 p.m. As a general rule of thumb where traffic noise predominates, the CNEL and DNL are typically within two dBA of the peak-hour L_{eq}.

3.5.1.2 *Regulatory Background*

State

California Building Standards Code

The California Building Standards Code (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 dBA DNL or CNEL in any habitable room, including hotel rooms. 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, industrial source or fixed-guideway noise source.

2019 California Building Cal Green Code

The State of California established exterior sound transmission control standards for new non-residential buildings as set forth in the 2019 California Green Building Standards Code (Section 5.507.4.1 and 5.507.4.2). Section 5.507.4.1 states that wall and roof-ceiling assemblies exposed to the noise source making up the building envelope shall meet a composite STC rating of at least 50 or a composite OITC rating of no less than 40, with exterior windows of a minimum STC of 40 or OITC of 30 when the building falls within the 65 dBA L_{dn} noise contour of a freeway or expressway, railroad, industrial source or fixed-guideway noise source, as determined by the local general plan noise element.

Section 5.507.4.2 states that for buildings located, as defined by Section 5.507.4.1, wall and roof-ceiling assemblies exposed to the noise source making up the building envelope shall be constructed to provide an interior noise environment attributable to exterior sources that does not exceed an hourly equivalent noise level ($L_{eq\ (1\text{-}hr)}$) of 50 dBA in occupied areas during any hour of operation.

Local

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: General Plan Land Use Compatibility Guidelines (GP Table EC-1)

Land Use Category	Exterior DNL Value in Decibels					
	55	60	65	70	75	80
1. Residential, Hotels and Motels, Hospitals and Residential Care						
2. Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds						
3. Schools, Libraries, Museums, Meeting Halls, and Churches						

Table 3.5-1: General Plan Land Use Compatibility Guidelines (GP Table EC-1)						
Land Use Category	**Exterior DNL Value in Decibels**					
	55	**60**	**65**	**70**	**75**	**80**
4. Office Buildings, Business Commercial, and Professional Offices						
5. Sports Arena, Outdoor Spectator Sports						
6. Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters						

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

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

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

In addition, various policies in the City's 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to noise, as listed in the table below.

General Plan Policies - Noise and Vibration	
Policy EC-1.1	<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 Norman Y. Mineta San José International Airport, the Downtown Core Area, and along major roadways. For the remaining areas of the City, the following standards apply: – For new multi-family residential projects and for the residential component of mixed-use development, use a standard of 60 dBA DNL in usable outdoor activity areas, excluding balconies and residential stoops and porches facing existing roadways. There will be common use areas available to all residents that meet the 60 dBA exterior standard. Use noise

General Plan Policies - Noise and Vibration	
	attenuation techniques such as shielding by buildings and structures for outdoor common use areas. – For single-family residential uses, use a standard of 60 dBA DNL for exterior noise in private usable outdoor activity areas, such as back yards.
Policy EC-1.2	Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would: • Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or • Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.
Policy 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.
Policy EC-1.6	Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City's Municipal Code.
Policy 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.
Policy EC-1.9	Noise studies are required for land use proposals where known or suspected loud intermittent noise sources occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, mitigation will be implemented so that recurring maximum instantaneous noise levels do not exceed 50 dBA Lmax in bedrooms and 55 dBA Lmax in other rooms.
Policy 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.
Policy EC-1.11	Continue to require safe and compatible land uses within the Norman Y. Mineta International Airport noise zone (defined by the 65 CNEL contour as set forth in State law) and encourage aircraft operating procedures that minimize noise.

General Plan Policies - Noise and Vibration	
Policy EC-2.3	Require new development to minimize continuous vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, including ruins and ancient monuments or buildings that are documented to be structurally weakened, a continuous vibration limit of 0.08 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 normal conventional construction. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of a historical building, or building in poor condition. On a project-specific basis, this distance of 300 feet may be reduced where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction.

3.5.1.3 *Existing Conditions*

Ambient Noise

The project site is located in the downtown area of San José and is currently developed with a commercial use and a surface parking lot. Adjacent to the site to the west are commercial uses and to the south is a hotel. Across East San Salvador Street to the north are commercial uses and a surface parking lot. Additionally, across South 2nd Street to the east are commercial and residential uses.

The existing noise environment at the site results primarily from local vehicular traffic along South 2nd Street and East San Salvador Street. Distant State Route 87 and Interstate 280 traffic noise and aircraft associated with Mineta San José International Airport also contribute to the noise environment.

Due to the COVID-19 pandemic, traffic volumes along the surrounding roadways were reduced from typical conditions. A noise monitoring survey was not completed to document ambient noise levels during this unique time period because resultant noise levels would not be representative of typical ambient conditions. However, the project site and the surrounding area falls within the plan area for the Downtown San José Strategy Plan 2040 FEIR. Measurements and noise contours generated for the Downtown Strategy Plan were reviewed to establish the existing noise environment. While some new construction has occurred, the existing environment of the downtown area has not changed significantly since the adoption of the Downtown Strategy in December 2018; therefore, the established noise contours and noise environment would be largely unchanged.

As part of the ambient noise measurements made for the Downtown Strategy Plan in 2017, one long-term noise measurement was made near the project site along South 1st Street, which is expected to have similar noise levels as South 2nd Street. The day-night average noise level at this location was 70 dBA DNL. Hourly average noise levels at this location ranged from 64 to 72 dBA Leq during the day, and from 58 to 69 dBA Leq at night.

Additionally, existing traffic noise contours, based on traffic peak hour traffic volumes provided in 2015, were generated for the Plan Area. According to the contours, which are shown in Figure 3.5-1, existing noise levels at a distance of 75 feet from the centerline of South 1st Street would be 70 dBA

DNL. The peak hour levels would be about one dBA lower than the day-night average noise levels along each of the roadways.

Airport Noise

According to the City's Mineta San Jose International Airport Master Plan EIR (certified in April 2020), the project site is located just outside the projected 60 dBA CNEL aircraft noise impact area.

Groundborne Vibration

Groundborne vibration is not substantial at the project site due to the location of the project site in relation to sources of vibration. The project site is further than 100 feet from rail lines, therefore vibration at the project site does not exceed FTA guidelines under the existing condition as described in the City's General Plan Policy EC-2.1.

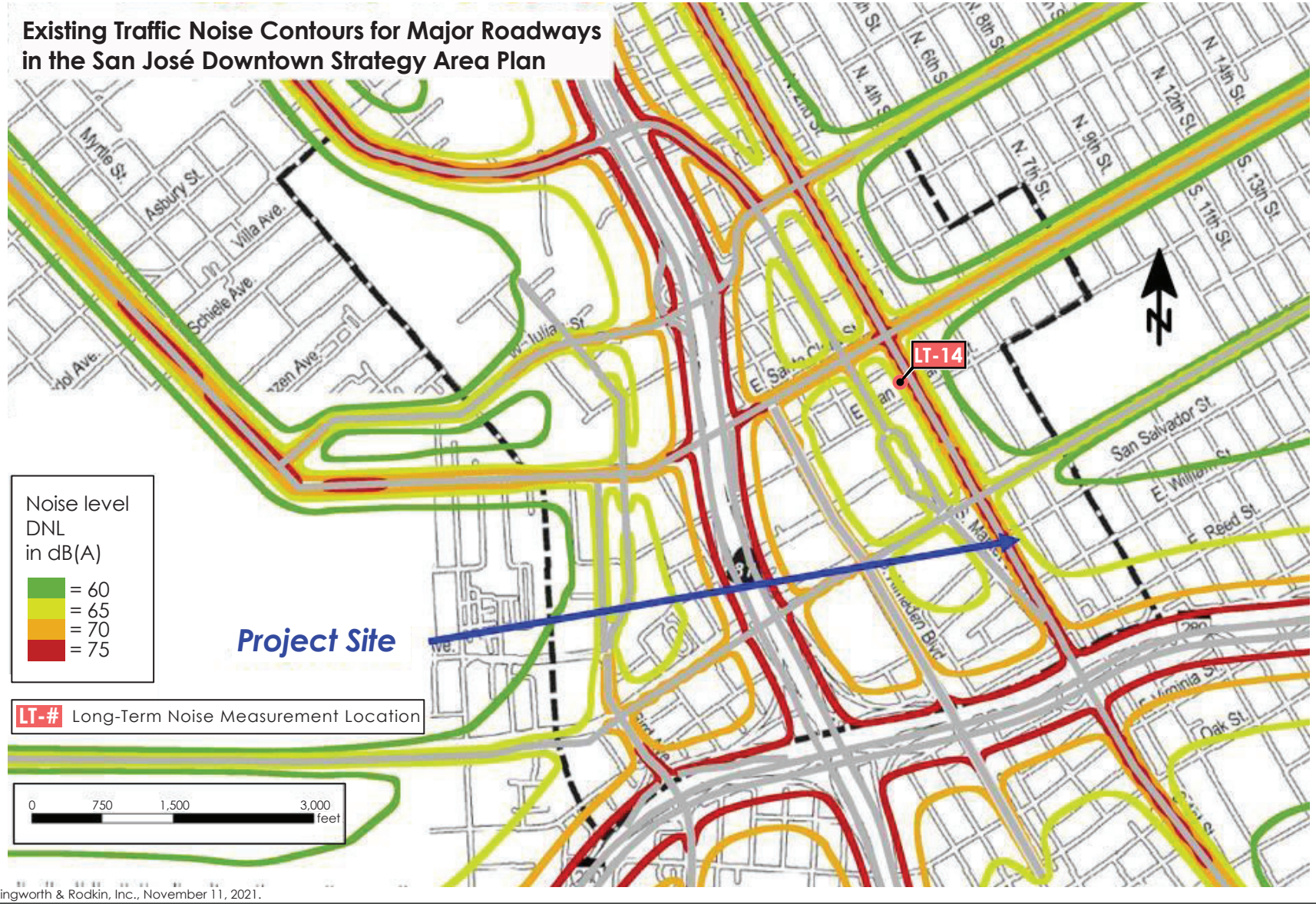
3.5.2 Impact Discussion

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?

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

The CEQA Guidelines state that a project will normally be considered to have a significant impact if noise levels conflict with adopted environmental standards or plans, of if noise levels generated by the project will substantially increase existing noise levels at noise-sensitive receivers on a permanent or temporary basis. CEQA does not define what noise level increase would be substantial. A three dBA noise level increase is considered the minimum increase that is perceptible to the human ear. Typically, project generated noise level increases of three dBA DNL or greater are considered significant where resulting exterior noise levels will exceed the normally acceptable noise level standard. Where noise levels will remain at or below the normally acceptable noise level standard with the project, a noise level increase of five dBA DNL or greater is considered significant.



Source: Illingworth & Rodkin, Inc., November 11, 2021.

NOISE MEASUREMENT LOCATION | FIGURE 3.5-1

City of San José Standards

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

Construction Noise

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

Operational Noise

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

Construction Vibration

The City of San José relies on guidance developed by Caltrans to address vibration impacts from development projects in San José. A vibration limit of 12.7 mm/sec (0.5 inches/sec), PPV for buildings structurally sound and designed to modern engineering standards. Based on Policy EC-2.3, a conservative vibration limit of 5 mm/sec (0.2 inches/sec), PPV has been used for buildings that are found to be structurally sound but structural damage is a major concern. For historic buildings or buildings that are documented to be structurally weakened, a conservative limit of two mm/sec (0.08 inches/sec), PPV is used to provide the highest level of protection.

Noise Impacts

In conformance with the Downtown Strategy 2040 FEIR, the project would be required to be constructed in accordance with General Plan policies and Zoning Ordinance requirements. Noise impacts would be less than significant with incorporated Standard Permit Conditions and project-specific mitigation measures, consistent with the Downtown Strategy 2040 FEIR as described below.

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?

As discussed above in *Section 3.4.1.3*, the existing noise environment at the project site exceeds the City's exterior noise goal of 60 dBA DNL for residential uses as a result of transportation noise sources in the project area (i.e., local traffic and aircraft) and downtown activities. The project proposes to construct a 540-unit mixed use residential building. Operational noise generated by the proposed project would be the result of vehicles traveling to and from the site and the project rooftop heating, ventilation, and air conditioning (HVAC) equipment. The project site is currently developed

with a two-story storage structure and a restaurant business with relatively low traffic; as a result, the noise generated by existing operations on the project site currently contribute on a limited basis to the ambient noise environment.

Mechanical Equipment

Emergency Generator

The proposed project includes electrical, mechanical, pump, and tank rooms in the underground parking levels, and a high voltage switch room on the ground level. Noise-generating equipment in these rooms would be well-shielded from all surrounding land uses.

The proposed project also includes an emergency generator room on the second floor, in the southeastern corner of the building. The roof would also include a space near the center of the roof for mechanical equipment, which would be surrounded by a parapet wall, and the majority of the roof would be used for photovoltaic panels, which generate low, immeasurable noise levels at neighboring property lines.

The emergency generator room, which would house a 95kW generator, would be adjacent to the hotel to the south and to the commercial buildings to the west. Generators typically produce noise levels up to 89 dBA at a distance of 50 feet. With the inclusion of sufficient noise control features, noise levels could be reduced to 65 dBA at 50 feet from the generator room. Emergency generators are typically tested monthly for a period of one hour between 7:00 a.m. and 10:00 p.m. Further, it is assumed that the City's thresholds would not apply during emergency conditions when the generators may run continuously during daytime and nighttime hours. During the testing periods, the General Plan thresholds would apply. Table 3.3-2 summarizes the hourly average noise levels and day-night average noise levels expected at the property lines of the surrounding receptors, assuming noise control features are included for the generator. Additionally, the building façade would provide a minimum 20 dBA reduction. These assumed noise level reductions are incorporated into the results.

Table 3.3-2: Noise Exposure from Generators On-Site at Adjacent Uses

Receptor	Distance from Center of the Generator Room	Leq, dBA[1]	DNL, dBA[1]
Hotel, south	10 feet	59	45
Commercial, west	20 feet	53	39
Commercial, north	285 feet	30	<25

[1] A conservative 20 dBA reduction was applied to the noise levels due to the elevation of the rooftop equipment.

While the hourly average noise levels during testing of the emergency generators would potentially exceed 55 dBA at the adjacent hotel, this exceedance would only occur for one hour every month, and the 55 dBA DNL threshold would not be exceeded.

Rooftop Equipment

The mechanical equipment located on the roof, which would be elevated above the ground approximately 378 feet, would be surrounded by a wall concealing the equipment. The wall and the elevation of the mechanical equipment would provide at least 20 dBA reduction.

This mechanical equipment area is relatively small and, therefore, would not include a lot of equipment. Assuming worst-case conditions, heating, ventilation, and air condition (HVAC) units would be located in this space. HVAC units typically cycle on and off continuously over a 24-hour period. Assuming up to eight units would be running simultaneously at any given time, hourly average noise levels would be up to 75 dBA Leq at a distance of three feet.

The roof plan shows this mechanical equipment space to be located along the western façade, towards the center of the building. Table 3.3-3 shows the estimated mechanical equipment noise propagated to the surrounding land uses.

Table 3.3-3: Noise Exposure from Rooftop Equipment On-Site at Adjacent Uses

Receptor	Distance from Center of the Rooftop Mechanical Equipment Area	Leq, dBA[1]	DNL, dBA[1]
Hotel, south	95 feet	25	31
Commercial, west	40 feet	33	39
Commercial, north	195 feet	<25	25
Residential & Commercial, east	180 feet	<25	26

[1] A conservative 20 dBA reduction was applied to the noise levels due to the elevation of the rooftop equipment.

The mechanical equipment noise levels would not exceed the City's General Plan or Municipal Code noise limits at the surrounding receptors.

The proposed project would not include operational components which would result in exceedance of existing noise limits for surrounding receptors and would result in a less than significant noise impact.

Truck Loading and Unloading

The proposed project would have truck loading and unloading activities occurring on the ground level, within the parking structure. The loading zone would be completely surrounded by the building, which would provide adequate shielding from all surrounding land uses. Truck deliveries occurring at the project site would not generate noise exceeding 55 dBA DNL at the nearby noise-sensitive land uses. Therefore, the operations of the proposed project would result in a less than significant impact.

Project-Generated Traffic

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

The traffic study prepared for the proposed project included peak hour turning movements for the existing traffic volumes and project trips at four intersections in the vicinity of the project site. The

peak hour project trips were added to the existing traffic volumes to establish the existing plus project traffic scenario. By comparing the existing plus project traffic scenario to the existing scenario, the project would result in less than a two dBA DNL increase along each roadway segment included in the traffic study. Therefore, the project would not result in a permanent noise increase of three dBA DNL or more at noise-sensitive receptors in the project vicinity and would have a less than significant impact.

Construction Noise

Construction of the project is estimated to occur over a period of 33 months, from 7:00 am to 10:00 pm six days a week. Construction activities generate considerable amounts of noise, especially during earthmoving activities when heavy equipment is used. Ambient noise levels at sensitive receptors near the site are estimated to be similar to that of the site itself, 64 to 72 dBA DNL. Peak-hour (7 pm) noise levels would be about one dBA less at 63 to 71 dBA Leq (1-hr). Construction-generated noise levels drop off at a rate of about six dBA per doubling of the distance between the source and receptor.

As seen in Table 3.3-4, project construction would result in noise levels exceeding the existing ambient noise levels by five dBA Leq or more throughout most phases of construction at most nearby receptors. No pile driving is proposed for the construction of the project.

Table 3.3-4: Estimated Construction Noise Levels at Nearby Land Uses

Phase of Construction	Total Work Days	Calculated Hourly Average Noise Levels, L_{eq} (dBA)			
		South Hotel (105ft)	West Commercial (60ft)	East Residential/ Commercial (155ft)	North Commercial (185ft)
Demolition	26	82	87	78	77
Shoring/ Grading/ Excavation	153	79	84	76	75
Foundation/ Structure	506	74	79	71	69
Building Exterior[a]	378	74-77	79-82	70-74	69-72
Building Interior/ Architectural Coating[b]	39	70-78	75-83	67-74	65-73

Notes:
[a]Range of levels reflects building – exterior phase only and during the overlapping period with the foundation/structure phase.
[b]Range of levels reflects building – interior/architectural coating phase only and during the overlapping period with the foundation/structure and building – exterior phases.

Since project construction would last for a period longer than one year and the project site is within 500 feet of existing residences and within 200 feet of existing commercial uses, Policy EC-1.7 of the City's General Plan would consider this construction noise impact to be significant.

Impact NOI-1: Construction noise would exceed ambient levels by five dBA or more for a period of more than one year in the vicinity of residential and commercial uses. **(Significant Impact)**

Mitigation Measures:

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

MM NOI-1.1: Prior to the issuance of any grading or demolition permits, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The logistics plan shall be prepared by a qualified acoustics professional. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and during construction to respond to noise complaints from neighbors. The noise logistic plan 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 grading or demolition permits.

As part of the noise logistics plan, construction activities for the proposed project shall include, but are not limited to, the following best management practices:

- Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists.
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices.
- Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Prohibit all unnecessary idling of internal combustion engines.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences, two weeks prior to the start of each construction phase.
- 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.
- A "noise disturbance coordinator" shall be designated to respond to any 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 disturbance coordinator shall be conspicuously posted at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

With implementation of the identified mitigation measures during all phases of construction and would have a less than significant construction noise impact.

The proposed project would not exceed the City's threshold for the operation of mechanical equipment on-site. The proposed project would increase the ambient noise level through traffic operations by less than two dBA; as a result, implementation of the proposed project would not result in a permanent noise increase of three dBA DNL or more. Additionally, the proposed project would implement mitigation measure MM NOI-1.1 to reduce the impacts of construction noise on sensitive receptors surrounding the project site. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

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

General Policy EC-2.3 of the 2040 General Plan establishes a vibration limit of 0.08 in/sec PPV to minimize the potential for cosmetic damage to sensitive historic structures, and a vibration limit of 0.2 in/sec PPV to minimize damage at buildings of normal conventional construction. Pile driving is not proposed as part of the project. Typical vibration levels that could be expected from construction equipment is summarized below in Table 3.3-5.

Table 3.3-5: Vibration Levels for Construction Equipment at Various Distances

Equipment		West Historical Buildings (5ft)	North Historical Building (210ft)	East Historical Building (120ft)	West & South Hotel/ Commercial Buildings (5ft)	East & North Residential & Commercial Buildings (70ft)
Clam shovel drop		**1.186**	0.019	0.036	**1.186**	0.065
Hydromill (slurry wall)	in soil	0.047	0.001	0.001	0.047	0.003
	in rock	**0.100**	0.002	0.003	0.100	0.005
Vibratory Roller		**1.233**	0.020	0.037	**1.233**	0.068
Hoe Ram		**0.523**	0.009	0.016	**0.523**	0.029
Large bulldozer		**0.523**	0.009	0.016	**0.523**	0.029
Caisson drilling		**0.523**	0.009	0.016	**0.523**	0.029
Loaded trucks		**0.446**	0.007	0.014	**0.446**	0.024
Jackhammer		**0.206**	0.003	0.006	**0.206**	0.011
Small bulldozer		0.018	0.0003	0.001	0.018	0.001

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

The two commercial buildings adjoining the site to the west are considered historic and are subject to the conservative 0.08 in/sec PPV vibration threshold. All other historical buildings surrounding the site would be more than 100 feet from the project's boundaries. Additionally, all other hotel, commercial, and residential buildings surrounding the site would be considered normal conventional construction buildings subject to the 0.2 in/sec PPV threshold.

Groundborne vibration levels from project construction would be anticipated to exceed 1.0 in/sec PPV when construction is located within five feet of the structures adjacent to the project site to the west and south. Vibration levels may still be perceptible in areas further from the site during periods of heavy construction but would not cause structural damage.

Impact NOI-2: Construction vibration activity associated with the proposed project may impact adjacent commercial, and historic structures within five feet of the project site (exceeding 0.08 in/sec PPV vibration). **(Significant Impact)**

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. In accordance with the Downtown Strategy 2040 FEIR, the proposed project would implement the following measures all phases of construction on-site.

MM NOI-2.1: Prior to issuance of any demolition, grading, or building permits, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earliest. The Plan shall include, but not be limited to, the following measures:

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

- Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent building.
- Document conditions at all historic structures located within 60 feet of construction and at all other buildings located within 25 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 60 feet of any construction activities identified as sources of high vibration levels.
    - Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 60 feet of construction activities and all other buildings within 25 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, 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. The survey shall be submitted to the Director of Planning, Building, and Code Enforcement or the Director's designee.

With the implementation of MM NOI-2.1, impacts from groundborne vibration to the surrounding commercial and historic structures would be less than significant. **[Same Impact 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?

According to the City's Mineta San Jose International Airport Master Plan EIR (certified in April 2020), the project site is located just outside the projected 60 dBA CNEL aircraft noise impact area. According to Policy EC-1.11 of the City's General Plan, the required safe and compatible threshold for exterior noise levels would be at or below 65 dBA CNEL/DNL for aircraft. Therefore, the proposed project would be compatible with the City's exterior noise standards for aircraft noise. Assuming standard construction materials for aircraft noise of about 59 dBA DNL, the future interior noise levels resulting from aircraft would be at or below 45 dBA DNL. The Downtown Strategy 2040 FEIR concluded that implementation of General Plan policies and compliance with the local airport land use plans would reduce program-level aircraft noise impacts to a less than significant level. **[Same Impact as Approved Project (Less than Significant Impact)]**

3.5.2.1 *Cumulative Impacts*

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

Construction

Cumulative noise impacts would include temporary construction noise from cumulative construction projects. Cumulative traffic noise increases due to the proposed project was studied in the Downtown San José Strategy Plan 2040 EIR. Therefore, no further cumulative traffic noise increases would occur due to the proposed project.

From the City's website, the projects described in Section 3.0 include several planned or approved projects are located within 1,000 feet of the proposed project Gateway Tower, The Mark, Mixed-use Project, Dot & Bar (Valley Title Project), 420 South 2nd Street, 420 South 3rd Street, San José Stage/Home 2 Hotel Project, South 4th Street Mixed-Use Project.

The existing residences and commercial uses located along South 2nd Street would be considered sensitive receptors during construction activities at Valley Title, Bo Town, and 420 South 2nd Street project sites. Each of these identified project sites are located within the boundary of the Downtown San José Strategy Plan 2040 FEIR. According to the Strategy Plan, implementation of the construction noise and vibration mitigation measures in combination with Policies EC-1.7 and EC-2.3 of the City's General Plan and the construction allowable hours identified in the City's Municipal Code would reduce construction occurring within the Plan Area to a less than significant impact. Each individual project includes measures to further reduce noise and vibration levels emanating from the individual sites. With the implementation of construction noise and vibration mitigation measures included in the Downtown San José Strategy Plan 2040 FEIR and the construction noise

and vibration mitigation measures from the individual projects, construction noise and vibration levels would be reduced as much as possible at all surrounding sensitive receptors during construction of each individual project. Therefore, potential cumulative construction impacts would be less than significant. **(Less than Significant Impact)**

Operational

The proposed project would be consistent with the development proposed under the Downtown Strategy 2040 which determined that development in the downtown area would result in a significant unavoidable cumulative noise impact at existing noise-sensitive land uses adjacent to segments of Santa Clara Street, Autumn Street, San Carlos Street, Bird Avenue, Julian Street, Almaden Boulevard, Race Street, The Alameda, King Road, North First Street, Fruitdale Avenue, Alma Avenue, Naglee Avenue, and Keyes Street. due to substantial increases in traffic noise. The proposed project would contribute trips predominately to South Second Street and East San Salvador Street which were not identified as impacted under the Downtown Strategy 2040. Therefore, the proposed project would not contribute to a cumulative operational noise impact. **(Less than Significant 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 a 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.

In light of this ruling, the effect of existing ambient noise or groundborne vibration on future users or residents of the project would not be considered an impact under CEQA. General Plan Polices EC-1.1 through 1.7, however, require that existing ambient noise levels be analyzed for new residences, office buildings, business commercial, or professional offices and that noise attenuation be incorporated into the project in order to bring interior and exterior noise levels down to acceptable levels. The analysis of noise exposure for future site users discloses information on the project's compliance with General Plan polices.

- For the proposed hotel land use, the City's "normally acceptable" exterior noise level standard is 60 dBA DNL or less and the "conditionally acceptable" exterior noise level standard is 75 dBA DNL or less.
- The California Building Code requires interior noise levels in hotel rooms attributable to exterior environmental noise sources to be limited to a level not exceeding 45 dBA DNL/CNEL in any habitable room.
- The Cal Green Code standards specify an interior noise environment attributable to exterior sources not to exceed an hourly equivalent noise level (Leq (1-hr)) of 50 dBA in occupied areas of non-residential uses during any hour of operation

Future Exterior Noise Environment

The exterior noise threshold established in the City's General Plan for residential uses is 60 dBA DNL at usable outdoor activity areas and 70 dBA DNL at commercial uses. The proposed project includes the following outdoor areas:

- outdoor seating area along South 2nd Street on the eastern façade of the proposed ground-level restaurant
- outdoor seating area associated with the restaurant in a patio area between the restaurant and the residential lobby
- outdoor seating area associated with the residential component of the proposed project, which is divided from the restaurant patio by a wall
- a 30th floor outdoor residential amenity area, including a pool area and barbecue rooms

The proposed project also features private residential balconies for all units; however, within the Downtown Plan Area private balconies are not considered public use outdoor areas subject to the City's exterior noise thresholds.

Residential Land Uses

The center of the ground-level outdoor seating area associated with the residential component of the proposed project would be located about 75 feet from the centerline of South 2nd Street. Assuming the noise levels along South 2nd Street would be similar to noise levels expected along South 1st Street, future exterior noise levels at the center of this outdoor use area would be 68 dBA DNL.

The rooftop pool would be elevated more than 368 feet above the ground. With the center of the pool area set back approximately 65 feet from the centerline of South 2nd Street, and the shielding provided by the building of the roadway below, future exterior noise levels at the rooftop pool would be below 60 dBA DNL. The outdoor barbeque rooms would have greater setbacks than the pool, and therefore, would have more shielding. Future exterior noise levels at the rooftop barbeque rooms would be below 60 dBA DNL.

The City's normally acceptable threshold for residential uses would be exceeded at the ground-level outdoor seating area located in the patio. Considering the usage of this space as outdoor seating along the sidewalk and adjacent to an indoor amenity area, constructing a sound wall would take away from the aesthetic appeal and intention of the outdoor space. Since the future exterior noise levels for the outdoor area would be within the City's conditionally acceptable limits for the proposed uses, no additional noise controls would be required for this outdoor area.

Commercial Retail Uses

The center of the ground-level outdoor seating area along the eastern façade of the restaurant would be located about 60 feet from the centerline of South 2nd Street. Additionally, the center of the restaurant patio would be set back approximately 75 feet from the centerline of South 2nd Street. Future exterior noise levels at the outdoor seating areas of the restaurant would range from 70 dBA DNL at the patio area to 73 dBA DNL along the building façade.

The City's normally acceptable threshold for commercial uses would be exceeded at the ground-level outdoor seating area adjacent to the eastern façade of the restaurant. Considering the usage of this space as outdoor seating along the sidewalk and adjacent to an indoor amenity area, constructing a sound wall would take away from the aesthetic appeal and intention of the outdoor space. Since the future exterior noise levels for the outdoor area would be within the City's conditionally acceptable limits for the proposed uses, no additional noise controls would be required for this outdoor area.

Future Interior Noise Environment

Residential Land Uses

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 are normally required. Such 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.

Residential units would be located on floors three through 28 of the proposed project and they would have setbacks ranging from 55 to 100 feet from the centerline of the surrounding roadways. At these distances, the units facing South 2nd Street would be exposed to future exterior noise levels ranging from 71 to 73 dBA DNL. Assuming windows to be partially open, future interior noise levels in these units would range from 56 to 58 dBA DNL.

Units located on the western façade of the proposed building would be shielded from traffic along South 2nd Street and partially shielded from traffic along South 1st Street; however, the upper floors would have some direct line-of-sight to South 1st Street traffic. Units located along the western façade would be exposed to future exterior noise levels up to 66 dBA DNL. Assuming windows to be partially open, future interior noise levels in these units would be up to 51 dBA DNL. Units facing East San Salvador Street would be exposed to lower levels of noise due to their orientation and location and lower traffic volumes on East San Salvador Street. To meet the interior noise requirements set forth by the City of San José of 45 dBA DNL, implementation of noise insulation features would be required as described in the Conditions of Approval below.

Commercial Retail Uses

Ground-level commercial retail uses would be subject to the state's Cal Green Code. With setbacks of 55 feet from the centerline of South 2nd Street, daytime hourly average noise levels would range from 64 to 72 dBA L_{eq} at the building façades, with day-night average noise levels up to 73 dBA DNL, according to future buildout conditions established in the Downtown San José Strategy Plan 2040 EIR.

Standard construction materials for commercial uses would provide about 25 dBA of noise reduction in interior spaces. The inclusion of adequate forced-air mechanical ventilation systems is normally required so that windows may be kept closed at the occupant's discretion and would provide an additional five dBA reduction. The standard construction materials in combination with forced-air mechanical ventilation would satisfy the daytime threshold of 50 dBA $L_{eq(1\text{-}hr)}$.

Conditions of Approval

Consistent with the requirements for future development under the Downtown Strategy 2040 FEIR and California Building Code, the following measures shall be implemented to reduce interior noise levels to 45 dBA DNL for the residential units or 50 dBA DNL or lower for the commercial portions:

Treatments would include, but are not limited to, sound-rated windows and doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what noise insulation treatments are necessary shall be conducted on a unit-by-unit basis during final design of the project. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City, along with the building plans and approved design, prior to issuance of a building permit.

Noise Insulation Features to Reduce Future Interior Noise Levels

The following noise insulation features shall be incorporated into the proposed project to reduce interior noise levels to 45 dBA DNL or less at residential interiors:

- Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on the project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
- Preliminary calculations indicate that residential units along the eastern building façade would require windows and doors with a minimum rating of 31 to 35 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
- Preliminary calculations indicate that residential units along the western building façade would require windows and doors with a minimum rating of 28 to 32 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.

SECTION 4.0 GROWTH-INDUCING IMPACTS

The project proposes to construct 540 residential units on a 0.75-acre infill site within an urbanized area of downtown San José. 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.

Indirect population growth associated with the proposed project could occur because of the jobs generated by construction of the proposed project, however this would be a temporary condition and would not expand beyond planned growth in the City. In addition, the increase in retail on site would generate more employees. However, the jobs created during operation of the project would be consistent with the planned growth in the Downtown Strategy 2040. The project also includes residences which would directly result in an increase in the residential population, however, the proposed project is consistent with the growth expected in the Downtown Strategy and would not increase the rate of growth in the City beyond that included in the full General Plan buildout.

The project would occur on an infill site in an urbanized area of the City. The project would not require the expansion of utilities or roads. Additionally, due to the project's location in the downtown area and proximity to various modes of transit, any growth that would be accounted for by existing and planned transit options.

SECTION 5.0 SIGNIFICANT AND IRREVERSIBLE ENVIRONMENTAL CHANGES

CEQA and the CEQA Guidelines require that an EIR address "significant irreversible environmental changes which would be involved in the proposed project, should it be implemented." [§15126(c)]

The proposed project would redevelop a currently developed site. The project would not result in significant and irreversible environmental changes to the project site.

Future development on-site would involve the use of non-renewable resources both during construction phases and future operations/use of the site. Construction would include the use of building materials, including materials such as petroleum-based products and metals that cannot reasonably be re-created. Construction also involves significant consumption of energy, usually petroleum-based fuels that deplete supplies of non-renewable resources. 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 development would be constructed in compliance with 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 from any increase in impervious surfaces. Lastly, the site provides a mixed-use building in proximity to existing transportation networks. The proposed project would, therefore, 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 impact has been identified as a result of the project:

- **Air Quality:** Implementation of the proposed project would result in significant cancer risk to sensitive receptors near the project site during construction.

- **Cultural Resources:** Implementation of the proposed project would result in the demolition of the eligible Candidate City Landmark at 409 South 2nd Street.

- **Cultural Resources:** Implementation of the proposed project would result in demolition of the eligible Candidate City Landmark at 409 South 2nd Street, which would constitute a cumulative historic impact.

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.

7.2 SIGNIFICANT IMPACTS FROM THE PROJECT

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

Significant Impacts that would be Mitigated to Less than Significant Levels:

- Air Quality: Construction activities would generate fugitive dust in the form of PM10 and PM2.5 which would significantly contribute to criteria pollutants. **[New Less than Significant Impact with Mitigation Incorporated (Less Than Significant Impact)]**
- Air Quality: The proposed project would result in odors leading to odor complaints due to the presence of the wastewater treatment facility on site. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**
- Biology: Construction activities associated with the proposed project could result in 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)]**
- Cultural Resources: Project ground disturbing activities could result in a substantial adverse change in the significance of an archaeological resource. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**
- Hazards and Hazardous Materials: Construction activities associated with the proposed project could expose construction workers and/or nearby residents to contamination from an off-site source. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**
- Noise: Construction noise would exceed ambient levels by five dBA for a period of more than one year in the vicinity of residential and commercial uses. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**
- Noise: Construction vibration activity associated with the proposed project may impact adjacent structures within five feet of the project site. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

Significant and Unavoidable Impacts:

- **Air Quality:** Implementation of the proposed project would result in significant cancer risk to sensitive receptors near the project site.

- **Cultural Resources:** Implementation of the proposed project would result in the demolition of the eligible Candidate City Landmark at 409 South 2nd Street.

- **Cultural Resources:** Implementation of the proposed project would result in demolition of the eligible Candidate City Landmark at 409 South 2nd Street, which would constitute a cumulative historic impact.

7.3 PROJECT OBJECTIVES

While CEQA does not require that alternatives be capable of meeting all of the project objectives, their ability to meet most of the objectives is considered relevant to their consideration. The objectives of the proposed project are to:

1. Provide a project that meets the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 Plan of locating high density development on infill sites

to strengthen the downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José. Specifically, provide high density, high-rise housing and ground floor retail in the downtown area that is accessible to downtown jobs, retail and entertainment and various modes of public transit.

2. Support the growth strategies by increasing the housing base in the downtown in order to reduce the overall amount of vehicle miles traveled by placing housing in proximity to jobs.

3. Create and raise the quality of downtown housing with a high quality, well designed, high-density, high-rise residential development project in the downtown focus area to further the 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.

4. Construct a high density residential and ground floor retail development that is marketable and produces a reasonable return on investment for the project sponsor and its investors.

5. Provide biking amenities on-site including bicycle parking, bicycle club, and bicycle repair and lounges for residents and neighbors to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community along one of the major bicycle streets within the downtown.

6. Provide a project which draws upon the past heritage of the region's orchards, and the reconstruction of a restaurant frequented in its history in the downtown by the local community and provides an example of integrating these elements into the project and the architectural design.

7. Provide a project which is an example of sustainable design, incorporating environments with enhanced air quality and energy conservation including active solar and higher efficiency systems that save energy and improve the living conditions for its residents and guests.

7.4 ALTERNATIVES

The City considered the following alternatives to the proposed project:

- Location Alternative
- No Project
- Reduced Development
- Preservation Alternative 1 – Relocation of Historic Resource Off-Site
- Preservation Alternative 2 – Preservation of Historic Resource On-site
- Reduced Development and Preservation Alternative

7.4.1 Feasibility of Alternatives

CEQA, the CEQA Guidelines, and case law on the subject have found that feasibility can be based on a wide range of factors and influences. The Guidelines advise that such factors *can* include (but are not necessarily limited to) the suitability of an alternate site, economic viability, availability of infrastructure, consistency with a general plan or with other plans or regulatory limitations,

jurisdictional boundaries, and whether the project proponent can "reasonably acquire, control or otherwise have access to the alternative site" [Section 15126.6(f)(1)].

7.4.2 Project Alternatives

7.4.2.1 *Alternatives Considered and 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".[22] The project proposes to construct 540-room, 30-story building (719 DU/acre) with four levels of underground parking on an approximately 0.75-acre site in the downtown area.

Any project of this size and intensity within the downtown area could be expected to have similar operational impacts, as well as impacts associated with project construction. In addition, the downtown area has historic structures and historic districts throughout. A suitable alternative location would not necessarily preclude impacts to historic structures on-site or adjacent. Therefore, since no suitable alternative site that could meet the basic objectives of the project would reduce all significant impacts, a feasible location alternative was not identified, and was not evaluated further.

Preservation Alternative 1 - Relocation of the Historic Resource Off-Site

The historic report prepared by TreanorHL identified the building at 409 South 2nd Street as an eligible Candidate City Landmark. Historic buildings can be relocated in many circumstances, depending on structural condition, building materials, location, and the availability and suitability of a receiver site. The TreanorHL report noted the eligible Candidate City Landmark could likely be relocated to another site. It would be preferable to relocate the building in a manner that maintains its existing spatial relationship to the roadway (e.g. street frontage with comparable setbacks and on a corner); therefore, locations within the downtown core or closely adjacent were reviewed.

As proposed, this alternative would relocate the eligible Candidate City Landmark off-site and construct the mixed use building as proposed by the project. The lots identified for relocation would need to be large enough to accommodate the building and its general setting.

The building is an approximately 5,283 square feet in area. Given the size of the building, the lot size requirement is not onerous and could allow for the structure to be relocated to a site with other existing buildings. According to the TreanorHL report, the building was renovated in 2009 and was operated as a restaurant up to the present date. Therefore, relocation of the building would be feasible without substantial damage occurring to the structure.

There are 21 surface parking lots within the downtown area of the City which may be suitable for relocation of the eligible Candidate City Landmark on the project site. Of the 21 sites, 10 are entitled or being processed for new development. Nine are associated with existing businesses and would not

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

be available for redevelopment because they are necessary for operations. The remaining two sites are described below.

The lot at the northwest corner of West St. John Street and Notre Dame Avenue would not be suitable because the site is adjacent to a freeway on-ramp on the edge of the downtown area primarily surrounded by single story industrial buildings with limited visibility and access. This setting is not consistent with the current site location which is located in the center of the downtown area within walking distance of historically established single-family and low-rise multi-family neighborhoods and entertainment venues. The lot at the southeast corner of West St. John Street and Market Street while not actively in process, has a preliminary permit application on file.

This alternative would not be feasible due to the lack of locations available in the downtown core which would provide an appropriate setting as a restaurant located in downtown within walking distance of historically established single-family and low-rise multi-family neighborhoods and entertainment venues to retain the historic significance and integrity of the eligible Candidate City Landmark. Any relocation of the building outside of the downtown core would diminish the significance of the eligible Candidate City Landmark as one of the few remaining Googie style commercial buildings in the downtown core. Therefore, relocation of the building was not considered further.

7.4.2.2 *Project Alternatives*

The project alternatives are outlined below. Table 7.4-1 shows a comparison of the alternatives with the proposed project.

Table 7.4-1: Comparison of Feasible Alternatives with the Proposed Project

Scenario	Residential Units	Restaurant Square Footage	Amenities	Parking Spaces	Retention of Historic Structure
Proposed Project	540	5,530	~17,698	175	No
No Project	0	5,283	0	55	Yes
Reduced Development	481	0	~3,698	~154	No
Preservation Alternative 2	345	5,283	~17,698	~105	Yes
Reduced Density/Preservation	504	5,283	~8,698	~161	Yes

No-Project 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 land uses on-site as is. If the project site were to remain as is, the significant impacts of the project resulting during construction of the proposed project would not occur, however, this alternative would not meet any of the project objectives. 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 residential development on a downtown site near transit.

If the proposed project were not approved, it is possible that an alternative development proposal may be proposed for the project site in the future. Based on the General Plan and zoning designations for the project site permitted uses include variety of residential, commercial, and mixed uses. Any future proposals for the site would likely also try to maximize development on-site and result in comparable impacts. Additionally, it would be speculative to assume that a future project would attempt to incorporate a likeness of the Candidate City Landmark as part of its design.

Reduced Development Alternative

The Reduced Development Alternative would relocate the underground parking for the residential units that encompasses the entire project site to above grade podium parking within the envelope of the proposed building. The height of the building would be the same as the proposed project and the massing would not change for the residential floors. Occupation of the first five floors of the building with parking would reduce the number of residential units proposed from 540 units to 481 units. Reducing the number of dwelling units would commensurately reduce the number of parking spaces required for the development.

Relocating the parking from four below grade levels to five podium levels would reduce the excavation required for the project site, the intensity of use of construction equipment and generation of particulate matter and diesel emissions would be reduced. To fully relocate the proposed below-grade parking into the podium, the project would need to replace the first five floors of the building with a podium parking structure. This would displace the planned restaurant, amenity space, and cycling club and result in the loss of 59 residential units proposed to be located on floors three through five.

The project as proposed contains first floor amenities and a restaurant space, and the Reduced Development Alternative would require a relocation or reduction of this space to allow for development for the podium parking. Under the current project design, the parking area for the residential units encompasses an underground area covering the entirety of the project site. To fully relocate the below grade parking area, the proposed project would need to replace the first five floors of the building with a podium parking structure. This would eliminate the restaurant, amenity space, and cycling club and result in the loss of 59 residential units proposed to be located on floors three through five.

Therefore, this alternative would result in 481 dwelling units, no restaurant space, and removal of the first-floor cycling club and amenity space. This is a loss of 59 dwelling units, 5,530 square feet of restaurant, and approximately 14,000 square feet of amenities.

The Reduced Development Alternative would result in a reduction in air quality emissions during the initial phases of construction by substantially reducing the excavation and grading. By reducing these construction phases, and with the proposed mitigation measures, the proposed project would be able to reduce the impacts on air quality to a less than significant level by reducing the use of heavy equipment on-site. The Reduced Development Alternative would still significantly impact the eligible Candidate City Landmark on-site because the building would need to be demolished in order

to expand the ground floor of the building which would instead contain above-grade parking. This alternative would still be required to implement all other mitigation measures, Standard Permit Conditions, and Conditions of Approval identified for the proposed project. As a result, the impacts to noise, hazardous waste, and biological resources would be reduced to a less than significant level.

With these features implemented the Reduced Development alternative would reduce the significant unavoidable construction TAC impact and meet all objectives of the proposed project with the exception of Objectives 3 and 4.

Preservation Alternative 2 - Preservation of the Historic Resource On-site

As noted in *Section 3.3*, the Googie style building at 409 South 2nd Street is an eligible Candidate City Landmark. Under this alternative, the historic resource would be retained on-site, all other structures on-site would be demolished, and a new mixed-use building would be constructed on the remaining areas on-site. The mixed-use building would be the same height and massing as the proposed project. Because eligible Candidate City Landmark would be retained on-site, no parking could be constructed under the existing building, reducing the size of the below-grade parking structure equating to a loss of approximately 70 parking spaces and 195 dwelling units.

The existing restaurant building is approximately 5,283 square feet in area. The project as proposed includes a 5,530 square foot restaurant on the first floor of the building located in approximately the same location as the existing restaurant on-site Therefore, with retention of the existing restaurant building, Preservation Alternative 2 would result in 5,283 square feet of restaurant area, 345 dwelling units, and 105 parking stalls, and would retain all amenities proposed by the project.

Under Preservation Alternative 2, construction air quality and noise impacts would be minimally reduced compared to the proposed project because the size of the project would be slightly smaller and preservation of the eligible Candidate City Landmark would result in less on-site demolition. Although demolition would be reduced, retention of the eligible Candidate City Landmark would preclude the construction of parking under the restaurant structure. As stated above, this would require a reduction in the number of residential units on-site commensurate to the reduced parking provided under the eligible Candidate City Landmark in order to comply with City parking requirements. Excavation for the four levels of below-grade parking under the tower would result in construction operations which would be similar air quality impacts to the proposed project.

The biological resource impacts would remain the same as the proposed project. The timeframe and magnitude of demolition and construction activities would be slightly less than the proposed project, but it would have the same impact on nesting birds on or in the vicinity of the site. The significant unavoidable impacts to historic resources would be avoided under Preservation Alternative 2. This alternative would still be required to implement all other mitigation measures, Standard Permit Conditions, and Conditions of Approval identified for the proposed project. As a result, the impacts to noise, hazardous waste, and biological resources would be reduced to a less than significant level consistent with the proposed project. Construction of this alternative would still require substantial excavation and construction that would contribute to cancer risk for nearby sensitive receptors.

Preservation Alternative 2 would meet all the objectives for the proposed project. The alternative would avoid the significant and unavoidable impact to the eligible Candidate City Landmark, which

would be preserved on-site and would be reused as a restaurant with minor interior improvements. No exterior modifications would be permitted.

Reduced Density and Preservation Alternative

The Reduced Density and Preservation Alternative would be a hybrid of the other alternatives which would retain the eligible Candidate City Landmark and construct the proposed residential tower. The tower would be the same height and massing as the proposed project, but there would be no below-grade parking. All parking would be located above-grade within the tower.

The proposed project would be parked at a ratio of 0.36 spaces per residential unit and 21 units per residential floor. This alternative would maintain the same unit count per floor and the same parking ratio. Parking is estimated to be 42 spaces per floor to allow for the inclusion of necessary mechanical equipment.

By keeping all aspects of the project within the footprint of the proposed tower, this alternative would result in 4.5 levels of above grade parking, 24 floors of residential units, and would not contain any of the proposed amenity space. Specifically, parking would be provided on the first four floors of the building and half of the fifth floor for approximately 161 parking spaces. The other half of the fifth floor would be amenity space. The upper 24 floors would have up to 504 residential units. The residential unit count and parking count are general estimates only, but this alternative would result in a reduction of approximately 36 units and approximately 9,000 square feet of amenity space. The total available units and parking spaces under this alternative could be less because of the need for non-occupiable space within the building for utilities, elevators, mechanical, bicycle parking, etc. Therefore, the Reduced Density and Preservation Alternative would consist of 504 dwelling units and retain the current restaurant space.

With this alternative, the eligible Candidate City Landmark would be retained on-site and reused as a restaurant by the applicant with no exterior modifications allowed, thereby avoiding the significant unavoidable historic resources impact. In addition, by limiting grading and excavation, the significant unavoidable TAC air quality impact would be reduced to less than significant with the inclusion of the identified mitigation. All other impacts would be comparable to the proposed project and this alternative would be required to implement all identified mitigation measures, Standard Permit Conditions, and Conditions of Approval. This alternative would achieve all objectives of the project with the exception of Objective 4 because the bicycle amenities would not be included in the project.

7.4.3 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. The chart uses the following acronyms: LTSM = Less than Significant with Mitigation; NI = No Impact; SU = Significant and Unavoidable Impact.

Significant Project Impacts	Proposed Project	No Project-No Redevelopment Alternative	Reduced Development Alternative	Preservation Alternatives		Reduced Density and Preservation Alternative
				1	2	
Construction activities would generate fugitive dust in the form of PM10 and PM2.5 which would significantly contribute to criteria pollutants.	LTSM	**NI**	LTSM	LTSM	LTSM	LTSM
Construction activities associated with the proposed project would expose infants near the project site to toxic air contaminant emissions in excess of BAAQMD thresholds (cancer risk and PM2.5 concentration).	SU	**NI**	**LTSM**	SU	SU	**LTSM**
The proposed project would result in odors leading to odor complaints due to the presence of the wastewater treatment facility on site.	LTSM	**NI**	LTSM	LTSM	LTSM	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.	LTSM	**NI**	LTSM	LTSM	LTSM	LTSM
Implementation of the proposed project would result in the demolition of one historic structure that is eligible for Candidate City Landmark status, the mixed-use building at 409 South 2nd Street on the project site.	SU	**NI**	SU	**LTSM**	**LTSM**	**LTSM**
Implementation of the proposed project would result in demolition of the historic restaurant building at 409 South 2nd Street, which	SU	**NI**	SU	**LTSM**	**LTSM**	**LTSM**

Significant Project Impacts	Proposed Project	No Project-No Redevelopment Alternative	Reduced Development Alternative	Preservation Alternatives		Reduced Density and Preservation Alternative
				1	2	
would constitute a cumulative loss of historic resources.						
Construction activities associated with the proposed project could expose construction workers and/or nearby residents to contamination from an off-site source.	LTSM	**NI**	LTSM	LTSM	LTSM	LTSM
Construction noise would exceed ambient levels by five dBA for a period of more than one year in the vicinity of residential and commercial uses.	LTSM	**NI**	LTSM	LTSM	LTSM	LTSM
Construction activity associated with the proposed project may impact adjacent structures within five feet of the project site.	LTSM	**NI**	LTSM	LTSM	LTSM	LTSM

7.4.4 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 Project Alternative would retain the site in its current condition with the eligible Candidate City Landmark. Retaining the status quo on the site would avoid all construction and operational impacts associated with the project, including the significant and unavoidable loss of the historic resource and air quality impacts from construction. Therefore, the No Project Alternative is the environmentally superior alternative; however, it would not achieve the project objectives.

CEQA Guidelines Section 15126.6 (e)(2) states that "if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. Beyond the No Project Alternative, the Reduced Development and Preservation Alternative would be the environmentally superior alternative.

The Reduced Development and Preservation Alternative would result in reduced noise and air quality impacts compared to the proposed project and avoid all the significant and unavoidable impacts on

air quality and historic resource impacts. This alternative would achieve all objectives of the project with the exception of Objective 4 because the bicycle amenities would not be included in the project.

SECTION 8.0 REFERENCES

The analysis in this Initial Study 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:

ABAG, Projections 2040: Forecasts for Population, Household, and Employment for the Nine County San Francisco Bay Area Region. 2017.

AEI Consultants. Phase I Environmental Site Assessment. January 25, 2021.

Association of Bay Area Governments and Metropolitan Transportation Commission. "Project Mapper." Accessed August 31, 2021. http://projectmapper.planbayarea.org/.

Association of Bay Area Governments. "Tsunami Maps and Information." Accessed November 12, 2020. http://resilience.abag.ca.gov/tsunamis/.

BAAQMD. Final 2017 Clean Air Plan. April 19, 2017. http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans.

Bay Area Air Quality Management District. "Annual Bay Area Air Quality Summaries." Accessed November 15, 2021. Available at: http://www.baaqmd.gov/about-air-quality/air-quality-summaries.

CalEEMod. "Table 9.1: Water Use Rates." Accessed February 17, 2021. http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixd.pdf.

California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed September 10, 2021. https://www.arb.ca.gov/research/diesel/diesel-health.htm.

California Air Resources Board. "The Advanced Clean Cars Program." Accessed September 15, 2021. https://www.arb.ca.gov/msprog/acc/acc.htm.

California Building Standards Commission. "California Building Standards Code." Accessed September 28, 2021. https://www.dgs.ca.gov/BSC/Codes#@ViewBag.JumpTo.

California Department of Conservation Website. "CGS Information Warehouse: Regulatory Maps." Accessed June 23, 2021. http://maps.conservation.ca.gov/cgs/informationwarehouse/index.html?map=regulatorymaps.

California Department of Conservation. Important Farmland Finder. Accessed February 3, 2021. https://maps.conservation.ca.gov/DLRP/CIFF/.

California Department of Education. Abraham Lincoln High School Accountability Report Card. Accessed February 17, 2021. https://admin.sarconline.org/Sarc/Print/43696664333795?year=2019-2020.

California Department of Education. Gardner Elementary School Accountability Report Card. Accessed February 17, 2021. https://admin.sarconline.org/Sarc/Print/43696666048532?year=2019-2020.

California Department of Education. Herbert Hoover Middle School Accountability Report Card. Accessed February 17, 2021. https://admin.sarconline.org/Sarc/Print/43696666062111?year=2019-2020.

California Department of Housing and Community Development. "Regional Housing Needs Allocation and Housing Elements" Accessed August 31, 2021. http://hcd.ca.gov/community-development/housing-element/index.shtml.

California Department of Tax and Fee Administration. "Net Taxable Gasoline Gallons." Accessed August 31, 2021. https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=VehicleTaxableFuelDist.

California Department of Water Resources, Division of Safety of Dams. Accessed June 9, 2020. https://water.ca.gov/Programs/All-Programs/Division-of-Safety-of-Dams#:~:text=Since%20August%2014%2C%201929%2C%20the,Safety%20of%20Dams%20(DSOD).

California Energy Commission (CEC). "2019 Building Energy Efficiency Standards." Accessed September 28, 2021. https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2019-building-energy-efficiency.

California Energy Commission. "Natural Gas Consumption by County." Accessed August 31, 2021. http://ecdms.energy.ca.gov/gasbycounty.aspx.

California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." Accessed August 31, 2021. http://ecdms.energy.ca.gov/elecbycounty.aspx.

California Gas and Electric Utilities. 2019 California Gas Report. Accessed August 31, 2021. https://www.socalgas.com/regulatory/documents/cgr/2019_CGR_Supplement_7-1-19.pdf.

California Office of Historic Preservation. "CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6." Accessed August 31, 2020. http://www.ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf.

California Office of Historic Preservation. "CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6." Accessed February 3, 2021. http://www.ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf.

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

CalRecycle. “Estimated Solid Waste Generation Rates.” Accessed February 17, 2021. https://www2.calrecycle.ca.gov/WasteCharacterization/General/Rates.

Case, Jill. Director of Student Operational Services. San José Unified School District. Personal Communication. March 27, 2020.

City of San José, City of San José. Annual Report on City Services 2019-20. Accessed February 12, 2021. https://www.sanjoseca.gov/home/showpublisheddocument?id=67957.

City of San José. Downtown Strategy 2040 FEIR. December 2018. https://www.sanjoseca.gov/Home/ShowDocument?id=44054.

City of San José. Greenhouse Gas Reduction Strategy. November 2020. https://www.sanjoseca.gov/your-government/department-directory/planning-building-code-enforcement/planning-division/environmental-planning/greenhouse-gas-reduction-strategy.

City of San José. San José-Santa Clara Regional Wastewater Facility. Accessed August 12, 2020. http://www.sanjoseca.gov/?nid=1663.

County of Santa Clara. Geologic Hazards Zones, Map 20, 2012. Accessed June 23, 2021. https://www.sccgov.org/sites/dpd/DocsForms/Documents/GEO_GeohazardATLAS.pdf.

E.J. Helley, R.W. Graymer, G.A. Phelps, P.K. Showalter, and C.M. Wentworth. Quaternary Geology of Santa Calra Valley, Santa Clara, Alameda, and San Mateo Counties, California: A digital database. May 1994.

Fehr and Peers. Bo Town Residential Local Transportation Analysis (LTA). March 2022.

FEMA. Flood Insurance Rate Map: Santa Clara County Panel 234 of 830. Map Number 06085C0234H. May 18, 2009.

Harvie, Nicole. City of San José. “Fwd: Online Form Submittal: Contact Environmental Services” E-mail to David J. Powers and Associates, Inc. February 26, 2018.

HMH. Certified Tree Inventory. December 28, 2020.

Holman and Associates Archeological Consultants. Archaeological Literature Search for Bo Town Mixed Use Project at 409 South 2nd Street. March 30, 2021.

Illingworth and Rodkin. Bo Town Mixed-Use Project Air Quality Assessment. November 12, 2021.

Illingworth and Rodkin. Botown Mixed-Use Project Noise and Vibration Assessment. November 11, 2021.

J. McLaughlin, J.C. Clark, E.E. Brabb, E.J. Helley, and C.J. Colon. USGS. Geologic Maps and Structure Sections of the Southwestern Santa Clara Valley and Southern Santa Cruz Mountains, Santa Clara and Santa Cruz Counties, California. 2001.

Metropolitan Transportation Commission. Transit Priority Areas (2017). Accessed September 13, 2021. http://opendata.mtc.ca.gov/datasets/d97b4f72543a40b2b85d59ac085e01a0_0?geometry=-121.930%2C37.306%2C-121.898%2C37.312.

North, Daniel. General Manager, Republic Services. Personal Communication. April 19, 2021.

Odell Planning and Research, Inc. Development Fee Justification Study Prepared for the San José Unified School District. April 2014

Public Law 110–140—December 19, 2007. Energy Independence & Security Act of 2007. Accessed August 31, 2021. http://www.gpo.gov/fdsys/pkg/PLAW-110publ140/pdf/PLAW-110publ140.pdf.

Santa Clara County. Five-Year CIWMP/RAIWMP Review Report. June 2016.

Santa Clara Valley Habitat Agency. "GIS Data & Key Maps." Accessed February 3, 2021. http://www.hcpmaps.com/habitat/.

Santa Clara Valley Water District. "Anderson Dam Flood Inundation Maps." Accessed November 12, 2020. https://www.valleywater.org/sites/default/files/Anderson%20Dam%20Inundation%20Maps%202016.pdf.

Santa Clara Valley Water District. "Lexington Dam Flood Inundation Maps." Accessed November 12, 2020. https://www.valleywater.org/sites/default/files/Lexington%20Dam%20Inundation%20Map%202016.pdf.

Santa Clara Valley Water District. Groundwater Management Plan. November 2016.

State of California, Department of Finance, E-5 Population and Housing Estimates for Cities, Counties and the State — January 1, 2011-2020. Sacramento, California, May 2019.

The City of San Jose. Downtown Strategy 2040 Integrated Final Environmental Impact Report. SCH# 2003042127, December 2018.

TreanorHL. Historic Resource Assessment & Design Guidelines and Standards Compliance Review. July 6, 2021.

United States Department of Agriculture. Soil Survey: Elpaloalto Series. Accessed: June 23, 2021. https://soilseries.sc.egov.usda.gov/OSD_Docs/E/ELPALOALTO.html.

United States Department of Energy. Energy Independence & Security Act of 2007. Accessed August 31, 2021. http://www.afdc.energy.gov/laws/eisa.

United States Energy Information Administration. "State Profile and Energy Estimates, 2019." Accessed August 31, 2021. https://www.eia.gov/state/?sid=CA#tabs-2.

United States Energy Information Administration. “State Profile and Energy Estimates, 2019.” Accessed August 31, 2021. https://www.eia.gov/state/?sid=CA#tabs-2.

United States Environmental Protection Agency. “The 2018 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975.” March 2019.

United States Environmental Protection Agency. Waterbody Quality Assessment Report for 2016 Waterbody Report for Guadalupe River (Santa Clara Co.). 2016. Accessed February 12, 2021. https://mywaterway.epa.gov/community/95050/overview.

SECTION 9.0 LEAD AGENCY AND CONSULTANTS

9.1 LEAD AGENCY

City of San José
Department of Planning, Building and Code Enforcement
Chris Burton - Director of Planning, Building, and Code Enforcement for the City of San Jose
David Keyon - Principal Planner, City of San José Planning Department
Kara Hawkins - Planner, City of San José Planning Department

9.2 CONSULTANTS

David J. Powers & Associates, Inc.
Environmental Consultants and Planners
Shannon George, Principal Project Manager
Patrick Kallas, Associate Project Manager
Ryan Osako, Graphic Artist

AEI Consultants
Phase I Environmental Site Assessment
Tory Golino

Fehr and Peers
Traffic Consultants
Mark Soendjojo
Steve Davis

Illingworth & Rodkin, Inc
Acoustic and Air Quality Consultants
James Reyff, Principal
Michael Thill
Casey Divine
Carrie Janello

Holman and Associates
Cultural Resources Assessment
Sunshine Psota

HMH
Certified Tree Assessment
William Sowa

TreanorHL
Archaeologist and Historian
Kimberly Butt, Principal
Elizabeth Graux, Architect