



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Rosalynn Hughey

**SUBJECT:** SEE BELOW

**DATE:** January 13, 2020

Approved

*D. D. S. L.*

Date

*1/17/2020*

**COUNCIL DISTRICT: 3**

**SUBJECT: ADMINISTRATIVE HEARING ON THE APPEALS OF THE PLANNING DIRECTOR'S (i) CERTIFICATION OF A SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT UNDER CEQA; AND (ii) APPROVAL OF THE HISTORIC PRESERVATION PERMIT (FILE NO. HP17-003) AND SITE DEVELOPMENT PERMIT (FILE NO. H16-042) FOR CONSTRUCTION OF A 24-STORY, 274-ROOM HOTEL INTEGRATED WITH THE MONTGOMERY HOTEL, A DESIGNATED CITY LANDMARK, WITH OFF-SITE PARKING ON AN APPROXIMATELY 0.58 GROSS-ACRE SITE**

## RECOMMENDATION

- (a) Conduct an Administrative Hearing to consider the Appeals of the Planning Director's (i) certification of a Supplemental Environmental Impact Report (SEIR) to the Downtown Strategy 2040 Final Environmental Impact Report (FEIR) for the San José Tribute Hotel project; and (ii) approval of Historic Preservation Permit No. HP17-003 and Site Development Permit No. H16-042 for the San José Tribute Hotel project, which involves the construction of a 24-story, 274-room hotel integrated with the Montgomery Hotel, a designated City landmark, with off-site parking on an approximately 0.58 gross-acre site at 211 South First Street.
- (b) Adopt a resolution upholding the Planning Director's certification of the SEIR, and finding that:
  - (1) The City Council has read and considered the SEIR for the San José Tribute Hotel Project and related administrative record in connection with Historic Preservation Permit No. HP17-003 and Site Development Permit No. H16-042; and
  - (2) The SEIR for the San José Tribute Hotel project was prepared and completed in compliance with the California Environmental Quality Act (CEQA) of 1970, as amended, together with State and local implementation guidelines; and
  - (3) Certification of the SEIR for the San José Tribute Hotel project reflects the independent judgment and analysis of the City of San José; and

- (4) Preparation of a new Environmental Impact Report or revised SEIR is not required because the SEIR thoroughly and adequately analyzed the historical issues and the environmental appeal does not raise any new significant impacts that have not already been analyzed in the SEIR in accordance with Public Resources Code (PRC) Section 21166, or CEQA Guidelines Section 15162.
- (c) Adopt a resolution approving Historic Preservation Permit No. HP17-003 and the Site Development Permit No. H16-042 for the construction of a 24-story, 274-room hotel integrated with the Montgomery Hotel, a designated City landmark, with off-site parking on an approximately 0.58 gross-acre site, at 211 South First Street.

### **OUTCOME**

Denying the environmental appeal and upholding the certification of the SEIR would allow the City Council to consider the appeals of the Historic Preservation Permit and the Site Development Permit. If the Planning Director's approval of the Historic Preservation Permit and Site Development Permit are also upheld, the project applicant would be able to move forward with the building permit phase of the project.

Upholding the environmental appeal would void both the certification of the SEIR and approved Historic Preservation Permit and Site Development Permit. The project applicant would be required to prepare a new or revised environmental document prior to reconsideration of the project.

### **EXECUTIVE SUMMARY**

The proposed project is the construction of a new hotel integrated with the historic Montgomery Hotel which is a national, State, and City landmark. PAC-SJ filed timely environmental and permit appeals. In general, the environmental appeal and the Historic Preservation Permit and Site Development Permit appeals claim that the proposed project does not meet the Secretary of the Interior's standards for preservation and does not conform to the City's General Plan policies and Municipal Code for preservation of a historic landmark and adjacent historic district.

The environmental appeal claims that the SEIR does not adequately discuss the alternatives to the project. Staff asserts the analysis in the SEIR meets the requirements of Public Resources Code (PRC) Section 21003(c) and CEQA Guidelines Section 15126.6 for discussing alternatives, and provides a comparison of all alternatives and a discussion of the Environmentally Superior Alternative. As discussed in this memorandum, the SEIR provides adequate details and information for the decision makers to consider the alternatives to the proposed project.

The environmental appeal also raises concerns with the project's conformance to the Secretary of the Interior's Standards. TreanorHL (formerly Carey & Co., Inc.) prepared a Historic Report in

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May 2017. At the City’s request, Archives & Architecture prepared a Supplemental Historic Report to review the project and the Carey & Co. evaluation (October 2017, revised May 2018). The project applicant, in response to comments and recommendations in the Historic Reports, continued to make design modifications through January 2018, to make the new building more compatible with the historic Montgomery Hotel. Both historic consultants found that the latest iteration of the project design is consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties and the San José Downtown Historic Design Guidelines (see Attachment D).

The appeals of the Historic Preservation Permit and the Site Development Permit did not state how the project is inconsistent with the General Plan policies and the Municipal Code. The Staff Reports and the analysis in this memorandum outlines in detail the project’s conformance with the General Plan policies and the Municipal Code sections.

Staff recommends denial of the environmental appeal because the SEIR thoroughly and adequately addresses the discussion of alternatives and the current iteration of the project design conforms to the Secretary of the Interior’s Standards. Staff also recommends denial of the appeals of the Historic Preservation Permit and Site Development Permit because the permits conform to the General Plan, Zoning Code, and City policies and requirements; and there is substantial evidence in the administrative record to support the findings for the permits, all as further described below and in the subject permit resolutions.

<b>Project Timeline</b>		
<b>Date</b>	<b>Milestone</b>	<b>Outcome</b>
October 18, 2016	Application for Site Development Permit	
June 15, 2016	Historic Landmarks Commission (HLC) Design Review Subcommittee	Early Referral
December 7, 2016	HLC	Preservation Action Council of San José (PAC-SJ) commented on the size of the proposed new building and that it overpowers the historic building; Commissioners asked for more analysis of building massing in relation to the surrounding vicinity and the need to analyze the accessibility of public open spaces around the building; and maintaining the historic “corner” perspective of the Montgomery Hotel.
March 28, 2017	Application for a Historic Preservation Permit filed with the City	
October 5, 2017	Community Meeting	8 attendees
April 12, 2018	Community Meeting	40 attendees
May 24, 2018	Community Meeting	50 attendees
September 17, 2018	Joint Community Meeting and SEIR Scoping Meeting	Public comments were made regarding the construction noise and air quality

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		and shadow impacts on the Senior Residential building adjacent to the project site; and that the proposed project would create an impact to a City landmark.
October 2, 2019	HLC	Hopkins-Carley representing the Fairmont Hotel and PAC-SJ submitted letters to the HLC. Hopkins-Carley requested that the project applicant continue to work with the Fairmont Hotel to provide articulation and interest to the rear façade. PAC-SJ commented on the massing of the proposed project being much larger than the Montgomery Hotel. The Commissioners asked the project applicant to provide different options addressing the Commissioners comments regarding the front balconies and adding more articulation on the rear façade, and deferred action to the next meeting.
November 6, 2019	HLC	Recommended denial of the Historic Preservation Permit based on the mass of the proposed project.
November 13, 2019	Director’s Hearing	SEIR certified; Historic Preservation Permit and Site Development Permit approved and incorporation of a Permit Adjustment to modify the northern facing façade.
November 18, 2019	PAC SJ files Environmental Appeal	See Attachment A
November 22, 2019	PAC SJ files Historic Preservation Permit and Site Development Permit Appeals	See Attachment B and C

**BACKGROUND**

**Permits**

On October 18, 2016, the project applicant, Khanna Enterprises, Ltd. III LP, submitted an application for a Site Development Permit to allow the construction of a 24-story, 274-room hotel integrated with the historic Montgomery Hotel, with off-site parking on an approximately 0.58 gross-acre site in the DC Downtown Primary Commercial Zoning District. The project site is currently used as an outdoor patio for the Sheraton Four Points Hotel which is the current

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operator for the Montgomery Hotel. The project applicant is the current owner of the project site.

On March 28, 2017, the project applicant, at the behest of the City, filed an application for a Historic Preservation Permit because the project is located on the same parcel as the Montgomery Hotel, a designated National, State, and City Landmark. Pursuant to Section 13.48.210 of the San José Municipal Code (Historic Preservation Ordinance), a Historic Preservation Permit is required for any exterior alterations to a designated Historic City Landmark. Although the proposed project does not propose any physical changes to the Montgomery Hotel itself, the proposed building will be connected to the façade of the historic building.

### **Community Meetings**

On October 5, 2017, a community meeting was held at the Dr. Martin Luther King, Jr. Library. Approximately eight people attended the meeting. The primary concerns raised pertained to the adjacent senior housing building and retirees home during the day who may be subject to possible construction dust and noise during the construction period. Further, the individuals were concerned about the loss of views and decreased sunlight once the proposed project was constructed.

On April 12, 2018, a community meeting was held at the project site, the Four Points by Sheraton. Approximately 40 people attended. Concerns raised at the meeting included avoiding glare into the neighboring federal building and the need for bollards if cars are parked near the building; insufficient loading parking spaces in front of the proposed hotel addition, design elements on the ground floor of the addition, design of the new building contrasts with the historic building; and emergency access during construction. The Downtown Association submitted two letters. The first letter was in support of the project with zero parking. The second letter expressed concern about the one lane alternative. The Downtown Association also expressed its desire to keep the street access the same and support of the hybrid street option to keep both lanes and five loading parking spaces.

Another community meeting was held May 24, 2018, to accommodate those who were unable to meaningfully participate in the April 12, 2018 meeting because of the limited meeting room capacity or not otherwise able to attend this meeting. Approximately 50 people attended this meeting. The concerns raised were that the height of the proposed tower would cut off sunlight from the senior housing building and result in bad *feng shui*, impacts to privacy, noise, emergency access during construction and that construction could result in accidents that could affect the senior housing building, and parking.

On September 17, 2018, a joint community meeting and Environmental Impact Report Scoping Meeting were held at the Dr. Martin Luther King, Jr. Library. Approximately 40 people attended. The concerns raised at the meeting included the City's lack of preserving historic buildings; the impact of the project on the adjacent senior housing pertaining to construction noise, dust, safety,

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traffic and pollution, parking, drop off and pick up during project operation; and moving the project to another location.

### **Historic Landmarks Commission (HLC)**

On June 15, 2016, the proposed project was taken before the HLC Design Review Subcommittee during the preliminary review application and then taken before the entire HLC on December 7, 2016 for an early referral. In summary, the HLC provided comments concerning the overall massing, architectural elements (windows, cornices, balconies), and materials of the proposed addition. The HLC noted a desire to restore signage and increase the visibility of the hotel, given its original location on a street corner and proposed addition. Additionally, the HLC expressed concern about the cantilevered design in overshadowing the historic building and potential seismic impact on the building. The HLC expressed the importance of highlighting the history of the building and shared that the final design should maintain a compatible color and texture between the existing and new proposed addition with an emphasis on the pedestrian scale and level of the buildings.

On October 2, 2019, the proposed project was brought before the HLC for consideration of the Historic Preservation Permit. The Commission deferred the decision pending additional design alternatives. PAC-SJ spoke during the public hearing commenting on the inconsistency of the proposed project with the adjacent historic building.

On November 6, 2019, the proposed project was brought back before the HLC for consideration of the Historic Preservation Permit. The project applicant provided the requested design alternatives. PAC-SJ spoke during the public hearing commenting on the inconsistency of the proposed project with the adjacent historic building. The primary concerns were the proposed project height and massing. The HLC voted to recommend denial of the Historic Preservation Permit to the Planning Director (4-1-2 vote, Commissioners Arnold, Saum, Boehm, Raynsford recommended denial, Commissioner Hirst voted against the recommendation, and Commissioners Polcyn and Royer were absent).

### **Historic Resources Review**

Carey & Co. (now known as TreanorHL) prepared a historic report for the proposed project on May 25, 2017. The report included analysis and responses to comments made by the HLC Design Review Subcommittee. This historic report concluded that the *proposed project complies with all ten of the Secretary of Interior's Standards for Rehabilitation*. Further analysis is included in the historic report in Attachment D. Because of the Montgomery Hotel's status as a

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City Landmark and concerns raised by the community, City staff required a peer review of the Carey & Co. Historic Report.

At staff's request, Archives & Architecture, LLC conducted a peer review of the Carey & Co. Historic Report. Archives & Architecture, LLC prepared its own historic report on May 8, 2018. The report concluded:

The Carey & Co. analysis approached the design analysis somewhat differently from that of Archives & Architecture, and the applicants worked to satisfy both sets of comments [*the Carey & Co. and Archives & Architecture recommendations*]. Carey & Co. had considered that the proposed addition would be essentially separate from the historic hotel building and analyzed it as new infill; therefore, the analysis in that report is less focused on the Standards review in which materials, scale, and other elements must be compatible with the historic building. Their review concluded that the project met the Standards. In contrast, the Archives & Architecture analysis considered that the new construction was being designed as an addition, so must be analyzed for reasonable compatibility with the historic design. A supporting article associated with Preservation Brief 14 states:

*The historic property must remain predominant and its historic character must be retained. Generally, the same recommendations for compatible new additions apply equally to new construction.*

The Archives & Architecture analysis initially concluded that the addition needed revision, so the historic building would “remain predominant” on the property for the project to meet the Standards. Recommendations for revision are included in this report in the Methodology Section. The applicants and architects of the project received the analysis and revised the design. The revised design is analyzed in this report and finding is that the project is now compatible with the Standards.

In using the City of San José Downtown Historic Design Guidelines, the Carey & Co. report focused more of its analysis on the project's impact on the Hotel Montgomery building specifically, rather than analyzing the proposed new construction in the larger setting and context of the Downtown Core, and the report concluded that the design of the project was acceptably differentiated from the historic building. The Archives & Architecture analysis addresses the project's impact on a larger downtown historic subarea. Although initially there were some concerns in this regard, after revisions in the design, the project is now generally compatible with the Downtown Historic Design Guidelines.

Carey & Co. reviewed the Archives & Architecture report and provided an Addendum to their Historic Report of May 25, 2017. The conclusion of the Addendum is excerpted below:

Through a number of iterations, the design for the proposed San Jose Tribute Hotel responded to TreanorHL's comments and recommendations through May 2017 for making the new building more compatible with the Montgomery Hotel. Subsequently, additional refinements were made in response to both Archives & Architecture and city

staff reviews. The resulting design is an acceptable solution following the Secretary of the Interior's Standards for the Treatment of Historic Properties and the San Jose Downtown Historic Design Guidelines.

After a lengthy review process by two separate historical consultants, both concluded that the proposed project meets the Secretary of Interior's Standards for Treatment of Historic Properties and the San José Downtown Historic Design Guidelines. The City's Historic Officer reviewed both reports and the Addendum and came to the same conclusion.

### **Environmental Review – SEIR**

The City prepared an SEIR to the Downtown Strategy 2040 FEIR for the proposed project. The Notice of Preparation (NOP) of the Draft SEIR was published on September 4, 2018, and a Scoping Meeting was held on September 17, 2018. Comments received at the Scoping meeting and during the NOP public comment period were addressed in the Draft SEIR. The Draft SEIR was circulated for public review and comment for 45 days from May 28, 2019 through July 11, 2019. The above analysis related to the historical issues were included in the Draft SEIR. The SEIR was certified by the Hearing Officer on November 13, 2019 (Resolution No. 19-020, see Attachment E).

The SEIR identified the following temporary (construction) significant impacts:

- Potential community risk from construction emissions of toxic air pollutants, since the cancer risk is above the single-source threshold of 10.0 parts per million
- Potential to physically impact nearby historic materials and structures during construction
- Potential to impact unknown buried archaeological resources and human remains during construction, if present on the project site
- Potential to expose construction workers and the public to residual soil and groundwater contaminants during the construction phase of the project
- Potential for vibration levels during construction to exceed 0.08 in/sec peak particle velocity (PPV) at the historic Montgomery Hotel and result in cosmetic damage to the building

And the following significant impact during project operation:

- Potential for noise from mechanical equipment to exceed 55 dBA day-night average noise level (DNL) at noise-sensitive land uses in the immediate project vicinity

All the above significant impacts could be reduced to less-than-significant levels with the incorporation of mitigation measures identified in the SEIR. No significant and unavoidable impacts were identified.

### **Director's Hearing**

On November 13, 2019, the proposed project was heard before the Hearing Officer, Timothy Rood, Planning Division Manager, on behalf of Rosalynn Hughey, Director of Planning, Building and Code Enforcement. André Luthard representing PAC-SJ spoke against project approval citing incompatibility of the proposed building and the historic hotel and violation of



the goals of the City's General Plan and the Secretary of the Interior's Standards relating to the hotel's original construction on a corner site and that the SEIR for the project did not discuss the environmentally superior alternative in sufficient detail. Jay Ross of Hopkins & Carley, representing the Fairmont Hotel, spoke against the project citing aesthetics of the addition and its disparate treatments of the north and south facades and requested a permit condition be inserted into the permit that would encourage additional coordination on the northern facade. Two other members of the public also spoke against the project, citing the height and mass of the proposed project were incompatible and dominate the historic hotel and would set a precedent for other historic buildings in the City. After considering the testimony, and the need to balance the concerns about the height and massing of the proposed project in relation to the historic Montgomery Hotel (particularly the cantilever) with the goals of the General Plan to make Downtown a more vibrant place with more hotel rooms and more activity, the Hearing Officer adopted the resolution certifying the SEIR (Resolution 19-020, see Attachment E) and approved Historic Preservation Permit HP17-003 and Site Development Permit H16-042 with the additional condition for a Permit Adjustment for modifications to the northern facade.

### **Environmental Determination and Permit Appeals**

On November 18, 2019, André Luthard, representing PAC-SJ, filed an appeal of the certification of the SEIR, citing the following reasons:

1. Insufficient detailed analysis of project alternatives
2. Insufficient information available for public and decision-makers to analyze alternatives
3. Failure to address Project's overshadowing bulk and massing cantilevered the Montgomery Hotel
4. Inaccurate analysis of Project Conformance to Secretary of Interior's Standard #2<sup>1</sup>
5. Incomplete analysis of Project Conformance to the Secretary's recommendations regarding "New Exterior Additions to Historic Buildings and Related New Construction"

On November 22, 2019, André Luthard, representing PAC-SJ, filed an appeal of the Historic Preservation Permit, citing the following reasons:

Incomplete/inaccurate analysis or out of context with the following [City policies, municipal code sections and guidelines]:

[General Plan Goal] LU3-Downtown

[General Plan Policy] LU-13.6

[General Plan Policy] LU-13.8

[San José Municipal Code Section] 13.48.010

[San José Municipal Code Section] 13.48.250

City of San José Historic Design Guidelines

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<sup>1</sup> Secretary of the Interior's Standard #2: The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

On November 22, 2019 Jeremy Harris, a property owner within 1,000 feet of the project site, also representing PAC-SJ, filed an appeal of the Site Development Permit citing the following reasons:

Incomplete/inaccurate analysis or out of context with the following [City policies, municipal code sections and guidelines]:

[General Plan Goal] LU3-Downtown

[General Plan Policy] LU-13.6

[General Plan Policy] LU-13.8

[San José Municipal Code Section] 13.48.010

[San José Municipal Code Section] 13.48.250

City of San José Historic Design Guidelines

## **ANALYSIS**

Staff's responses to the reasons for each appeal are analyzed below.

### **Response to the Environmental Appeal**

#### **a) Insufficient detailed analysis of project alternatives**

PRC Section 21003(c), Planning and Environmental Review Procedures; Documents; Reports; Data Base; Administration of Process, states:

*The Legislature further finds and declares that it is the policy of the state that:*

*(c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.*

CEQA Guidelines Section 15126.6 (Consideration and Discussion of Alternatives to the Proposed Project, Evaluation of alternatives) states that the analysis of alternatives should focus on alternatives to the project that are capable of avoiding or substantially lessening the significant effects of the project, in addition to the no-project alternative. The CEQA Guidelines further state that only feasible alternatives may be analyzed in any detail.

The significant impacts of the project as described on page 104 of the Draft SEIR (see Attachment F) are as follows:

- Air Quality: construction toxic air contaminant emissions
- Cultural Resources: potential disturbance of archaeological resources, construction effects on historic resources
- Noise/Vibration: mechanical equipment noise, vibration impacts on historic resources.

Feasible mitigation measures identified in the SEIR would reduce all these significant impacts to less-than-significant levels.

The SEIR described four alternatives considered for the project (pages 105-108 of the SEIR):

1. Location Alternative

The Location Alternative was considered but rejected because the proposed project is a hotel addition within the Downtown core near transit, major roadways, and jobs and services. The project applicant does not own another hotel or other property downtown that could be used for development of the project. (Page 105 of the SEIR)

2. Increased Setback Alternative

The Increased Setback Alternative was considered but rejected because in order to reduce construction vibration levels to below the City's thresholds for historic building, the proposed project would need to be located 60 feet from the Montgomery Hotel. Relocating the proposed project 60 feet from the Montgomery Hotel would move the addition to within two feet of the property line. This would not provide adequate space to build the project, making this alternative infeasible. (Page 106 of the SEIR)

3. No Project Alternative

The No-Project Alternative was analyzed, and it was determined that this alternative would avoid the significant impacts of the proposed project but would not meet the project objectives of contributing to job growth and hotel development as envisioned in the Downtown Strategy 2040 and the General Plan. (Page 106 of the SEIR)

4. Reduced Development Alternative

The Reduced Development Alternative reduced the number of hotel rooms by 50 percent, which resulted in a shorter building (approximately 150 feet or 12 floors). The analysis in the SEIR determined that because the footprint of the hotel would remain the same under this alternative, it would result in similar impacts as the project for cultural resources and hazards and hazardous materials, and for noise and vibration during project operation. The analysis also determined that construction noise and vibration impacts would be less than the project because a shorter construction period would occur under this alternative. Mitigation measures identified for the proposed project would also apply to this alternative to reduce all project impacts to less than significant levels. The SEIR concluded that this alternative would not make the best use of this site since it would have 137 fewer rooms and fewer visitors and employees than the project, but this alternative was otherwise consistent with the project objectives. (Page 107 of the SEIR)

The SEIR provides a comparison of all alternatives and a discussion of the Environmentally Superior Alternative (page 108 of the SEIR).

In accordance with the provisions of PRC Section 21003 and CEQA Guidelines Section 15126.6, the SEIR discusses all feasible alternatives to the project. Therefore, the SEIR provides the information required for the decision makers to consider the alternatives to the project.

**b) Insufficient information available for public and decision-makers to analyze alternatives**

PAC-SJ did not provide specific details as to how the alternatives discussion is insufficient. As described in the discussion for Comment a), the SEIR provides adequate information for the decision makers to consider the alternatives the project.

**c) Failure to address Project's overshadowing bulk and massing cantilevered the Montgomery Hotel**

The Archives & Architecture Historic Report on pages 22 and 23 discusses the bulk and massing of the proposed project in relation to the Montgomery Hotel. The report states:

The face of the paneled, cantilevered mass is similar in width to the main forward upper stories of the historic hotel, and the hotel floors are accentuated with intermediate horizontal levels that visually divide the cantilevered wing into modern elements that emulate the size and massing of the historic hotel wings. To further break down the massing and scale of this cantilevered element, the intermediate detailing extends into the south elevation, creating a more three-dimensional design, relating to the bulkiness of the original building. The property depth of the upper level is patterned with human-scaled openings. The face of the cantilevered mass wraps onto the face of the vertical support mass. This layered feature provides visual equilibrium to the design, as the cantilever is visually supported above and to the site of the historic hotel. This creates a sense of balance within the new addition a structure that is harmonious with the significant character of the historic structure.

The discussion concludes that *the massing and scale of the proposed addition are in keeping with the primary historic structure on the same parcel.*

The SEIR provides graphic representations of the massing and cantilevering of the project over the Montgomery Hotel in the renderings shown in Figures 6a, 6b, 6c, 6d, and 7 of the SEIR. In addition, photo simulations that show what the project would look like once constructed in relation to the current existing conditions are shown in Figures 9a, 9b, 9c, 9d, and 9e of the SEIR.

The analysis of aesthetics is included in the Initial Study prepared for the project (see Appendix A of the SEIR, pages 31 – 43). The discussion on page 41 of the Initial Study discusses the project in relation to the existing surrounding buildings and the Montgomery

Hotel. Since aesthetics is by nature a subjective topic, the analysis relies on compatibility with the City's Downtown Historic Design Guidelines and input from the HLC Design Review Subcommittee to ensure the project is compatible with, and does not adversely impact, the historic Montgomery Hotel. The analysis in the Initial Study determined that the project design is consistent with the City's Downtown Historic Design Guidelines. Many elements of the proposed project complement the historic building such as the size, scale, and façade of the lobby. Additionally, the windows are proportional, and the entrance mimics the traditional pedestrian storefront entrance of the historic hotel and nearby historic resources.

A discussion of the views from public viewpoints if the project is constructed is discussed on page 41 of the Initial Study and refers to the photo simulations prepared for the project. As shown in these photo simulations, the project would introduce a building tower above the existing streetscape, to a height of 260 feet. Although the project would substantially increase the density of development on the project site, it is consistent with the urban concepts and strategies identified in the Downtown Strategy 2040 and would contribute to the developed downtown skyline.

A discussion of the shade effects is also discussed on page 41 of the Initial Study with a graphic representation of shade simulation of the proposed project shown on Figure 14 of the Initial Study. The shade simulation showed that the proposed tower would not increase shadows on the Plaza de César Chávez.

The supporting detailed historic reports and the Cultural Resources section of the SEIR addressed the project's bulk and massing in relation to the Montgomery Hotel and found it compatible with the surrounding character of the street and the Secretary of the Interior's Standards.

**d) Inaccurate analysis of Project Conformance to Secretary of Interior's Standard #2**

TreanorHL (formerly Carey & Co., Inc.), and Archives & Architecture, both historic preservation consultant firms, in their analyses of the impact of the project on the Montgomery Hotel (see Appendix D of the SEIR; page 24 of the Archives & Architecture Report, and pages 11-13 of the Carey & Co., Inc. report) agree that, with the following recommendation regarding the lobby attachment detail (the intersection of the proposed new tower's glazing to the existing building), the project would be consistent with the Secretary of the Interior's Standard No. 2 for Rehabilitation (page 11 of the Carey & Co., Inc. report):

*Cutting the glazing straight at the typical vertical surface and enclose with a silicone sealer. At the cornice and belt courses, the enclosure would be formed by a set of metal framing members that roughly conform to the cornice, then a compressible filler that follows the profile of the architectural feature.*

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The project applicant has incorporated the recommendation into the project design. With this recommendation incorporated into the project and the proposed new lobby set back from the historic corner, the two-sided design of the historic building can be “read”, and the project design would preserve the spatial understanding of the Montgomery Hotel as a former corner building. Therefore, the project would conform to the Secretary of the Interior's Standard No. 2.

**e) Incomplete analysis of Project Conformance to the Secretary's recommendations regarding “New Exterior Additions to Historic Buildings and Related New Construction”**

The project applicant, in response to comments and recommendations in the Historic Reports, continued to make design modifications through January 2018, to make the new building more compatible with the Montgomery Hotel. The latest iteration of the project design was found to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the San José Downtown Historic Design Guidelines (see Attachment D).

The revised project design with changes to the face of the paneled, cantilevered mass is similar in width to the main forward upper stories of the historic hotel. The hotel floors are accentuated with intermediate horizontal levels that visually divide the cantilevered wing into modern elements that emulate the size and massing of the historic hotel wings. To further break down the massing and scale of this cantilevered element, the intermediate detailing extends into the south elevation, creating a more three-dimensional design, relating to the blockiness of the original building. The property depth of the upper level is patterned with human-scaled openings. The face of the cantilevered mass wraps onto the face of the vertical support mass. This layered feature provides visual equilibrium to the design, as the cantilever is visually supported above and to the side of the historic hotel. This creates a sense of balance within the proposed project that is harmonious with the significant character of the historic structure.

Based on the above, the project conforms to the Secretary of the Interior's Standard 9.

**Responses to the Historic Preservation Permit and Site Development Permit Appeals**

**a) Incomplete/inaccurate analysis or out of context with the following [City policies, municipal code sections and guidelines]:**

- i. [General Plan Goal] LU3-Downtown**
- ii. [General Plan Policy] LU-13.6**
- iii. [General Plan Policy] LU-13.8**
- iv. [San José Municipal Code Section] 13.48.010**
- v. [San José Municipal Code Section] 13.48.250**
- vi. City of San José Historic Design Guidelines**

**i. General Plan Goal LU3-Downtown**

General Plan Goal LU-3 - Downtown: *Strengthen Downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José.*

As included in the Site Development Permit, the proposed project would contribute to the Downtown's vibrancy as a destination district by providing additional hotel accommodations for visitors to Downtown San José. The site is close to regional attractions such as the San José McEnery Convention Center, SAP Center at San José, and San José State University.

**ii. General Plan Policy LU-13.6**

General Plan Policy LU-13.6: *Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State of California requirements regarding historic buildings and/or structures, including the California Historical Building Code.*

Two separate historical consultants concluded the revised project conforms to the Secretary of the Interior's Standards for Treatment of Historic Properties and San José Downtown Historic Design Guidelines. Further, the cultural resources section in the SEIR analyzed the project's conformance with the Secretary of the Interior's Standards for Treatment of Historic Properties which is also the standard for the California Historical Building Code. The analysis in the SEIR, as described in the response to the CEQA appeal above, determined that the proposed project conforms to the Secretary of the Interior's Standards.

**iii. General Plan Policy LU-13.8**

General Plan Policy LU-13.8: *Require that new development, alterations, and rehabilitation/remodels adjacent to a designated or candidate landmark or Historic District be designed to be sensitive to its character.*

1. The City's Downtown Historic Design Guidelines identify eight conceptual elements for new construction adjacent to historic resources. The proposed project was analyzed for consistency with these guidelines to ensure that it complements historic Downtown core area. The following is a summary of the project's consistency with the San José Downtown Historic Design Guidelines based on the results of the historic evaluation:

Lot-pattern: the proposed building pattern, represented by a side addition to the historic footprint, does not interrupt the rhythm of the development pattern in the immediate area. The narrowness of the new frontage is an extension of the historic building, detailed to have the appearance of a proportionately low and wide main podium area. The project provides a more complete lot coverage, in keeping with the surrounding area. The proposed design approach is compatible with this lot-pattern guideline.

Massing: the proposed tower is broken down into visually smaller masses that are in the scale of the historic massing and relate to the area's historic building heights. The proposed tower is compatible with the historic massing guideline.

Façade: the horizontal elements and façade seams create a rhythmic façade that complements the repetitive historic window patterns of the Montgomery Hotel and nearby historic buildings. The proposed project is compatible with the historic façade design guideline.

Corner elements: the integrated proposed project is setback from the face of the historic Montgomery Hotel to maintain the corner of the historic building, while the material and palette selection frames the lower façade area of the new building to be sensitive to the historic character of the historic Montgomery Hotel.

Rear façade: the north side of the historic hotel includes many character-defining features. This façade is proposed to be incorporated into the lobby of the new addition. The north side elevation of the addition will face another high-rise, across a narrow alley. The design of this façade includes paired smaller windows in a repetitive pattern that is consistent with the repetitive window proportions of the surrounding area. The proposed project is consistent with the rear façade guideline.

Entries: The historic pedestrian orientation and scale of this subarea of the Downtown Core is maintained with the preservation of the historic entrances and with the proposed project design of the new entrance area.

Exterior materials: The new materials are of high quality, reflecting the intent of the downtown district guidelines. The proposed tower can be considered compatible with the historic exterior materials guideline.

Vehicular and pedestrian access: The historic vehicular and pedestrian access patterns are respected in the proposed design. Main pedestrian and vehicular access will continue to flow on South First Street and within the full width of the sidewalk areas, respecting the City grid. The proposed building can be considered compatible with the historic vehicular and pedestrian access guideline.

**iv. San José Municipal Code Section 13.48.010 (Historic Preservation Ordinance)**

*Municipal Code Section 13.48.010 - Purpose and declaration of policy.*

*A. The council of the City of San José hereby finds that in order to promote the economic and general welfare of the people of the City of San José, and to ensure the harmonious, orderly and efficient growth and development of the municipality, it is deemed essential by the council of the City of San José that the qualities relating to the history of the City of San José and a harmonious outward appearance of structures which preserve property values and attract tourists and residents alike be preserved; some of these qualities are the continued existence and preservation of historic districts and landmarks; continued construction of structures in the historic styles and a general harmony as to style, form, color, proportion, texture and material between buildings of historic design and those of more modern design; that such purpose is advanced through the preservation and protection of the old historic or architecturally worthy structures and neighborhoods which impart a*



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*distinct aspect to the City of San José and which serve as visible reminders of the historical and cultural heritage of the City of San José, the state, and the nation.*

*B. The purpose of this chapter is to promote the public peace, health, safety and welfare through the preservation of landmarks and districts and thereby stabilize neighborhoods and areas of the city; enhance, preserve and increase property values; carry out the goals and policies of the city's general plan, increase cultural, economic and aesthetic benefits to the city and its residents; preserve, continue and encourage the development of the city to reflect its historical, architectural, cultural, and aesthetic value or tradition; protect and enhance the city's cultural and aesthetic heritage; and promote and encourage continued private ownership and utilization of such structures.*

PAC-SJ did not specify how the project is inconsistent with the specific provision of the purpose and declaration of the referenced section of the municipal code.

The proposed project, if approved, would allow the construction of a 24-story, 274-room hotel, integrated with the Montgomery Hotel. The project would not demolish any part of the existing historic city landmark structure. The project would preserve the current building, while the new additions as discussed in the evaluation with the Secretary of Interior's Standards of Rehabilitation and City Historic guidelines and policies and would be compatible yet differentiated from the historic Montgomery Hotel. The new addition would continue the existing building use and lotting pattern. The upper cantilevered portion would include a narrow and tall solid form with an overlapping, cantilevered element. This would include a narrow and tall solid form with an overlapping, cantilevered element, presenting a visually balanced, asymmetrical mass.

Therefore, the project would not be detrimental to the City Landmark or historic block, as it would maintain a use consistent with the historic block and implement a compatible ground floor design; thus, the project would be consistent with the purpose of the Historic Preservation Ordinance.

In addition, the proposed project would be consistent with the allowed heights, setbacks, uses, parking and other applicable provisions of the Zoning Ordinance.

As described above, the project balances the efficient growth and development of the City while maintaining the historic integrity of the existing City Landmark.

**v. San José Municipal Code Section 13.48.250 (Historic Preservation Ordinance)**

*Municipal Code Section 13.48.250 - Design criteria.*

*A. This part shall apply only to the exterior portions of landmarks or structures in historic districts and shall not apply to the interior portions thereof unless the director or city council*

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*on appeal finds that the structure cannot be preserved without preserving the interior, in which event, the director or city council on appeal shall exercise as little control over the interior as necessary to the preservation.*

*B. The director shall develop design standards and guidelines in consultation with the historic landmarks commission. Said standards and guidelines shall be subject to the approval of the city council. Said standards and guidelines shall be kept on file at the office of the director of planning for use and examination by the public.*

*C. In making the determination required by Sections 13.48.240, 13.48.330 and 13.48.340, the application shall be reviewed in accordance with the approved standards and guidelines.*

PAC-SJ did not specify how the project is inconsistent with the above-mentioned municipal code.

See detail responses above on how the revised project conforms to the Secretary of the Interior's Standards for Treatment of Historic Properties and San José Downtown Historic Design Guidelines.

**vi. City of San José Historic Design Guidelines**

PAC-SJ did not specify how the project is inconsistent with the City's Historic Design Guidelines findings. Staff responses in the "Responses to the Historic Permit and Site Development Permit Appeals" section of this memorandum substantiate how the revised project conforms to the Secretary of the Interior's Standards for Treatment of Historic Properties and San José Downtown Historic Design Guidelines.

**CONCLUSION**

**Environmental Appeal**

The analysis of alternatives in the SEIR for the proposed project is consistent with Section 21003(c) of the PRC and Section 15126.6 of the CEQA Guidelines (Consideration and Discussion of Alternatives to the Proposed Project, Evaluation of alternatives), and the SEIR provides adequate information for the decision makers to consider the alternatives of the project under CEQA. The SEIR and supporting Historic Resources Assessment reports addressed the project's bulk and massing in relation to the Montgomery Hotel, and also contains a detailed analysis of the proposed project's conformance to the Secretary of the Interior's standards. Based on the full administrative record including the historical reports and SEIR, staff recommends denial of the environmental appeal of certification of the SEIR for the project, and upholding the Hearing Officer's decision.

### **Historic Preservation Permit and Site Development Permit Appeals**

PAC-SJ did not provide details on the alleged inconsistency with the General Plan, Municipal Code and Design Guidelines. In the supporting staff reports, permit facts and findings, staff has adequately described the analysis of how the proposed project conforms to the applicable General Plan policies, Municipal Code, and Design Guidelines. Based on those analyses, staff recommends denial of the appeals of the Historic Preservation Permit and the Site Development Permit, and upholding the Hearing Officer's decision.

### **EVALUATION AND FOLLOW-UP**

If the Council denies the environmental and permit appeals and upholds the decision of the Hearing Officer, then the project applicant may move forward with the building permit process for the proposed project.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals.

### **POLICY ALTERNATIVES**

As discussed in the Analysis section, above, the Council has two distinct decisions to make.

1. For the Environmental Appeal, the Council can either:
  - a. Deny the appeal and uphold the certification of the SEIR, or
  - b. Uphold the appeal and require that additional environmental review be conducted, resulting in a new or revised environmental document prior to consideration of the Historical Preservation Permit and Site Development Permit.
  
2. For the Historic Preservation Permit and Site Development Permit appeal, if the Council denies the environmental appeal, then it can consider the Historic Preservation Permit and the Site Development Permit. In such circumstances, the Council may:
  - a. Approve the Historic Preservation Permit and Site Development Permit as approved by the Planning Director,
  - b. Approve the of the Historic Preservation Permit and the Site Development Permit with additional modifications to the conditions, or
  - c. deny the Historic Preservation Permit and the Site Development Permit.

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For the reasons stated above, Staff recommends that the City Council deny the environmental appeal of the certification of the SEIR, and approve the Historic Preservation Permit and the Site Development Permit as approved by the Planning Director.

### **PUBLIC OUTREACH**

Community meetings were held for the project on October 5, 2017, April 12, 2018, May 24, 2018, and September 17, 2018, in accordance with the City Council Development Policy on Public Outreach 6-30.

On September 4, 2018, a Notice of Preparation of a SEIR was published. Comments from the public were accepted through October 3, 2018. On May 28, 2019, the Draft SEIR was circulated for a period of 45 days for public review. The public comment period ended on July 11, 2019.

On September 23, 2019, the First Amendment to the SEIR which included Responses to Comments received during the public comment period of the Draft SEIR was posted on the City's website and the public was notified of the posting via email.

On September 13, 2019 a notice with the HLC hearing date (October 2, 2019) and the Director's Hearing date (October 16, 2019) was mailed to all neighbors within 1,000-foot radius of the project site.

Pursuant to the requirements in Title 21 of the San José Municipal Code for environmental appeals, a hearing notice for the City Council public hearing was mailed to owners and tenants of all properties within 1,000 feet of the project site, and a copy of this City Council Memorandum was mailed to adjacent property owners, PAC-SJ, and the project applicant.

### **COORDINATION**

Preparation of this City Council Memorandum was coordinated with the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

#### **Historic Landmarks Commission**

On November 6, 2019, the proposed project was brought before the HLC for consideration of the Historic Preservation Permit. The Commission's primary concerns were the proposed project height and massing. The Commission voted to recommend denial of the Historic Preservation Permit to the Planning Director (4-1-2 vote, Commissioners Arnold, Saum, Boehm, Raynsford recommended denial, Commissioner Hirst voted against the recommendation, and Commissioners Polcyn and Royer were absent).

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### **Director's Hearing**

On November 13, 2019, the project and Supplemental EIR were considered at the Director's Hearing. The SEIR was certified and the Historic Preservation Permit and the Site Development Permits were approved.

### **CEQA**

SEIR to the Final Environmental Impact Report for the Downtown Strategy 2040 (Resolution No. 77096) for the San José Tribute Hotel Project, File Nos. H16-042, and HP17-003.

/s/

ROSALYNN HUGHEY, Director  
Planning, Building and Code Enforcement

For questions, please contact John Tu, Planner IV, at (408) 535-6818.

### **Attachments:**

- A: Environmental Appeal
- B: Historic Preservation Permit Appeal
- C: Site Development Permit Appeal
- D: Historic Reports prepared for the San José Tribute Hotel Project
- E: Resolution No. 19-020, certifying the San José Tribute Hotel Project SEIR.
- F: SEIR to the Final Environmental Impact Report for the Downtown Strategy 2040, San José Tribute Hotel, May 2019.