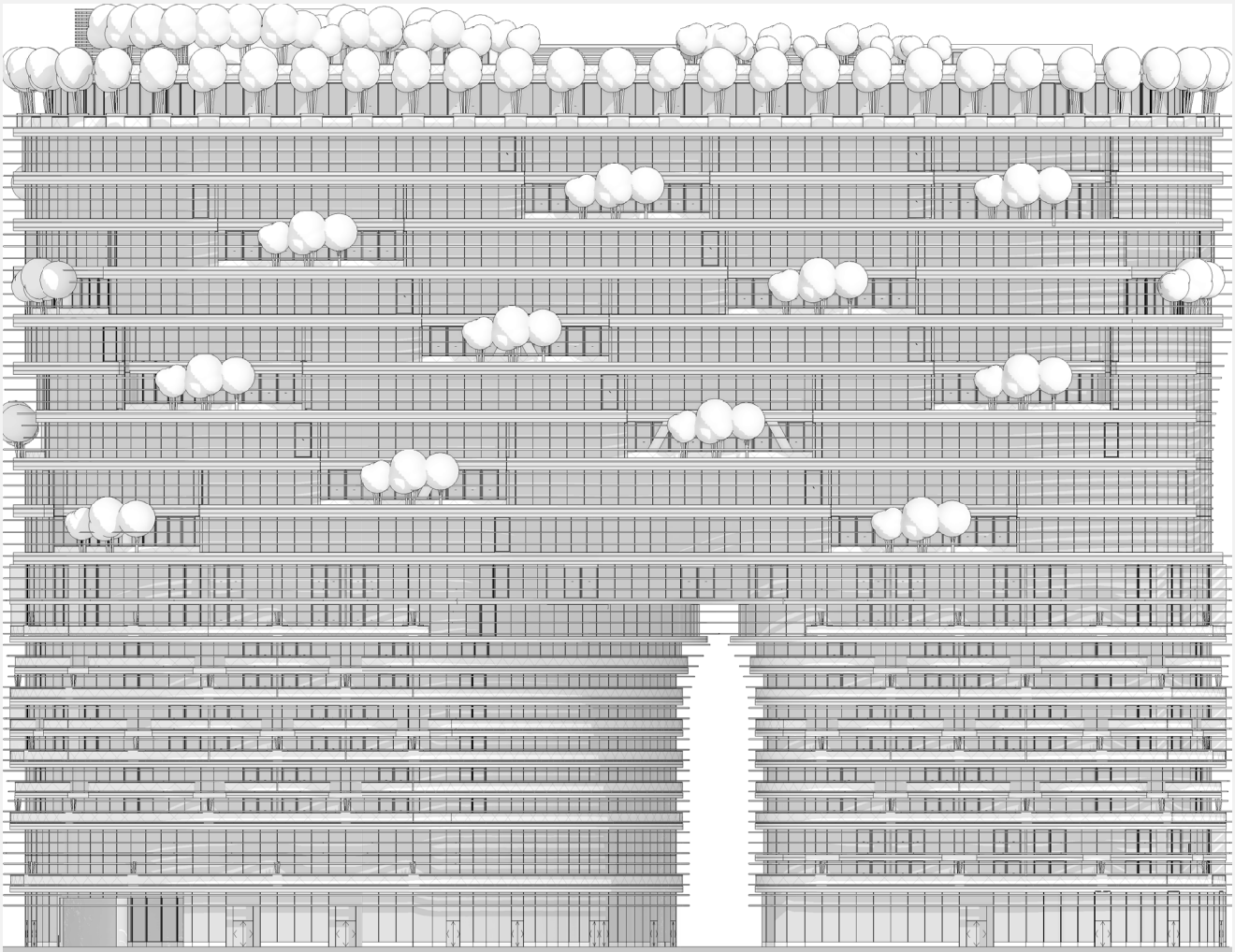
Supplemental Environtmental Impact Report

San José Fountain Alley Mixed-Use

File Nos. H20-037 & ER20-242



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SUMMARY

The site is currently developed with a surface parking lot. The project proposes to remove the existing parking lot and construct a 21-story curvilinear mixed-use building with up to 194 dwelling units, approximately 31,959 square feet of ground floor retail, and 405,924 square feet of office space. The following is a summary of the significant impacts and mitigation measures addressed within this Draft SEIR. The project description and full discussion of impacts and mitigation measures can be found in *Section 2.0 Project Description* and *Section 3.0 Environmental Setting, Impacts, and Mitigation*.

Significant Impacts	Mitigation Measures
Air Quality	
Impact AIR-1: Construction activities associated with the proposed project would expose the project maximum exposed individuals (MEIs) to a cancer risk of 32.44 cases per one million (for infants) and a maximum-annual $PM_{2.5}$ concentration of 0.46 µg/m^3 which exceeds BAAQMD significance thresholds of 10 cases per one million for cancer risk and 0.3 µg/m^3 for $PM_{2.5}$, respectively. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**	**MM AIR-1.1:** Prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest), the project applicant shall prepare and submit a construction operations plan that includes specifications of the equipment to be used during construction to the Director of Planning, Building and Code Enforcement or the Director's designee. 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. • For all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total, use equipment that meet U.S. Environmental Protection Agency (EPA) Tier 4 emission standards for particulate matter (PM_{10} and $PM_{2.5}$). • If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a 70 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.

	• Use of alternatively fueled or electric equipment. • Stationary cranes and construction generator sets 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 70 percent or greater. The plan shall be reviewed and approved by the Director of Planning or Director's designee of the City of San José Department of Planning, Building and Code Enforcement prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).
Biological Resources	
Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**	**MM BIO-1.1:** Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive. If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist 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

	ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest. The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction. Prior to any tree removal, or approval of any demolition or grading permits (whichever occurs first), the applicant shall submit an ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.
Cultural Resources	
Impact CUL-1: Project ground disturbing activities could result in a substantial adverse change in the significance of unknown archaeological resources. **[Same Impact as Approved Project (Less than Significant Impact)]**	**MM CUL-1.1: Cultural Sensitivity Training.** Prior to issuance of any grading permit, the project applicant shall be required to submit evidence that a Cultural Awareness Training program has been provided to 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. **MM CUL-1.2:Sub-Surface Monitoring.** A qualified archaeologist, 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 also 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, the applicant shall notify the Director of Planning, Building, and Code Enforcement, or Director's designee, of grading and construction dates and activities that a qualified archeologist and Native American

	monitor would be present on the project site during. **MM CUL-1.3: Treatment Plan.** 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.

	MM CUL-1.4: Evaluation. The project applicant shall notify the Director of Planning, Building, and Code Enforcement or the Director's designee of any finds during grading or other construction activities. Any historic or prehistoric material identified in the project area 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, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Information Center, and the Director of Planning, Building, and Code Enforcement or the Director's designee.
Hazards and Hazardous Materials	
Impact HAZ-1: Construction activities associated with the proposed project could expose construction workers and nearby land uses to soil and/or groundwater contamination (e.g., tetrachloroethene) from the former coffee roaster business. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**	**MM HAZ-1.1:** Prior to the issuance of any demolition or grading permit(s), the project applicant shall retain a qualified environmental professional to conduct a Phase II soil, soil gas and/or groundwater investigation to determine if the soil, soil gas, and groundwater from former uses of the site have contaminants in concentrations above established construction/trench worker and residential or commercial Regional Water Quality Control Board Environmental Screening Levels (ESLs). If the Phase II results indicate soil, soil gas and/or groundwater contamination above regulatory environmental screen levels, the project applicant must enter into the Santa Clara County Department of Environment Health (SCCDEH) Site Cleanup Program (SCP) to obtain regulatory oversight from SCCDEH. Any further investigation and remedial actions must be performed under regulatory oversight to mitigate the contamination and make the site suitable for the proposed residential

	development. A report of the findings and of applicable regulatory oversight will be provided to the Director of Planning, Building and Code Enforcement or Director's designee and the Municipal Compliance Officer of the City of San José Environmental Services Department for review. **MM HAZ-1.2:** If soil, soil gas, or groundwater contamination is identified, the project applicant shall implement appropriate management procedures, such as removal of the contaminated soil and implementation of a Site Management Plan (SMP), Removal Action Workplan (RAP), or equivalent document under regulatory oversight from the SCCDEH or State Department of Toxic Substances Control (DTSC). Copies of all environmental investigations shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee and the Supervising Environmental Compliance Officer in the City of San José's Environmental Services Department. The SMP shall be prepared by a qualified hazardous materials consultant and include the following: • Management practices for handling contaminated soil or other materials if encountered during construction or cleanup activities and measures to minimize dust generation, stormwater runoff, and tracking of soil off-site. • Preliminary Remediation Goals (PRGs) for environmental contaminants of concern to evaluate the site conditions following SMP implementation. • A health and safety plan (HSP) for each contractor working at the site that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety

	requirements to minimize work and public exposure to hazardous materials during construction. The SMP shall be prepared and submitted to SCCDEH or DTSC for review and approval prior to issuance of grading permits and commencement of cleanup activities. The approved SMP shall detail procedures and protocols for management of soil containing environmental contaminants during site development activities. The approved SMP or No Further Action letter (or equivalent assurance) from SCCDEH or DTSC documenting completion of cleanup activities shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee prior to issuance of any grading permit.
Noise and Vibration	
Impact NOI-1: Construction noise would exceed ambient levels of 64 to 69 dBA L_{eq} by five dBA or more for a period of more than one year. **[Less Impact than Approved Project with Mitigation Incorporated (Significant Unavoidable Impact)]**	**MM NOI-1.1:** Prior to the issuance of any grading or demolition permits, whichever occurs first, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits for review and approval. As part of the noise logistic plan, construction activities for the proposed project shall include, but are not limited to, the following best management practices:

	• Construction shall be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses. • The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components. • Prohibit all unnecessary idling of internal combustion engines. Staging areas and stationary noise-generating equipment shall be located as far as possible from sensitive receptors (a minimum of 200 feet, where feasible). • The surrounding neighborhood within 500 feet shall be notified early and frequently of the construction activities. • Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists. • 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 will 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 levels would exceed the 0.08 in/sec PPV threshold by 0.13 in/sec PPV for historic buildings within 60 feet of the project site. **[Same Impact as Approved Project (Less Than Significant Impact)]**	**MM NOI-2.1:** Prior to issuance of any demolition, grading, or building permits, whichever occurs earliest, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to issuance of any demolition, grading, or building permit, whichever occurs earliest. The Plan shall include, but not be limited to, the following measures: • A description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. • A list of all heavy construction equipment to be used for this project known to produce high vibration levels (e.g., clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning, Building or Code Enforcement or the Director's designee by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort for reducing vibration levels below the thresholds. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period. • Use of heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent building (where possible). • Document conditions at all historic structures located within 60 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. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion. The surveys shall include internal and external crack monitoring in the structure, settlement, and distress, and shall document the condition of the foundation, walls and other structural elements in the interior and exterior of the structure. • Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approach the limits. • At a minimum, vibration monitoring shall be conducted during demolition and excavation activities. • If vibration levels approach limits, construction shall be suspended and contingency measures shall be implemented to lower vibration or secure affected structures.

	• Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site. • Conduct a post-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs in accordance with the Secretary of the Interior's Standards where damage has occurred as a result of construction activities. The survey shall be submitted to the City of San José Director of Planning, Building, and Code Enforcement or Director's designee. **MM NOI-2.2:** Prior to commencement of any construction activities, including any ground disturbing activities, the project applicant shall prepare and implement a Historical Resources Protection Plan (HRRP) that provides measures and procedures to protect nearby historic resources from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage). The HRRP shall be prepared by a qualified Historic Architect and reviewed and approved by the Historic Preservation Officer or equivalent of the City of San José Department of Planning, Building and Code Enforcement prior to demolition and Public Works clearance, including any ground-disturbing work. The project applicant shall ensure the construction contractor follows the HRRP while working near these historic resources. At a minimum, the plan shall include: • Guidelines for operation of construction equipment adjacent to historical resources; • Means and methods to reduce vibrations levels from excavation and construction; • Requirements for monitoring and documenting compliance with the HRRP; and

	• Education/training of construction workers about the significance of the adjacent historical resources. **MM NOI-2.3:** The Historic Architect shall establish a "Monitoring Team" comprised of at least one qualified Historic Architect and one qualified structural engineer for the duration of the site monitoring process. The Monitoring Team shall monitor the adjacent historical resources and any changes to existing conditions shall be reported, including, but not limited to, expansion of cracks, new spalls, or other exterior deterioration during construction phase and any changes to the existing conditions shall be reported. In addition, the Monitoring Team shall prepare a site visit report documenting all site visits. The Monitoring Team shall submit the site visit reports and documents to the City's Historic Preservation Officer no later than one week after each reporting period (as defined by the HRRP). The City's Historic Preservation Officer shall determine the frequency of the reporting period. The structural engineer shall consult with the Historic Architect if any problems related to the character-defining features of the historic resources occur. The Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement may request any additional number of site visits at their discretion. If, in the opinion of the Monitoring Team, substantial adverse impacts related to construction activities are found during construction, the Monitoring Team shall inform the project applicant (or the applicant's designated representative responsible for construction activities), the Director of Planning, Building and Code Enforcement or the Director's designee, and the Historic Preservation Officer of the potential impacts

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

Summary of Alternatives to the Proposed Project

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

Location Alternative

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

No Project – No Development

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

Reduced Height (Four-Stories), Two Buildings Alternative

Under the *Reduced Height (Four-Stories), Two Buildings Alternative*, the 21-story curvilinear building (up to 267 feet to the top of the roof) would be reduced to two, four-story rectangular-shaped buildings (up to 60 feet) with a 10-foot wide alleyway located in between the two buildings. Under this alternative, the two buildings would have a combined total of up to 123,300 square feet of office space and up to 42,200 square feet of retail space (totaling 165,500 square feet). No dwelling units are proposed under this alternative. The project under this alternative would include up to 11,430 square feet of public realm outdoor space. The size of the below-grade parking garage would remain as is proposed.[1] Under this alternative, the above-grade construction timeframe would be reduced from 34 to 28 months.[2]

Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative

Similar to the *Reduced Height (Four-Stories), Two Buildings Alternative*, the *Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative* would include two buildings with a 10-foot wide alleyway located in between. The building located north of the alleyway (Building 3) would be 17 stories tall and consist of office and ground floor retail while the building located south of the alleyway (Building 4) would be 20 stories tall and consist of residential, office, and ground floor retail. Building 3 would be a maximum of 267 feet tall (to the top of the roof, which is the same as the proposed project) and would step down to 40 feet along the northern building façade and 60 feet along the southern and western building façades. Building 4 would be up to 217 feet to the top of the roof and would step down to 40 feet along the southern and western building façades. Under this

[1] Lien, Hunter. Westbank. Personal communication. June 17, 2022.
[2] Ibid.

alternative, the buildings would consist of approximately 250,818 square feet of office space, approximately 42,900 square feet of retail space, and up to 170 dwelling units (totaling approximately 501,198 square feet). The project under this alternative would also include up to 11,430 square feet of public realm outdoor space. The size of the below-grade parking garage would remain as is proposed.[3] Under this alternative, the above-grade construction timeframe would be reduced from 34 to 32 months.[4]

Areas of Public Controversy

Areas of public concern include:

- Impacts to known cultural resources
- Impacts to nearby/adjacent historic structures and the San José Downtown Commercial National Register Historic District
- Impacts to VTA transit services (e.g., light rail facilities and bus operations)
- Impacts to groundwater

[3] Lien, Hunter. Westbank. Personal communication. June 17, 2022.
[4] Ibid.

SECTION 1.0 INTRODUCTION

1.1 PURPOSE OF THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT

The City of San José, as the Lead Agency, has prepared this Draft Supplemental Environmental Impact Report (SEIR) to the Downtown Strategy 2040 Final Environmental Impact Report (FEIR) for the San José Fountain Alley Mixed-Use Project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines.

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

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

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

This SEIR tiers from the Downtown Strategy 2040 FEIR because the project was included in the overall development that was analyzed for that document at a program level. An SEIR is required for this project because project-specific information was not available at the time the Downtown Strategy 2040 FEIR was prepared. An Initial Study prepared for the proposed project (see Appendix A) identified significant impacts to air quality, biological resources, cultural resources, hazardous materials, and noise and vibration. Thus, this SEIR to the Downtown Strategy 2040 FEIR has been prepared to address this potential new significant impact. The SEIR evaluation process is the same as the SEIR process as outlined below in *Section 1.2*.

1.1.1.1 *Employment Priority Area*

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

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

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

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

1.2 SEIR PROCESS

1.2.1 Notice of Preparation and Scoping

In accordance with Section 15082 of the CEQA Guidelines, the City of San José prepared a Notice of Preparation (NOP) for this SEIR. The NOP was circulated to local, state, and federal agencies on May 24, 2021. The standard 30-day comment period concluded on June 24, 2021. The NOP provided a general description of the proposed project and identified possible environmental impacts that could result from implementation of the project. The City of San José also held a public scoping meeting on June 14, 2021 to discuss the project and solicit public input as to the scope and contents of this SEIR. The meeting was held virtually over Zoom. Appendix J of this SEIR includes the NOP and comments received on the NOP.

1.2.2 Draft SEIR Public Review and Comment Period

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

Kara Hawkins, *Environmental Project Planner*
Kara.Hawkins@sanjoseca.gov
(408) 535-7852
200 East Santa Clara Street, 3rd Floor
San José, CA 95113

1.3 FINAL EIR/RESPONSES TO COMMENTS

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

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

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

1.3.1 Notice of Determination

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

Since circulation of the NOP, changes to the square footages of the office, residential, and retail have occurred. The changes to the proposed project are shown in the table below.

Summary of Proposed Changes to the Project		
Project Component	**Original Project**	**Proposed Project**
Office Square Footage (sqft)	405,924	368,093
Retail Square Footage (sqft)[1]	31,959	30,790
Residential Square Footage (sqft)	303,219	268,899
Open Space (sqft)[2]	22,500	22,500
No. of Residential Units	194	194
Maximum Building Height (feet)	289	289
Total Parking Spaces	292	289

Notes: [1] The retail space includes the gym proposed on the second floor.
[2] Includes 8,700 square feet for the paseo and 13,800 square feet for the Fountain Alley alleyway.

The original project provides a more conservative analysis; therefore, the square footages listed under the original project were analyzed in this document.

2.1 PROJECT LOCATION

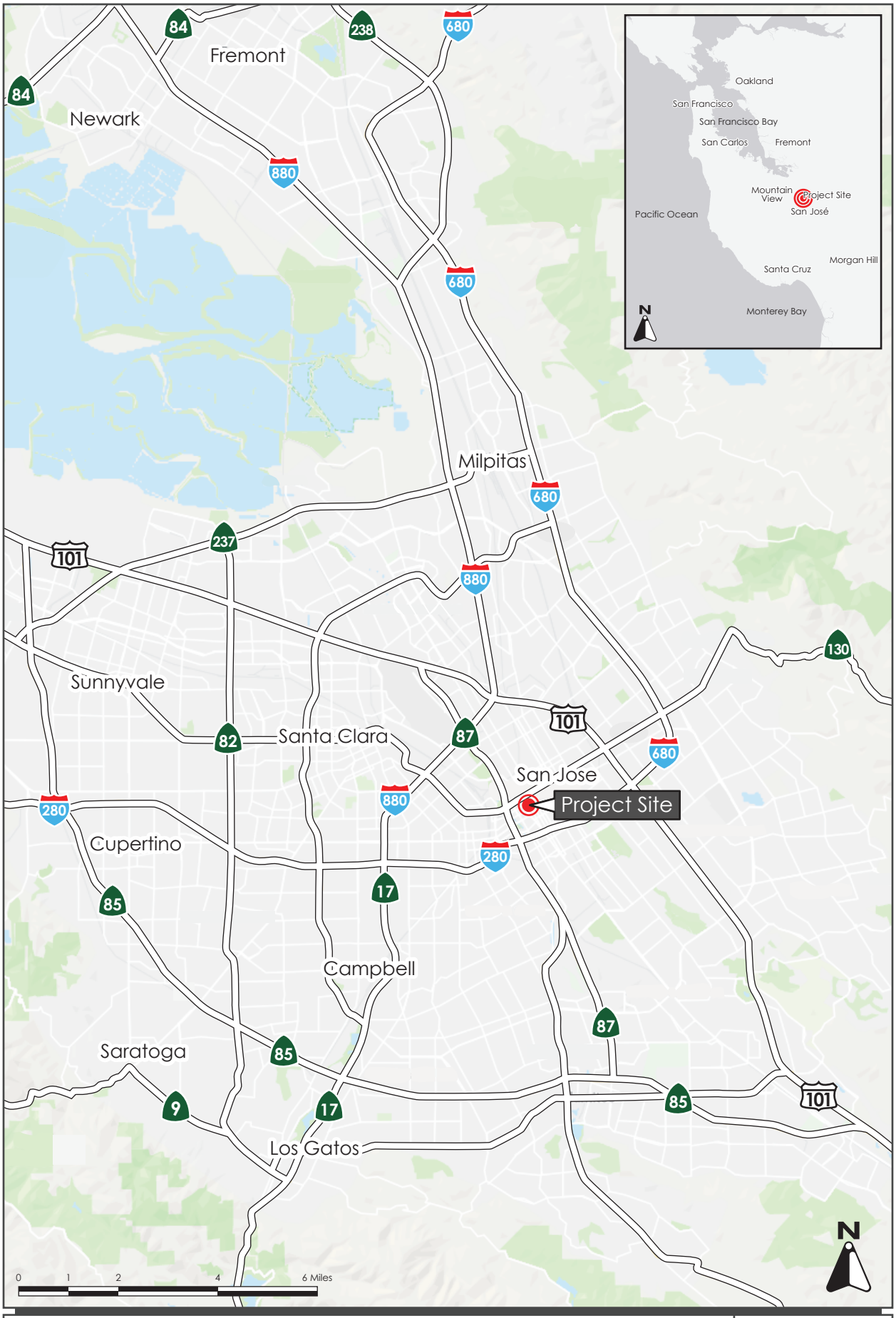
The approximately 1.25-acre site is comprised of one parcel (Assessor's Parcel Number [APN] 467-22-121) located west of Second Street, between East Santa Clara Street and West San Fernando Street, in the Fountain Alley area of downtown San José. Currently, the site is developed with a surface parking lot and is listed as a non-contributing parcel within the San José Downtown Commercial Historic District (Historic District).[5] Refer to Figures 2.1-1 to 2.1-3 for the regional, vicinity, and aerial maps.

Vehicular access to the project site is currently provided via one egress driveway and one ingress driveway along South Second Street.

2.2 PROJECT DESCRIPTION

As proposed, the project would remove the existing parking lot and construct a 21-story curvilinear mixed-use building with up to 194 dwelling units, approximately 31,959 square feet of ground floor retail, and 405,924 square feet of office space. The building would have a maximum height of 267 feet to the top of the roof and 289 feet to the top of the mechanical penthouse. The proposed dwelling units would be located on floors two to 11. The project proposes a gym on the second floor. Amenities on floor 11 would include two party rooms, a lounge, and a study room. The remaining floors (floors 12 to 21) would consist of office space. The building would feature an archway located at the center of floors one to 10 which would provide pedestrian connectivity from South Second Street and the Fountain Alley pedestrian paseo. An "urban room" (a 10-story high passageway)

[5] The Historic District is comprised of 45 properties (27 contributing structures and 18 non-contributing properties) and is bounded by South First Street to the west, East Santa Clara Street to the north, East San Fernando Street to the south, and extends to South Third Street and South Fourth Street (along East Santa Clara Street) to the east.



REGIONAL MAP | FIGURE 2.1-1

VICINITY MAP

FIGURE 2.1-2

AERIAL PHOTOGRAPH AND SURROUNDING LAND USES | FIGURE 2.1-3

would be located beneath the archway on the ground floor surrounding the building and would consist of seating and landscaping. There would be a combined total of 22,500 square feet of public open space area (up to 8,500 square feet for the paseo and up to 13,800 square feet for the Fountain Alley alleyway). In addition, a roof terrace is proposed which would consist of an active and passive open space, outdoor workspace, and dining areas.

The project proposes one level below-grade for loading and three levels of below-grade parking for a total of four below-grade levels with up to 292 parking spaces. The existing driveway on South Second Street would remain in the same location and would be widened as part of the project. No new driveways are proposed. Refer to Figures 2.2-1 to 2.2-3 for the site plan and elevations.

Mechanical Equipment

Emergency generator rooms, electrical rooms, a water tank, and exhaust fans are proposed within the below-grade parking structure. A 2,000-kilowatt (kW) emergency diesel generator powered by a 3,058 horsepower (HP) diesel engine and a fire pump is proposed at the northeast corner of the basement. Details of the fire pump are unknown.

Two air handling units (AHUs), electrical rooms, and a cooling tower are proposed on the roof. Both AHUs and the cooling tower would have enclosures surrounding the equipment. At the time the analysis was completed, no specific details on the mechanical equipment was available.

Transportation Demand Management Program

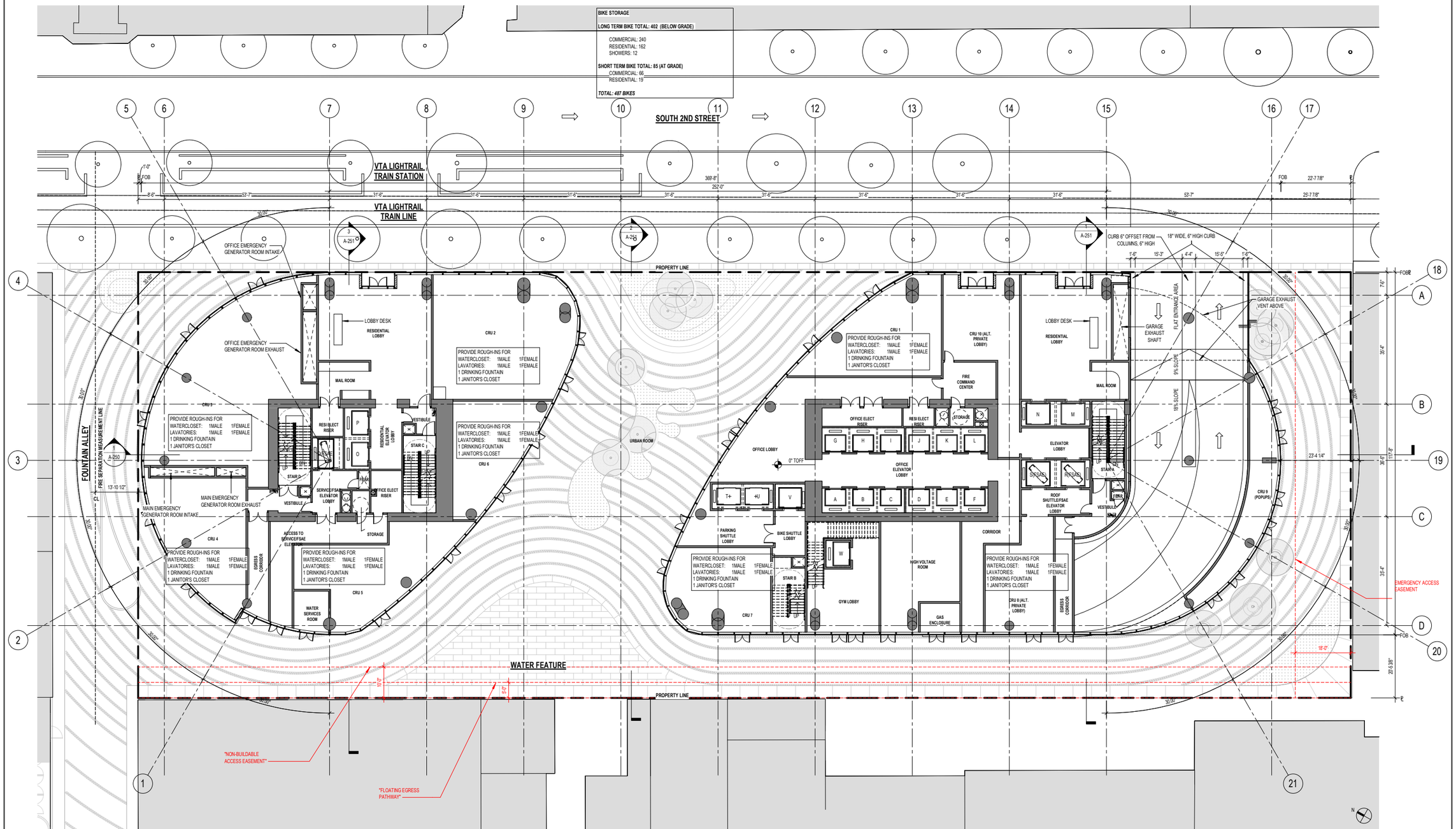
The applicant proposes the following measures as part of the transportation demand management (TDM) program[6] for the proposed project:

- Pedestrian-oriented design
- Limited Automobile Parking Supply
- Short- and long-term bicycle parking
- On-site shower and locker rooms
- Subsidized transit use for on-site employees and residents

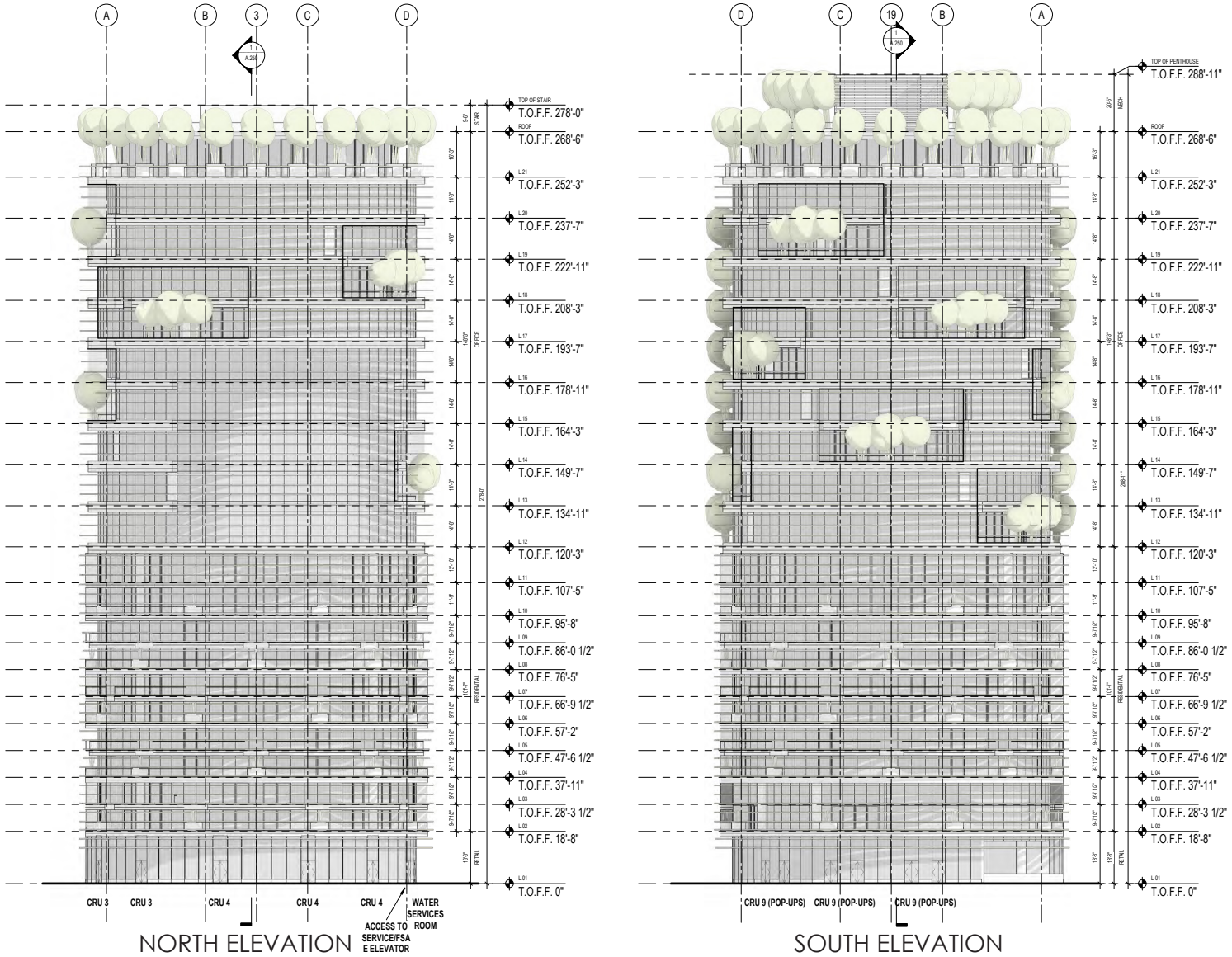
General Plan and Zoning Designation

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

[6] Fehr & Peers. *Fountain Alley TDM Plan*. June 2021.

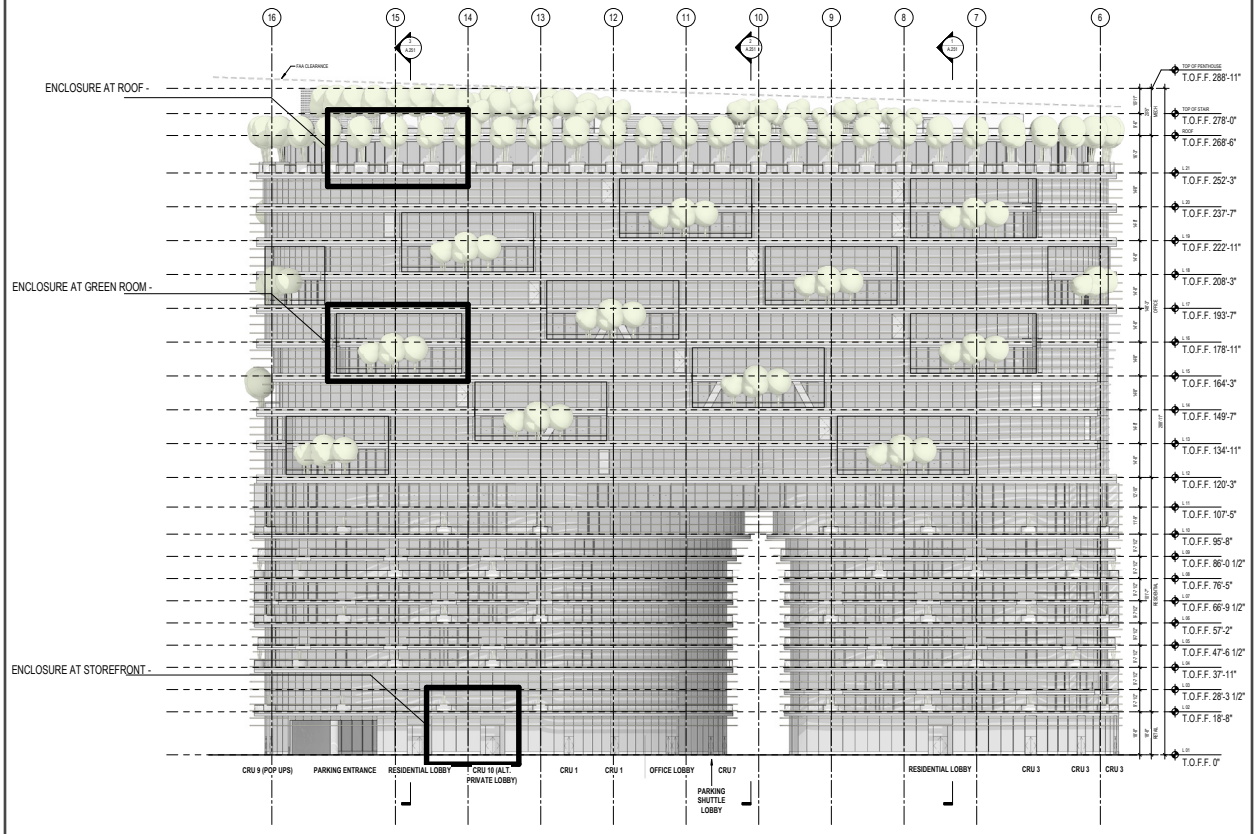


SITE PLAN - GROUND FLOOR | FIGURE 2.2-1

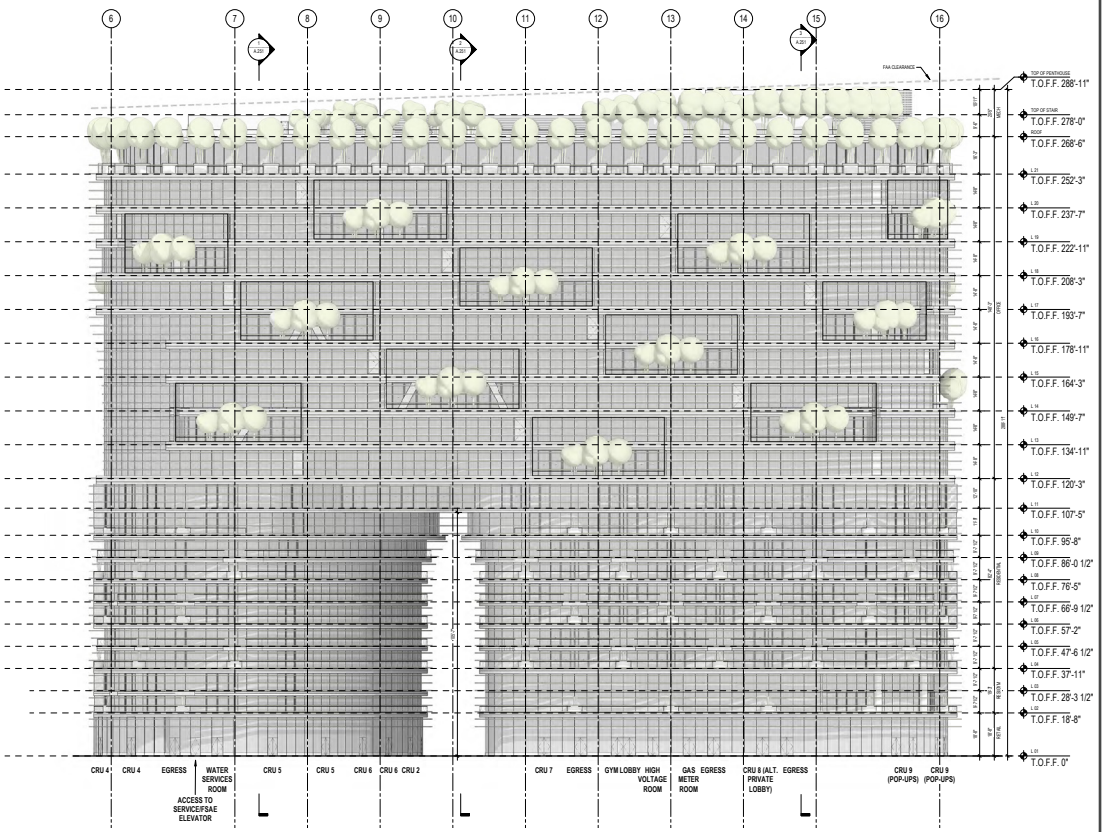


ELEVATIONS - NORTH AND SOUTH

FIGURE 2.2-2



EAST ELEVATION



WEST ELEVATION

ELEVATIONS - EAST AND WEST | FIGURE 2.2-3

Green Building Measures

The project would be required to be built in accordance with the California Building Code (CALGreen) requirements which includes design provisions intended to minimize wasteful energy consumption. The proposed development would be constructed in compliance with the City's Council Policy 6-32 and the City's Green Building Ordinance. The proposed development would be designed to achieve Leadership in Energy and Environmental Design Core & Shell (LEED C&S) Platinum certification and International Living Future Institute's (ILFI) Zero Carbon Certification. Additionally, the project proposes green roofs and green walls to contribute to pollution control, reduce the City's ambient temperature, retain rainwater, and act as a carbon dioxide (CO_2) sink.

Construction

The project would be constructed over a period of 34 months from 7:00 AM to 10:00 PM Monday through Friday and 7:00 AM and 7:00 PM on Saturdays.

2.3 PROJECT OBJECTIVES

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

1. Support the development of downtown as a regional job center, consistent with the Envision San José 2040 General Plan, Strategy 2000, and Metropolitan Transportation Commission (MTC) goals for transit-oriented development near regional transit expansion projects:

    a. Develop a mixed-use building that achieves financial viability through large floor plates where at least 10 floors are used for office use and no more than 10 floors are used for residential use.

    b. Provide a mix of residential and office use to contribute to around-the-clock activation of the project's retail and neighboring commercial use.

    c. Replace a surface parking lot in downtown San José with a development that connects the numerous surrounding paseos and alleyways by creating a place to be in downtown San José and establishing the desired transit-oriented density.

2. Create a new Class A office space typology with convenient access to outdoor space to attract the best tenants and support the City's economic development goals.

3. Provide future residents access to downtown jobs, retail and entertainment, and various public transit modes such as bikeways, Santa Clara Valley Transportation Authority (VTA) light rail and buses, and a planned Bay Area Rapid Transit (BART) extension.

4. Locate residential units in the lower portion of the building with a more introspected scale and variety contributing to the neighborhood's urbanity and relating to the historical context, with more extensive office in the upper portion of the building to meet commercial

requirements and register the development on the skyline.

5. Provide a ground-floor configuration with retail use, residential and office lobbies, storefront, and landscape design to enhance the pedestrian experience.

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

7. Support San José Climate Smart goals by providing sustainable energy, reduce water usage by recycling greywater, offer natural ventilation for residential and commercial users, provide electric vehicle (EV) car parking to reduce greenhouse gas emissions.

8. Provide an architecturally-distinguished high-rise residential and commercial project in the downtown area that contributes an iconic design to the skyline of downtown San José.

9. Provide on-site parking and loading in amounts adequate to meet anticipated demands of tenants that would reside and work in such a prominent project.

2.4 USES OF THE EIR

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

- Site Development Permit
- Vesting Tentative Map
- Demolition, Grading, and Building Permit(s)
- Other Public Works Clearances

SECTION 3.0 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION

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

3.1	Air Quality	3.4	Hazards and Hazardous Materials
3.2	Biological Resources	3.5	Noise and Vibration
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).
- **Impact Conclusions –** – Because the analysis in this SEIR tiers from the Downtown Strategy 2040 FEIR, the level of impact in the project specific analysis is presented as it relates to the findings of the Downtown Strategy 2040 FEIR. For example, if the conclusion is "Same Impact as Approved Project/Less Than Significant Impact" the project level impact was found to be less than significant consistent with the finding in the Downtown Strategy 2040 FEIR.
- **Cumulative Impacts** – This subsection discusses the project's cumulative impact on the environmental subject. Cumulative impacts, as defined by CEQA, refer to two or more individual effects, which when combined, compound or increase other environmental impacts. Cumulative impacts may result from individually minor, but collectively significant effects taking place over a period of time. CEQA Guideline Section 15130 states that an EIR should discuss cumulative impacts "when the project's incremental effect is cumulatively considerable." The discussion does not need to be in as great detail as is necessary for project impacts, but is to be "guided by the standards of practicality and reasonableness." The purpose of the cumulative analysis is to allow decision makers to better understand the impacts that might result from approval of past, present, and reasonably foreseeable future projects, in conjunction with the proposed project addressed in this SEIR.

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

document (CEQA Guidelines Section 15130(b)(1)). This SEIR uses the list of projects approach.

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

Table 3.0-1 identifies the approved but not yet constructed/occupied and pending projects in the project vicinity (within half-mile radius) that are evaluated in the cumulative analysis.

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

Name	Location	Description
Approved But Not Yet Constructed/Occupied		
Fountain Alley Office	26 South First Street	Construction of an approximately 91,992-square foot, six-story commercial building with office and retail uses.
Parkview Towers	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.
Gateway Tower	455 South First Street	Construction of a 25-story tower with up to 308 residential units and approximately 8,000 square feet of ground floor retail.
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).
South Market Mixed-Use	477 South Market Street	Construction of a six-story mixed-use building with 130 residential units and approximately 5,000 square feet of commercial space.

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Name	**Location**	**Description**
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[7]	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.
Adobe North Tower	333 West San Fernando Street	Construction of an approximately 1,315,000-square foot building, 690,328 square feet of research and development and office use, and up to 8,132 square feet of retail use.
Miro Apartments[8]	157 East Santa Clara Street	Construction of up to 630 residential units and approximately 21,000 square feet of ground floor retail.
Museum Place[9]	180 Park Avenue	Construction of a 24-story mixed-use building with approximately 214,000 square feet of office, 13,402 square feet of ground floor retail, 60,000 square feet of museum space, 184 hotel rooms, and 306 residential units.

[7] Modifications to the original project (e.g., Hotel Clariana Expansion and Clariana Phase II) have been approved since circulation of the NOP.
[8] While Miro Apartments is currently built and units are being leased, Miro Apartments was under construction at the time this document was prepared. Therefore, Miro Apartments was included in this table.
[9] Modifications to the original project have been approved since circulation of the NOP.

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Name	**Location**	**Description**
Icon-Echo	147 East Santa Clara Street	Construction of two towers (an 525,000-square foot office tower and a residential tower with 415 units) connected via a podium on floors one to four.
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		
The Mark[10]	459 South Fourth Street	Construction of a 23-story multi-family residential building with up to 157240 dwelling units with an alternative parking design (four levels of car stackers, including one basement level).
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
BoTown Residential	409 South Second Street	Construction of a 29-story high-rise with up to 520 residential units and approximately 6,400 square feet of ground floor retail.
North Second Affordable Senior Housing	19 North Second Street	Construction of a 22-story mixed-use project with approximately 18,643 square feet of commercial space and up to 220 units of senior housing.
San José Stage/Home 2 Hotel	490 South First Street	Construction of a new 132,000-square foot mixed-use building (seven stories) with a total of 151 hotel rooms, and 17,000 square feet of performance theater/auditorium space.
South Fourth Street Mixed-Use	439 South Fourth Street	Construction of an 18-story mixed use building consisting of 218 residential units, approximately 1,345 square feet of commercial use and approximately 12,381 square feet of public eating establishment.

[10] NOP circulation for the San José Fountain Alley Mixed-Use Project ended on June 24, 2021. The Mark was approved on July 28, 2021.

Table 3.0-1: Summary Project List Within Half-Mile Radius		
Name	**Location**	**Description**
Almaden Office	Northwest corner of South Almaden Boulevard and Woz Way	Construction of up to approximately 1,727,777 square feet of office in two 16-story towers (North Tower and South Tower) with amenity/food and beverage space.
Dot and Bar	300 South First Street	Construction of a 20-story office mixed-use building with two towers and ground floor retail (totaling 1,397,321 square feet).
Davidson Towers	255 West Julian Street	Construction of a new 14-story office building with approximately 12,908 of ground floor retail and approximately 448,159 square feet of office space. In addition, modification of an existing six-story office building to change the existing office use to 6,317 square feet of retail use on the ground floor, retain 50,470 square feet of office use on the upper floors, and make changes to the exterior façade, with associated below-grade connection and a pedestrian bridge connection between the two buildings.
SuZaCo Mixed-Use	150 East Santa Clara Street	Construction of a six-story mixed-use building (approximately 76,298 square feet). Retail/restaurant space is proposed at the ground level and the remaining floors would consist of office space. A portion of the 150 East Santa Clara Street building façade would be retained.

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

3.1 AIR QUALITY

The following discussion is based on an Air Quality Assessment prepared by Illingworth & Rodkin, Inc. in June 2021.[11,12] A copy of this report is included as Appendix B of the SEIR.

3.1.1 Environmental Setting

3.1.1.1 *Background Information*

Criteria Pollutants

Air quality in the Bay Area is assessed related to six common air pollutants (referred to as criteria pollutants), including ground-level ozone (O_3), nitrogen oxides (NO_x), particulate matter (PM), carbon monoxide (CO), sulfur oxides (SO_x), and lead.[13] 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

[11] Since the Air Quality Assessment was completed, the Local Transportation Analysis was updated and shows a decrease of net new weekday project trips from 4,354 to 3,936. The new project trips are less than the CalEEMod trips used in the analysis; therefore, the operational emission and project traffic health risk assessment emissions would be less than what was analyzed. This analysis provides a more conservative analysis. Janello, Carrie. Illingworth & Rodkin. Personal Communication. March 28, 2022.

[12] The project would procure 100 percent green power beyond what the on-site photovoltaics can provide and would pursue ILFI Zero Carbon Certification which requires all electric buildings and 100 percent renewable energy, as discussed in Appendix H. For the purposes of this analysis, the air quality assessment conservatively assumed that the project would participate in San José Clean Energy at the GreenSource level (60 percent renewable energy). GreenSource is the default assumption and standard service.

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

Table 3.1-1: Health Effects of Air Pollutants		
Pollutants	**Sources**	**Primary Effects**
Toxic Air Contaminants (TACs)	Cars and trucks, especially diesel-fueled; industrial sources, such as chrome platers; dry cleaners and service stations; building materials and products	• Cancer • Chronic eye, lung, or skin irritation • Neurological and reproductive disorders

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

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

Toxic Air Contaminants

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

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about three-quarters of the cancer risk from TACs. Diesel exhaust is a complex mixture of gases, vapors, and fine particles. Medium- and heavy-duty diesel trucks represent the bulk of DPM emissions from California highways. The majority of DPM is small enough to be inhaled into the lungs. Most inhaled particles are subsequently exhaled, but some deposit on the lung surface or are deposited in the deepest regions of the lungs (most susceptible to injury).[14] Chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the California Air Resources Board (CARB).

Sensitive Receptors

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

[14] California Air Resources Board. "Overview: Diesel Exhaust and Health." Accessed August 24, 2021. https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.

elementary schools, parks and places of assembly.

3.1.1.2 *Regulatory Framework*

Federal and State

Clean Air Act

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

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

Risk Reduction Plan

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

Regional

2017 Clean Air Plan

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

climate pollutants in the near-term, and to decrease emissions of carbon dioxide by reducing fossil fuel combustion.[15]

CEQA Air Quality Guidelines

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

City of San José

Envision San José 2040 General Plan

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

General Plan Policies - Air Quality	
MS-10.1	Assess projected air emissions from new development in conformance with the Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines and relative to state and federal standards. Identify and implement feasible air emission reduction measures.
MS-10.5	In order to reduce vehicle miles traveled and traffic congestion, require new development within 2,000 feet of an existing or planned transit station to encourage the use of public transit and minimize the dependence on the automobile through the application of site design guidelines and transit incentives.
MS-11.2	For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.
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.

[15] BAAQMD. *Final 2017 Clean Air Plan*. April 19, 2017. Accessed August 24, 2021. http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans.

General Plan Policies - Air Quality	
MS-13.2	Construction and/or demolition projects that have the potential to disturb asbestos (from soil or building material) shall comply with all the requirements of the California Air Resources Board's air toxic control measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.

3.1.1.3 *Existing Conditions*

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

BAAQMD is responsible for assuring that the national and state ambient air quality standards are attained and maintained in the Bay Area. Air quality studies generally focus on four criteria pollutants that are most commonly measured and regulated: carbon monoxide (CO), ozone (O_3), nitrogen dioxide (NO_2), and suspended particulate matter (PM_{10} and $PM_{2.5}$). These pollutants are considered criteria pollutants by the U.S. Environmental Protection Agency (U.S. EPA) and CARB as they can result in health effects such as respiratory impairment and heart/lung disease symptoms. Table 3.1-2 shows violations of state and federal standards at the monitoring station in downtown San José (the nearest monitoring station to the project site) during the 2017-2019 period (the most recent years for which data is available).[16]

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 August 24, 2021. http://www.baaqmd.gov/about-air-quality/air-quality-summaries.

"Attainment" status for a pollutant means that a given air district meets the standard set by the EPA and/or CARB. The Bay Area, as a whole, does not meet state or federal ambient air quality standards

[16] 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.

for ground level O_3 and $PM_{2.5}$, nor does it meet state standards for PM_{10}. The Bay Area is considered in attainment or unclassified for all other pollutants.
The closest sensitive receptors are the residences located approximately 85 feet east of the project site. There are additional residences located at farther distances to the north, west, and east/southeast.

3.1.2 Impact Discussion

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

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

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would not result in a significant project-level impact due to construction-related emissions of criteria pollutants or expose sensitive receptors to a significant risk associated with TACs or odors. The Downtown Strategy 2040 FEIR did, however, identify a significant unavoidable cumulative regional air quality impact, as discussed below. The proposed project would result in a cumulative $PM_{2.5}$ concentration impact, as discussed below.

3.1.2.1 *Thresholds of Significance*

Impacts from the Project

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

Table 3.1-3: BAAQMD Air Quality Significance Thresholds

Pollutant	Construction Thresholds	Operation Thresholds	
	Average Daily Emissions (pounds/day)	Annual Daily Emissions (pounds/day)	Annual Average Emissions (tons/year)
Criteria Air Pollutants			
ROG, NO_x	54	54	10
PM_{10}	82 (exhaust)	82	15

Table 3.1-3: BAAQMD Air Quality Significance Thresholds			
Pollutant	**Construction Thresholds**	**Operation Thresholds**	
	Average Daily Emissions (pounds/day)	**Annual Daily Emissions (pounds/day)**	**Annual Average Emissions (tons/year)**
$PM_{2.5}$	54 (exhaust)	54	10
CO	Not Applicable	9.0 ppm (eight-hour) or 20.0 ppm (one-hour)	
Fugitive Dust	Dust Control Measures/Best Management Practices	Not Applicable	
Health Risks and Hazards for New Sources (within a 1,000-foot Zone of Influence)			
Health Hazard	**Single Source**	**Combined Cumulative Sources**	
Excess Cancer Risk	10 per one million	100 per one million	
Hazard Index	1.0	10.0	
Incremental Annual $PM_{2.5}$	0.3 µg/m^3	0.8 µg/m^3 (average)	

3.1.2.2 *Project Impacts*

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

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

Table 3.1-4: Bay Area 2017 Clean Air Plan Applicable Control Measures		
Control Measures	**Description**	**Project Consistency**
Transportation Measures		
Trip Reduction Programs	Encourage trip reduction policies and programs in local plans, e.g., general and specific plans. Encourage local governments to require mitigation of vehicle travel as part of new development approval, to develop innovative ways to encourage rideshare, transit, cycling, and walking for work trips.	The project site is located in proximity to Caltrain, the Altamont Commuter Express (ACE) train, Amtrak, and VTA bus and light rail. The proposed project would be required to include bicycle parking consistent with City standards. As part of the project's TDM program, the project would subsidize transit use for on-site employees and residents. For these reasons, the project is consistent with this measure.

Table 3.1-4: Bay Area 2017 Clean Air Plan Applicable Control Measures		
Control Measures	**Description**	**Project Consistency**
Bicycle and Pedestrian Access and Facilities	Encourage planning for bicycle and pedestrian facilities in local plans, e.g., general and specific plans, fund bike lanes, routes, paths and bicycle parking facilities.	As mentioned above, the project would be required to include bicycle parking consistent with City standards. The project area has adequate pedestrian facilities including sidewalks, crosswalks, and pedestrian signal heads. In addition, the project would include on-site shower and locker rooms. Therefore, the project is consistent with this measure.
Land Use Strategies	Support implementation of Plan Bay Area, maintain and disseminate information on current climate action plans and other local best practices.	As mentioned above, the project would be located in proximity to multiple transit services; therefore, the project is consistent with this measure (refer to *Section 4.17 Transportation* of Appendix A for more information).
Building Measures		
Green Buildings	Identify barriers to effective local implementation of CALGreen (Title 24) statewide building energy code; develop solutions to improve implementation/ enforcement. Engage with additional partners to target reducing emissions from specific types of buildings.	The project would comply with Building Energy Efficiency Standards (Title 24), the City's Green Building Ordinance, and the most recent CALGreen requirements. In addition, the project would be designed to achieve LEED C&S Platinum certification and ILFI Zero Carbon Certification. The project is consistent with this measure.
Urban Heat Island Mitigation	Develop and urge adoption of a model ordinance for "cool parking" that promotes the use of cool surface treatments for new parking facilities, as well existing surface lots undergoing resurfacing. Develop and promote adoption of model building code requirements for new construction or reroofing/ roofing upgrades for commercial and residential multifamily housing.	The project would be required to comply with the City's Green Building Ordinance and the most recent CALGreen requirements which would increase building efficiency over standard construction. Therefore, the project is consistent with this control measure.
Natural and Working Lands Measures		
Urban Tree Planting	Develop or identify an existing model municipal tree planting ordinance and encourage local governments to adopt such an ordinance. Include tree planting recommendations, the Air District's technical guidance, best	Any trees removed would be required to be replaced in accordance with the City's tree replacement policy. Therefore, the project is consistent with this control measure.

Table 3.1-4: Bay Area 2017 Clean Air Plan Applicable Control Measures		
Control Measures	**Description**	**Project Consistency**
	management practices for local plans, and CEQA review.	
Waste Management Measures		
Recycling and Waste Reduction	Develop or identify and promote model ordinances on community-wide zero waste goals and recycling of construction and demolition materials in commercial and public construction projects.	The City adopted the Zero Waste Strategic Plan which outlines policies to help the City foster a healthier community and achieve its Green Vision goals, including 75 percent diversion by 2013 and zero waste by 2022. In addition, the project would comply with the City's Construction and Demolition Diversion Program during construction which ensures that at least 75 percent of construction waste generated by the project is recovered and diverted from landfills. Therefore, the project is consistent with this control measure.

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

Construction Criteria Pollutant Emissions

The California Emissions Estimator model (CalEEMod) Version 2016.3.2 was used to estimate emissions from project construction. The project's land use types and sizes, as well as the construction schedule, were input into CalEEMod. The CARB EMission FACtors 2021 (EMFAC2021) model was used to estimate construction traffic emissions.

The following proposed land uses were input into CalEEMod, which included 194 dwelling units entered as "Apartments High-Rise", 405,924 square feet entered as "General Office Building", 31,959 square feet entered as "Strip Mall", and 292 parking spaces entered as "Enclosed Parking Structure with Elevator". The project equipment list and schedule were based on data provided by the applicant. The construction schedule assumes that the project would begin construction in March 2023. Construction would occur six days a week for a period of approximately 34 months (up to 872 construction workdays). Traffic-related emissions were based on CalEEMod estimates and haul trips were calculated based on the estimated demolition material to be exported and soil material import/export, and the estimated cement and asphalt truck trucks (refer to Appendix B of this document). Table 3.1-5 shows the estimated daily air emissions from construction of the proposed project.

Table 3.1-5: Construction Emissions from the Project				
Description	**ROG**	**NO_x**	**PM_{10}**	**$PM_{2.5}$**
Construction Emissions Per Year (Tons)				
2023	0.21	1.60	0.10	0.05
2024	2.10	2.49	0.13	0.08

Table 3.1-5: Construction Emissions from the Project				
Description	**ROG**	**NO_x**	**PM_{10}**	**$PM_{2.5}$**
2025	2.91	2.16	0.12	0.07
Annualized Daily Construction Emissions Per Year (Pounds Per Day)				
2023 (263 construction workdays)	1.58	12.19	0.73	0.40
2024 (314 construction workdays)	13.39	15.85	0.86	0.51
2025 (295 construction workdays)	19.70	14.66	0.81	0.47
BAAQMD Thresholds (pounds per day)	*54*	*54*	*82*	*54*
Threshold Exceeded?	**No**	**No**	**No**	**No**

As shown in the table above, project construction period emissions would not exceed the BAAQMD significance thresholds. The proposed project would have a less than significant criteria pollutant emissions impact and would not conflict with or obstruct implementation of the Bay Area 2017 CAP.

Operational Criteria Pollutant Emissions

Operational criteria pollutant emissions associated with the project would be generated primarily from project generators and vehicles driven by future residents, employees, and patrons of the site. The project proposes a 2,000-kW emergency diesel generator powered by a 3,058 HP diesel engine and a fire pump located at the northeast corner of the first below-grade parking level. Details of the fire pump are unknown. For the purposes of this analysis, it was assumed the fire pump would not have its own engine and that the fire pump would be powered by the emergency diesel generator. The generators would be operated during periods of emergency and for maintenance and testing purposes with a maximum of 50 hours per year. During the maintenance and testing periods, the generator would run for less than one hour.

Vehicle trip generation rates, energy usage, and other default CalEEMod model assumptions for solid waste generation and water usage/wastewater disposal were input into CalEEMod to estimate the emissions from operation of the project (refer to Appendix B of this document). Table 3.1-6 below shows an estimate of emissions from operation of the proposed project using CalEEMod. Full operation of the site was assumed to occur in 2026.

Table 3.1-6: Operational Emissions for the Project				
Description	**ROG**	**NO_x**	**PM_{10}**	**$PM_{2.5}$**
2026 Project Operational Emissions (tons/year)	5.31	1.62	2.58	0.67
BAAQMD Thresholds (tons/year)	*10*	*10*	*15*	*10*
Threshold Exceeded?	**No**	**No**	**No**	**No**
2026 Project Operational Emissions (pounds/day)	29.09	8.87	14.15	3.66
BAAQMD Thresholds (pounds/day)	*54*	*54*	*82*	*54*
Threshold Exceeded?	**No**	**No**	**No**	**No**
Note: Assumes 365-day operation.				

The project's operational criteria pollutant emissions would not exceed BAAQMD significance thresholds for ROG, NO_x, PM_{10}, and $PM_{2.5}$. The proposed project would, however, contribute to the previously identified significant unavoidable regional criteria pollutant impact from full build out of the Downtown Strategy 2040. The project site is located in the downtown area which has the lowest vehicle miles traveled (VMT) of any plan area in the City and is located in proximity to public transit

and other services and amenities which would reduce the project's VMT. Therefore, implementation of the project would not conflict with or obstruct implementation of the 2017 CAP.

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

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

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

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

Dust Generation

Project construction would temporarily generate fugitive dust in the form of PM_{10} and $PM_{2.5}$. The project would be required to implement the following Standard Permit Conditions during all phases of construction to reduce dust and other particulate matter emissions.

Standard Permit Conditions:

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

- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and 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.

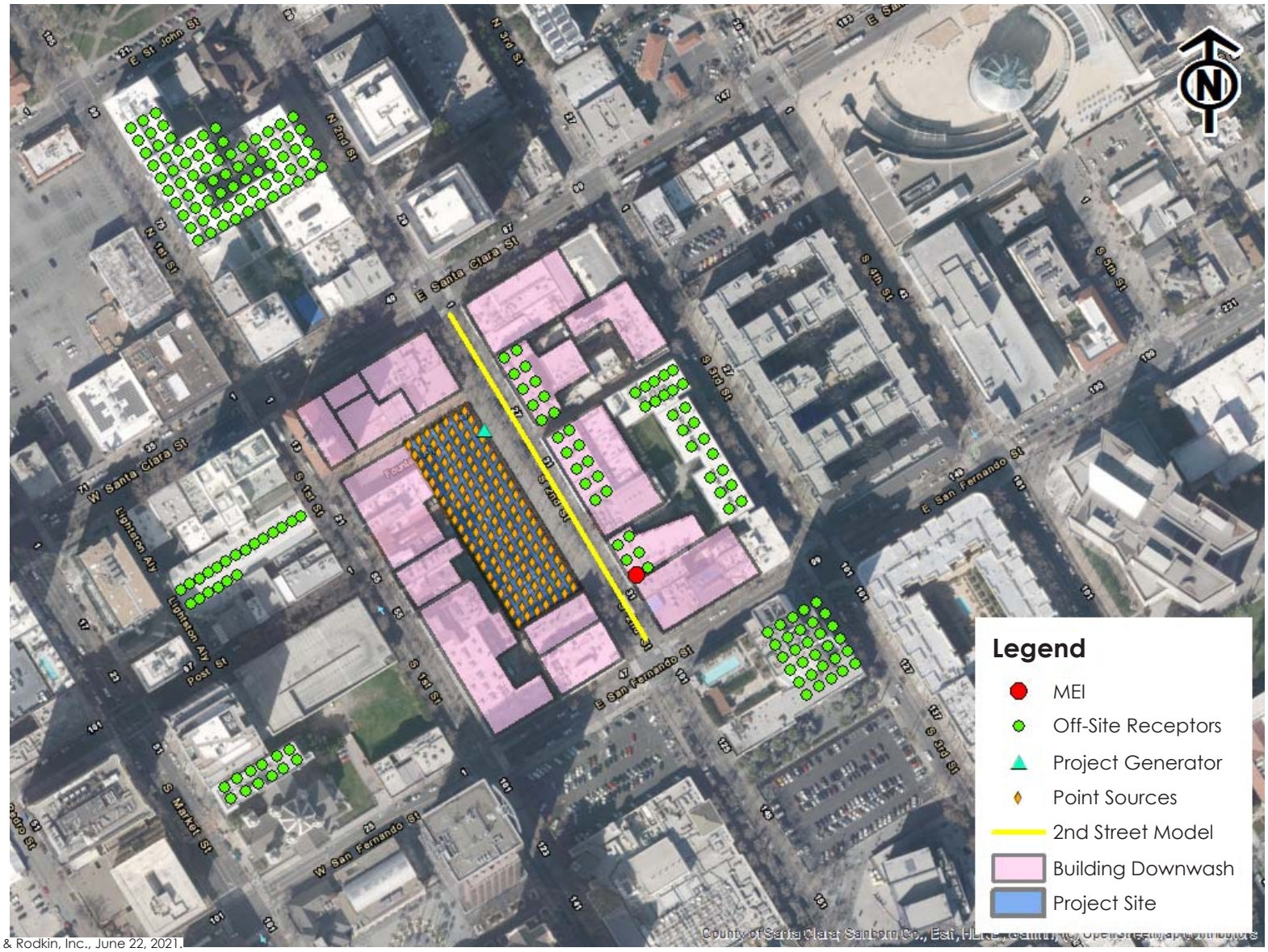
With implementation of the Standard Permit Conditions, construction dust and other particulate matter would have a less than significant construction air quality impact.

Project Construction – Community Risk Impacts

Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC, and could pose as a health risk to nearby sensitive receptors. A health risk assessment was completed to evaluate potential health effects to nearby sensitive receptors (within 1,000 feet of the project site) from construction emissions of DPM and $PM_{2.5}$.[17] The CalEEMod and EMFAC2021 models were used which provides total annual PM_{10} exhaust emissions (DPM) for the off-road construction equipment and on-road vehicles. The U.S. EPA AERMOD dispersion model was used to predict construction-related DPM and $PM_{2.5}$ concentrations at existing sensitive receptors (e.g., residences, students, children at daycare) in the vicinity of the project construction area. The U.S. EPA AERMOD dispersion model inputs and results are described further in Appendix B of this document.

The cancer risk and $PM_{2.5}$ maximum exposed individuals (MEIs) were identified at the residences located on the third and second floor, respectively, approximately 85 feet southeast of the project site (refer to Figure 3.1-1). Sensitive receptors are designated in green and the MEI from construction is designated in red. The construction cancer risk MEI would have a cancer risk of 32.44 cases per one million (for infants) without mitigation which exceeds the BAAQMD threshold of 10 cases per one million. The adult cancer risk at the location of the MEI would be 0.8 cases per one million. The maximum-annual $PM_{2.5}$ concentration would be 0.46 µg/m^3, which exceeds BAAQMD significance threshold of 0.3 µg/m^3. The maximum hazard index (HI) concentration is 0.02, which is below the HI of greater than 1.0.

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



Source: Illingworth & Rodkin, Inc., June 22, 2021.

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

Impact AIR-1: Construction activities associated with the proposed project would expose the project maximum exposed individuals (MEIs) to a cancer risk of 32.44 cases per one million (for infants) and a maximum-annual $PM_{2.5}$ concentration of 0.46 µg/m^3 which exceeds BAAQMD significance thresholds of 10 cases per one million for cancer risk and 0.3 µg/m^3 for $PM_{2.5}$, respectively.

Mitigation Measure

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

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

- For all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total, use equipment that meet U.S. Environmental Protection Agency (EPA) Tier 4 emission standards for particulate matter (PM_{10} and $PM_{2.5}$).
- If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a 70 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.
- Use of alternatively fueled or electric equipment.
- Stationary cranes and construction generator sets 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 70 percent or greater. The plan shall be reviewed and approved by the Director of Planning or Director's designee of the City of San José Department of Planning, Building and Code Enforcement prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

With implementation of the required Standard Permit Conditions for dust and Mitigation Measure AIR-1.1, the construction cancer risk would be reduced to 4.72 cases per one million for infants, the maximum annual $PM_{2.5}$ concentration would be reduced to 0.10 µ/m^3, and the HI would be less than

0.01. With mitigation, the construction cancer risk, maximum annual $PM_{2.5}$ concentration, and HI would not exceed BAAQMD's single-source thresholds of 10 cases per one million for cancer risk, 0.3 µg/m^3 for $PM_{2.5}$, or an HI greater than 1.0. Therefore, the proposed project would have a less than significant construction community risk impact.

Project Operation - Community Risk Impacts (Traffic and Generators)

Project traffic and generators could result in community risk impacts. Per BAAQMD, roadways with less than 10,000 total vehicles per day would have a less than significant TAC impact. The project's trip generation was estimated from the traffic analysis and CalEEMod. The proposed project was estimated to generate up to 4,215 net new daily trips[18] and it was conservatively assumed that all project traffic emissions occur along South Second Street. On a project-level, the project trips are less than 10,000 trips which would not be enough to contribute as a TAC source by itself.

The project would include a 2,000-kW emergency diesel generator powered by a 3,058-HP diesel engine and a fire pump at the northeast corner of the basement. Based on the site plan provided by the applicant, the generator's exhaust stack would be on the ground floor. Therefore, it was assumed that the generator exhaust emissions would be released on the top of the ground floor along the eastern building façade. Details of the fire pump are unknown; therefore, it was assumed that the fire pump would be powered by the generator.

The generator would be operated for testing and maintenance purposes, with a maximum of 50 hours per year of non-emergency operation under normal conditions. During testing periods, the engine would typically be run for less than one hour under light engine loads. The generator emissions were estimated using CalEEMod.

The U.S. EPA AERMOD dispersion model was used to estimate the potential cancer risk and $PM_{2.5}$ concentration at off-site sensitive receptor locations (e.g., residences) from operation of the proposed generator. To estimate the increased cancer risk from the generator at the MEIs, the cancer risk exposure duration was adjusted to account for the MEIs being exposed to construction for the first three years of the 30-year period.[19] Refer to Appendix B of this document for more information and Figure 3.1-1 above for the location of the project generator and off-site receptors. Table 3.1-7 provides a summary of the construction and operation risk impacts at the off-site MEIs.

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

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ (µg/m^3)	Hazard Index
Project Construction (Years 0-3) **Mitigated**	4.72 (infant)	0.10	<0.01
Project Traffic Operation on South Second Street (Years 4-30)	0.11	0.04	<0.01
Project Generator (Years 4-30)	0.28	<0.01	<0.01

[18] Project daily trips were estimated in CalEEMod because the land use sizes provided by Fehr & Peers in December 2020 were not consistent with the land uses from the air quality report. Trips were estimated based on the provided land use trip rate and the project land use sizes, including any trip reductions.

[19] Construction cancer risks would occur during the first three years and 27 years of operational cancer risks.

Table 3.1-7: Construction and Operation Risk Impacts at Off-Site MEI			
Source	**Cancer Risk (per million)**	**Annual $PM_{2.5}$ ($\mu g/m^3$)**	**Hazard Index**
Total/Maximum Project Impact (Years 0-30) **Mitigated**	5.11 (infant)	0.10	<0.01
BAAQMD Single-Source threshold	***>10.0***	***>0.3***	***>1.0***
***Exceed Threshold?* Mitigated**	No	No	No

The maximum cancer risk and annual $PM_{2.5}$ concentration at the MEIs from construction and operation of the project (without mitigation) would exceed BAAQMD's significance thresholds of 10 cases per one million and annual $PM_{2.5}$ concentration of 0.3 $\mu g/m^3$, respectively. The HI from construction and operation of the project would not exceed BAAQMD's significance threshold. With implementation of the Standard Permit Conditions and Mitigation Measure AIR-1.1, the total maximum project cancer risk impact to infants and annual $PM_{2.5}$ concentration would be reduced to 4.72 cases per one million and 0.10 $\mu g/m^3$, respectively, which would be below the BAAQMD significance threshold for cancer risk and annual $PM_{2.5}$ concentration. The proposed project would result in a less than significant operational TAC impact to nearby sensitive receptors with implementation of the Standard Permit Conditions and Mitigation Measure AIR-1.1.

Criteria Pollutant Emissions

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

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

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

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

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

While operation of the proposed project would result in the use of cleaning supplies and maintenance chemicals which would generate temporary odors in the areas of use, it would be comparable to the surrounding land uses in the area and would not generate odors that would affect people off-site. **[Same Impact as Approved Project (Less Than Significant Impact)]**

3.1.2.3 *Cumulative Impacts*

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

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

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

Cumulative TAC Sources in the Project Area

Mobile Sources

The only substantial source of mobile TAC emissions within 1,000 feet of the project site is East Santa Clara Street. The average daily trips (ADT) on East Santa Clara Street was estimated using the AM and PM peak-hour background traffic volumes for nearby roadways provided by *Fehr & Peers*. It is estimated that the ADT on East Santa Clara Street would be 15,713 vehicles.

Stationary Sources

Stationary sources are facilities that contain sources of TACs such as a generator or gas station. Nearby stationary sources were identified using BAAQMD's *Permitted Stationary Sources 2018* geographic information system map website which identifies the location of stationary sources and their estimated risk and hazard impacts. Eleven stationary sources were identified; 10 of which are diesel generators, and one is a gas station.

Construction Risk Impacts from Nearby Development

There are 10 projects (Miro File Nos. SP17-009 and T16-056, CityView Plaza Office File No. H19-016, Post & San Pedro Tower File No. H14-023, Icon-Echo Mixed-Use File No. SP21-031, SuZaCo[20] Mixed-Use File No. H21-026, Hotel Clariana File No. H17-059, 19 North Second Street File No. H20-040, Eterna Tower File No. H20-026, 27 West File No. SP18-016, and Fountain Alley Office File No. H19-041 located within 1,000 feet of project site. For nearby developments that did not have construction analyses completed at the time the air quality report was prepared, it was assumed that the construction risks would be less than the BAAQMD single-source thresholds for community risks and hazards. For nearby developments located more than 500 feet of the site, the construction risks were assumed to be half of the BAAQMD single-source thresholds due to dispersion and the distance between the source and receptors. For the purposes of this analysis, it was conservatively assumed the entire construction period from the proposed project would overlap with the nearby developments' construction schedule. This approach provides an overestimate of the community risk and hazard levels because it assumes that maximum impacts from the nearby development occurs concurrently with the proposed project at the proposed project's MEIs.

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

Table 3.1-8: Cumulative Sources at Project MEI

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
Total/Maximum Project Impact Mitigated	5.11 (infant)	0.10	<0.01
East Santa Clara Street	0.43	0.04	<0.01
Facility ID#8556 (Generator), MEI at 615 feet	0.90	0.04	<0.01
Facility ID #15969 (Generator), MEI at 950 feet	1.85	<0.01	<0.01
Facility ID #14985 (Generator), MEI at 1,000+ feet	0.22	<0.01	<0.01
Facility ID #16778 (Generator), MEI at 615 feet	1.28	0.26	0.01
Facility ID #19298 (Generator), MEI at 370 feet	11.30	0.01	0.01
Facility ID #19758 (Generator), MEI at 725 feet	0.44	<0.01	--
Facility ID #20903 (Generator), MEI at 950 feet	3.00	<0.01	<0.01
Facility ID #22415 (Generator), MEI at +1,000 feet	0.14	--	--
Facility ID #22612 (Generator), MEI at 370 feet	0.25	--	--
Facility ID #23479 (Generator), MEI at 650 feet	0.22	--	--
Facility ID #104124 (Gas Station), MEI at 820 feet	0.27	--	<0.01
Nearby Developments			
Fountain Alley Office, five feet west	<4.50	<0.03	<0.01
27 West, 215 feet west	<2.40	<0.05	<0.01
Eterna Tower, 250 feet north	<10.00	<0.30	<1.00
19 North Second Street, 340 feet north	<10.00	<0.30	<1.00
Hotel Clariana, 410 feet east	<8.80	<0.07	<0.01
SuZaCo Mixed-Use, 515 feet east	<5.00	<0.15	<0.50

[20] Also referred as BDG Mixed-Use project.

Source: Illingworth & Rodkin, Inc., June 22, 2021.

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

Table 3.1-8: Cumulative Sources at Project MEI			
Source	**Cancer Risk (per million)**	**Annual $PM_{2.5}$ ($\mu g/m^3$)**	**Hazard Index**
Icon-Echo Mixed-Use, 600 feet northeast	<5.00	<0.15	<0.50
Post & San Pedro Tower, 965 feet west	<8.50	<0.06	<0.01
CityView Plaza Office, 930 feet southwest	<15.01	<0.44	<0.01
Combined Sources Mitigated	<94.62	**<2.04**	<3.14
BAAQMD Cumulative Source threshold	***>100***	***>0.8***	***>10.0***
***Exceed Threshold?* Mitigated**	No	**Yes**	No

As shown in the table above, the cancer risk and annual $PM_{2.5}$ concentration, without mitigation, would exceed the BAAQMD threshold for cumulative sources. Implementation of Mitigation Measure AIR-1.1 and Standard Permit Conditions would reduce the cancer risk to less than 94.62 cases per one million which would be below BAAQMD's cumulative cancer risk significance threshold of 100 cases per one million. Even with implementation of Mitigation Measure AIR-1.1 and the identified Standard Permit Conditions, the cumulative $PM_{2.5}$ concentration would continue to exceed the BAAQMD significance threshold of 0.8 $\mu g/m^3$ for $PM_{2.5}$. **[New Significant Unavoidable Impact (Less Than Significant Cumulative Impact)]**

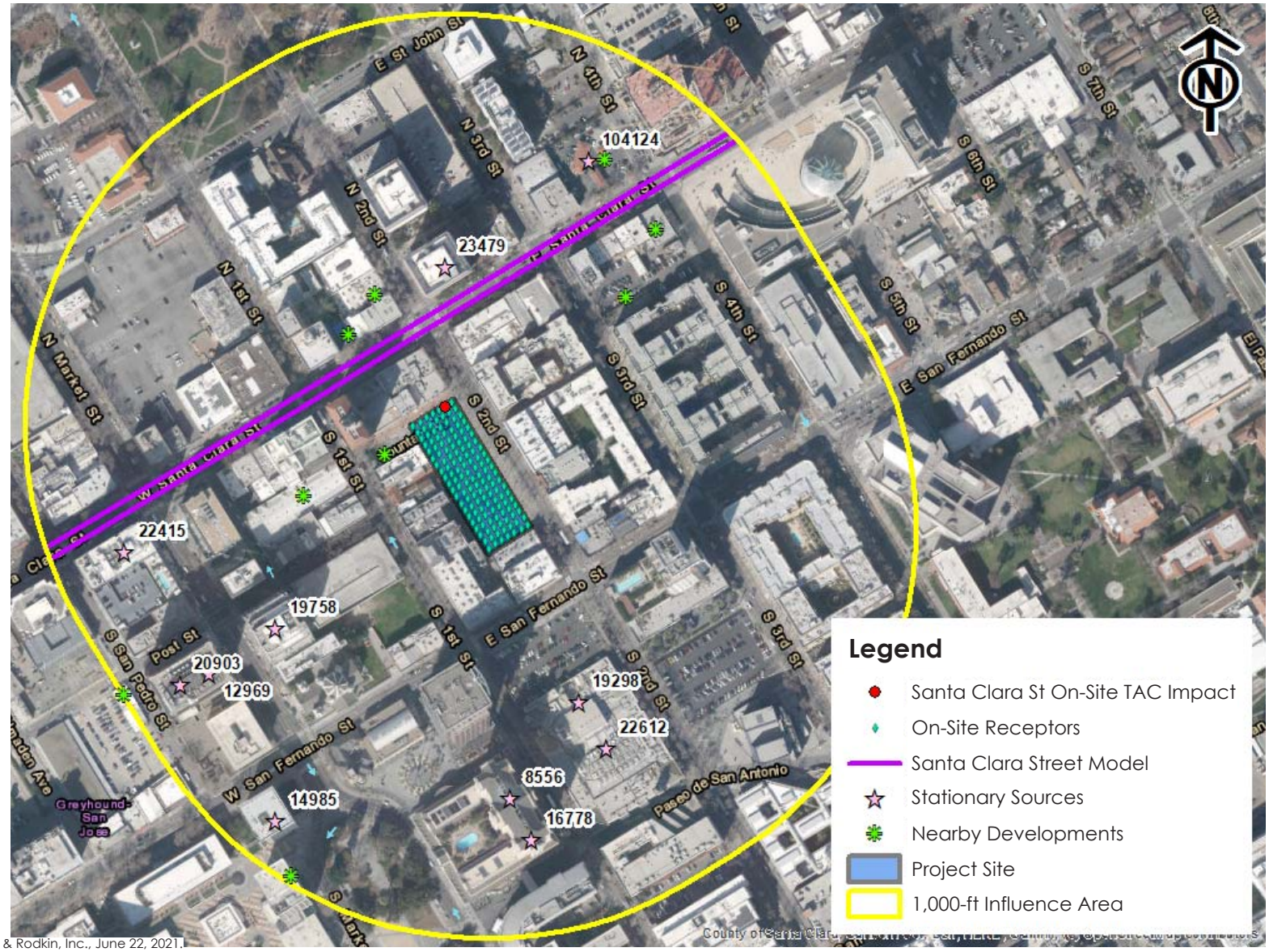
3.1.3 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District,* 62 Cal. 4th 369 *(BIA v. BAAQMD)*, effects of the environment on the project are not considered CEQA impacts. The following discussion is included for informational purposes only because the City of San José has policies that address existing air quality conditions affecting a proposed project. Pursuant to General Plan policies MS-10.1, MS-11.1, and MS-11.2, a health risk assessment was prepared to ensure that future sensitive receptors on-site are not exposed to substantial TAC emissions. The same TAC sources identified previously were used in this health risk assessment.

Operational Community Risk Impacts – New Residences

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

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



Source: Illingworth & Rodkin, Inc., June 22, 2021.

PROJECT SITE, ON-SITE RECEPTORS, AND NEARBY TAC AND $PM_{2.5}$ SOURCES | FIGURE 3.1-3

Table 3.1-9: Cumulative Sources to Future On-Site Receptors			
Source	**Cancer Risk (per million)**	**Annual $PM_{2.5}$ ($\mu g/m^3$)**	**Hazard Index**
East Santa Clara Street	1.06	0.08	<0.01
Facility ID#8556 (Generator), at 575 feet	0.90	0.04	<0.01
Facility ID #15969 (Generator), at 750 feet	3.24	<0.01	<0.01
Facility ID #14985 (Generator), at 870 feet	0.28	<0.01	<0.01
Facility ID #16778 (Generator), at 575 feet	1.28	0.26	0.01
Facility ID #19298 (Generator), at 415 feet	9.41	0.01	0.01
Facility ID #19758 (Generator), at 515 feet	0.63	<0.01	--
Facility ID #20903 (Generator), at 750 feet	5.26	0.01	<0.01
Facility ID #22415 (Generator), at 750 feet	0.25	--	--
Facility ID #22612 (Generator), at 415 feet	0.21	--	--
Facility ID #23479 (Generator), at 285 feet	0.68	--	--
Facility ID #104124 (Gas Station), at 670 feet	0.37	--	<0.01
Nearby Developments			
Fountain Alley Office, five feet west	<4.50	<0.03	<0.01
27 West, 215 feet west	<2.40	<0.05	<0.01
Eterna Tower, 250 feet north	<10.00	<0.30	<1.00
19 North Second Street, 340 feet north	<10.00	<0.30	<1.00
Hotel Clariana, 410 feet east	<8.80	<0.07	<0.01
SuZaCo Mixed-Use, 515 feet east	<5.00	<0.15	<0.50
Icon-Echo Mixed-Use, 600 feet northeast	<5.00	<0.15	<0.50
Post & San Pedro Tower, 965 feet west	<8.50	<0.06	<0.01
CityView Plaza Office, 930 feet southwest	<15.01	<0.44	<0.01
Combined Total	<92.78	<**1.98**	<3.13
BAAQMD Combined Source Threshold	***>100***	***>0.8***	***>10.0***
Exceed Threshold?	No	**Yes**	No

The combined total for annual $PM_{2.5}$ concentration would exceed the BAAQMD significance threshold of 0.8 $\mu g/m^3$ while the combined effects of the identified TAC sources would be below the BAAQMD thresholds of significance for cancer risk and HI. No additional project design features are recommended since the project would comply with applicable Downtown Strategy 2040 policies and regulations.

3.2 BIOLOGICAL RESOURCES

The following analysis is based on an Arborist Report completed by HMH Engineers in February 2021. A copy of this report is included in Appendix C of this document.

3.2.1 Environmental Setting

3.2.1.1 *Regulatory Framework*

Federal and State

Endangered Species Act

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

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

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. Hunting and poaching are also prohibited. The taking and killing of birds resulting from an activity is not prohibited by the MBTA when the underlying purpose of that activity is not to take birds.[22] 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

[22] United States Department of the Interior. "Memorandum M-37050. The Migratory Bird Treaty Act Does Not Prohibit Incidental Take." Accessed August 24, 2021. https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf.

regulation by the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), CDFW, and/or the USFWS under provisions of the federal Clean Water Act (e.g., Sections 303, 304, 404) and State of California Porter-Cologne Water Quality Control Act.

Fish and Game Code Section 1602

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

Regional and City of San José

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

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

Tree Removal Ordinance

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

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

Riparian Corridor and Bird-Safe Building Policy 6-34

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

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

Envision San José 2040 General Plan

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

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

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

3.2.1.2 *Existing Conditions*

Special-Status Species

The project site is currently developed with a surface parking lot surrounded by a chain-link fence. The site is located in an urbanized area of downtown San José which include predominantly urban adapted birds and animals. No sensitive habitats or wetlands are located on or adjacent to the site.

The project site is located within the Habitat Plan study area and is designated as "Urban-Suburban" land.[23] "Urban-Suburban" land is comprised of areas where native vegetation has been cleared for residential, commercial, industrial, transportation, or recreational structures, and is defined as having one or more structures per 2.5 acres.

Trees

A total of 30 trees, including 18 street trees, were surveyed on and adjacent to the project site HMH Engineers. Of the 30 trees surveyed, 12 are ordinance-sized trees (refer to the Table 3.2-1). The location of trees is shown on Figure 3.2-1.

[23] Santa Clara Valley Habitat Agency. "Habitat Agency Geobrowser." Accessed August 30, 2021. http://www.hcpmaps.com/habitat/.

Source: HMH, Februrary 5, 2021.

LOCATION OF TREES | FIGURE 3.2-1

Table 3.2-1: Tree Survey				
Tree No.	**Scientific Name**	**Common Name**	**Circumference in Inches**	**Diameter in Inches**
******1	*Platanus acerifolia*	London Plane	36	11.4
****2**	***Platanus acerifolia***	**London Plane**	**39**	**12.5**
******3	*Platanus acerifolia*	London Plane	35	11.0
******4	*Platanus acerifolia*	London Plane	35	11.0
******5	*Platanus acerifolia*	London Plane	36	11.6
****6**	***Platanus acerifolia***	**London Plane**	**41**	**13.1**
****7**	***Platanus acerifolia***	**London Plane**	**39**	**12.4**
****8**	***Platanus acerifolia***	**London Plane**	**40**	**12.8**
****9**	***Platanus acerifolia***	**London Plane**	**40**	**12.7**
****10**	***Platanus acerifolia***	**London Plane**	**37**	**11.9**
****11**	***Platanus acerifolia***	**London Plane**	**39**	**12.4**
******12	*Platanus acerifolia*	London Plane	31	9.9
****13**	***Platanus acerifolia***	**London Plane**	**41**	**13.1**
14	***Ulmus parvifolia***	**Chinese Elm**	**55**	**17.6**
15	*Ulmus parvifolia*	Chinese Elm	26	8.3
16	*Ulmus parvifolia*	Chinese Elm	34	10.7
17	*Ulmus parvifolia*	Chinese Elm	35	11.1
18	*Ulmus parvifolia*	Chinese Elm	24	7.5
19	*Ulmus parvifolia*	Chinese Elm	21	6.8
20	*Ulmus parvifolia*	Chinese Elm	29	9.3
21	*Ulmus parvifolia*	Chinese Elm	4	1.2
22	*Ulmus parvifolia*	Chinese Elm	3	1.1
23	*Ulmus parvifolia*	Chinese Elm	22	7.0
24	*Ulmus parvifolia*	Chinese Elm	33	10.5
25	***Syzygium paniculatum***	**Brush Cherry**	**41**	**13.1**
****26**	***Platanus acerifolia***	**London Plane**	**46**	**14.5**
******27	*Platanus acerifolia*	London Plane	37	11.7
****28**	***Platanus acerifolia***	**London Plane**	**43**	**13.7**
******29	*Platanus acerifolia*	London Plane	44	14.0
******30	*Platanus acerifolia*	London Plane	35	11.0

Notes: Ordinance-sized trees are 38+ inches in circumference (12.1+ inches in diameter)
** denotes street trees.
Bold denotes ordinance-sized trees.

3.2.2 Impact Discussion

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

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife (CDFW) or United States Fish and Wildlife Service (USFWS)?
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFW or USFWS?
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

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

3.2.2.1 *Project Impacts*

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

A total of 12 on-site trees and 18 street trees were surveyed; all of which are non-native. The project proposes to remove 12 on-site trees (tree nos. 14 to 25) and two street trees (tree nos. one and 29). Any trees removed could provide nesting and/or foraging habitat for migratory birds. 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. 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 Measure

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

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

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

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

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

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

Sensitive natural communities (i.e., riparian and aquatic habitat) in the vicinity of the downtown area are located within the Los Gatos Creek and Guadalupe River. The project site is located approximately 0.6 miles and 0.4 miles west of Los Gatos Creek and Guadalupe River, respectively. The Downtown Strategy 2040 FEIR concluded that implementation of applicable General Plan policies and existing regulations would reduce direct and indirect impacts to riparian habitat from

increased human activity. As a result, implementation of the project would not adversely affect any riparian habitat or other 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 site is not located adjacent to any waterway nor are there federally protected wetlands, as defined by Section 404 of the Clean Water Act (CWA), located on the project site. The proposed project would not have a substantial adverse effect on any wetland habitat. **[Same Impact as Approved Project (Less Than Significant Impact)]**

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

The project site is in a developed, urbanized area of downtown. No natural habitat exists on-site that would support endangered, threatened, or special status wildlife species. The project site is not used as a wildlife corridor by any native resident or migratory fish or wildlife species. Therefore, the proposed project would not interfere with the movement of any fish or wildlife species. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

The project proposes to remove 12 on-site trees (tree nos. 14 to 25) and two street trees (tree nos. one and 29). The remaining 16 street trees would remain. Consistent with the General Plan, 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 measures consistent with the Downtown Strategy 2040 FEIR.

Standard Permit Conditions:

The project shall be required to implement the following measures:

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

Table 3.2-2: Tree Replacement Ratios				
Circumference of Tree to be Removed[1]	**Replacement Ratios Based on Type of Tree to be Removed**			**Minimum Size of Each Replacement Tree****
	Native	**Non-Native**	**Orchard**	
38 inches or more	5:1*	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon

*x:x = tree replacement to tree loss ratio

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

A 38-inch tree equals 12.1 inches in diameter.

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

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

Of the 14 trees to be removed, three trees would be replaced at a 4:1 ratio, nine trees would be replaced at a 2:1 ratio, and two trees would be replaced at a 1:1 ratio. As mentioned previously, there are no native trees on-site. The total number of replacement trees required to be planted would be 32 trees.[24] The species of trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

- If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment:

  - The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
  - Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

In accordance with City policy, tree replacement would be implemented as shown in Table 3.2-2. The proposed project would be required to meet the tree replacement requirements as noted above. The Downtown Strategy 2040 FEIR concluded that compliance with local laws, policies and guidelines would reduce impacts to the urban forest to a less than significant level. **[Same Impact as Approved Project (Less Than Significant Impact)]**

[24] The street trees proposed for removal shall be reviewed by the Department of Transportation at the Public Improvement Plan review stage.

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

- The activity is subject to either ministerial or discretionary approval by the County or one of the cities;
- The activity is described in *Section 2.3.2 Urban Development* or in *Section 2.3.7 Rural Development*;[25]
- In Figure 2-5 of the SCVHP, the activity is located in an area identified as "Private Development is Covered," or the activity is equal to or greater than two acres and;
    - The project is located in an area identified as "Rural Development Equal to or Greater than 2 Acres is Covered," or "Urban Development Equal to or Greater than 2 Acres is Covered" or,
    - The activity is located in an area identified as "Rural Development is not Covered" but, based on land cover verification of the parcel (inside the Urban Service Area) or development area, the project is found to impact serpentine, wetland, stream, riparian, or pond land cover types; or the project is located in occupied or occupied nesting habitat for western burrowing owl.

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

Standard Permit Condition:

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

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

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

3.2.2.2 *Cumulative Impacts*

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

The geographic area for cumulative biological resources impacts includes the project site and nearby parcels (e.g., Fountain Alley Office). The project site does not contain sensitive, wetland, or riparian habitat. Therefore, the project's impact to biological resources would not be considerable.

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

3.3 CULTURAL RESOURCES

The following discussion is based on a Historic Resources Evaluation prepared by TreanorHL in April 2022. A copy of the report is attached in Appendix D.

3.3.1 Environmental Setting

3.3.1.1 *Regulatory Framework*

Federal and State

National Historic Preservation Act

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

California Register of Historical Resources

The California Register of Historical Resources (CRHR) is administered by the State Office of Historic Preservation and encourages protection of resources of architectural, historical, archeological, and cultural significance. The CRHR identifies historic resources for state and local planning purposes and affords protections under CEQA. Under Public Resources Code Section 5024.1(c), a resource may be eligible for listing in the CRHR if it meets any of the NRHP criteria.[26]

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

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

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

California Native American Historical, Cultural, and Sacred Sites Act

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

Public Resources Code Sections 5097 and 5097.98

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

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

City of San José

Historic Preservation Ordinance

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

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

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

Envision San José 2040 General Plan

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

General Plan Policies - Cultural Resource	
LU-13.1	Preserve the integrity and fabric of candidate or designated Historic Districts.
LU-13.2	Preserve candidate or designated landmark buildings, structures and historic objects, with first priority given to preserving and rehabilitating them for their historic use, second to preserving and rehabilitating them for a new use, or third to rehabilitation and relocation on-site. If the City concurs that no other option is feasible, candidate or designated landmark structures should be rehabilitated and relocated to a new site in an appropriate setting.
LU-13.3	For landmark structures located within new development areas, incorporate the landmark structures within the new development as a means to create a sense of place, contribute to a vibrant economy, provide a connection to the past, and make more attractive employment, shopping, and residential areas.
LU-13.4	Require public and private development projects to conform to the adopted City Council Policy on the Preservation of Historic Landmarks.
LU-13.7	Design new development, alterations, and rehabilitation/remodels within a designated or candidate Historic District to be compatible with the character of the Historic District and conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties, appropriate State of California requirements regarding historic buildings and/or structures (including the California Historic Building Code) and to applicable historic design guidelines adopted by the City Council.
LU-13.8	Require that new development, alterations, and rehabilitation/remodels adjacent to a designated or candidate landmark or Historic District be designed to be sensitive to its character.
LU-13.15	Implement City, State, and Federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.
LU-14.1	Preserve the integrity and enhance the fabric of areas or neighborhoods with a cohesive historic character as a means to maintain a connection between the various structures in the area.
LU-14.3	Design new development, alterations, and rehabilitation/remodels in conservation areas to be compatible with the character of the Conservation Area. In particular, projects should respect character defining elements of the area that give the area its identity. These defining characteristics could vary from area to area and could include density, scale, architectural consistency, architectural variety, landscape, etc.
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.

General Plan Policies - Cultural Resource	
ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

3.3.1.2 *Existing Conditions*

Subsurface Resources

Prehistoric

Native Americans occupied Santa Clara Valley and the greater Bay Area for more than 5,000 years. The exact time period of the Ohlone (originally referred to as Costanoan) migration into the Bay Area is debated by scholars. Dates of the migration range between 3000 B.C. and 500 A.D. Regardless of the actual time frame of their initial occupation of the Bay Area and, in particular, Santa Clara Valley, it is known that the Ohlone had a well-established population of approximately 7,000 to 11,000 people with a territory that ranged from the San Francisco Peninsula and the East Bay, south through the Santa Clara Valley and down to Monterey and San Juan Bautista.

The Ohlone people were hunter/gatherers focused on hunting, fishing, and collecting seasonal plant and animal resources, including tidal and marine resources from San Francisco Bay. The customary way of living, or lifeway, of the Costanoan/Ohlone people disappeared by about 1810 due to disruption by introduced diseases, a declining birth rate, and the impact of the California mission system established by the Spanish in the area beginning in 1777.

Artifacts pertaining to the Ohlone occupation of San José have been found throughout the downtown area, particularly near the Guadalupe River. The nearest waterway to the project site is Guadalupe River, located approximately 0.4 miles west.

Based on the literature search completed for two nearby project sites[27], the nearest recorded site is located west of Market Street. The site was nominated for listing under the NRHP in 1982 and retains a National Register Status of 2S2 (individual property determined eligible for National Register by a consensus through Section 106 process). The recorded site is also listed in the CRHR.

Based on previous studies, the Fountain Alley Office (File Nos. HP19-00, H19-041, & T19-035) site located at 30 and 34 South First Street was considered moderately sensitive for subsurface Native American archaeological resources. Based on previous literature searches completed in the area, the project area is archaeologically sensitive for Native American and historic-era archaeological

[27] Fountain Alley Office (File Nos. HP19-00, H19-041, & T19-035) and 27 West (SP18-016)

deposits and cultural materials.

Historic – Mission period

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

The pueblo was originally near the old San José City Hall. Because the location was prone to flooding, the pueblo was relocated in the late 1780's or early 1790's south to what is now downtown San José. The current intersection of Santa Clara Street and Market Street in downtown San José was the center of the second pueblo. The second pueblo is located approximately 726 feet west of the project site.

Historic – Post-Mission period to Early 20th Century

A land use history of the project site has been compiled based on a review of historical sources including Sanborn fire insurance maps, aerial photographs, and City directory listings, and agency records. From 1884 to 1891, the site was developed with various offices, businesses, and a theatre. By 1915, similar land uses remained on-site with the addition of lodgings. From 1930 to 1955, a coffee roaster business was located at 75 South Second Street. From 1922 to 1967, the site was developed with commercial buildings occupied by various businesses. A hotel with apartment units above was constructed at 28-48 Fountain Alley and 25-79 South Second Street. By 1968, the site was converted to the existing parking lot. No significant changes have occurred since then.

Additionally, the project site is within the Historic District.[28] This area, established from 1800 to 1924, was Santa Clara Valley's mercantile and financial center. The Historic District was designated as a National Register Historic District in 1984 and currently contains architecturally and historically significant buildings dating from the 1870s to the early 1940s.

Structures On-Site

The project site is currently developed with a surface parking lot and is listed as a non-contributing property within the boundaries of the Historic District.

Structures Off-Site

The building located at 27-29 Fountain Alley is listed in the NRHP. In addition, the project site is located adjacent and nearby nine San José Designated Historic Landmarks which include: Bank of Italy (Eight South First Street), Knox-Goodrich Building (34-36 South First Street), El Paseo Court (40-44 South First Street), Rea Block (56-60 South First Street), Letitia Building (66-72 South First

[28] The Historic District is comprised of 45 properties (27 contributing structures and 18 non-contributing properties) and is bounded by South First Street to the west, East Santa Clara Street to the north, South Third Street to the east, and East San Fernando Street to the north.

Street), Security Building/Ryland Block (74-86 South First Street), Jose Theater (62-64 South Second Street), New Century Bock (52-78 East Santa Clara Street), and Fountain Alley Building (27-29 Fountain Alley). These buildings are shown on Figure 3.3-1 with assigned numbers for reference.

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 Historic Resources Inventory or a structure that is an eligible Candidate City Landmark.

The proposed project would result in a significant unavoidable impact on the Historic District and a less than significant impact to subsurface resources, as discussed below.

3.3.2.1 *Project Impacts*

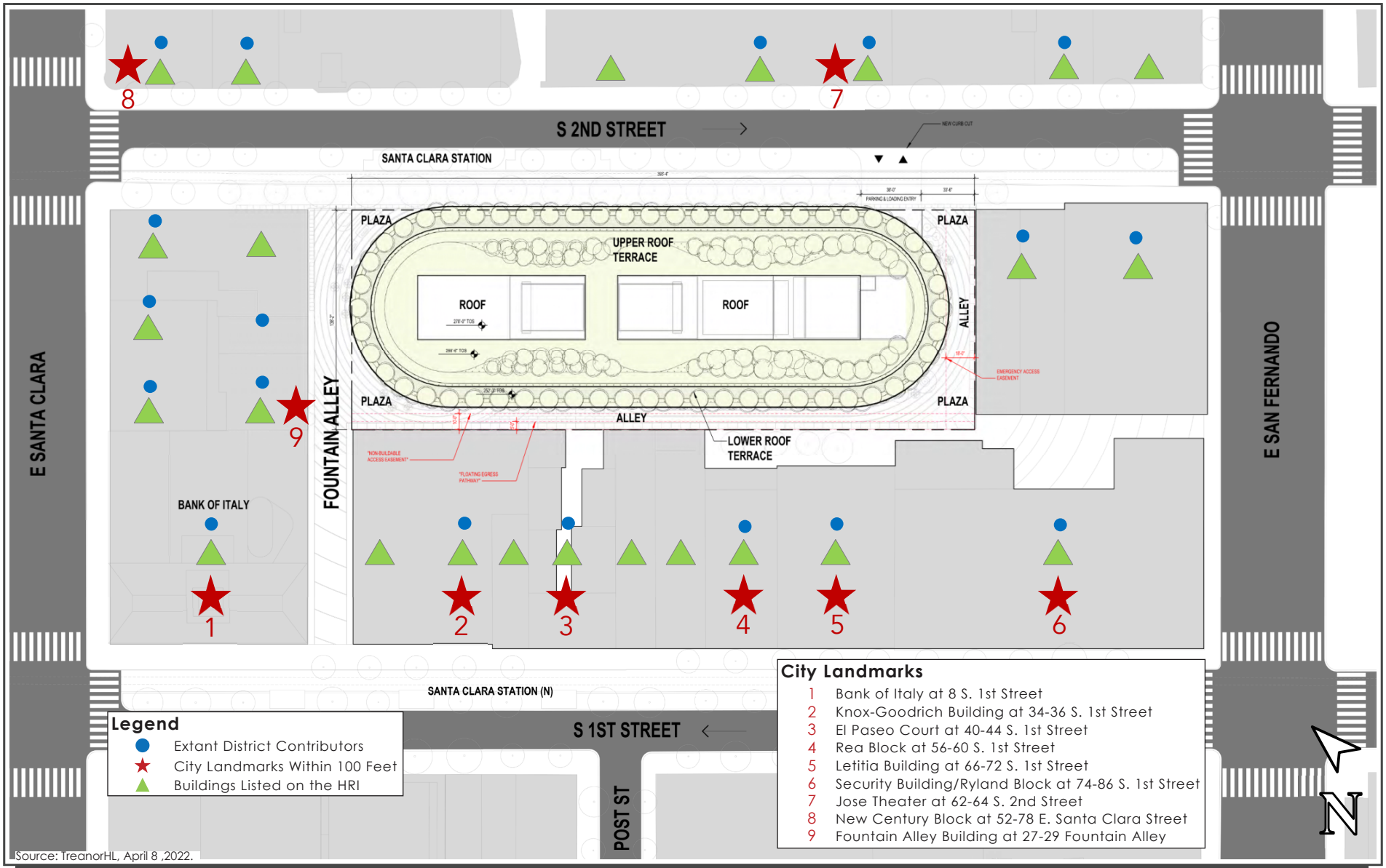
a) Would the project cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5?

Secretary of the Interior's Standards

The Secretary of the Interior's Standards (Standards) include 10 standards used to determine whether the project would result in a substantial adverse change to the Historic District, a historic resource, under CEQA. Because the project site is located within a designated historic district, the proposed project should be designed to be compatible with the overall historic character of the area. Standards 1-7 are not applicable to the proposed project since it does not propose any direct alterations or additions to historic resources on-site. Standard 8 is related to archaeological resources and is beyond the scope of this report. Standards 9 and 10 are relevant to the proposed project and are discussed in detail below.

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

The project site is currently developed with a surface parking lot and has been identified as a non-contributing property within the Historic District. The Historic District contributors utilize a variety of building materials including stucco, masonry, metals and ironwork, glass, and wood. The



Source: TreanorHL, April 8 ,2022.

NEARBY BUILDINGS SURROUNDING THE PROJECT SITE | FIGURE 3.3-1

proposed building would be contemporary in design and would be clearly differentiated from the contributing historic resources within the Historic District. The proposed building would consist of a curtain wall glazing system with terracotta louvers[29], aluminum fascia panels, and brick which would be compatible with the Historic District.

The proposed building would not include any false-historic features. Consistent with buildings within the Historic District, the proposed building would include a flat roof, brick walls, recessed entries, and glazed openings.

The project would not be compatible with Historic District in terms of size, scale, proportion, and massing. The Historic District consists of one- to three-story commercial buildings (except for the Bank of Italy building which is 14 stories tall). The proposed building would be 21 stories tall with a maximum height of 267 feet to the top of the roof. The contributor buildings within the district have rectilinear footprints that occupy the entire width of their lots which create a continuous streetwall. The proposed building would be curvilinear at the northern and southern ends and would be set back from the western and southern property lines. Additionally, the proposed building would not step down in height on all sides. The building façades would not be broken up into elements consistent with the scale of the adjacent historic buildings. The proposed building would overwhelm the adjacent historic buildings. For these reasons, the proposed project is not consistent with Standard 9.

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

The project would construct a 21-story mixed-use tower at 35 South Second Street, a non-contributor site within the historic district. If the proposed project is removed in the future, the historic district and its environment would be unimpaired. Future removal of the new construction would restore the integrity of the historic resource and its environment given that the proposed project is not compatible with the historic resource in terms of features, size, scale, proportion, and massing. Therefore, the proposed project is consistent with Standard 10.

2003 San José Downtown Historic District Design Guidelines

The 2003 Draft San José Downtown Historic Design Guidelines (2003 Historic Guidelines) aims to retain and enhance the character-defining features of the historic district. The 2003 Historic District Design Guidelines identify 12 design guidelines (e.g., building height, corner element, massing, façades, rear façades, openings, entries, exterior materials, ground floors, setbacks and stepback, pedestrian passageways, and vehicular access) for infill construction.

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

[29] Louvers is defined as a window, wall, or door with horizontal slats

Analysis: The proposed building would be 21 stories tall (up to 267 feet tall to the top of the roof) and would exceed the 60-foot building height. Therefore, the project would not be compatible with this guideline.

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

Analysis: The proposed building would be located at the corner of South Second Street and Fountain Alley. The proposed building would be curvilinear at the northern and southern ends and would not include a corner element at the northeastern corner. Therefore, the project would not be compatible with this guideline.

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

Analysis: As mentioned previously, the buildings within the district are one- to three-stories tall (except the Bank of Italy building) with rectangular or L-shaped footprints that are built out to the front lot lines. Depending on the parcel, building widths range from approximately 25 feet to 200 feet. The proposed building would be curvilinear at the northern and southern ends. The South Second Street project frontage would include an "urban room" (a 10-story high passageway), which would divide the street frontage into a 70-foot wide and a 100-foot wide segment (at the property line). The building design would not be segmented into smaller façades or sections. Therefore, the project would not be compatible with this guideline.

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

Analysis: The buildings along South Second Street and Fountain Alley have large storefronts along the ground floor and repetitive rectangular or arched windows on the upper floors. The proposed building would include a continuous glazing system with louvers wrapped around the building. While the ground floor storefronts of the proposed building would be consistent with the storefronts along South Second Street and Fountain Alley, the upper floors would not be compatible with the historic buildings. A low brick wall is proposed at the storefront which would act as a base or bulkhead element. Overall, the proposed project would not be compatible with this guideline.

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

Analysis: The adjacent historic buildings have rear façades with secondary entrances on the ground floor and rectangular or arched openings on the upper floors. In addition, the adjacent buildings have façades that are exposed brick or stucco clad and some have attached metal stairways. The western façade of the proposed building would have glazed storefronts with multiple entries and a wall glazing system on the upper floors. A louvered façade wrapped around all sides of the building

would form a band of balconies at the residential floors and green rooms at the office floors. As proposed, the new building's rear façade would not be compatible with the existing adjacent rear façades; therefore, the project would not be compatible with this guideline.

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

Analysis: All windows and doors (except for the parking entrance) would be glass with no mirror, tinted, frosted or opaque glazing. The ground floor storefronts would have brick bulkheads. Therefore, the project would be compatible with this guideline.

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

Analysis: Typical storefronts within the Historic District have recessed entries, doors with kick plates and wood framing, large display windows, transoms windows, bulkheads, and clerestories. The proposed building would have multiple storefronts at the ground floor. Three recessed entries are proposed along South Second Street while the rest of the entries facing north, west, and south would not be recessed. The proposed storefronts would be designed to reference some features of the historic storefronts (e.g., large windows, glazed double doors with transoms, terracotta shading fins forming clerestories, and brick bulkheads). The proposed storefront entries would connect the building to South Second Street and Fountain Alley through the proposed pedestrian alley ways, corner paseos, and the "urban room". Therefore, the project would be compatible with this guideline.

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

Analysis: The proposed building would use a curtain wall glazing system with terracotta louvers, aluminum fascia panels, and brick cladding and paving; therefore, the project would be compatible with this guideline.

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

Analysis: The proposed ground floor would be strongly pedestrian-oriented and would include recessed entries, brick bulkheads, glazed storefronts, glazed double doors, and transoms/clerestories defined by terracotta louvers. Therefore, the proposed project would be compatible with this guideline.

Setbacks and Stepbacks - *Not permitted.*

Analysis: The proposed project would be at the property line along South Second Street and Fountain Alley and would be set back from the western and southern property lines. The proposed building

would not have any stepbacks. The proposed project would not be fully compatible with this guideline due to the setbacks at the western and southern property lines.

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

Analysis: The proposed building would create a passageway with the proposed 10-story angled "urban room" along South Second Street. Therefore, the proposed project would be compatible with this guideline.

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

Analysis: Vehicular access to the site would be located along the eastern façade; therefore, the proposed project would be compatible with this guideline.

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

Analysis: The proposed project would not include any surface or above-level parking. Therefore, the proposed project would be compatible with this guideline.

TreanorHL concluded that the project would not fully comply with the height, corner element, massing, façades, rear façades, and setbacks and stepbacks of the 2003 Historic District Design Guidelines.

City of San José 2019 Downtown Design Guidelines and Standards

The 2019 San José Downtown Design Guidelines and Standards (2019 Design Guidelines and Standards) provides a framework of relevant criteria for addressing new construction adjacent to eligible historic resources. The 2019 Design Guidelines and Standards include a series of "Framework Plans" that identify design constraints within the downtown. Standards 4.2.2 Massing Relationship to Context and 4.2.4 Historic Adjacency would be applicable to the project.

A site has Historic Adjacency when any of these are true:

a) At least 50 percent of buildings fully or partially within 200 feet are on the San José HRI or are eligible for HRI listing;
b) The site is within 100 feet of a Designated or Candidate City Landmark or contributor to a district or conservation area; and
c) The site is adjacent to a historic building on the HRI or eligible for HRI listing.

The proposed project would have historic adjacency because 1) approximately 90 percent of the properties within 200 feet of the project site are listed in the City of San José HRI, 2) the site is within 100 feet of nine Designated City Landmarks, and the site is adjacent to nine historic buildings listed on the HRI. The nine historic buildings are: Bank of Italy (Eight South First Street), Knox-

Goodrich Building (34-36 South First Street), El Paseo Court (40-44 South First Street), Rea Block (56-60 South First Street), Letitia Building (66-72 South First Street), Security Building/Ryland Block (74-86 South First Street), Jose Theater (62-64 South Second Street), New Century Bock (52-78 East Santa Clara Street), and Fountain Alley Building (27-29 Fountain Alley). Refer to Figure 3.3-2 for the locations of the Designated City Landmarks.

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

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

Analysis: The proposed building would be up to 267 feet tall to the top of the roof and would be adjacent to multiple historic buildings (up to 45 feet tall) located at 64 South Second Street, 83 South Second Street, 27-29 Fountain Alley, and 33 Fountain Alley. The proposed project would not step back at least five feet from the front parcel; therefore, the project would not be compatible with this standard.

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

Analysis: The adjacent historic buildings are up to 45 feet tall and more than 30 feet narrower than the proposed building. While the proposed building provides slight gaps by louvers and planters on the third floor, the massing behind would not be broken into narrower segments. Therefore, the proposed project would not be compatible with this standard.

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

Analysis: The proposed building would be up to 267 feet tall to the top of the roof and is located across a parcel line interior to a block from several historic buildings that are up to 45 feet tall. The proposed building would not maintain a transition height; however, the building would be set back a minimum of 20 feet from the western property line. Therefore, the design would not be compatible with this standard.

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

Massing

a) Relate *Podium Level*[30] building massing to the scale of *Historic Context*[31] buildings.

Analysis: The podium of the proposed building would be up to 19 feet tall which is compatible to the scale of the historic context buildings on South Second Street and Fountain Alley. The proposed "urban room" would be broken up into two segments that are 70- and 100-foot wide at the property line which is similar to the Eight South First Street, 84 South First Street, and 40 South First Street buildings. The proposed building design would be consistent with this standard.

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

Analysis: The proposed building mass is curvilinear at the northern and southern ends and would have louvers wrapped around. Therefore, the building would not be consistent with this standard.

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

Analysis: The proposed podium level would be 19 feet tall which is comparable to the height of the historic context buildings. At the podium level, the storefront and glazed curtain walls with brick bulkheads would be more transparent than the upper residential floors. Therefore, the project would be consistent with this standard.

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

Analysis: The historic context buildings on the west side of South Second Street are built out to the property line which creates a continuous streetwall. The proposed building would have a curvilinear massing and pedestrian plazas at the northern and southern ends. Additionally, an interior paseo would divide the building into two masses (a 70-foot wide streetwall and a 100-foot wide streetwall) which would not provide a single continuous streetwall along South Second Street at the pedestrian level. Since the building footprint would curve away from the property line in multiple locations, sections of the east elevation would have a significant setback from South Second Street. The proposed project would be partially consistent with this standard.

Façade

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

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

Analysis: The widths of the historic context buildings facing South Second Street range from approximately 60 feet to 120 feet. As mentioned previously, the first 10 floors of the eastern façade would be divided into two sections by the proposed "urban room". The northern section would be approximately 70 feet at the property line and 140 feet overall. The southern section would be approximately 100 feet at the property line and 200 feet overall. For the purposes of this analysis, since the proposed building footprint is curvilinear, the widths at the property lines would be analyzed per this standard. The 70- and 100-foot widths at the new building's eastern façade would be comparable to the overall widths of the historic context buildings. Therefore, the proposed project would be consistent with this standard.

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

Analysis: The proposed building is contemporary and would not simulate historic architecture. The project would be consistent with this standard.

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

Analysis: The proposed building would include storefronts and windows on all exterior walls which would be visible from the windows of the adjacent historic context buildings. Therefore, the project would be consistent with this standard.

Elements

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

Analysis: As mentioned previously, the proposed project would use building materials that are compatible with the historic context buildings. Therefore, the project would be consistent with this standard.

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

Analysis: Overall, the new materials would be compatible with the historic materials in terms of scale, proportion, design, finish, texture, and durability. The proposed project would be consistent with this standard.

Ground Floor

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

Analysis: The proposed building has multiple pedestrian entries at similar distances as the historic context building entries. As proposed, the project would be compatible with this standard.

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

Analysis: At 19 feet, the podium level of the proposed building would be similar in height to the historic context buildings. As proposed, the project would be compatible with this standard. TreanorHL concluded that the project does not fully comply with the 2019 Design Guidelines and Standards including height transition and width transition of Guideline 4.2.2 and massing b of Guideline 4.2.4. The project would partially comply with streetwall continuity of Guideline 4.2.4.

Historic Integrity Impacts

A project that has been determined to be consistent with the Standards is considered to be a project that will not cause a significant impact. Since the proposed project does not fully conform with the Standards, TreanorHL prepared an integrity analysis of the Historic District to assess possible impacts. Historic integrity is evaluated with regard to the seven aspects of integrity: location, design, setting, materials, workmanship, feeling, and association.

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

Analysis: Implementation of the project would not change the location of the Historic District. Therefore, the Historic District would retain its integrity of location.

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

Analysis: The Historic District has been altered several times since its nomination in 1983 due to the construction of new buildings along the east side of South Second Street and the west side of South Third Street. These developments appear compatible with the character-defining features of the district. As mentioned previously, the project is not compatible with the Historic District in terms of features, size, scale, proportion, and massing; therefore, the overall integrity of design would be diminished. While the pedestrian passages and alleys are proposed consistent with the district, the proposed building design would still overwhelm the district contributors and impact the existing spatial relationship between buildings and the streetscape.

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

Analysis: As mentioned above, the district has been changed since its nomination in 1983 due to the construction of new buildings. Most of the new buildings are four- to five-stories tall, stucco or masonry clad, and have rectilinear footprints with continuous streetwalls. The 96 East Santa Clara Street building is the only contributing building along South Third Street that is still standing. While

the early 20th century setting of the Historic District has been altered over time, the new construction has been consistent with the character-defining features of the Historic District. The proposed project would alter the setting along South Second Street (the middle of the district); however, the proposed project would not result in an impact at the edges of the district along East Santa Clara Street, South First, and East San Fernando Street since the new construction would not be seen at the sidewalk. From this vantage point, the setting of the district would remain. Therefore, the integrity of setting would be partially diminished.

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

Analysis: The project is not proposing to alter any existing contributor buildings. The project would use building materials that are compatible with the character of the district. Therefore, the integrity of materials would not be impacted.

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

Analysis: The project is not proposing to alter any existing contributor buildings; therefore, the integrity of workmanship would not be impacted.

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

Analysis: The Historic District's original design, materials, workmanship, and setting relates to the commercial life in the late 19th and early 20th centuries. Overall, the feeling of the historic district remains at its edges along East Santa Clara Street, South First, and East San Fernando Street. The general feeling of the district has changed since it was listed in the NRHP by the new construction along South Second and South Third Streets. Construction of the proposed building would impact the feeling and aesthetic sense of the district through its scale, height, and massing, and by its location. As mentioned previously, the overall integrity of feeling would be partially diminished at South Second Street, but would be retained at the edges of the district.

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

The district is significant for downtown San José's commercial development and for its architecture. The proposed building is a contemporary mixed-use project consisting of ground floor retail and office and residential uses on the upper floors. The Historic District would retain its integrity of association since the commercial character would be preserved.

TreanorHL concluded that while the proposed project would diminish the integrity of design, setting (partial), and feeling (partial), the Historic District would still retain its overall historic character that qualifies it for listing as a historic resource. In addition, the proposed project is located at the center of the Historic District, a less prominent street, that originally did not contain many district contributors and would not block any existing visual connections between the district contributors. For these reasons, TreanorHL concluded that the proposed project would have a less than significant impact on the Historic District. Based on the documentation provided by TreanorHL, the City concluded that the proposed development would have a significant impact on the Historic District because:

- The project site takes up two thirds of the South Second Street frontage and South Second Street is the only street in the Historic District where both sides of the street are included in the district. This site makes it particularly important to the district.
- The buildings within the Historic District relate to one another visually and spatially. The proposed development is centrally located and would be visible from all points in the Historic District. Its features, size, scale, proportion, and massing would significantly erode the cohesive character of the Historic District.
- All existing new construction generally relates to the features, size, scale, proportion, and massing of contributing buildings in the Historic District and generally appears consistent with the 2003 Historic District Design Guidelines.
- The proposed building does not comply with the building height, corner element, massing, facades, rear facades, and setbacks and stepbacks which are key elements of the 2003 Historic District Design Guidelines.

For these reasons, the proposed project would have a significant unavoidable impact on the Historic District.

Vibration Impacts Resulting from Project Construction

Per General Plan Policy EC-2.3, a continuous vibration limit of 0.08 inch/sec PPV will be used to minimize the potential for cosmetic damage to sensitive historic structures, and a continuous vibration limit of 0.2 inch/sec PPV will be used to minimize damage at buildings of normal conventional construction. Construction activities on-site would include demolition, site preparation, grading/excavation, trenching/foundation, building (superstructure/exterior/cores/elevators), and site work. Pile driving is not proposed. As discussed in *Section 3.6*, with implementation of Mitigation Measures NOI-2.1 to NOI-2.3, the project would have a less than significant construction vibration impact on adjacent historic buildings.

For a project to cause a substantial adverse change in the significance of a historical resource, it must demolish or materially alter in an adverse manner those physical characteristics that convey the resources' historic significance and accounts for its identification as a City Landmark Structure, Candidate City Landmark, or Landmark District. Standards 1-8 are not applicable to the project. As mentioned previously, the proposed project would not be compatible to the historic district in terms of features, size, scale, proportion, and massing. Therefore, the project is not consistent with Standard 9. The project would be consistent with Standard 10 since the form and integrity of the district would be unimpaired if the proposed project were removed in the future. The proposed project would not fully comply with the 2003 Historic District Design Guidelines (e.g., building

height, corner element, massing, façades, rear façades, and setbacks and stepbacks). The project, as proposed, does not fully comply with the 2019 Guidelines and Standards. TreanorHL concluded that the integrity of design, setting (partial), and feeling (partial) would be diminished; however, the Historic District would still retain its overall historic character. The City concluded that the proposed development would have a significant impact on the Historic District (see discussion above). With implementation of Mitigation Measures NOI-2.1 to NOI-2.3, the project would have a less than significant construction vibration impact on adjacent historic buildings. **[New Significant Unavoidable Impact]**

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

The proposed project would be excavated approximately 56 feet below the ground surface (bgs) for the parking garage. In accordance with General Plan policy ER-10.3, the proposed project would be consistent with the following condition to reduce or avoid impacts to subsurface cultural resources.

Standard Permit Condition:

- If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist shall (1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel should not collect or move any cultural materials.

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

Mitigation Measures

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

MM CUL-1.1: **Cultural Sensitivity Training.** Prior to issuance of any grading permit, the project applicant shall be required to submit evidence that a Cultural Awareness Training program has been provided to 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.

MM CUL-1.2: **Sub-Surface Monitoring**. A qualified archaeologist, 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 also 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, the applicant shall notify the Director of Planning, Building, and Code Enforcement, or Director's designee, of grading and construction dates and activities that a qualified archeologist and Native American monitor would be present on the project site during.

MM CUL-1.3: **Treatment Plan.** 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.

MM CUL-1.4: **Evaluation.** The project applicant shall notify the Director of Planning, Building, and Code Enforcement or the Director's designee of any finds during grading or other construction activities. Any historic or prehistoric material identified in the project area 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, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Information Center, and the Director of Planning, Building, and Code Enforcement or the Director's designee.

With implementation of the identified Standard Permit Condition and Mitigation Measures CUL-1.1 to CUL-1.4 listed above, the proposed project would result in a less than significant impact to subsurface archaeological resources. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

Construction activities associated with the project have the potential to disturb human remains. Consistent with General Plan policy ER-10.2, the proposed project would be required to comply with the following Standard Permit Conditions to ensure human remains would not be disturbed.

Standard Permit Condition:

- If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. 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 or Code Enforcement or the Director's designee and the qualified archaeologist in consultation with a Native American representative, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD shall inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter

the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

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

With implementation of the identified Standard Permit Condition, impacts to human remains would be less than significant. **[Same Impact as Approved Project (Less than Significant Impact)]**

3.3.2.2 *Cumulative Impacts*

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

The geographic study area is the project site and surrounding area (within 1,000 feet of the project site).

Historic Structures

The project site is located within the Historic District and is adjacent to nine San José Designated Historic Landmarks. In addition to the project, there are four recently approved, but not yet constructed projects and one pending project within the Historic District. The four approved projects were individually analyzed and found to be consistent with all applicable design guidelines and standards. The pending project will be subject to its own CEQA analysis to determine consistency with the Historic District Design Guidelines and the Secretary of the Interior Standards. While the development/redevelopment of these parcels within the Historic District would cumulatively change the visual character of the Historic District and the proposed project would have a significant unavoidable impact on the Historic District, consistency with the applicable design guidelines and standards by the other projects would ensure that the combined effect of these projects would not significantly impact the historic integrity and significance of the Historic District.

Additionally, with implementation of Mitigation Measures NOI-2.1 to NOI-2.3, the project's construction impacts to the nearby historic buildings would be reduced to a less than significant level. Therefore, the project would not result in a cumulatively considerable impact on historic structures.

Subsurface Resources

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

The project would not result in a cumulatively considerable impact on historic structures or subsurface archaeological resources. **[New Less Than Significant Cumulative Impact (Significant Unavoidable Cumulative Impact)]**

3.4 HAZARDS AND HAZARDOUS MATERIALS

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

3.4.1 Environmental Setting

3.4.1.1 *Regulatory Framework*

Overview

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

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

Federal and State

Federal Aviation Regulations Part 77

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

Government Code Section 65962.5

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

agencies and developers to comply with CEQA requirements. The Cortese List includes hazardous substance release sites identified by the Department of Toxic Substances Control (DTSC) and State Water Resources Control Board (SWRCB). The project site is not listed in the Cortese List.[32]

City of San José

Envision San José 2040 General Plan

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

General Plan Policies - Hazards and Hazardous Materials	
EC-6.1	Require all users and producers of hazardous materials and wastes to clearly identify and inventory the hazardous materials that they store, use or transport in conformance with local, state and federal laws, regulations and guidelines.
EC-6.2	Require proper storage and use of hazardous materials and wastes to prevent leakage, potential explosions, fires, or the escape of harmful gases, and to prevent individually innocuous materials from combining to form hazardous substances, especially at the time of disposal by businesses and residences. Requires proper disposal of hazardous materials and wastes at licensed facilities.
EC-6.6	Address through environmental review all proposals for new residential, park and recreation, school, day care, hospital, church or other uses that would place a sensitive population in close proximity to sites on which hazardous materials are or are likely to be located, the likelihood of an accidental release, the risks posed to human health and for sensitive populations, and mitigation measures, if needed, to protect human health.
EC-6.7	Do not approve land uses and development that use hazardous materials that could impact existing residences, schools, day care facilities, community or recreation centers, senior residences, or other sensitive receptors if accidentally released without the incorporation of adequate mitigation or separation buffers between uses.
EC-7.1	For development and redevelopment projects, require evaluation of the proposed site's historical and present uses to determine if any potential environmental conditions exist that could adversely impact the community or environment.
EC-7.2	Identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for identified human health and environmental hazards to future users and provide as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and groundwater contamination shall be designed to avoid adverse human health or environmental risk, in conformance with regional, state and federal laws, regulations, guidelines and standards.
EC-7.5	On development and redevelopment sites, require all sources of imported fill to have adequate documentation that it is clean and free of contamination and/or acceptable for the proposed land use considering appropriate environmental screening levels for

[32] CalEPA. "Cortese List Data Resources." Accessed August 20, 2021. https://calepa.ca.gov/sitecleanup/corteselist.

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

3.4.1.2 *Existing Conditions*

The 1.25-acre project site is currently developed with a surface parking lot surrounded by a chain-link fence. Groundwater on-site is estimated at a depth ranging from 15 to 20 feet below the ground surface (bgs). Fluctuations in the groundwater level may occur due to seasonal changes, variations in rainfall, and underground drainage patterns. Groundwater in the project area flows in a westerly direction.

3.4.1.3 *History of Project Site*

A land use history of the project site has been compiled based on a review of historical sources including Sanborn fire insurance maps, aerial photographs, and City directory listings, and agency records. From 1884 to 1891, the site was developed with various offices, businesses, and a theatre. By 1915, similar land uses remained on-site with the addition of lodgings. From 1930 to 1955, a coffee roaster business was located at 75 South Second Street. From 1922 to 1967, the site was developed with commercial buildings occupied by various businesses. A hotel with apartment units above was constructed at 28-48 Fountain Alley and 25-79 South Second Street. By 1968, the site was converted to the existing parking lot. No significant changes have occurred since then.

3.4.1.4 *On-Site Sources of Contamination*

As mentioned previously, the site was occupied by a coffee roaster business from 1930 to 1955. Per the Phase I ESA, tetrachloroethene (PCE/PERC) was historically used to decaffeinate coffee beans until the 1970s, when it was banned for food preparation and pharmaceutical operations. PCE/PERC can accumulate in soil and soil gas and migrate to groundwater and was identified by the Phase I ESA as a recognized environmental condition (REC). An REC refers to the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property; due to release into the environment; under conditions indicative of a release into the environment; or under conditions that pose a material threat of a future release into the environment.

In addition, the site was previously listed in the Hazardous Waste Tracking System (HWTS) database in 2003 for generating 0.3 tons of other organic solid waste. The waste was disposed of off-site under waste manifest control and regulatory oversight; therefore, the listing is not an environmental concern.

3.4.1.5 *Off-Site Sources of Contamination*

Based on the Phase I ESA, no off-site facilities within 0.5 miles have been identified as an environmental concern for the project site because 1) no release or violations were identified, 2) the distance of the facility from the project site and/or the location of the release relative to groundwater flow, 3) the regulatory status, or 4) the time elapsed since closure was achieved.

3.4.1.6 *Other Hazards*

Airports

Norman Y. Mineta San José International Airport is located approximately 1.7 miles northwest of the project site. Based on the Airport Comprehensive Land Use Plan (CLUP), the project site is not located within the Airport Influence Area (AIA). The proposed project is not located within a CLUP-defined safety zone[33] nor is it located in the vicinity of a private airstrip.

Federal Aviation Regulations, Part 77, "Objects Affecting Navigable Airspace" (FAR Part 77) sets forth standards and review requirements for protecting the airspace for safe aircraft operation, particularly by restricting the height of potential structures and minimizing other potential hazards (such as reflective surfaces, flashing lights, and electronic interference) to aircraft in flight. These regulations require that the Federal Aviation Administration (FAA) be notified of certain proposed construction projects located within an extended zone defined by an imaginary slope radiating outward for several miles from an airport's runways, or which would otherwise stand at least 200 feet in height above ground. For the project site, any proposed structure of a height greater than approximately 70 feet above the ground surface is required to be submitted to the FAA for review (under FAR Part 77).

[33] Walter B. Windus, PE. Aviation Consultant. "Comprehensive Land Use Plan: Norman Y. Mineta San José International Airport." May 2011. Accessed August 24, 2021. https://www.sccgov.org/sites/dpd/DocsForms/Documents/ALUC_SJC_CLUP.pdf.

3.4.2 Impact Discussion

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

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

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

3.4.2.1 *Project Impacts*

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

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

The project site contains one REC related to the former coffee roaster business. PCE/PERC was historically used to decaffeinate coffee beans until the 1970s when it was banned. PCE/PERC, a chlorinated solvent, can readily migrate into the subsurface (both soil and groundwater).

Impact HAZ-1: Construction activities associated with the proposed project could expose construction workers and nearby land uses to soil and/or groundwater contamination (e.g., tetrachloroethene) from the former coffee roaster business.

Mitigation Measures

MM HAZ-1.1: Prior to the issuance of any demolition or grading permit(s), the project applicant shall retain a qualified environmental professional to conduct a Phase II soil, soil gas and/or groundwater investigation to determine if the soil, soil gas, and groundwater from former uses of the site have contaminants in concentrations above established construction/trench worker and residential or commercial Regional Water Quality Control Board Environmental Screening Levels (ESLs). If the Phase II results indicate soil, soil gas and/or groundwater contamination above regulatory environmental screen levels, the project applicant must enter into the Santa Clara County Department of Environment Health (SCCDEH) Site Cleanup Program (SCP) to obtain regulatory oversight from SCCDEH. Any further investigation and remedial actions must be performed under regulatory oversight to mitigate the contamination and make the site suitable for the proposed residential development. A report of the findings and of applicable regulatory oversight will be provided to the Director of Planning, Building and Code Enforcement or Director's designee and the Municipal Compliance Officer of the City of San José Environmental Services Department for review.

MM HAZ-1.2: If soil, soil gas, or groundwater contamination is identified, the project applicant shall implement appropriate management procedures, such as removal of the contaminated soil and implementation of a Site Management Plan (SMP), Removal Action Workplan (RAP), or equivalent document under regulatory oversight from the SCCDEH or State Department of Toxic Substances Control (DTSC). Copies of all environmental investigations shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee and the Supervising Environmental Compliance Officer in the City of San José's Environmental Services Department.

The SMP shall be prepared by a qualified hazardous materials consultant and include the following:

- Management practices for handling contaminated soil or other materials if encountered during construction or cleanup activities and measures to minimize dust generation, stormwater runoff, and tracking of soil off-site.

- Preliminary Remediation Goals (PRGs) for environmental contaminants of concern to evaluate the site conditions following SMP implementation.
- A health and safety plan (HSP) for each contractor working at the site that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.

The SMP shall be prepared and submitted to SCCDEH or DTSC for review and approval prior to issuance of grading permits and commencement of cleanup activities. The approved SMP shall detail procedures and protocols for management of soil containing environmental contaminants during site development activities.

The approved SMP or No Further Action letter (or equivalent assurance) from SCCDEH or DTSC documenting completion of cleanup activities shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee prior to issuance of any grading permit.

With implementation of the identified mitigation measures, redevelopment of the project site would not significantly impact construction workers or nearby land uses due to exposure to any contamination sources.

Off-Site Sources of Contamination

No off-site facilities were identified as a significant environmental concern to the project site. Therefore, implementation of the project would not exacerbate an existing soil or groundwater contamination source and would not impact persons or properties off-site.

Dewatering During Construction

The project site would be excavated to a depth of approximately 56 feet bgs for the parking garage and would likely encounter groundwater during excavation activities on-site. Any groundwater encountered during excavation activities would need to be removed from the site and disposed. Water discharge produced from construction dewatering to the sanitary sewer is acceptable under permit by the City of San José Environmental Service Department Watershed Protection Division. The maximum duration of a short-term permit to discharge to the sanitary sewer is one year. Discharge to the storm drain system requires approval from the San Francisco Bay RWQCB. As mentioned in *Section 4.7 Geology and Soils* of Appendix A, the project shall comply with the recommendations of the site-specific geotechnical investigation. As a result, dewatering during construction would not create a significant hazard to the public or the environment.

With implementation of Mitigation Measures HAZ-1.1 and HAZ-1.2 and the recommendations identified in the site-specific geotechnical investigation, the proposed project would result in a less than significant hazard to the public and/or the environment. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

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

The proposed project is located within one-quarter mile of San José State University (SJSU), Horace Mann Elementary School, and Little Einstein's Montessori Preschool. The project would construct a mixed-use building comprised of dwelling units, ground floor retail, and office space. The proposed land uses would not result in hazardous emissions or hazardous materials being transported to and from the site, nor would hazardous waste be produced or disposed of with implementation of the project. The proposed project would utilize small quantities of cleaning chemicals and would not use or store hazardous materials in sufficient quantities to pose a health risk to any nearby school. As a result, the proposed project would not present a risk to any nearby school. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

The proposed project is not located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.[34] Construction of the project would not create a significant hazard to the public or the environment. **[Same Impact as Approved Project (Less than Significant Impact)]**

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

The Norman Y. Mineta San José International Airport is located approximately 1.7 miles northwest of the project site. The project site is not located within the Norman Y. Mineta San José International Airport CLUP-defined safety zone or the Airport Influence Area (AIA). For the project site, any proposed structure of a height greater than approximately 70 feet above the ground surface is required to be submitted to the FAA for review (under FAR Part 77). As the proposed project would have a maximum height of 289 feet to the top of the penthouse, notification to the FAA is required to determine the potential for the project to create an aviation hazard.

The project would be required to follow all applicable General Plan policies (including General Plan Policy TR-14.2), regulations, and procedures outlined in the CLUP for the Norman Y. Mineta San José International Airport, as well as the Standard Permit Condition below.

Standard Permit Condition:

[34] CalEPA. "Cortese List Data Resources." Accessed August 20, 2021. https://calepa.ca.gov/sitecleanup/corteselist.

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

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

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

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

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

The project site is located within downtown San José and is not adjacent to any wildland area. As a result, implementation of the project would not expose any people or structures to risk from wildland fires. **[Same Impact as Approved Project (Less than Significant Impact)]**

3.4.2.2 *Cumulative Impacts*

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

The geographic area for hazards and hazardous materials is defined as locations within 1,000 feet of the project site. While there are other projects within 1,000 feet of the project site which may have on-site RECs, the proposed project would be required to implement Mitigation Measures HAZ-1.1 and HAZ-1.2 to reduce construction workers' and nearby land uses exposure to potential contaminated soil, soil gas, and groundwater during construction. The other projects also have site-specific mitigation to reduce impacts to less than significant. Therefore, the project would not result in a cumulatively considerable contribution to cumulative hazards and hazardous materials impacts. **[Same Impact as Approved Project (Less Than Significant Cumulative Impact)]**

3.4.3 Non-CEQA Effects

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

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

The project shall implement Mitigation Measures HAZ-1.1 and HAZ-1.2 to reduce construction workers and future site users' exposure to potential contaminated soil, soil gas, and groundwater below applicable screening levels. Therefore, the proposed project would not result in human health and environmental hazards to construction workers and future site users consistent with Policy EC-7.2.

3.5 NOISE AND VIBRATION

The following discussion is based on a Noise and Vibration Assessment prepared by Illingworth & Rodkin, Inc. in August 2021.[35] A copy of this report is included as Appendix F of this document.

3.5.1 Environmental Setting

3.5.1.1 *Background Information*

Noise

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

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

Vibration

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

[35] Since the Noise and Vibration Assessment was completed, the Local Transportation Analysis was updated and shows a decrease of net new weekday project trips from 4,354 to 3,936. The new project trips are less than the CalEEMod trips used in the analysis; therefore, the operational emission and project traffic health risk assessment emissions would be less than what was analyzed. This analysis provides a more conservative analysis. Janello, Carrie. Illingworth & Rodkin. Personal Communication. March 28, 2022.

3.5.1.2 *Regulatory Framework*

Federal

Federal Transit Administration Vibration Limits

The Federal Transit Administration (FTA) has developed vibration impact assessment criteria for evaluating vibration impacts associated with transit projects. The FTA has proposed vibration impact criteria based on maximum overall levels for a single event. The impact criteria for groundborne vibration are shown in Table 3.5-1 below. There are established criteria for frequent events (more than 70 events of the same source per day), occasional events (30 to 70 vibration events of the same source per day), and infrequent events (less than 30 vibration events of the same source per day). These criteria can be applied to development projects in jurisdictions that lack vibration impact standards.

Table 3.5-1: Groundborne Vibration Impact Criteria

Land Use Category	Groundborne Vibration Impact Levels (VdB inch/sec)		
	Frequent Event	Occasional Events	Infrequent Events
Category 1: Buildings where vibration would interfere with interior operations	65	65	65
Category 2: Residences and buildings where people normally sleep	72	75	80
Category 3: Institutional land uses with primarily daytime use	75	78	83

Source: Federal Transit Administration. *Transit Noise and Vibration Assessment Manual*. September 2018.

State

California Building Standards Code

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

California Green Building Standards Code

For commercial uses, CALGreen (Section 5.507.4.1 and 5.507.4.2) requires that wall and roof-ceiling assemblies exposed to the adjacent roadways have a composite STC rating of at least 50 or a composite OITC rating of no less than 40, with exterior windows of a minimum STC of 40 or OITC of 30 when the commercial property falls within the 65 dBA Ldn or greater noise contour for a freeway or expressway, railroad, or industrial or stationary noise source. The state requires interior

noise levels to be maintained at 50 dBA $L_{eq(1\text{-}hr)}$ or less during hours of operation at a proposed commercial use.

City of San José

Envision San José 2040 General Plan

The 2040 General Plan includes noise compatibility guidelines for various land uses. For reference, these guidelines are provided in Table 3.5-2 below.

Table 3.5-2: Land Use Compatibility Guidelines for Community Noise in San José

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

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

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

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

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

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

General Plan Policies – Noise and Vibration	
EC-1.1	Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include: <u>Interior Noise Levels</u> • The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected 2040 General Plan traffic volumes to ensure land use compatibility and 2040 General Plan consistency over the life of this plan. <u>Exterior Noise Levels</u> • The City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (Table EC-1). The acceptable exterior noise level objective is established for the City, except in the environs of the Norman Y. Mineta San José International Airport, the Downtown Core Area, and along major roadways. For the remaining areas of the City, the following standards apply: – For new multi-family residential projects and for the residential component of mixed-use development, use a standard of 60 dBA DNL in usable outdoor activity areas, excluding balconies and residential stoops and porches facing existing roadways. There will be common use areas available to all residents that meet the 60 dBA exterior standard. Use noise attenuation techniques such as shielding by buildings and structures for outdoor common use areas. – For single-family residential uses, use a standard of 60 dBA DNL for exterior noise in private usable outdoor activity areas, such as back yards.
EC-1.2	Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would: • Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or • Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.
EC-1.3	New nonresidential land uses will mitigate noise generation to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.
EC-1.6	Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City's Municipal Code.

General Plan Policies – Noise and Vibration	
EC-1.7	Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would: • Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months. For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.
EC-1.9	Noise studies are required for land use proposals where known or suspected loud intermittent noise sources occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, mitigation will be implemented so that recurring maximum instantaneous noise levels do not exceed 50 dBA L_{max} in bedrooms and 55 dBA L_{max} in other rooms.
EC-1.11	Continue to require safe and compatible land uses within the Norman Y. Mineta International Airport noise zone (defined by the 65 CNEL contour as set forth in State law) and encourage aircraft operating procedures that minimize noise.
EC-2.1	Near light and heavy rail lines or other sources of ground-borne vibration, minimize vibration impacts on people, residences, and businesses through the use of setbacks and/or structural design features that reduce vibration to levels at or below the guidelines of the Federal Transit Administration. Require new development within 100 feet of rail lines to demonstrate prior to project approval that vibration experienced by residents and vibration sensitive uses would not exceed these guidelines.
EC-2.3	Require new development to minimize continuous vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, including ruins and ancient monuments or buildings that are documented to be structurally weakened, a continuous vibration limit of 0.08 inch/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A continuous vibration limit of 0.20 inch/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of a historical building, or building in poor condition. On a project-specific basis, this distance of 300 feet may be reduced where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction.

3.5.1.3 *Existing Conditions*

Noise

The existing noise environment at the project site results primarily from vehicular traffic along South First Street, South Second Street, and East Santa Clara Street. The VTA light rail and buses and aircraft associated with the Norman Y. Mineta San José International Airport are also audible on-site.

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

The Downtown Strategy 2040 FEIR provides measurement data at a distance of 30 feet from the centerline of South First Street (between East Santa Clara Street and East San Fernando Street) which is shown as LT-11 in Figure 3.5-1 below. Data at these locations were collected between March 16, 2018 and March 18, 2018. The day-night average noise level at LT-11 was 72 dBA DNL. The existing traffic noise contours were based on traffic peak hours from 2015. Additionally, Illingworth & Rodkin, Inc. collected ambient noise measurements (one long-term measurement [LT-1] and one short-term measurement [ST-1]) along the eastern boundary of the project site in August 2005. The noise monitoring survey was made from August 22, 2005 to August 23, 2005.

VTA light rail runs along South Second Street. LT-1 is located approximately 25 feet from the light rail, 50 feet from the bus lane, and 60 feet from the traffic lane. The typical hourly average noise levels at LT-1 ranged from 64 to 69 dBA L_{eq} during the day and from 58 to 68 dBA L_{eq} at night. The day-night average noise level was 70 dBA DNL. The short-term noise measurement was made over a 10-minute period. A summary of the typical maximum noise levels is shown in Table 3.5-3.

Table 3.5-3: Typical Maximum Noise Levels at ST-1

Activity	Typical L_{max} Noise Level, dBA
VTA Movement	74 to 77
VTA Idling	60 to 65
VTA Bell	75
VTA Announcement	65
Bus Movement	70 to 75
Bus Idling	65 to 70
Parking Lot Noise	60 to 65
Aircraft	60 to 65

Noise measurement locations are shown in Figure 3.5-1.

Source: Illingworth & Rodkin, Inc., August 19, 2021.

NOISE MONITORING LOCATIONS | FIGURE 3.5-1

Vibration

Vibration levels were previously measured along the light rail for another development on March 28, 2018.[36] Vibration levels were measured at the ground level approximately 60 feet from the light rail track on South First Street. This is the same train line that run along South Second Street. A total of six individual light rail train passbys were observed and vibration levels ranged from 59 to 64 VdB at a distance of 60 feet from the tracks.

Sensitive Receptors

The closest sensitive receptors are the residences located approximately 85 feet east of the project site. There are additional residences located at farther distances to the north, west, and east/southeast.

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

[36] Illingworth & Rodkin, Inc. *27 South First Street Project Environmental Noise and Vibration Report*. December 14, 2018.

standard. Where noise levels will remain at or below the normally acceptable noise level standard with the addition of project noise, a noise level increase of five dBA DNL or greater is considered significant.

City of San José Standards

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

Construction Noise

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

Operational Noise

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

Construction Vibration

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

Noise Impacts

In conformance with the Downtown Strategy 2040 FEIR, the project would be required to be constructed in accordance with General Plan policies and Zoning Ordinance requirements. Impacts as a result of noise would be less than significant, consistent with the Downtown Strategy 2040 FEIR as described below.

3.5.2.1 *Project Impacts*

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

Project-Generated Traffic Noise Impacts

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

To determine the effect of project-generated traffic on sensitive receptors in the project vicinity, the peak hour existing and background trips at five intersections were added to the existing traffic volumes to calculate the existing plus project traffic. By comparing the existing plus project traffic to the existing traffic, the project's noise level was estimated to increase up to two dBA DNL or less along each roadway segment. Additionally, Table 3.12-6 of the Downtown Strategy FEIR provides a summary of all affected intersections located within the downtown. Noise levels would increase substantially (e.g., three dBA DNL or more) along segments of Santa Clara Street, Autumn Street, San Carlos Street, Bird Avenue, Julian Street, Almaden Boulevard, Race Street, The Alameda, King Road, First Street, Fruitdale Avenue, Alma Avenue, Naglee Avenue, and Keyes Street. The project site is not located along any of the identified intersections. As a result, implementation of the proposed project would result in a less than significant traffic noise impact in the vicinity of the project site.

Mechanical Equipment

While the City's General Plan does not include thresholds for equipment noise, the City's Municipal Code requires mechanical equipment noise be maintained at or below 55 dBA at the property line of adjacent residential properties or 60 dBA DNL at commercial properties.

High-rise buildings typically include various mechanical equipment for heating, ventilation, and air conditioning (HVAC), as well as an emergency generator and cooling tower. Based on the plans provided by the applicant, emergency generator rooms, electrical rooms, a water tank, and exhaust fans are proposed within the below-grade parking structure. Two AHUs, electrical rooms, and a cooling tower are proposed on the roof. Both AHUs and the cooling tower would have enclosures surrounding the equipment. At the time the analysis was completed, no specific details on the mechanical equipment were available.

The equipment rooms would be located below-grade on the northern side of the building. Additionally, the ground floor site plan shows generator exhaust vents within the emergency generator exhaust rooms.

Emergency Generator

As mentioned in *Section 3.1*, the project is proposing a 2,000-kW emergency diesel generator. The applicant has provided specifications for a 2,000-kW indoor critical grade silencer which would provide average attenuation of 25 to 34 dBA. The building's exterior façades and location of the mechanical equipment would provide an additional 20 dBA attenuation. Assuming the proposed project would include a Conditional Use Permit with established monthly testing hours, noise levels from the emergency generator would not be subject to City's noise thresholds during emergencies.

During monthly testing, the emergency generator would be subject to the City's threshold. The nearest receptor is the commercial building located approximately 25 feet north of the property line. Assuming up to two hours for testing[37], the hourly average noise levels would be up to 53 dBA L_{eq} and the day-night average noise level would be 43 dBA DNL. All other receptors would be located further away and exposed to lower noise levels (refer to Table 3.5-4).

Table 3.5-4: Estimated Operational Noise Levels for Monthly Emergency Generator Tests at Nearby Land Uses

Receptor	Distance from Center of the Noise Source	Hourly Average Noise Level (dBA L_{eq})	Day-Night Average Noise Level (dBA DNL)
Western Residential Property	70 feet	34 to 44	34
Eastern Residential Property	80 feet	34 to 43	32
Northern Commercial Property	25 feet	44 to 53	43
Southern Residential Property	330 feet	22 to 31	20

As shown above, the noise exposure from the monthly emergency generator tests at the shared property lines would be below the City's 55 dBA DNL threshold.

Air Handling Units

The mechanical equipment room proposed on the roof would provide at least 20 dBA reduction due to the elevation of the noise-generating sources and the enclosures. The center of the AHU noise source would be at least 75 feet from the nearest property line and the center of the cooling tower noise source would be at least 50 feet from the nearest property line. Typical heating pumps generate noise levels ranging from 56 to 66 dBA at a distance of three feet. Assuming up to 10 heating pumps would run simultaneously during a 24-hour period, the day-night average noise level would be up to 62 dBA DNL at a distance of three feet (with the 20 dBA reduction). Table 3.5-5 below provides a summary of the estimated noise levels from the AHUs running simultaneously assuming a 20 dBA reduction.

Table 3.5-5: Estimated Operational Noise Levels for 10 AHUs

Receptor	Distance from Center of the Noise Source	Hourly Average Noise Level (dBA L_{eq})	Day-Night Average Noise Level (dBA DNL)
Western Residential Property	75 feet	Below 30	35
Eastern Residential Property	135 feet	Below 25	29
Northern Commercial Property	150 feet	Below 25	28
Southern Residential Property	200 feet	Below 25	26

[37] The Noise and Vibration Assessment conservatively assumed two hours for testing. Monthly testing typically occurs for one to two hours.

As shown above, the noise exposure from the AHUs (with the 20 dBA reduction) would be below the City's 55 dBA DNL threshold.

Cooling Tower

The cooling tower would be located along the southern façade of the building. Since specific details of the cooling tower (e.g., number of units and types of units) were not available at the time the analysis was completed, it was assumed that the project would include up to five chillers generating a collective noise level of 56 dBA at 210 feet.[38] Assuming the equipment operates continuously over a 24-hour period, the day-night average noise levels would be at or below 55 dBA DNL at the nearest residence, with the inclusion of the 20 dBA reduction. Table 3.5-6 below provides a summary of the estimated noise levels from the cooling tower operating continuously over a 24-hour period (assuming a 20 dBA reduction).

Table 3.5-6: Estimated Operational Noise Levels for the Cooling Tower

Receptor	Distance from Center of the Noise Source	Hourly Average Noise Level (dBA L_{eq})	Day-Night Average Noise Level (dBA DNL)
Western Residential Property	75 feet	45	51
Eastern Residential Property	135 feet	40	46
Northern Commercial Property	365 feet	31	38
Southern Residential Property	50 feet	49	55

As shown above, the noise exposure from the cooling tower (with the 20 dBA reduction) would be below the City's 55 dBA DNL threshold. Nevertheless, the proposed project would be required to implement the following Condition of Approval to ensure the project maintains a noise level of 55 dBA or less at the shared property lines of nearby noise-sensitive land uses.

Condition of Approval:

- A detailed acoustical study shall be prepared during final building design to evaluate the potential noise generated by building mechanical equipment and demonstrate the necessary noise control to meet the City's 55 dBA DNL goal. Noise control features such as sound attenuators, baffles, and barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations around the project site. The noise control features identified by the study shall be incorporated into the project prior to issuance of a building permit.

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

[38] This is the worst-case scenario.

Truck Loading and Unloading

Truck loading and unloading activities would occur in the below-grade parking garage, which would be accessed from South Second Street. Noise due to loading and unloading activities would be shielded from the existing buildings. Assuming all deliveries and on-site maintenance activities would occur during daytime hours between 7:00 AM and 10:00 PM, truck loading and unloading activities would not generate noise levels exceeding the City's 55 dBA DNL threshold.

Construction Noise

During daytime hours, the current hourly average noise levels is estimated to range from 64 to 69 dBA L_{eq}. Noise levels in areas away from local roadways would be about five to 10 dBA less. The project would be constructed over a period of 34 months from 7:00 AM to 10:00 PM Monday through Friday and from 7:00 AM to 7:00 PM on Saturdays. Construction activities associated with the project would include demolition of the surface parking lot, excavation for the below-grade parking garage and utilities, and building construction. Pile driving is not proposed. Construction-generated noise levels drop off at a rate of about six dBA per doubling of the distance between the source and receptor. For each phase, the worst-case hourly average noise level was estimated at the property line of each surrounding land use. Table 3.5-7 below lists the equipment that would be used during construction and the estimated construction noise levels at nearby land uses from the center of the construction site.

Table 3.5-7: Estimated Construction Noise Levels at Nearby Land Uses

Phase of Construction	Calculated Hourly Average Noise Levels, L_{eq}(dBA)							
	Ambient Noise levels = 64 to 69 dBA L_{eq}							
	West Residential and Commercial (75 feet)		North Commercial (190 feet)		South Residential and Commercial (200 feet)		East Residential and Commercial (130 feet)	
	dBA	Exceed Ambient Levels by five dBA or more?	dBA	Exceed Ambient Levels by five dBA or more?	dBA	Exceed Ambient Levels by five dBA or more?	dBA	Exceed Ambient Levels by five dBA or more?
Demolition	82	**Yes**	74	**Yes**	74	**Yes**	78	**Yes**
Site Preparation	82-85[1]	**Yes**	74-77[1]	**Yes**	74-77[1]	**Yes**	78-81[1]	**Yes**
Grading/ Excavation	85	**Yes**	77	**Yes**	77	**Yes**	80	**Yes**
Trenching/ Foundation	84	**Yes**	76	**Yes**	75	**Yes**	79	**Yes**
Building - Superstructure/ Exterior	84	**Yes**	76	**Yes**	75	**Yes**	79	**Yes**
Building - Cores/Elevators	82-85[2]	**Yes**	74-77[2]	**Yes**	74-77[2]	**Yes**	78-81[2]	**Yes**
Sitework	85	**Yes**	77	**Yes**	76	**Yes**	80	**Yes**

Notes: The distance is measured from the center of the construction site to adjacent uses.
The noise levels do not assume reductions due to intervening buildings or existing barriers.
For the phases that require cement and mortar mixers, the table shows the total number expected during the phase; however, these would not all be operating at one time. At any given time, up to six cement and mortar

Table 3.5-7: Estimated Construction Noise Levels at Nearby Land Uses								
Phase of Construction	Calculated Hourly Average Noise Levels, L_{eq}(dBA)							
	Ambient Noise levels = 64 to 69 dBA L_{eq}							
	West Residential and Commercial (75 feet)		North Commercial (190 feet)		South Residential and Commercial (200 feet)		East Residential and Commercial (130 feet)	
	dBA	Exceed Ambient Levels by five dBA or more?	dBA	Exceed Ambient Levels by five dBA or more?	dBA	Exceed Ambient Levels by five dBA or more?	dBA	Exceed Ambient Levels by five dBA or more?
mixers could be operational. For modeling worst-case scenario, six cement and mortar mixers were assumed for the trenching/foundation, building - superstructure/exterior, and sitework phases. Additionally, during pour days of the foundation, up to six trucks would be operational on-site at any given time. During pour days of the decks/shear walls, up to three trucks would be operational.								
[1]Range of hourly average noise levels reflects the site preparation phase only and in combination with the demolition phase.								
[1]Range of hourly average noise levels reflects the building cores/elevators phase only and in combination with the building - superstructure/exterior phase.								

As shown in the table above, ambient levels at the nearby land uses would be exceeded by five dBA L_{eq} during different phases of construction. The project site is located within 500 feet of existing residences and within 200 feet of existing commercial uses and would last for a period of more than 12 months which would result in a significant impact (per General Plan Policy EC-1.7).

Impact NOI-1: Construction noise would exceed ambient levels of 64 to 69 dBA L_{eq} by five dBA or more for a period of more than one year.

Mitigation Measure

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

MM NOI-1.1: Prior to the issuance of any grading or demolition permits, whichever occurs first, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits for review and approval.

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

practices:

- Construction shall be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
- Prohibit all unnecessary idling of internal combustion engines. Staging areas and stationary noise-generating equipment shall be located as far as possible from sensitive receptors (a minimum of 200 feet, where feasible).
- The surrounding neighborhood within 500 feet shall be notified early and frequently of the construction activities.
- Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists.
- 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 will 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 Measure NOI-1.1, the proposed project would have a less than significant construction noise impact.

Per the Downtown Strategy 2040 FEIR, build out of the Downtown Strategy 2040 would result in a significant unavoidable impact at existing noise-sensitive land uses adjacent to segments of Santa Clara Street, Autumn Street, San Carlos Street, Bird Avenue, Julian Street, Almaden Boulevard, Race Street, The Alameda, King Road, First Street, Fruitdale Avenue, Alma Avenue, Naglee Avenue, and Keyes Street due to substantial increases in traffic noise. The project site is not located along any of the identified segments. With implementation of the identified Standard Permit Condition and Mitigation Measure NOI-1.1, the project would result in a less than significant construction noise impact. **[Less Impact than Approved Project With Mitigation Incorporated (Significant Unavoidable Impact)]**

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

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

Jackhammers typically generate vibration levels of 0.035 in/sec PPV and drilling typically generates vibration levels of 0.09 in/sec PPV at a distance of 25 feet. Typical vibration levels that could be expected from construction equipment at 25 feet is summarized below in Table 3.5-8.

Table 3.5-8: Typical Vibration Levels from Construction Equipment at 25 Feet

Equipment		PPV at 25 feet (in/sec)	Minimum Distance to Meet 0.08 in/sec PPV (feet)	Minimum Distance to Meet 0.2 in/sec PPV (feet)
Clam Shovel Drop		0.202	58	26
Hydromill	in soil	0.008	3	1
	in rock	0.017	6	2
Vibratory Roller		0.210	60	27
Hoe Ram		0.089	28	12
Large Bulldozer		0.089	28	12
Caisson Drilling		0.089	28	12
Loaded Trucks		0.076	24	10
Jackhammer		0.035	12	5
Small Bulldozer		0.003	1	<1

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

The nearest building of conventional construction is located more than 200 feet from the project site; therefore, those buildings would not be exposed to vibration levels exceeding 0.2 ins/sec PPV. As mentioned previously, the project site is located within the San José Downtown Historic District. Table 3.5-9 below provides a summary of construction equipment vibration levels at nearby historic buildings.

Table 3.5-9: Impacts to Nearby Historic Buildings Surrounding the Project Site					
Equipment		**Vibration Levels Nearby (in/sec PPV)**			
		West Historic Building (five feet)	**North Historic Building (30 feet)**	**South Historic Building (25 feet)**	**East Historic Building (85 feet)**
Clam shovel drop		**1.186**	**0.165**	**0.202**	0.053
Hydromill	soil	0.047	0.007	0.008	0.002
	rock	**0.100**	0.014	0.017	0.004
Vibratory Roller		**1.233**	**0.172**	**0.210**	0.055
Hoe Ram		**0.523**	0.073	**0.089**	0.023
Large bulldozer		**0.523**	0.073	**0.089**	0.023
Caisson drilling		**0.523**	0.073	**0.089**	0.023
Loaded trucks		**0.446**	0.062	0.076	0.020
Jackhammer		**0.206**	0.029	0.035	0.009
Small bulldozer		0.018	0.002	0.003	0.001

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

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

The 0.08 in/sec PPV threshold would be exceeded for historic buildings located within 60 feet of the site.

Impact NOI-2: Construction vibration levels would exceed the 0.08 in/sec PPV threshold by 0.13 in/sec PPV for historic buildings within 60 feet of the project site.

Mitigation Measure

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

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

- A description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.
- A list of all heavy construction equipment to be used for this project known to produce high vibration levels (e.g., clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning, Building or Code Enforcement or the Director's designee by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort for reducing vibration levels below the thresholds. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.
- Use of heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent building (where possible).
- Document conditions at all historic structures within 60 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. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion. The surveys shall include internal and external crack monitoring in the structure, settlement, and distress, and shall document the condition of the foundation, walls and other structural elements in the interior and exterior of the structure.
- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approach the limits.
- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.
- If vibration levels approach limits, construction shall be suspended and contingency measures shall be implemented to lower vibration or secure affected structures.

- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- Conduct a post-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs in accordance with the Secretary of the Interior's Standards where damage has occurred as a result of construction activities. The survey shall be submitted to the City of San José Department of Planning, Building, and Code Enforcement or Director's designee.

MM NOI-2.2: Prior to commencement of any construction activities, including any ground disturbing activities, the project applicant shall prepare and implement a Historical Resources Protection Plan (HRRP) that provides measures and procedures to protect nearby historic resources from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage).

The HRRP shall be prepared by a qualified Historic Architect and reviewed and approved by the Historic Preservation Officer or equivalent of the City of San José Department of Planning, Building and Code Enforcement prior to demolition and Public Works clearance, including any ground-disturbing work. The project applicant shall ensure the construction contractor follows the HRRP while working near these historic resources. At a minimum, the plan shall include:

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

MM NOI-2.3: The Historic Architect shall establish a "Monitoring Team" comprised of at least one qualified Historic Architect and one qualified structural engineer for the duration of the site monitoring process. The Monitoring Team shall monitor the adjacent historical resources and any changes to existing conditions shall be reported, including, but not limited to, expansion of cracks, new spalls, or other exterior deterioration during construction phase and any changes to the existing conditions shall be reported.

In addition, the Monitoring Team shall prepare a site visit report documenting all site visits. The Monitoring Team shall submit the site visit reports and documents to the City's Historic Preservation Officer no later than one week after each reporting period (as defined by the HRRP). The City's Historic

Preservation Officer shall determine the frequency of the reporting period. The structural engineer shall consult with the Historic Architect if any problems related to the character-defining features of the historic resources occur. The Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement may request any additional number of site visits at their discretion.

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

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

With implementation of Mitigation Measures NOI-2.1 to NOI-2.3, the project would have a less than significant construction vibration impact. **[Same Impact as Approved Project (Less Than Significant Impact)]**

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

The project site is located approximately 1.7 miles southeast of the Norman Y. Mineta San José International Airport and is outside the 60 dBA CNEL contour line. 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)]**

3.5.2.2 *Cumulative Impacts*

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

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

- Miro
- CityView Plaza Office
- Post & San Pedro Tower
- Icon-Echo Mixed-Use
- SuZaCo Mixed-Use
- Hotel Clariana
- 19 North Second Street
- Eterna Tower
- 27 West
- Fountain Alley Office

The existing residences located along North First Street, west of the project site, would be considered a sensitive receptor during construction activities at the proposed project, Fountain Alley Office, and 27 West sites. Additionally, the building north of the project site would have direct line-of-sight to three construction sites (e.g., Eterna, Fountain Alley Office, and the proposed project). The disruption to the occupants would be substantial if construction activities took place simultaneously or sequentially.

The Downtown Strategy 2040 FEIR concluded that implementation of the identified mitigation in combination with General Plan Policies EC-1.7 and EC-2.3 and the City's allowable construction hours would reduce construction noise to a less than significant level. Each individual project includes measures to further reduce noise and vibration levels from the individual sites. With

implementation of the identified mitigation and Standard Permit Conditions, the construction noise and vibration levels from individual projects would be reduced to the extent possible during construction of each individual project. Therefore, the project would not result in a cumulatively considerable contribution to a significant cumulative noise impact. **[Same Impact as Approved Project (Less Than Significant Cumulative Impact)]**

3.5.3 Non-CEQA Effects

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

Future Exterior Noise Levels

The City's acceptable exterior noise level standard is 60 dBA DNL or less for residential land uses and 70 dBA DNL or less for commercial land uses (General Plan Policy EC-1.1). Per General Plan Policy EC-1.1, the acceptable exterior noise level objective has been established for the City except in the environs of the Norman Y. Mineta San José International Airport, the downtown core area, and along major roadways (General Plan Policy EC-1.1).

Residential Component

Amenities proposed for the residential use would include decks on the 11th floor (along the eastern and western façades) and the roof terrace. The eastern deck would be set back approximately 55 to 95 feet from the South Second Street centerline with partial shielding provided by the building and elevation of the deck above the ground. The center of the eastern deck would be located approximately 90 feet from the South Second Street centerline. Future exterior noise levels would be up to 63 dBA DNL along the edge of the eastern deck. Future exterior noise levels at the center of the deck would be below 60 dBA DNL.

The roof terrace would be located along the entire roof at approximately 287 feet above ground. At this height (assuming outdoor use would occur towards the center of the terrace), the future exterior noise levels at the roof terrace would be below 60 dBA DNL.

Future exterior noise levels would be consistent with the City's normally acceptable threshold of 60 dBA DNL. The proposed project would be consistent with General Plan Policy EC-1.1.

Urban Room

A ground level "urban room" is proposed between the northern and southern lobbies of the proposed building. The center of the "urban room" would be set back approximately 105 feet from South Second Street centerline. The proposed building would provide some shielding for the outdoor use space, and the existing buildings located west of the project site would provide shielding from South First Street. The future exterior noise levels at the center of the "urban room" would be below 70 dBA DNL. Therefore, the project would be compatible with the City's normally acceptable threshold of 70 dBA DNL (General Plan Policy EC-1.1).

Future Interior Noise Levels

Residential Component

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

Residential units are proposed on floors two to 11. Units that are located along the eastern façade near South Second Street would be set back from the roadway centerline by approximately 55 feet. At this distance, the units would be exposed to future exterior noise levels ranging from 63 to 72 dBA DNL. Assuming a 15 dBA of exterior-to-interior noise reduction with windows partially open, future interior noise levels in these units would range from 48 to 57 dBA DNL.

While units along the western façade would be partially shielded from South First Street by existing buildings that are two- to four-stories tall, the upper floors of the proposed building would have direct line-of-sight to South First Street. The upper floors would also have some direct line-of-sight to SR 87. The residential units facing the western façade of the proposed building would be exposed to future exterior noise levels up to 65 dBA DNL. With windows partially open, future interior noise levels would be up to 50 dBA DNL.

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

Conditions of Approval:

- 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.
- Residential units along the eastern building façade shall require windows and doors with a minimum rating of 31 STC with adequate forced-air mechanical ventilation to meet the interior noise threshold of 45 dBA DNL.
- A qualified acoustical specialist shall prepare a detailed analysis of interior residential noise levels from all exterior sources during the design phase pursuant to requirements set forth in the state building code. The study shall establish appropriate criteria for noise levels inside the commercial spaces affected by environmental noise. The study shall review the final site plan, building elevations, and floor plans prior to construction and recommend building treatments to reduce residential interior noise levels to 45 dBA DNL or lower and to reduce commercial interiors to 50 L_{eq}(1-hr) or below. Treatments could 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.

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

Commercial Component

Daytime hourly average noise levels at the ground level of the building exterior would range from 66 to 71 dBA L_{eq} at the eastern building façade with day-night average noise levels up to 72 dBA DNL. On floors 12 through 21, the daytime hourly average noise levels would range from 57 to 62 dBA L_{eq} with day-night average noise levels up to 63 dBA DNL.

Standard construction materials for commercial uses would provide about 25 dBA of noise reduction in interior spaces. Inclusion of adequate forced-air mechanical ventilation systems would provide an additional five dBA reduction. Therefore, the use of standard construction materials in combination with forced-air mechanical ventilation would comply with the 50 dBA $L_{eq(1\text{-}hr)}$ threshold. Nevertheless, the project would implement the identified Conditions of Approval to ensure that the project complies with the City's interior noise standards consistent with General Plan Policy EC-1.1.

Future Vibration

Per General Plan Policy EC-2.1, new development within 100 feet of rail lines would be required to demonstrate (prior to project approval) that vibration experienced by residents and vibration sensitive uses would not exceed the FTA guidelines.

The nearest building façade would be located approximately 25 feet from the nearest VTA tracks. Vibration levels were estimated to range from 63 to 67 VdB at the nearest building façade. Based on the number of events observed in March 2018, sites along this light rail line would have 70 or more events per day. This is not expected to change under project conditions. The proposed project would fall into Category 2, which has a threshold of 72 VdB for frequent events. Therefore, the proposed project would not exceed vibration threshold, consistent with General Plan Policy EC-2.1.

SECTION 4.0 GROWTH-INDUCING IMPACTS

Would the project foster or stimulate significant economic or population growth in the surrounding environment?

The CEQA Guidelines require that an EIR identify the likelihood that a proposed project could "foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment" (Section 15126.2[d]). This section of the Draft SEIR is intended to evaluate the impacts of such growth in the surrounding environment. Examples of projects likely to have significant growth-inducing impacts include removing obstacle to population growth, for example by extending or expanding infrastructure beyond what is needed to serve the project. Other examples of growth inducement include increases in population that may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects.

The project would construct a 21-story mixed-use building on a 1.25-acre site in downtown San José. There are no undeveloped areas adjacent or in the immediate vicinity of the project site and the project would not remove any obstacles that would help facilitate growth that could significantly affect the physical environment. The project would increase residential, retail, and office development on an underutilized infill site which would increase the City and employee population. The proposed project is part of the planned growth in the Downtown Strategy 2040 and the project would not require the expansion of utilities or roads. Any growth that would occur from construction of the project would be a beneficial impact due to its location in the downtown area and proximity to various modes of transit.

SECTION 5.0 SIGNIFICANT AND IRREVERSIBLE ENVIRONMENTAL CHANGES

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

The project would demolish an existing surface parking lot and construct a 21-story mixed-use building. Future development on-site would involve the use of non-renewable resources during construction phases. Construction would include the use of building materials, including materials such as petroleum-based products and metals that cannot reasonably be re-created. Additionally, construction involves significant consumption of energy, usually petroleum-based fuels that deplete supplies of non-renewable resources.

The City of San José encourages the use of building materials that include recycled materials and makes information available on those building materials to developers. The project would be built to current codes, which require insulation and design to minimize wasteful energy consumption. Additionally, the proposed project would be designed to achieve LEED C&S Platinum certification and ILFI Zero Carbon Certification and constructed in compliance with CALGreen requirements, the City's Council Policy 6-32 and the City's Green Building Ordinance. In addition, the project proposes 100 percent renewable electricity through a portfolio scale power purchase agreement or participation in SJCE at the TotalGreen level (100 percent renewable energy). The project would be constructed consistent with City Council Policy 6-29 and the RWQCB Municipal Regional Stormwater NPDES to avoid impacts to waterways. The project site is located in the downtown area which would provide future residents, employees, and patrons access to existing transportation networks and other downtown services. Therefore, the proposed project would facilitate a more efficient use of resources over the lifetime of the project. For these reasons, the project would not result in significant and irreversible environmental changes to the project site.

SECTION 6.0 SIGNIFICANT AND UNAVOIDABLE IMPACTS

A significant unavoidable impact is an impact that cannot be mitigated to a less than significant level if the project is implemented as it is proposed. The following significant unavoidable impacts have been identified as a result of the project:

- **Cumulative Air Quality:** Even with implementation of Mitigation Measure AIR-1.1 and the identified Standard Permit Conditions, the cumulative $PM_{2.5}$ concentration would continue to exceed the BAAQMD significance threshold 0.8 $\mu g/m^3$.
- **Cultural Resources:** The proposed project would impact the overall integrity of the San Jose Downtown Commercial Historic District (Historic District) as it does not comply with: the 2003 Historic District Design Guidelines (e.g., building height, corner element, massing, façades, rear façades, and setbacks and stepbacks) and the 2019 Guidelines and Standards.

SECTION 7.0 ALTERNATIVES

CEQA requires that an EIR identify and evaluate alternatives to a project as it is proposed. Two key provisions from the CEQA Guidelines pertaining to the discussion of alternatives are included below:

> **Section 15126.6(a). Consideration and Discussion of Alternatives to the Proposed Project.** An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.
>
> **Section 15126.6(b). Purpose.** Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or be more costly.

Other elements of the Guidelines discuss that alternatives should include enough information to allow a meaningful evaluation and comparison with the proposed project. The CEQA Guidelines state that if an alternative would cause one or more additional impacts, compared to the proposed project, the discussion should identify the additional impact, but in less detail than the significant effects of the proposed project.

The three critical factors to consider in selecting and evaluating alternatives are: (1) the significant impacts from the proposed project that could be reduced or avoided by an alternative, (2) consistency with the project's objectives, and (3) the feasibility of the alternatives available. Each of these factors is discussed below.

7.1 PROJECT OBJECTIVES

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

1. Support the development of downtown as a regional job center, consistent with the Envision San José 2040 General Plan, Strategy 2000, and Metropolitan Transportation Commission (MTC) goals for transit-oriented development near regional transit expansion projects:

    a. Develop a mixed-use building that achieves financial viability through large floor plates where at least 10 floors are used for office use and no more than 10 floors are

used for residential use.

b. Provide a mix of residential and office use to contribute to around-the-clock activation of the project's retail and neighboring commercial use.

c. Replace a surface parking lot in downtown San José with a development that connects the numerous surrounding paseos and alleyways by creating a place to be in downtown San José and establishing the desired transit-oriented density.

2. Create a new Class A office space typology with convenient access to outdoor space to attract the best tenants and support the City's economic development goals.

3. Provide future residents access to downtown jobs, retail and entertainment, and various public transit modes such as bikeways, Santa Clara Valley Transportation Authority (VTA) light rail and buses, and a planned Bay Area Rapid Transit (BART) extension.

4. Locate residential units in the lower portion of the building with a more introspected scale and variety contributing to the neighborhood's urbanity and relating to the historical context, with more extensive office in the upper portion of the building to meet commercial requirements and register the development on the skyline.

5. Provide a ground-floor configuration with retail use, residential and office lobbies, storefront, and landscape design to enhance the pedestrian experience.

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

7. Support San José Climate Smart goals by providing sustainable energy, reduce water usage by recycling greywater, offer natural ventilation for residential and commercial users, provide electric vehicle (EV) car parking to reduce greenhouse gas emissions.

8. Provide an architecturally-distinguished high-rise residential and commercial project in the downtown area that contributes an iconic design to the skyline of downtown San José.

9. Provide on-site parking and loading in amounts adequate to meet anticipated demands of tenants that would reside and work in such a prominent project.

7.2 SIGNIFICANT IMPACTS FROM THE PROJECT

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

- **Air Quality:** Construction activities associated with the proposed project would expose the project maximum exposed individuals (MEIs) to a cancer risk of 32.44 cases per one million (for infants) and a maximum-annual $PM_{2.5}$ concentration of 0.46 µg/m^3 which exceeds

BAAQMD significance thresholds of 10 cases per one million for cancer risk and 0.3 $\mu g/m^3$ for $PM_{2.5}$, respectively.

- **Cumulative Air Quality:** Even with implementation of Mitigation Measure AIR-1.1 and the identified Standard Permit Conditions, the cumulative $PM_{2.5}$ concentration would continue to exceed the BAAQMD significance threshold 0.8 $\mu g/m^3$.
- **Biological Resources:** Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.
- **Cultural Resources:** The proposed project would impact the overall integrity of the San Jose Downtown Commercial Historic District (Historic District) as it does not comply with: the 2003 Historic District Design Guidelines (e.g., building height, corner element, massing, façades, rear façades, and setbacks and stepbacks) and the 2019 Guidelines and Standards.
- **Cultural Resources:** Project ground disturbing activities could result in a substantial adverse change in the significance of unknown archaeological resources.
- **Hazards and Hazardous Materials:** Construction activities associated with the proposed project could expose construction workers and nearby land uses to soil and/or groundwater contamination (e.g., tetrachloroethene) from the former coffee roaster business.
- **Noise and Vibration:** Construction noise would exceed ambient levels of 64 to 69 dBA L_{eq} by five dBA or more for a period of more than one year.
- **Noise and Vibration:** Construction vibration levels would exceed the 0.08 in/sec PPV threshold by 0.13 in/sec PPV for historic buildings within 60 feet of the project site.

7.3 ALTERNATIVES

There is no rule requiring an EIR to explore off-site project alternatives in every case. As stated in the Guidelines: "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives." (Guidelines, § 15126.6, subd. (a), italics added.) As this implies, "an agency may evaluate on-site alternatives, off-site alternatives, or both." (Mira Mar, supra, 119 Cal.App.4th at p. 491.) The Guidelines thus do not require analysis of off-site alternatives in every case. Nor does any statutory provision in CEQA "expressly require a discussion of alternative project locations." (119 Cal.App.4th at p. 491 citing §§ 21001, subd. (g), 21002.1, subd. (a), 21061.)

The City considered the following alternatives to the proposed project:

- Location Alternative
- No Project – No Development Alternative and Development under Downtown General Plan Designation
- Reduced Height (Four-Stories), Two Buildings Alternative
- Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative

7.3.1 Project Alternatives

7.3.1.1 *Considered & Rejected*

Location Alternative

In considering an alternative location in an EIR, the CEQA Guidelines advise that the key question is "whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location".[39] As proposed, the project would construct a 21-story mixed-use building with up to 194 dwelling units, approximately 31,959 square feet of ground floor retail, and 405,924 square feet of office space on an approximately 1.25-acre site in the downtown area.

Given the size of the project site and the proposed project, it is reasonable to assume that there are other sites available within the downtown area that could be redeveloped to support the proposed development. To accommodate the project as proposed, it is likely that existing buildings would need to be demolished because of limited undeveloped parcels downtown. There are 21 surface parking lots within the downtown area that could accommodate the proposed project. Of the 21 identified sites, 10 sites maintain current planning project approvals or applications for new development on those sites are being processed by the City. Some of these sites are already owned by the applicant and have similar pending development applications that are located within close proximity to each other. Nine sites are associated with existing businesses and would not be available for redevelopment because they are necessary for operations. Additionally, displacement of existing buildings could trigger secondary effects. Addressing a site alternative where the site has an active use and the site is not owned by the applicant cannot be done without the owners' permission. Furthermore, it is unlikely that a new location would avoid impacts to individual historic buildings since it would be difficult to identify a site without historic adjacencies.

Due to the concentration of historic buildings in the downtown area, developing the project in a new location downtown could still result in impacts to individual historic buildings. The impact to the Historic District could, however, be avoided by constructing the project on a site outside the district boundary. Construction would also need to be precluded within the St. James Park Historic District boundary.

All construction-related impacts (air quality, biological resources, hazards, and noise and vibration) would remain the same if the project were relocated to an undeveloped site and sensitive receptors, such as residents or schools, are located within 1,000 feet of the site. If buildings need to be demolished, construction-related air quality and noise impacts could increase depending on the size of the existing building(s).

While a location alternative would avoid the identified impact to Cultural Resources (the Historic District), all sites controlled by the applicant outside the district already have pending development of a similar size. All other impacts resulting from the project would be the same or greater at an alternative location. For these reasons, this alternative was not considered further.

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

7.3.1.2 *No Project – No Development Alternative and Development under Downtown General Plan Designation*

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 parking lot on-site. While this alternative would have no new significant impacts because there would be no development on the site, this alternative would not meet any of the project objectives, nor would this alternative meet the City's goal and vison of encouraging job and housing growth in the downtown area.

Any future project will be consistent with the *Downtown* General Plan land use designation and *Downtown Commercial (DC)* zoning district. Permitted uses under the *Downtown* General Plan designation include offices and financial services, general retail, education and training, entertainment and recreation, food services, general services, public and quasi-public uses such as religious assembly and community centers, and residential. Based on the *DC* zoning, development shall only be subject to the height limitations necessary for the safe operation of Norman Y. Mineta San José International Airport. Any future proposals for the site would require review and approval by the City of San José. While it is possible that another mixed-use building comparable in size to the proposed project could be proposed in the foreseeable future, any future development proposals for the site would require review and approval by the City of San José. Such a development would have to be evaluated for compatibility with the Historic District and is likely to have similar impacts as the proposed project in terms of construction air quality, biological resources, hazards, noise and vibration.

7.3.1.3 *Reduced Height Alternatives*

As discussed in *Section 3.3, Cultural Resources*¸ the City concluded that the proposed development would have a significant impact on the Historic District because:

- The project site takes up two thirds of the South Second Street frontage and South Second Street is the only street in the Historic District where both sides of the street are included in the district. This site makes it particularly important to the district.
- The buildings within the Historic District relate to one another visually and spatially. The proposed development is centrally located and would be visible from all points in the Historic District. Its features, size, scale, proportion, and massing would significantly erode the cohesive character of the Historic District.
- All existing new construction generally relates to the features, size, scale, proportion, and massing of contributing buildings in the Historic District and generally appears consistent with the 2003 Historic District Design Guidelines.
- The proposed building does not comply with the building height, corner element, massing, facades, rear facades, and setbacks and stepbacks which are key elements of the 2003 Historic District Design Guidelines.

Since the project is a mix of residential, retail, and office land uses, there would be a substantive number of possible development scenarios. Therefore, two redesign alternatives were chosen and evaluated which assume substantial or partial compliance with the Historic District design standards and guidelines. Based on TreanorHL's review of the two height alternatives presented below, the *Reduced Height (Four-Stories), Two Buildings Alternative* would substantially reduce impacts to the Historic District.[40] TreanorHL found that the other alternative would not reduce impacts to the Historic District to a less than significant level. This analysis is discussed below and in Appendix D. Any development scenario with a smaller project would involve a shorter construction timeframe, which would lessen the construction air quality and noise impacts. Even with implementation of the identified measures and Standard Permit Conditions, it is reasonable to assume that the cumulative $PM_{2.5}$ concentration would still be significant and unavoidable. Under these two design alternatives, impacts from ground disturbance and tree removal would be comparable to the proposed project for impacts related to biological resources and hazards and hazardous materials.

The table below provides a summary of the two redesign alternatives, as well as the proposed project.

Table 7.3-1: Summary of Reduced Height Alternatives

	Proposed Project	**Reduced Height (Four-Stories), Two Buildings Alternative**	**Reduced Height (17-Stories and 20 Stories), Two Buildings Alternative**
No. of floors	21	Building 1: 4 Building 2: 4	Building 3: 17 Building 4: 20
Maximum Height to Roof (feet)	267	Building 1: 60 Building 2: 60	Building 3: 267 Building 4: 217
Residential Units (du)	194	0	170
Office Space (sqft)	405,924	123,300	250,818
Retail Space (sqft)	31,959	42,200	42,900
Public Open Space (sqft)	22,500	11,430	11,430
Construction Timeframe	34	28	32

Reduced Height (Four-Stories), Two Buildings Alternative

The project, as currently proposed, was not found to be compatible with the height, corner element, massing, façades, rear façades, setbacks and stepbacks of the 2003 Historic District Design Guidelines. Therefore, the *Reduced Height (Four-Stories), Two Buildings Alternative* was conceptually developed to reduce or avoid the significant impact on the Historic District. Under the *Reduced Height (Four-Stories), Two Buildings Alternative*, the 21-story curvilinear building (up to 267 feet to the top of the roof) would be reduced to two, four-story rectangular-shaped buildings (up to 60 feet) with a 10-foot wide alleyway located in between the two buildings. Under this alternative, the two buildings would have a combined total of up to 123,300 square feet of office space and up to 42,200 square feet of retail space (totaling 165,500 square feet). No dwelling units are proposed under this alternative. The project under this alternative would include up to 11,430 square feet of

[40] TreanorHL. *Fountain Alley Project Design Alternatives Memorandum*. May 9, 2022.

public realm outdoor space. The size of the below-grade parking garage would remain as is proposed.[41] Under this alternative, the above-grade construction timeframe would be reduced from 34 to 28 months.[42] Refer to Figure 7.3-1. For the purposes of this discussion, the building located north of the alleyway is referred to as Building 1 and the building located south of the alleyway is referred as Building 2.

The *Reduced Height (Four-Stories), Two Buildings Alternative* was evaluated by TreanorHL for conceptual conformance with the Secretary of the Interior's Standards for Rehabilitation, 2003 Historic Guidelines, and 2019 Design Guidelines and Standards and a summary of the analysis is outlined below.

Secretary of the Interior's Standards

Standard 9 Analysis: The existing buildings within the district are one- to three-stories tall (except the Bank of Italy building) and typically have rectilinear footprints that occupy the entire width of their lots which create continuous streetwalls. The eastern building façades facing South Second Street proposed under this alternative would be broken up into five sections which is consistent with the widths of the adjacent historic buildings. Therefore, the height, massing, proportion, and scale of the two, four-story buildings would conform with the Historic District. Based on a review of the *Reduced Height (Four-Stories), Two Buildings Alternative*, TreanorHL found that this alternative would be compatible with the Historic District in terms of size, scale, proportion, and massing of Standard 9 of the Secretary of the Interior's Standards for Rehabilitation. However, as this alternative has not been developed to the same level of detail as the proposed project, determination of consistency with the design, materials, or features is not possible at this time.

Standard 10 Analysis: The two, four-story buildings would conform with Standard 10 of the Secretary of the Interior's Standards for Rehabilitation because the essential form of the Historic District and its environment would be unimpaired if the buildings were removed in the future.

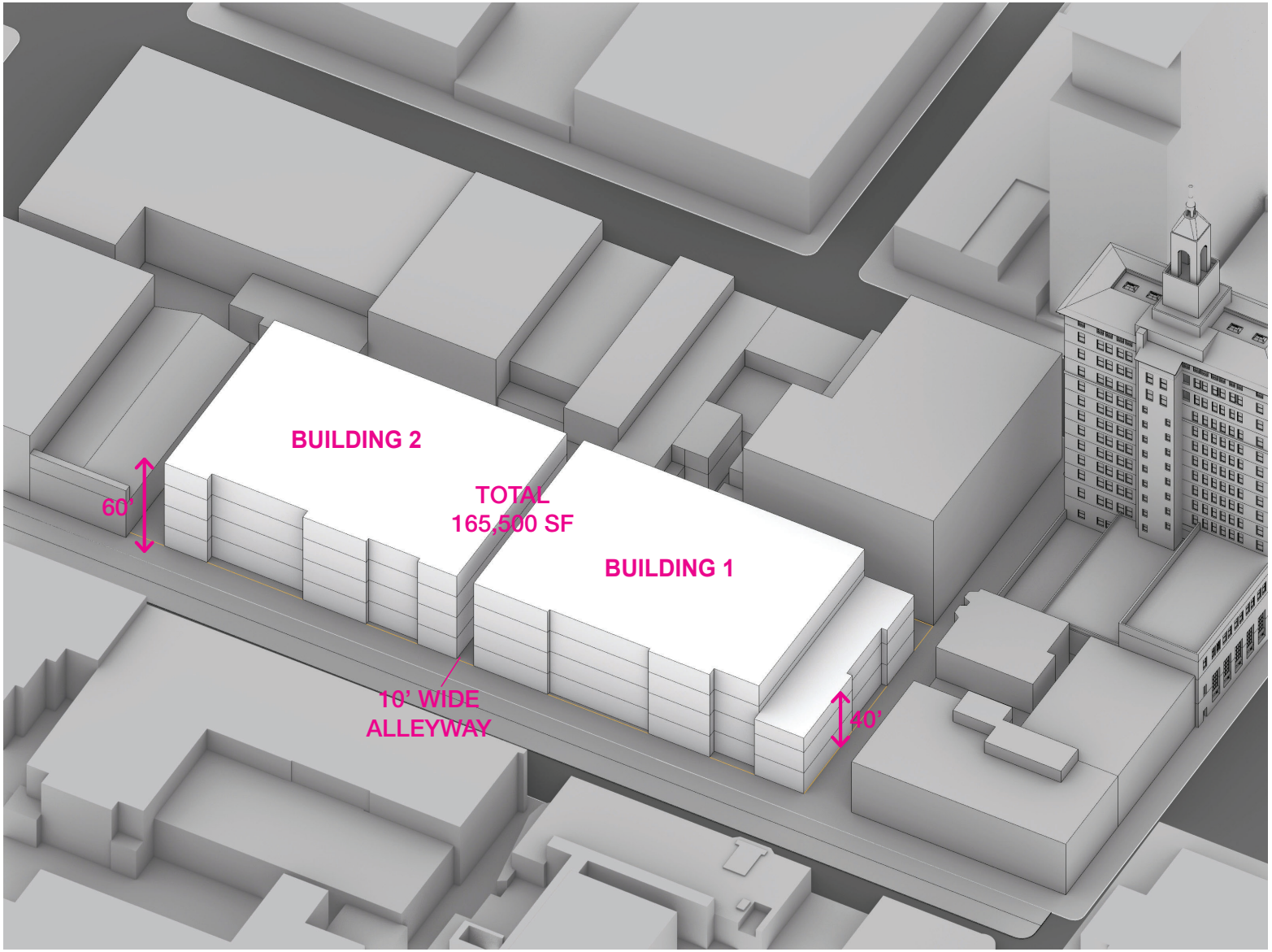
2003 Downtown San José Historic District Guidelines

Building Height Analysis: The two, four-story buildings would be up to 60 feet tall. The portion of Building 1 fronting onto Fountain Alley would be up to 40 feet tall and would be compatible with the district contributor buildings and the Fountain Alley Building, a designated City Landmark, located at 27-29 Fountain Alley. Therefore, this alternative would be compatible with this guideline.

Corner Element Analysis: The proposed massing of the Buildings 1 and 2 does not include a corner element; therefore, the project would not be compatible with this guideline.

Massing Analysis: Consistent with the massing guideline, the project under this alternative would be segmented into two buildings with a 10-foot wide alleyway which helps divide the street frontage. The eastern facades along South Second Street would be articulated to form narrower segments, consistent with the historic buildings which are divided into multiple bays with pilasters. Therefore,

[41] Lien, Hunter. Westbank. Personal communication. June 17, 2022.
[42] Ibid.



OFFICE:
123,300 SF

RETAIL:
42,200 SF

TOTAL AREA:
165,500 SF

DU:
0

OPEN AREA AT GRADE:
11,430 SF

REDUCED HEIGHT (FOUR-STORIES), TWO BUILDINGS ALTERNATIVE | FIGURE 7.3-1

the project would be compatible with this guideline.

Setbacks and Stepbacks Analysis: Buildings 1 and 2 would be built to the property line along South Second Street and Fountain Alley with minimal setbacks. However, both buildings would be set back along the western and southern property lines. Therefore, Buildings 1 and 2 under this alternative would not be compatible with the setbacks and stepbacks guideline.

Pedestrian Passageways Analysis: As mentioned above, a 10-foot wide alleyway is proposed between the two buildings. This guideline recommends that passageways be lined with retail storefronts and/or active display cases. As this alternative has not been developed to the same level of detail as the proposed project, determination of compatibility with pedestrian passageways cannot be completed at this time.

Façade, Rear Façades, Openings, Entries, Exterior Material, Ground Floors, Vehicular Access, and Parking Analysis: As this alternative has not been developed to the same level of detail as the proposed project, determination of compatibility with façades, rear façades, openings, entries, exterior material, ground floors, vehicular access, and parking cannot be completed at this time. However, it can be assumed that these aspects of the proposed project would be continued within this alternative; therefore, this alternative would be consistent with the 2003 Historic Guidelines.

2019 Downtown Design Guidelines and Standards

Standard 4.2.2 – Massing Relationship to Context.

Height Transition Analysis: Buildings 1 and 2 would be less than 100 feet tall; therefore, this standard is not applicable.

Width Transition Analysis: The adjacent historic buildings are up to 45 feet tall and more than 30 feet narrower than Buildings 1 and 2 since the widths would range from 30 to 70 feet. The facades that face South Second Street and Fountain Alley would be divided into multiple segments. Therefore, this alternative would be compatible with this standard.

Rear Transition Analysis: Buildings 1 and 2 would be less than 100 feet tall; therefore, this standard is not applicable.

Standard 4.2.4 – Historic Adjacency.

Massing Analysis:
a) As this alternative has not been developed to the same level of detail as the proposed project, compliance with this standard could not be made.
b) Buildings 1 and 2 have rectilinear forms; therefore, this alternative complies with this standard.
c) See response for a).
d) The streetwall continuity with the historic context buildings along South Second Street would be maintained; therefore, this alternative complies with this standard.

Facade Analysis:
e) The façades of both buildings would be articulated to create multiple divisions that are similar to the historic context buildings; therefore, this alternative complies with this standard.
f) See response for a).
g) See response for a).
Elements Analysis:
h) See response for a).
i) See response for a).

Ground Floor Analysis:
j) See response for a).
k) The height of the ground floor would be compatible with the historic context buildings; therefore, this alternative complies with this standard.

Based on available information, this alternative would be substantially compliant with the Secretary of the Interior's Standards for Rehabilitation, 2003 Historic District Design Guidelines, and 2019 Design Guidelines and Standards and would lessen or potentially avoid the impact of the project on the Historic District with the reduced height and massing. If this alternative were selected, the design of the project could be refined to conform with the design, materials, and features of Standard 9 and the corner element, setbacks and stepbacks, pedestrian passageways, façades, rear façades, openings, entries, exterior material, ground floors, vehicular access, and parking aspects of the 2003 Historic Guidelines which could avoid the significant impact to the Cultural Resource.

As proposed, the *Reduced Height (Four-Stories), Two Buildings Alternative* would reduce the significant impact on Cultural Resources (the Historic District) compared to the proposed project and would be designed to achieve substantial compliance with the 2003 Historic District Design Guidelines and the Secretary of the Interior's Standards for Rehabilitation. With implementation of all identified mitigation measures and Standard Permit Conditions, all other impacts would remain the same or less than the proposed project because of similar ground disturbance and major construction activities will still occur for a period of greater than one year due to the size of the project.

The *Reduced Height (Four-Stories), Two Buildings Alternative* would meet project objectives 1c, 2, and 7 by replacing the existing surface parking lot with a mixed-use development (office and retail) that connects to surrounding paseos and alleyways, creating a modern Class A office space with access to outdoor space, and supporting San José Climate Smart goals.

This alternative would not meet project objectives 1a, 1b, 3, 4, 5, 6, 8, and 9 to develop a high-rise mixed-use building that includes residential uses.

Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative

Similar to the *Reduced Height (Four-Stories), Two Buildings Alternative*, the *Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative* would include two buildings with a 10-foot wide alleyway located in between. The building located north of the alleyway (Building 3) would be 17 stories tall and consist of office and ground floor retail while the building located south of the alleyway (Building 4) would be 20 stories tall and consist of residential, office, and ground floor

retail. Building 3 would be a maximum of 267 feet tall (to the top of the roof, which is the same as the proposed project) and would step down to 40 feet along the northern building façade and 60 feet along the southern and western building façades. Building 4 would be up to 217 feet to the top of the roof and would step down to 40 feet along the southern and western building façades. Under this alternative, the buildings would consist of approximately 250,818 square feet of office space, approximately 42,900 square feet of retail space, and up to 170 dwelling units (totaling approximately 501,198 square feet). The project under this alternative would also include up to 11,430 square feet of public realm outdoor space. The size of the below-grade parking garage would remain as is proposed.[43] Under this alternative, the above-grade construction timeframe would be reduced from 34 to 32 months.[44] Refer to Figure 7.3-2.

The *Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative* was evaluated by TreanorHL for conceptual conformance with the Secretary of the Interior's Standards for Rehabilitation, 2003 Historic Guidelines, and 2019 Design Guidelines and Standards and a summary of the analysis is outlined below.

Secretary of the Interior's Standards

Standard 9 Analysis: The existing buildings within the district are one- to three-stories tall (except the Bank of Italy building) and typically have rectilinear footprints that occupy the entire width of their lots which create continuous streetwalls. While Buildings 3 and 4 would be rectilinear and create a continuous streetwall along South Second Street, the buildings would continue to overwhelm the adjacent historic buildings (except the Bank of Italy building). Therefore, the buildings under this alternative would not be compatible with the Historic District in terms of size, scale, and proportion. Based on a review of the *Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative*, TreanorHL found that this alternative would not be compatible with the Historic District in terms of size, scale, proportion, and massing of Standard 9 of the Secretary of the Interior's Standards for Rehabilitation. However, as this alternative has not been developed to the same level of detail as the proposed project, determination of consistency with the design, materials, or features is not possible at this time.

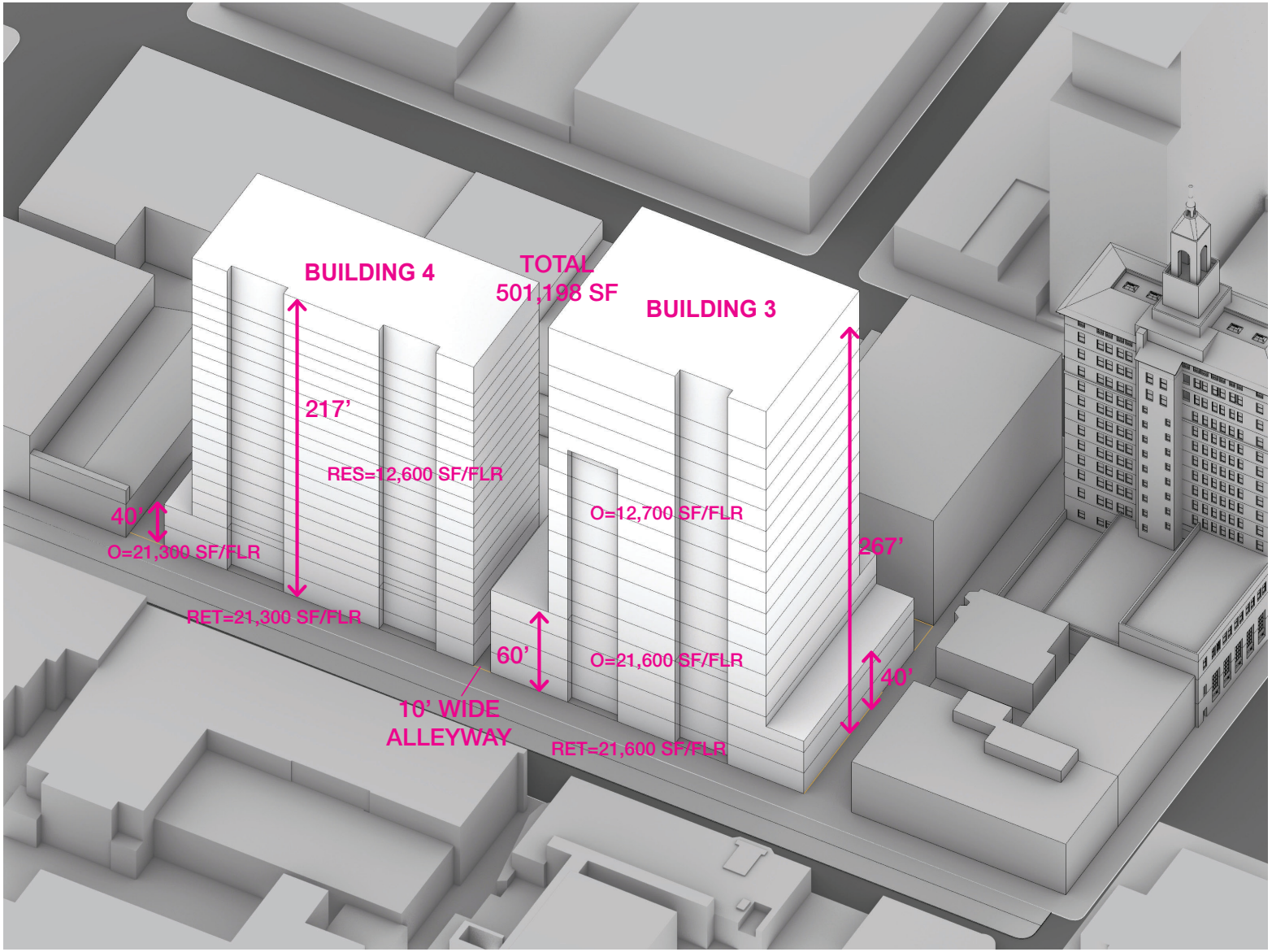
Standard 10 Analysis: The buildings under this alternative would still conform with Standard 10 of the Secretary of the Interior's Standards for Rehabilitation because the essential form of the Historic District and its environment would be unimpaired if the buildings were removed in the future.

2003 Downtown San José Historic District Guidelines

Building Height Analysis: Building 3 would be 267 feet tall and Building 4 would be 217 feet tall. As both buildings under this alternative would exceed 60 feet in height, the buildings would not be compatible with this guideline.

Corner Element Analysis: The proposed massing of the Buildings 3 and 4 does not include a corner element; therefore, the project would not be compatible with this guideline.

[43] Lien, Hunter. Westbank. Personal communication. June 17, 2022.
[44] Ibid.



REDUCED HEIGHT (17-STORIES AND 20-STORIES), TWO BUILDINGS ALTERNATIVE | FIGURE 7.3-2

Massing Analysis: This alternative would be segmented into two buildings with a 10-foot wide alleyway which helps divide the street frontage. The massing of both buildings respond to the existing character of the Historic District; therefore, the project would be compatible with this guideline.

Setbacks and Stepbacks Analysis: Buildings 3 and 4 would be built to the property line along South Second Street and Fountain Alley with minimal setbacks. However, both buildings would be set back along the western and southern property lines. Therefore, both buildings under this alternative would not be compatible with the setbacks and stepbacks guideline.

Pedestrian Passageways Analysis: As mentioned above, a 10-foot wide alleyway is proposed between the two buildings. This guideline recommends that passageways be lined with retail storefronts and/or active display cases. As this alternative has not been developed to the same level of detail as the proposed project, determination of compatibility with pedestrian passageways cannot be completed at this time.

Façade, Rear Façades, Openings, Entries, Exterior Material, Ground Floors, Vehicular Access, and Parking Analysis: As this alternative has not been developed to the same level of detail as the proposed project, determination of compatibility with façades, rear façades, openings, entries, exterior material, ground floors, vehicular access, and parking cannot be completed at this time. However, it can be assumed that these aspects of the proposed project would be continued within this alternative; therefore, this alternative would be consistent with the 2003 Historic Guidelines.

2019 Downtown Design Guidelines and Standards

Standard 4.2.2 – Massing Relationship to Context.

Height Transition Analysis: Buildings 3 and 4 would be over 200 feet tall and the buildings would not step back from the front parcel line along South Second Street; therefore, this alternative would not be compatible with this standard.

Width Transition Analysis: The adjacent historic buildings are up to 45 feet tall and more than 30 feet narrower than Buildings 3 and 4 since the widths, under this alternative, would range from 30 to 70 feet. While the facades that face South Second Street and Fountain Alley would be divided into multiple segments; it would appear monolithic on the Fountain Alley side. Therefore, this alternative would not be compatible with this standard.

Rear Transition Analysis: Both buildings would be located across a parcel line or interior to a block from multiple historic buildings that are up to 45 feet tall. Based on the massing study, it is not clear if the new towers would maintain the transitional height along the western property line.

Standard 4.2.4 – Historic Adjacency.

Massing Analysis:
a) The podium level would be 40 to 60 feet which is compatible to the scale of the historic context buildings; therefore, this alternative complies with this standard.
b) Buildings 3 and 4 have rectilinear forms; therefore, this alternative complies with this standard.

c) As this alternative has not been developed to the same level of detail as the proposed project, compliance with this standard could not be made.
d) The streetwall continuity with the historic context buildings along South Second Street would be maintained; therefore, this alternative complies with this standard.

Facade Analysis:
e) The façades of both buildings would be articulated to create multiple divisions that are similar to the historic context buildings along South Second Street; however, the north façade that would face Fountain Alley would not be articulated ; therefore, this alternative would not comply with this standard.
f) See response for c).
g) See response for c).

Elements Analysis:
h) See response for c).
i) See response for c).

Ground Floor Analysis:
j) See response for c).
k) The ground floor height would be compatible with the historic context buildings; therefore, this alternative complies with this standard.

Based on available information, while *Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative* would lessen the impact on Cultural Resource (Historic District) compared to the proposed project due to the reduced height and massing, this alternative would not be in conformance with Standard 9 of the Secretary of the Interior's Standards for Rehabilitation and would partially comply with the 2003 Historic District Design Guidelines and the 2019 Design Guidelines and Standards; therefore, the impact would remain significant and unavoidable. With implementation of all identified mitigation measures and Standard Permit Conditions, all other impacts would remain the same as the proposed project because of similar ground disturbance and major construction activities will still occur for a period of greater than one year due to the size of the project.

The *Reduced Height (17-Stories and 20-Stories), Two Buildings Alternative* would meet project objectives 1b, 1c, 2, 3, 5, 6, 7, and 9 by replacing the existing surface parking lot with a mixed-use development consisting of residential, office, and retail that connects to surrounding paseos and alleyways, creating a modern Class A office space with access to outdoor space, providing future residents with access to downtown jobs, retail and entertainment, and various public transit modes, enhancing the pedestrian experience by providing ground-floor configuration with retail, lobbies, and landscape design, providing bicycle parking for residents, supporting San José Climate Smart goals, and providing adequate amount of on-site parking and loading spaces to meet the demands of tenants that would reside and work on-site.

This alternative would not meet project objectives 1a, 4, and 8 by developing a mixed-use building with a floor plate of approximately 35,000 gross square feet, locating residential units in the lower levels and office in the upper levels of the building, and providing an architecturally-distinguished building that contributes an iconic design to the downtown skyline.

7.3.2 Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. If the environmentally superior alternative is the "No Project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives (Section 15126.6(e)(2)). The environmentally superior alternative is the No Project – No Development Alternative which would avoid all project impacts; however, this alternative would not meet any of the project objectives.

Beyond the No Project – No Development Alternative, the *Reduced Height (Four-Stories), Two Buildings Alternative* would be the environmentally superior alternative. While this alternative would not meet most project objectives (1a, 1b, 3, 4, 5, 6, 8, and 9), this alternative would be substantially compliant with the Secretary of the Interior's Standards for Rehabilitation, 2003 Historic District Design Guidelines, and 2019 Design Guidelines and Standards and would lessen or potentially avoid the impact of the project on the Historic District. The significant unavoidable impact to the Historic District would remain under the *Reduced Height (17-Stories and 20-Stories) Alternative* similar to the project.

SECTION 8.0 REFERENCES

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

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SECTION 9.0 LEAD AGENCY AND CONSULTANTS

9.1 LEAD AGENCY

City of San José
Department of Planning, Building and Code Enforcement
Chris Burton, *Director*
David Keyon, *Supervising Planner*
Kara Hawkins, Planner II

9.2 CONSULTANTS

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

AEI Consultants
Walnut Creek, CA
Phase I Environmental Site Assessment

Fehr & Peers
San José, CA
Traffic

HMH
San José, CA
Arborist Report

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

Langan Engineering and Environmental Services, Inc.
San José, CA
Geotechnical Investigation

TreanorHL
San Francisco, CA
Historic Assessment