CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: SEE BELOW

DATE: November 21, 2022

Approved

Date **12/1/2022**

COUNCIL DISTRICT: 3

SUBJECT: H20-026 ADMINISTRATIVE HEARING ON THE ENVIRONMENTAL APPEAL OF THE ETERNA TOWER MIXED-USE DEVELOPMENT PROJECT ADDENDUM TO THE DOWNTOWN STRATEGY 2040 FINAL ENVIRONMENTAL IMPACT REPORT

RECOMMENDATION

a) Conduct an Administrative Hearing to consider the environmental appeal of the Planning Director's reliance on the Eterna Tower Mixed-Use Development Project Addendum to the Downtown Strategy 2040 Final Environmental Impact Report in accordance with the California Environmental Quality Act (CEQA) for a Site Development Permit (File No. H20-026), to allow the demolition of two on-site two-story buildings and allow the construction of a 26-story, approximately 184,667-gross square foot mixed-use building consisting of 192 residential units and 6,644 square feet of commercial space, on an approximately 0.18-acre site.

b) Adopt a resolution denying the environmental appeal and upholding the Planning Director's reliance on the Eterna Tower Mixed-Use Development Project Addendum to the Downtown Strategy 2040 Final Environmental Impact Report in accordance with the California Environmental Quality Act, as amended, and finding that:

   (1) City Council has independently reviewed and analyzed the Addendum for the Eterna Tower Mixed-Use Development Project, and related administrative record related to Site Development Permit No. H20-026; and

   (2) Addendum for the Eterna Tower Mixed-Use Development Project was prepared and completed in full compliance with the CEQA of 1970, as amended, together with State and local implementation guidelines; and

   (3) Reliance on the Addendum for the Eterna Tower Mixed-Use Project reflects the independent judgment and analysis of the City of San José, as the lead agency for the Project; and

(4) Preparation of a new, subsequent, or supplemental environmental document is not required because the appeal does not raise any new significant impacts that have not already been analyzed or addressed in the Eterna Tower Mixed-Use Project Addendum and none of the following events occurred as outlined in Section 21166 of Public Resources Code:

(i) substantial changes are proposed in the project which will require major revisions of the environmental report;

(ii) substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or

(iii) new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available. Further, a new, subsequent, or supplemental environmental impact report is not required because no impacts outside the scope of the Downtown Strategy 2040 EIR were identified in Section 15168 of the CEQA Guidelines.

OUTCOME

Denying the environmental appeal and upholding the Planning Director's reliance on the Addendum for the Eterna Tower Mixed-Use Project (CEQA determination) would allow the project applicant to move forward under Site Development Permit No. H20-026, approved by the Director, to allow the demolition of two on-site two-story buildings and allow construction of a 26-story, approximately 184,667 square foot mixed-use building consisting of 192 residential units and 6,644 square feet of commercial space on an approximately 0.18-gross acre site located at 17-29 East Santa Clara Street. The Planning Director's approval of Site Development Permit No. H20-026 was not appealed.

Upholding the environmental appeal would void both the Planning Director's CEQA determination and the Site Development Permit. The project applicant would be required to prepare a new or revised environmental document prior to reconsideration of the proposed project. Alternatively, the applicant could choose to not proceed with the proposed project.

EXECUTIVE SUMMARY

On August 26, 2022, Silicon Valley Residents for Responsible Development (Silicon Valley Residents), represented by Adams, Broadwell, Joseph & Cardozo, a Professional Corporation, submitted a letter commenting on the adequacy of the Initial Study and Addendum prepared for the project under CEQA. The letter includes reasons for the appeal and an exhibit (Exhibit A) with an attachment (Attachment A to Exhibit A), both of which were previously submitted on

August 23, 2022, the day before the Director's Hearing. The appeal letter reiterates previously stated concerns outlined in the August 23, 2022 comment letter. These include:

- the City [of San José] improperly relied on an Addendum;
- the project results in significant air quality impacts not analyzed in the Downtown Strategy 2040 FEIR;
- the project results in significant hazards and hazardous materials impacts not analyzed in the Downtown Strategy 2040 FEIR; and
- the House Accountability Act would not preclude additional CEQA review.

On August 24, 2022, the Planning, Building, and Code Enforcement Deputy Director for the Planning Division, acting on behalf of the Planning, Building, and Code Enforcement Director, (Hearing Officer) held a public hearing to consider the Eterna Tower Mixed-Use Development Project Addendum and Site Development Permit No. H20-026. At the hearing, there were three public speakers, Ron Golem, Director of Real Estate and Transit-Oriented Development for Valley Transportation Authority (VTA), Rafa Sonnenfeld from YIMBY Law, and Kelilah Fetterman for Silicon Valley Residents. Silicon Valley Residents is represented by the law firm of Adams, Broadwell, Joseph & Cardozo.

Staff responded verbally to the comments raised by Adams, Broadwell, Joseph & Cardozo's August 23, 2022 comment letter and public testimony, on behalf of Silicon Valley Residents, at the public hearing as detailed below. The Hearing Officer considered all the information in the administrative record including the Initial Study, Addendum, and information presented at the public hearing, and determined that the Eterna Tower Mixed-Use Development Project Addendum to the Downtown Strategy 2040 FEIR was the appropriate environmental clearance under CEQA for the proposed project and approved the Site Development Permit, File No. H20-026. A copy of the Site Development Permit is included as Exhibit B to this memorandum.

On August 26, 2022, a timely appeal of the environmental determination was filed by Alisha Pember on behalf of Adams, Broadwell, Joseph & Cardozo, representing Silicon Valley Residents. No project permit appeal was filed. The appellant alleges the Addendum fails as an informational document under CEQA and is inadequate because it identifies significant environmental impacts not discussed in the Downtown Strategy 2040 FEIR, fails to comply with the requirements for tiering from a program-level environmental impact report, fails to evaluate the project-level impacts in the areas of public health, air quality, contaminant hazards, and historic resources, and lacks substantial evidence to support the City's environmental conclusions. The appellant urges the City Council to grant the appeal and remand the project and have the Planning Director prepare a Subsequent EIR for the project. A copy of the appeal is included as Exhibit A to this memorandum.

As stated above and explained in detail below, the Hearing Officer determined the Eterna Tower Mixed-Use Development Project is consistent with the Downtown Strategy 2040 FEIR and therefore an Addendum is the appropriate CEQA clearance.

The appellant failed to provide substantial evidence indicating that the proposed project would require a new, subsequent, or supplemental EIR as set forth in Public Resources Code Section 2116, CEQA Guidelines Section 15162-15164 and 15168, or any other provisions under CEQA. Therefore, Silicon Valley Residents has not presented substantial evidence that the project would result in significant, adverse, un-mitigatable impacts outside the scope of the Downtown Strategy 2040 FEIR, which would require the preparation of a new, subsequent, or supplemental EIR.

BACKGROUND

Site Location

The project site (Assessor's Parcel Numbers: 467-21-024 and 467-21-025) is located at 17 and 29 East Santa Clara Street in downtown San José. The 0.18-gross acre project site is located on the north side of East Santa Clara Street between North First Street and South Second Street and is currently occupied by a pair of two-story buildings, one of which,17 East Santa Clara Street, is identified in the City's Historic Resources Inventory as a Structure of Merit. The project site is surrounded by mixed-uses such as retail, restaurants, office, and residential. The site is in the DC Downtown Primary Commercial Zoning District and is designated in the General Plan as Downtown. The Downtown designation allows a density of up to 800 du/ac and a floor area ratio of up to 30.0 at heights of three to 30 stories.

The project site is identified as a potential BART station entrance in the combined NEPA/CEQA Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR) for VTA's BART Silicon Valley – Phase II Extension Project.

Proposed Project: Eterna Tower Mixed-Use Development

The Site Development Permit application, H20-026, was filed on July 27, 2020. The project applicant is Roygbiv Real Estate Development, represented by Loida Kirkley. The Site Development Permit would allow the demolition of two on-site two-story buildings and allow construction of a 26-story, approximately 184,667 square foot mixed-use building consisting of 192 residential units, including 20 percent restricted affordable units, 6,644 square feet of commercial space, and approximately 5,400 square feet reserved for a future VTA transit station, on an approximately 0.18-gross acre site. The proposed project is consistent with the DC Downtown Primary Commercial Zoning District and the Downtown designation.

The project would retain the street-facing façade and parapet of the existing building at 17 East Santa Clara Street, which would be integrated into the new project. The proposed building would have a height of just over 273 feet and would consist of a main lobby, 50 first-floor long-term parking spaces for bicycles, 192 residential units, and a basement level to house utilities for the building. The proposed common outdoor area for the building consists of a rooftop terrace. Private open space would be provided by balconies for most units.

The proposed project does not include any vehicle parking supported through Density Bonus incentives and the project's downtown location. However, the project would provide 51 long-term bicycle parking spaces on the first-floor level. No short-term bicycle spaces are proposed on-site. Pedestrian access to the proposed project site would be provided through the main lobby entrance on East Santa Clara Street. Direct access to basement utilities is provided via a roll-up utility door accessed via East Santa Clara Street.

Environmental Review

The environmental impacts of this project were addressed by the Downtown Strategy 2040 Final Environmental Impact Report adopted by City Council Resolution No. 78942 on December 19, 2018. CEQA Guidelines Section 15164, states that "A lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent EIR have occurred. Pursuant to Section 15164, and as part of the entitlement processing for this project, an Addendum to the Downtown Strategy 2040 Final EIR was determined to be the appropriate CEQA clearance. The Addendum was posted to the environmental review page on August 10, 2022, and is available on the City's website at: www.sanjoseca.gov/activeeirs.

The type and intensity of development proposed are consistent with the anticipated development in Downtown Strategy 2040 FEIR. The Downtown Strategy 2040 FEIR included the project site in the evaluation for the Downtown land use designation. This designation allows for office, retail, service, residential, and entertainment uses in the Downtown at very high intensities of up to 800 dwelling units per acre and a floor area ratio of up to 30.0. The project conforms to the Downtown General Plan land use designation in that it includes high-density residential and commercial uses, consistent with the Downtown Strategy 2040 FEIR.

The Downtown Strategy 2040 FEIR identified measures to minimize impacts and adopted statements of overriding consideration for all identified significant impacts resulting from the maximum level of the proposed development that could not be avoided. No new or more significant environmental impacts beyond those identified in the Downtown Strategy FEIR have not been identified, nor have any new mitigation measures or alternatives that are considerably different from those analyzed in the FEIR been incorporated. As analyzed in the Eterna Tower Mixed-Use Development Initial Study/Addendum, the project would comply with the Greenhouse Gas Reduction Strategy identified in the 2040 General Plan and would not result in greenhouse gas emission impacts beyond those identified in the General Plan FEIR and SEIR.

The project is located on a site that was analyzed as a potential BART station entrance in the combined NEPA/CEQA Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR) for the VTA's BART Silicon Valley – Phase II Extension Project. On June 8, 2021, the City Council, as a responsible agency under CEQA, adopted the VTA's CEQA Findings for the Project as its own findings under CEQA, the Statement of Overriding Considerations, and reiterated the benefits of the VTA/BART Silicon Valley project.

The VTA/BART Silicon Valley project involves the expansion of BART's rail service to Downtown San José via a new six-mile extension from the existing Berryessa/North San José Station through downtown San José to the Santa Clara Caltrain Station.

A Mitigation Monitoring and Reporting Program, consistent with the Downtown Strategy 2040 FEIR, was prepared for the project and includes mitigations to bring impacts to Air Quality, Biological Resources, Cultural Resources, Hazards and Hazardous Materials, and Noise to less than significant levels. A Condition of Approval implementing the Mitigation Monitoring and Reporting Program is part of this project as is standard environmental permit conditions to lessen the environmental effects of the project.

Planning Director's Public Hearing

On August 24, 2022, the Hearing Officer held a public hearing to consider the Eterna Tower Mixed-Use Development Project Addendum and Site Development Permit No. H20-026. At the public hearing, there were three speakers.

The first speaker, Mr. Ron Golem, VTA's Director of Real Estate and Transit-Oriented Development, stated that the VTA Board of Directors took a condemnation action to acquire the subject parcels and that VTA has possession of the project site property. He also stated for the record that VTA does not agree with the project as it is incompatible and infeasible with VTA's construction, operation, and maintenance of the future San José BART Station, and that remaining matters to be discussed with property owners only pertain to compensation. The Planning, Building, and Code Enforcement project manager for the subject project responded to VTA's statements by stating that the project plans were routed to VTA and, at no time, did VTA state that the proposed project would be incompatible or interfere with the future BART station. Further, the project manager clarified that the question of property ownership was elevated to the City Attorney's Office, and their advice to staff was to proceed with the application review and processing as no legal stay had been presented.

VTA did not submit an appeal for the project.

The second speaker, Mr. Rafa Sonnenfeld, from YIMBY Law, spoke in favor of the project and said the project could not be prevented because it was eligible under the Housing Accountability Act and was in conformance with the development standards and General Plan designation. YIMBY Law did not submit an appeal for the project.

The third speaker, Ms. Kelilah Federman, with Adams, Broadwell Joseph & Cardozo, on behalf of Silicon Valley Residents, spoke against the project citing concerns regarding the project and its alleged significant environmental impacts, including:

- Impact to historical resources
- Impact on air quality and pollution from project construction and operation on adjacent properties

- Project site contamination
- Improper environmental document (Addendum) and CEQA clearance based on significant environmental effects not analyzed in previous FEIR (Downtown Strategy 2040 FEIR)
- Inadequate analysis of the back-up generator based on their air quality expert's review and analysis
- Inadequate mitigation for Diesel Particulate Matter (not requiring the use of Tier 4 Final engines)

Ms. Federman concluded her public testimony by stating that the Site Development Permit findings could not be made and that a subsequent EIR was required in accordance with CEQA. Staff responded verbally to the comments pertaining to the CEQA analysis and environmental review at the request of the Hearing Officer. Staff provided an overview of the environmental review process and the Downtown Strategy 2040 FEIR and reaffirmed the environmental document is the adequate CEQA clearance for the project as the Addendum fully analyzes the impacts of the whole project. Staff also responded to the alleged air quality analysis deficiencies, by stating that the Bay Area Air Quality Management District (BAAQMD) administers the CARB's Airborne Toxic Control Measure for Stationary Diesel engines and that the operations of these generators are limited to 50 hours per year of non-emergency use (i.e., testing and maintenance) by the State's Air Toxic Control Measure for Stationary Compression Ignition Engines. The project would include testing each generator (generally performed monthly) to make sure that they are ready to come online when needed in the event of a power failure. For purposes of estimating emissions and potential air quality impacts from the engines, the air quality model assumed that each engine could be operated for 50 hours per year (maximum operation hours) as allowed by the State's Air Toxic Control Measure and BAAQMD for testing and maintenance purposes. Furthermore, the 2040 General Plan FEIR concluded that development allowed under the 2040 General Plan would result in a significant unavoidable impact due to an increase in air pollutant emissions and concentrations within the air basin. The analysis, including identified mitigation, used in the Addendum is consistent with the methodology and mitigation used for all other CEQA environmental analysis compliance documents adopted for similar downtown projects.

In response to the alleged impacts to historical resources, staff clarified that although Structures of Merit are important cultural resources for the City, under CEQA, they are not considered historical resources. Per the CEQA Statues and Guidelines, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources and/or included in a local register of historical resources. As analyzed in the Addendum, under the Cultural Resources section, Treanor HL's assessment of the historic significance of the two buildings on the project site, concluded that the buildings at 17-25 and 29-31 East Santa Clara Street do not appear to be individually eligible for listing on the National Register of Historic Places, California Register of Historical Resources or as City Landmarks as they do not possess sufficient historical significance under any criteria. Therefore, neither

property is considered a historical resource as defined by CEQA. The project does include standard permit conditions to address the demolition of the Structure of Merit.

In response to the alleged project site contamination and analysis regarding hazards and hazardous materials, staff reiterated the Addendum's analysis – namely that the Phase I Assessment (Appendix C of the EIR Addendum) identified hazardous materials contamination at the adjoining site located at 35 and 43 East Santa Clara Street from high volatility organic compounds. The Phase I Assessment recommends the development and implementation of a Soil Management Plan for the project during excavation and grading activities to provide measures to manage encountering, handling, and disposing of soil potentially impacted by hazardous substances.

In accordance with the Downtown Strategy 2040 FEIR and recommendations of the Phase I Environmental Site Assessment prepared, the HAZ-1 mitigation measure was applied to the project and is incorporated into the Mitigation Monitoring and Reporting Program. The measure's language was reviewed and approved by Environmental Services Department staff. Regulatory oversight from the County of Santa Clara Department of Environmental Health's Voluntary Cleanup Program, or an equivalent program by another oversight agency, to address soil and groundwater contamination discovered on the property would be required.

Based on the above response to the concerns and alleged issues raised, staff maintains that the Eterna Tower Mixed-Use Development Project Addendum is the appropriate clearance under CEQA as the project does not result in more significant impacts identified in the Downtown Strategy 2040 FEIR, and significant impacts identified can be mitigated to a less than significant level with the incorporation of mitigation measures. Further, none of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR have occurred.

The Hearing Officer considered the information presented and determined that the Addendum is the appropriate environmental clearance under CEQA and approved the Site Development Permit.

The Planning Director's Hearing Agenda item 4a. including the draft Site Development Permit and all associated documents for the Planning Director's Hearing on August 24, 2022, can be viewed at https://www.sanjoseca.gov/home/showpublisheddocument/88703/637963327163030000. The audio recording of the meeting is available at https://sanjose.granicus.com/MediaPlayer.php?view_id=54&clip_id=13293.

Environmental Appeal

Pursuant to Section 21.04.140 of the San José Municipal Code, any interested person can submit a timely request to appeal to the City Council the determination made by the Planning Director, Planning Commission, or non-elected decision-making body regarding the appropriate environmental clearance for a project. As outlined above, at the Appeal Hearing, the City

Council may uphold the Planning Director's reliance on the Eterna Tower Mixed-Use Development Project Addendum to the Downtown Strategy 2040 FEIR or require the preparation of a new environmental document.

On August 26, 2022, a timely environmental appeal of the Eterna Tower Mixed-Use Development Project Addendum was filed by Alisha Pember from Adams, Broadwell Joseph & Cardozo, on behalf of Silicon Valley Residents. The appeal is based on verbal comments presented at the Director's Hearing and the basis for the appeal stated in the appeal application. The formal reasons for the appeal are as follows:

- The City of San José improperly relied on an Addendum:
    - The project will have one or more significant impacts not discussed in the previous EIR; the Addendum specifically identifies several potentially significant impacts not discussed in the Downtown Strategy 2040 FEIR, including Impact AQ-1 (infant cancer risk from exposure to diesel particulate matter during project construction), Impact HAZ-1 (exposure of construction workers and the public to soil and groundwater contaminants), Impact NSE-1 (construction noise in excess of the City's General Plan thresholds) and Impact NSE-2 (vibrations from construction exceeding the City's General Plan thresholds).
    - The project-specific impacts and mitigation measures were not disclosed, analyzed, or considered in the Downtown Strategy 2040 FEIR.
    - The CEQA Guidelines Section 15152 only recognizes the use of an EIR or a negative declaration, not an Addendum, to tier from a program EIR.
    - The Downtown Strategy 2040 FEIR does not contemplate the use of density bonuses to inflate the size and impacts of projects tiering from it. The City's reliance on anticipated density bonus approvals to claim that the project is currently "consistent" with existing zoning and land use plans so as to rely on an Addendum to the Downtown Strategy 2040 FEIR is entirely unsupported and contrary to CEQA.
    - The project exceeds applicable zoning, density and height requirements, and does not qualify for approval under the City's Design Review and Historic Preservation requirements, and would require a Conditional Use Permit.
    - The Project's Floor Area Ratio waiver and density bonus may exacerbate the Project's impacts on air quality, public health, greenhouse gas emissions, and harm to historical property.
- The project results in significant air quality impacts not analyzed in the Downtown Strategy 2040 FEIR:
    - The air quality impacts of the project would result in unacceptable negative effects on adjacent properties.
    - The project fails to implement feasible mitigation to reduce construction air emissions.
    - The Addendum relies on inaccurate air quality modeling.

    - The project fails to mitigate air quality impacts associated with project operation and the backup generator.
- The project results in significant hazards and hazardous materials impacts not analyzed in the Downtown Strategy 2040 FEIR:
    - The Addendum fails to adequately analyze the impacts of hazardous contamination.
    - The Addendum fails to mitigate the impacts of hazardous contamination.
- The House Accountability Act would not preclude additional CEQA review:
    - Upholding Silicon Valley Residents' Appeal and remanding the project to City staff to draft a Subsequent EIR would not be "disapproving" the project within the meaning of the House Accountability Act.
    - The House Accountability Act does not relieve the City of its obligations to comply with CEQA.

A copy of the draft Eterna Tower Mixed-Use Development Project Appeal Resolution is included as Exhibit C to this memorandum.

ANALYSIS

Reliance on an Addendum

The document in question is the Eterna Tower Mixed-Use Development Project Addendum (See Exhibit D) to the Downtown Strategy 2040 FEIR which was certified in December 2018. As a programmatic document with some project level analysis, the Downtown Strategy 2040 FEIR evaluated the planned growth for the Downtown area to the year 2040. The proposed project was included in the planned growth for the Downtown and the Downtown Strategy 2040 FEIR. This Addendum to the Downtown Strategy 2040 FEIR was prepared to address the specific details of the proposed project and whether there were any new significant impacts outside the scope of the Downtown Strategy 2040 FEIR. As outlined in the appeal letter, the Eterna Tower Mixed-Use Development Project Addendum identifies significant impacts and associated mitigation. Identifying impacts and associated mitigation does not make the project ineligible for an Addendum to an EIR, rather it provides project-specific analysis and mitigation to ensure the impacts are not more significant than the document it tiers from (i.e., Downtown Strategy 2040 FEIR). All of the impacts, even if there are no impacts, are stated and described after each resource section in the Initial Study that accompanied the EIR Addendum; mitigation measures identified in the Downtown Strategy 2040 FEIR, as applicable, are also included after each impact statement within the analysis. The analysis concluded that no new significant impact other than those identified in the Downtown Strategy 2040 FEIR, would occur as a result of the implementation of the Eterna Tower Mixed-Use Development Project. The project description analyzed in the EIR Addendum includes the density bonus and waivers and assumes the same in the environmental analysis, including the Air Quality analysis. Therefore, an Addendum to the Downtown Strategy 2040 FEIR is the appropriate CEQA clearance for the project.

Separately, and outside of the CEQA process, the project is located in the DC Downtown Primary Commercial Zoning District and was properly and thoroughly reviewed under a Site Development Permit application pursuant to San José Municipal Code Section 20.70.100 and Chapter 20.100, and therefore, the project does not require a Conditional Use Permit.

Staff's response to the appeal points is included in Exhibit E and summarized below.

Air Quality Analysis

The appellant claims the project results in significant air quality impacts not analyzed in the Downtown Strategy 2040 FEIR. The Eterna Tower Mixed-Use Development Project Addendum discusses air quality in Section C and is based on an Air Quality Assessment (Appendix A of the EIR Addendum) prepared by Illingworth and Rodkin.

The Project's air quality assessment did analyze the unmitigated and mitigated health risk impacts of the project on adjacent sensitive receptors. The unmitigated maximum cancer risk impact (from both construction and operation of the project) would result in a risk of 17.19 per million, assuming infant exposure during construction when emissions are greatest. The mitigated maximum cancer risk impact, with mitigation including the Downtown Strategy 2040 FEIR best management practices to control dust and exhaust during construction and the use of construction equipment with Tier 4 Interim emissions standard engines, would result in a risk of 4.24 per million for infant risk. The mitigated cancer risk impact is below the BAAQMD significance threshold of 10 in one million for cancer risk and therefore results in a less-than-significant impact with mitigation.

BAAQMD's Air Quality Significance Thresholds were used, as outlined in the following table:

Health Risks and Hazards for New Sources (within a 1,000-foot Zone of Influence)		
Health Hazard	**Single Source**	**Combined Cumulative Sources**
Excess Cancer Risk	10 per one million	100 per one million
Hazard Index	1.0	10.0
Incremental Annual $PM_{2.5}$	0.3 $\mu g/m^3$	0.8 $\mu g/m^3$ (average)

The Tier 4 Interim equipment is still considered the "Best Available Control Technology" and the construction equipment with Tier 4 Interim engines are more readily available in fleet mixes. The main difference from Tier 4 Final equipment is that Tier 4 Final has a greater nitrogen oxide (NOx) emissions reduction, which the air quality assessment concluded had less-than-significant construction period NOx emissions. In the event that special equipment is needed and cannot be procured with engines that meet Tier 4 standards, Mitigation Measure AQ-1 states that engines meeting Tier 3 standards could be used; however, this equipment would have to be equipped

with particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a minimum of 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment. Therefore, the use of Tier 4 Interim equipment, or some equipment that meets Tier 3 standards with CARB Level 3 verifiable diesel emission control devices (if Tier 4 equipment is not available), sufficiently mitigates the project's health risk impacts to below BAAQMD significance thresholds as a Best Available Control Technology while meeting the measures included in the Downtown Strategy 2040 FEIR.

The commenter is incorrect in their assertion that the air quality modeling relied upon modeling that assumed the use of Tier 4 Final emissions standards. The use of Tier 4 Interim equipment was assumed in the modeling for mitigated impacts and would sufficiently mitigate the project's health risk impacts to below BAAQMD significance thresholds as a Best Available Control Technology while meeting the measures included in the Downtown Strategy 2040 FEIR.

Per direction by BAAQMD, only emissions from routine testing and maintenance were considered in the analysis. The procedure is in accordance with BAAQMD Regulation 2, Rule 5 and the number of non-emergency operation hours per year is limited to 50 hours per the Airborne Toxic Control Measure for Stationary Toxic Compression Ignition Engines (Section 93115, Title 17 CCR). BAAQMD's procedure for permitting emergency generators is to consider the operation of the generators for up to 50 hours per year. For cancer risk calculations to support the issuance of permits under Regulation 2, Rule 5, BAAQMD uses 50 hours of operation per year averaged over 30 years. The air quality assessment used the same assumptions, except the generator would operate for 28 years and there would be construction for two years (30-year total averaging period).

The Addendum provides a reasonable worst-case assessment of emissions because actual generator use would likely be less than 50 hours per year. The commenter does not provide verifiable and substantial evidence that generators would operate on average more than 50 hours per year over the life of the project.

Furthermore, the commenter provides no evidence that the use of the backup emergency generator would cause significant impacts even if it were to run for 150 to 200 hours per year. The operational emissions of air pollutants affected by diesel engine operation (i.e., NOx and particulate matter) are well below the significant thresholds and cancer risk associated with mitigated construction emissions and generator operation are also well below thresholds.

Construction and Operation Risk Impacts at the Off-Site Project MEI

Source		Cancer Risk* (per million)	Annual $PM_{2.5}$* ($\mu g/m^3$)	Hazard Index
Project Construction (Years 0-3)	Unmitigated	**15.85 (infant)**	0.32***	0.01
	Mitigated*	2.90 (infant)	0.09	<0.01
Project Generator, One 500-kW, 670-HP (Years 3-30)		1.34	0.01	<0.01
Total/Maximum Project Impact (Years 0-30)	Unmitigated	**17.19 (infant)**	0.32***	0.01
	Mitigated*	4.24 (infant)	0.09	<0.01
BAAQMD Single-Source Threshold		***10***	***0.3***	***1.0***
Exceed Threshold?	Unmitigated	***Yes***	*No*	*No*
	Mitigated*	*No*	*No*	*No*

* Maximum cancer risk and maximum $PM_{2.5}$ concentration occur at different receptors.
** Construction equipment with Tier 4 interim engines and BMPs as Mitigation.
*** As the threshold is presented with only one significant figure after the decimal, the project $PM_{2.5}$ concentration when rounded does not exceed the threshold.

Hazards and Hazardous Materials Analysis

The appellant claims that the project results in significant hazards and hazardous materials impacts not analyzed in the Downtown Strategy 2040 FEIR. Hazards and Hazardous Materials are discussed in Section I of the Addendum and the analysis is based on a Phase I Environmental Site Assessment (Appendix C of the Initial Study/Addendum in Exhibit D)) dated August 11, 2021, and prepared by AEI Consultants.

As described in the Addendum, a Phase I Assessment was performed for the project that identified hazardous materials contamination at the adjoining site located at 35 and 43 East Santa Clara Street from high volatility organic compounds. Mitigation Measure HAZ-1 requires that the project applicant retain a qualified consultant to conduct a Phase II analysis consisting of focused sampling and analysis for contamination of soil, soil vapor, and/or groundwater on-site prior to the issuance of any grading, building, or demolition permits. Sampling on the site would be under regulatory oversight from the County of Santa Clara Department of Environmental Health's Voluntary Cleanup Program, or an equivalent program by another oversight agency, to address soil and groundwater contamination discovered on the property. As outlined in the mitigation measure and Mitigation Monitoring and Reporting Program, the project applicant must prepare, under the guidance of the oversight agency, a Site and Groundwater Management Plan or equivalent report. The Site and Groundwater Management Plan or equivalent report must establish and implement remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors.

Conducting a Phase II assessment and testing was not feasible on the project site due to the presence of existing mid-rise development on the site. Mitigation Measure HAZ-1 identifies a course of action based on the results of the Phase II work subject to regulatory overview. Therefore, this mitigation does not represent deferred mitigation and is sufficient to avoid impacts related to the potential presence of hazardous materials. This mitigation is enforceable since it requires implementation of the Site and Groundwater Management Plan or equivalent

report and must be in accordance with local and state law. Compliance with regulations is appropriate mitigation when those regulations identify specific standards and criteria for minimizing environmental risk. As stated above, MM HAZ-1 will be incorporated into the Mitigation Monitoring and Reporting Program for the IS/MND and project conditions of approval.

CONCLUSION

The analysis and conclusions made in the EIR Addendum are accurate, adequate, and supported by facts and substantial evidence. None of the claims presented in the public testimony or appeal provide additional substantial evidence that the project would result in a new significant environmental impact or a substantial increase in the severity of an environmental impact than determined in the EIR Addendum. As stated above, the analysis in the EIR Addendum is consistent with the Downtown Strategy 2040 FEIR as presented in the conclusions at the end of each chapter of the EIR Addendum. Therefore, the City has determined that preparation of a Subsequent EIR is not warranted.

The CEQA Statute and Guidelines Section 15162(a) states that no subsequent EIR would need to be prepared if on the basis of substantial evidence and in light of the whole record, the Lead Agency determines the project would not result in new significant environmental effects or a substantial increase in the severity of the previously identified significant effects of the previous EIR due to project changes or new information and circumstances. Additionally, a subsequent EIR would not be needed as long as any feasible mitigation measures or alternatives that now would substantially reduce one or more significant effects of the Project would be adopted as project mitigation measures or alternatives. Based on the above analysis, the comments submitted by Silicon Valley Residents represent an opinion and do not demonstrate with facts and analysis for a fair argument that a new environmental document is required pursuant to CEQA Guidelines Sections 15162.

Staff recommends the City Council deny the appeal and uphold the Planning Director's reliance on the Eterna Tower Mixed-Use Development Project EIR Addendum to the Downtown Strategy 2040 Final Environmental Impact Report and approval of the Site Development Permit.

EVALUATION AND FOLLOW-UP

If the City Council denies the appeal and upholds the Planning Director's reliance on the EIR Addendum for the Site Development Permit, then the applicant may proceed with the acquisition of the necessary grading and building permits and implement the required mitigation measures to complete the development of the Eterna Tower Mixed-Use Development Project.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The development of the project would:

- Increase population density in growth areas
- Provide homes near transit
- Decrease vehicle miles traveled.

POLICY ALTERNATIVES

For the Environmental Appeal, the City Council can either:

a. Deny the appeal and uphold the adoption of the Eterna Tower Mixed-Use Development Project EIR Addendum; or
b. Grant the appeal and require that additional environmental review be conducted, resulting in a new or revised environmental document prior to consideration of the Site Development Permit.

Staff recommends that the City Council deny the CEQA appeal, uphold the Planning Director's reliance on the Eterna Tower Mixed-Use Development Project Addendum to the Downtown Strategy 2040 FEIR and associated Mitigation Monitoring and Reporting Program, and approval of the Site Development Permit.

PUBLIC OUTREACH

Staff followed City Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. A community meeting for the project was held via video conference on October 14, 2021. Notice of the public hearing for this appeal and associated materials were distributed to the appellant, applicant, and adjacent property owner(s). Staff has been available to answer questions from the public.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office.

CEQA

Eterna Tower Mixed-Use Development Project Addendum.

/s/
Christopher Burton, Director
Planning, Building, and Code Enforcement

For questions, please contact Robert Manford, Deputy Director – Planning, for Planning, Building and Code Enforcement at (408) 535-7900.

Attachments:

Exhibit A: Environmental Appeal from Adams, Broadwell, Joseph & Cardozo on behalf of Silicon Valley Residents

Exhibit B: Site Development Permit, File No. H20-026

Exhibit C: Eterna Tower Mixed-Use Development Project Appeal Resolution

Exhibit D: Initial Study/Addendum to the Downtown Strategy 2040 Final Environmental Impact Report and associated Mitigation Monitoring and Reporting Program

Exhibit E: City's Response to Environmental Determination Appeal

Exhibit A

Copy of Appeal

CITY OF SAN JOSE
Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113-1905
tel (408) 535-3555 fax (408) 292-6055
Website: www.sanjoseca.gov/planning

INSTRUCTIONS FOR FILING AN APPLICATION FOR
APPEAL OF AN ENVIRONMENTAL DETERMINATION

WHO MAY APPEAL
Any person may file.

TIME LIMIT
A complete Notice of Environmental Appeal (see back page) must be filed in person at Development Services Center, City Hall, no later than 5 p.m. on the **third business day** following the day of the public hearing that relied upon the Environmental Determination.

APPEAL REQUIREMENTS
1. A complete Notice of Environmental Appeal including the following within the appropriate time limit:

    a. Application filing fee, (see Filing Fee Schedule).
    b. The appeal shall state with specificity the reasons that the Environmental Determination should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA.
    c. No appeal shall be considered unless it is based on issues which were raised at the public hearing either orally or in writing prior to the public hearing. (21.07.040C)

PROCESSING SCHEDULE

Planning Staff:

- Checks the application for completeness.
- Logs and collects fees.
- Sets a public hearing date before City Council and places the item in the agenda.
- Prepares a recommendation to the City Council.

City Council:

- considers and acts upon the appeal in a public hearing.

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

CITY OF SAN JOSE
Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113-1905
tel (408) 535-3555 fax (408) 292-6055
Website: www.sanjoseca.gov/planning

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER	RECEIPT #
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)	AMOUNT DATE BY

TO BE COMPLETED BY PERSON FILING APPEAL

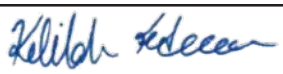
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:

Addendum to the Downtown Strategy 2040 Final EIR for Eterna Tower Mixed-Use Development

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):
See Attachment 1.

PERSON FILING APPEAL

NAME			DAYTIME TELEPHONE
Silicon Valley Residents for Responsible Development c/o Kelilah Federman, Adams Broadwell Joseph & Cardozo			(650) 589-1660
ADDRESS	**CITY**	**STATE**	**ZIP CODE**
601 Gateway Boulevard, Suite 1000	South San Francisco	CA	94080
SIGNATURE 			DATE 8/26/22

CONTACT PERSON
(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME			
Alisha Pember			
ADDRESS	**CITY**	**STATE**	**ZIP CODE**
601 Gateway Boulevard, Suite 1000	South San Francisco	CA	94080
DAYTIME TELEPHONE	**FAX NUMBER**	**E-MAIL ADDRESS**	
(650) 589-1660	(650)589-5062	apember@adamsbroadwell.com	

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
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DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

August 26, 2022

Via Email

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Christopher.Burton@sanjoseca.gov
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Robert.Manford@sanjoseca.gov
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Toni Taber, City Clerk
Office of the City Clerk
200 E. Santa Clara St.
Tower 14th Floor
San José, CA 95113
Email: city.clerk@Sanjoseca.gov

Re: **Appeal of the Environmental Determination - Addendum to the Downtown Strategy 2040 Final Environmental Impact Report for Eterna Tower Mixed-Use Development (File No. H20-026)**

Dear Mr. Burton, Mr. Manford, Ms. Blanco, and Ms. Meiners:

We are writing on behalf of Silicon Valley Residents for Responsible Development ("Silicon Valley Residents") to appeal the San Jose Planning Director's August 24, 2022 environmental clearance determination for and approval of the Eterna Tower Mixed-Use Development Project (File No. H20-026) ("Project"),[1] based on the Addendum ("Addendum") to the Downtown Strategy 2040 Final Environmental Impact Report ("Downtown Strategy 2040 FEIR") for the Project prepared by the City of San Jose ("City") pursuant to the California Environmental Quality Act ("CEQA").[2]

[1] City of San Jose, Planning, Building and Code Enforcement, Planning Director Hearing (August 24, 2022) Action Minutes. Available at: https://www.sanjoseca.gov/home/showpublisheddocument/88897.
[2] Pub. Resources Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR" or "CEQA Guidelines") §§ 15000 et seq.

This Appeal is accompanied by payment of the required appeal fee of $250 in accordance with the City of San Jose's Planning Application Filing Fee Schedule.[3]

The Project, proposed by ROYGBIV Real Estate Development LLC ("Applicant") includes construction of a 26-story, 184,667-gross square foot mixed-use building on the approximately 0.18-acre site at 17 and 29 East Santa Clara Street in downtown San José.[4] The Project would include 192 residential units and approximately 5,217 square feet of office space on the second floor. The Project site is currently occupied by a pair of two-story buildings, one of which (17 East Santa Clara Street) is an identified Structure of Merit on the City's Historic Resources Inventory[5]; both are proposed for demolition.

The Project is within the DC Downtown Primary Commercial Zoning District, and the Downtown General Plan Designation.[6] The Project is also located within the Downtown Employment Priority Area, which requires a minimum 4.0 FAR of commercial use within residential / commercial mixed-use projects.[7] Construction of the Project would occur over a period of 29 months.[8] The Project would include a diesel-powered backup generator.[9]

This Appeal letter, and Silicon Valley Residents' attached August 23, 2022 comments to the Planning Director,[10] demonstrate that the Planning Director's decision to approve the Project violated CEQA, land use laws and the City's municipal codes, and was not supported by substantial evidence in the record. Specifically, our prior comments, and the comments of our expert consultant James Clark of Clark & Associates identified several flaws in the City's environmental analysis, and provided new information and substantial evidence demonstrating that the Addendum fails as an informational document under CEQA and is

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[3] City of San Jose, Planning Application Filing Fee Schedule, Effective August 15, 2022. Available at: https://www.sanjoseca.gov/home/showdocument?id=24803.
[4] City of San Jose, Addendum to the Downtown Strategy 2040 Final Environmental Impact Report for Eterna Tower Mixed-Use Development, File No. H20-026 (August 5, 2022) (hereinafter "Addendum").
[5] Addendum, Appendix B, Historical Evaluation, p. 1; City of San Jose, Planning, Building & Code Enforcement, Historic Resources Inventory.
[6] San Jose Zoning Code § 20.70.100.
[7] City of San Jose, Site Development Permit (H20-026) p. 10 of 28.
[8] Addendum p. 6.
[9] *Id.* at 1.
[10] Silicon Valley Residents for Responsible Development's August 23, 22 written comments to the Planning Director are attached hereto as **Exhibit A** and incorporated by reference.

inappropriate under CEQA because it identifies significant environmental impacts not discussed in the Downtown Strategy 2040 FEIR, fails to comply with the requirements for tiering from a program-level environmental impact report, fails to evaluate the project-level impacts in the areas of public health, air quality, contaminant hazards and historical resources, and lacks substantial evidence to support the City's environmental conclusions.

This Appeal is "based upon issues that were raised previously either orally or in writing" to the Planning Director prior to approval of the Project, as specified by Section 21.04.140 subdivision (E)(3) of the San Jose Municipal Code and as allowed pursuant to CEQA and State land use laws.[11] This Appeal is based on the issues raised in Silicon Valley Residents' August 23, 2022 comments, and in oral comments at the August 24, 2022 Planning Director Hearing.[12]

Silicon Valley Residents urges the City Council to grant this Appeal and remand the Project to City Staff to prepare a Subsequent EIR for the Project. Silicon Valley Residents reserves the right to submit supplemental comments and evidence at any later hearings and proceedings related to the Project, in accordance with State law.[13]

I. STATEMENT OF INTEREST

Silicon Valley Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. Residents includes International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, along with their members, their families, and other individuals who live and work in the City of San José.

Individual members of Silicon Valley Residents live, work, recreate, and raise their families in the City and in the surrounding communities. Accordingly, they

[11] San Jose Muni. Code § 21.04.140 subd. (E)(3) (providing that "[n]o appeal shall be considered unless it is based upon issues that were raised previously either orally or in writing to a recommending body or a decision-making body at or prior to a public hearing whenever the underlying project is considered at a public hearing.")
[12] Exhibit A.
[13] Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; *see Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

In addition, Silicon Valley Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which is satisfied by the Addendum. CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.[14] The EIR is the "heart" of this requirement.[15] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[16]

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and reflect a good faith effort at full disclosure."[17] An adequate EIR must contain facts and analysis, not just an agency's conclusions.[18] CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.[19]

Further, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by

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[14] 14 Cal. Code Regs. ("CCR") § 15002(a)(1); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[15] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.
[16] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[17] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[18] *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.
[19] PRC § 21100(b)(1); 14 CCR § 15126.2(a).

requiring the consideration of environmentally superior alternatives.[20] If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.[21] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[22] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.[23] A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.[24] This approach helps "ensure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."[25]

When an EIR has previously been prepared that could apply to the Project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

> (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
>
> (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
>
> **(c) New information, which was not known and could not have been known at the time the environmental impact report**

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[20] 14 CCR § 15002(a)(2) and (3); *Berkeley Jets,* 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.
[21] PRC §§ 21002.1(a), 21100(b)(3).
[22] *Id*., §§ 21002-21002.1.
[23] 14 CCR § 15126.4(a)(2).
[24] *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).
[25] *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

was certified as complete, becomes available.[26]

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

> (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
>
> (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
>
> (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
>
> > **(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;**
> >
> > **(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;**
> >
> > **(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or**
> >
> > **(D) Mitigation measures or alternatives which are considerably different from those analyzed in the**

[26] PRC, § 21166 (emphasis added).

previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[27]

Only where ***none*** of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum or no further documentation.[28] For addenda specifically, CEQA allows an addendum to a previously certified EIR if "some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred."[29] The City's decision not to prepare a Subsequent EIR and to instead rely on an addendum must be supported by substantial evidence.[30]

Here, the City lacks substantial evidence for its decision not to prepare a Subsequent EIR because at least one of the triggering conditions in Section 15162 has occurred. As explained below, substantial evidence shows that the Project may have one or more significant effects not discussed in the Downtown Strategy 2040 EIR. Specifically, the Project may have significant impacts associated with air quality and public health, as described by Dr. Clark. Moreover, the Addendum specifically recognizes potentially significant impacts (and proposes mitigation measures) with respect to air quality, soil and groundwater hazards, and noise and vibration—impacts and mitigation that were not addressed in the 2040 Downtown Strategy EIR. This fact alone makes an addendum inappropriate under CEQA and requires preparation of an EIR or mitigated negative declaration ("MND") to be circulated for public review and comment.

Accordingly, Dr. Clark's substantial evidence, and the City's own recognition of potentially significant impacts not previously addressed, require that the City prepare and circulate for public comment a Subsequent EIR or MND that adequately addresses all of the Project's potentially significant impacts and proposes appropriate mitigation measures.[31]

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[27] 14 CCR, § 15162(a)(1)-(3) (emphasis added).
[28] 14 CCR, § 15162(b).
[29] 14 CCR, § 15164.
[30] *Id*. §§ 15162 (a), 15164(e), and 15168(c)(4).
[31] 14 CCR, § 15162 ("no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one of more of the following [triggering actions has occurred]"); § 15164 ("The [agency's] explanation [to not prepare a subsequent EIR pursuant to Section 15162] must be supported by substantial evidence.").

III. THE CITY IMPROPERLY RELIED ON AN ADDENDUM

An addendum to an EIR is only appropriate if some changes or additions to the prior EIR are necessary, but none of the conditions described in Guidelines section 15162 have occurred. Where, as here, the project will have one or more significant impacts not discussed in the previous EIR, an addendum is inappropriate. The Addendum specifically identifies several potentially significant impacts not discussed in the Downtown Strategy 2040 EIR, including Impact AQ-1 (infant cancer risk from exposure to diesel particulate matter during project construction), Impact HAZ-1 (exposure of construction workers and the public to soil and groundwater contaminants), Impact NSE-1 (construction noise in excess of the City's General Plan thresholds) and Impact NSE-2 (vibrations from construction exceeding the City's General Plan thresholds).

As to each of these impacts, the Addendum also purports to adopt mitigation measures to address these impacts. None of these Project-specific impacts or mitigation measures were disclosed, analyzed or considered in the Downtown Strategy 2040 EIR. CEQA requires that these impacts and proposed mitigation measures be included in an EIR and circulated for public review and comment. Because the City has identified potentially significant impacts (and proposed mitigation measures) not discussed in the previous EIR, the Addendum is not appropriate and the City must prepare and circulate a subsequent EIR pursuant to Guidelines section 15162.

In addition, the City seeks to rely on CEQA Guidelines Section 15152 to tier from the Downtown Strategy 2040 EIR. Tiering refers to "using the analysis of general matters contained in a broader EIR…with later EIRs or negative declarations" and is appropriate when the sequence of analysis is from a program EIR to a site-specific EIR or negative declaration.[32] The CEQA Guidelines only recognize the use of an EIR or a negative declaration, not an addendum, to tier from a program EIR. The Addendum is not an appropriate environmental review document to tier from the Downtown Strategy 2040 EIR.

Moreover, the Downtown Strategy 2040 EIR does not contemplate the use of density bonuses to inflate the size and impacts of Projects tiering from it. The City's reliance on anticipated density bonus approvals to claim that the Project is currently "consistent" with existing zoning and land use plans so as to rely on an

[32] 14 CCR, § 15152(a) and (b).

addendum to the Downtown Strategy 2040 EIR is entirely unsupported and contrary to CEQA.

CEQA requires that the lead agency determine the appropriate form of CEQA review at the time the project application is submitted, not based on speculative future approvals.[33] CEQA requires lead agency to analyze the 'whole' of the project – this includes all foreseeable discretionary approvals.[34] For example, in *Laurel Heights Improvement Association v. Regents of University of California*[35] the California Supreme Court rejected an EIR where the agency failed to consider the whole of the project. The agency defined the project as involving "only the acquisition and operation of an existing facility and negligible or no expansion of use of existing use at that facility."[36] However, the Court found that future expansion of the project was a reasonably foreseeable consequence of the project and would likely change the scope or nature of the initial project or its environmental effects.[37] Here, approval of the Project's requested density bonus is a reasonably foreseeable consequence of the Project. The City therefore has a duty to analyze the impacts of the increase in density (and other associated impacts) that would result from approval of the density bonus.

When viewed as a whole, there is no dispute that the Project exceeds applicable zoning, density and height requirements, and does not qualify for approval under the City's Design Review and Historic Preservation requirements. Rather, the Project requires a conditional use permit ("CUP)", and must undergo applicable CUP permitting requirements.

By ignoring the Project's facial inconsistency with City land use requirements, the potentially significant impacts associated with those inconsistencies escape environmental review. As a result, the City has failed to

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[33] CEQA Guidelines, § 15063 (timing and process of initial study); Pub. Resources Code, §§ 21003.1 (early identification of environmental effects), 21006 (CEQA is integral to agency decision making).
[34] Pub. Resources Code, § 21082.2(a) ("The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record"); CEQA Guidelines, § 15003(h) ("The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect" and citing *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 401 ("*Laurel Heights I")*
[35] *Laurel Heights I, supra,* 47 Cal.3d 376.
[36] *Laurel Heights I, supra,* 47 Cal.3d at p. 388.
[37] *Laurel Heights I, supra,* 47 Cal.3d at p. 396.

comply with its CEQA obligations to disclose the nature and severity of the Project's impacts, and the City lacks substantial evidence to support its density bonus findings that the Project's proposed floor area ratio ("FAR") waiver and additional density bonus units would not have a specific adverse impact upon public health or safety, the environment, or harm historical property.[38] The Project's FAR waiver and density bonus may exacerbate the Project's impacts from air quality, public health, greenhouse gas emissions, and harm to historical property.

IV. THE PROJECT RESULTS IN SIGNIFICANT AIR QUALITY IMPACTS NOT ANALYZED IN THE DOWNTOWN STRATEGY 2040 EIR

A. The Air Quality Impacts of the Project Would Result in Unacceptable Negative Effects on Adjacent Properties

Project construction may result in significant emissions of diesel particulate matter and dust which will cause unacceptable negative effects on adjacent sensitive receptors, including the future 19 North Second Street Affordable Senior Housing project to the northeast of the Project site.[39] The City should not have approved the Site Development Permit for the Project, because the City could not support a finding that:

> The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

The dust and diesel particulate matter emissions from the Project are significant under CEQA and result in an unacceptable negative effect on adjacent properties.[40] Additionally, absent the use of Tier 4 Final engines, the project will result in unacceptable negative effects associated with diesel particulate matter. These impacts will adversely impact sensitive receptors at adjacent properties. The maximum excess residential cancer risks at these locations would be 17.19 per million for infant risk, which is greater than the BAAQMD significance threshold of

[38] Gov. Code, § 65589.5(d)(2).
[39] Clark Comments, p. 2; Addendum p. 54.
[40] Clark Comments, p. 5.

10 in one million for cancer risk.[41] The dust from construction may negatively affect the sensitive receptors within adjacent properties, but the Addendum fails to adequately analyze and mitigate such impacts. As such, the City did not have substantial evidence to make the necessary findings to approve the Site Development Permit. The City must adequately analyze and mitigate the Project's significant air, dust, and health risk impacts in a Subsequent EIR to comply with CEQA.

B. The Project Fails to Implement Feasible Mitigation to Reduce Construction Air Emissions

The Downtown Strategy 2040 EIR includes measures that may reduce air quality impacts, but the Addendum fails to implement them. The Downtown Strategy 2040 EIR provides that additional measures that would reduce emissions include to "equip all construction equipment, diesel trucks, and generators with Best Available Control Technology for emission reductions of NOx and PM."[42]

New information which was not known and could not have been known at the time of preparation of the Downtown Strategy 2040 EIR shows that the Best Available Control Technology for emission reductions of NOx and PM is through the use of Tier 4 Final Emission standard engines.[43] The Downtown Strategy 2040 EIR does not require the use of Tier 4 final engines. The Addendum likewise does not require Tier 4 Final engines. Mitigation Measure ("MM") AQ-1 provides:

1. 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 Tier 4 emission standards for particulate matter (PM10 and PM2.5), if feasible, otherwise,

a. If use of Tier 4 equipment is not available, alternatively use equipment that meets 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 minimum of 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.
b. Use of alternatively fueled or electric equipment.[44]

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[41] *Id.*
[42] City of San Jose, Downtown Strategy 2040 Integrated Final EIR, p. 64.
[43] Clark Comments, p. 5.
[44] Addendum p. 59.

Dr. Clark concluded that not only is MM AQ-1 not the Best Available Control Technology, but that Tier 4 Interim emissions and Tier 3 emissions standards would not adequately reduce the Project's construction emissions to safe levels.[45] Dr. Clark explains that Tier 3 equipment would put out substantially more particulate matter (PM_{10} and $PM_{2.5}$) than Tier 4 Interim and Tier 4 Final equipment.[46] Tier 3 equipment puts out 80% to 89% more PM_{10} than Tier 4 Interim equipment and 85% to 91% more PM_{10} than Tier 4 Final equipment. Tier 3 equipment puts out 81% to 89% more $PM_{2.5}$ than Tier 4 Interim equipment and 85% to 92% more $PM_{2.5}$ than Tier 4 Final equipment.[47] Substantial evidence presented herein, and in Dr. Clark's comments, that the Project's air quality impacts may be reduced through the use of Tier 4 Final Mitigation, but such measures were not implemented in the Addendum nor the Downtown Strategy 2040 EIR.

A subsequent EIR must be prepared, as here, when mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[48] Here, the Addendum fails to incorporate the Best Available Control Technology in the form of Tier 4 Final engines. A subsequent EIR must be prepared because Tier 4 Final mitigation measures are considerably different from those analyzed in the previous EIR and would substantially reduce one or more significant effects on the environment, but the project proponents declined to adopt the mitigation measure. The City should grant this Appeal and require the preparation of a subsequent EIR to be circulated for public review in compliance with CEQA.

C. The Addendum Relies on Inaccurate Air Quality Modeling

The Addendum is inadequate under CEQA for failing to accurately analyze the Project's Air Quality impacts. Dr. Clark concluded that the Addendum relies on modeling which assumes the use of Tier 4 Final emission standards, but Tier 4 Final engines are not required by the Addendum or the Downtown Strategy 2040

[45] Clark Comments, p. 5.
[46] Clark Comments, p. 6.
[47] *Id.*
[48] 14 CCR, § 15162(a)(1)-(3) (emphasis added).

EIR.[49] This results in the artificial reduction of the Project's construction air emissions. Inaccurate modeling may not be relied on for determining the significance of air quality impacts. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.[50] An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[51]

The failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[52] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[53] In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[54] Here, the City's failure to provide accurate air modeling associated with the Tier 4 Final mitigation is a failure to disclose information about the Project's environmental effects and results in a failure to proceed in the manner required by CEQA. A subsequent EIR must be prepared which accurately analyzes and mitigates the Project's air emissions and includes a requirement to utilize Tier 4 Final Emission standards for Project Construction before the Project can be approved.

D. The Project Fails to Mitigate Air Quality Impacts Associated with Project Operation and the Backup Generator

The Project will utilize a stand-by diesel engine backup generator, which will be located on the basement level.[55] The Addendum states that the Generator would be operated for testing and maintenance purposes, with a maximum of 50 hours per year of nonemergency operation under normal conditions.[56] The Addendum and the

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[49] *Id.* at 5.
[50] 14 CCR § 15064(b).
[51] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
[52] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[53] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[54] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
[55] Addendum, p. 1; 54.
[56] *Id.* at 55.

Downtown Strategy 2040 FEIR failed to analyze the Project's potential use of the backup generator for 200 hours per year or more, as described in Dr. Clark's comments.

As such, the Addendum fails to analyze the full extent of the Project's operational air emissions by failing to accurately model the backup generators' air emissions. According to SCAQMD Rules 1110.2, 1470, back-up generators are allowed to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year.[57] The Addendum must be revised to quantify and analyze the full extent of the necessary maintenance and testing period for the generators onsite.

Second, the Addendum fails to analyze the Project's use of backup generator during a power outage. According to Dr. Clark, it is more likely that the Backup Generators would need to be used more than 150 hours per year, due to increasing Public Safety Power Shutoff ("PSPS") events and extreme heat events.[58]

During a PSPS event, the use of stationary generators is permitted as an emergency use.[59] For every PSPS or extreme heat event, significant GHG emissions i.e., carbon dioxide equivalents and diesel particulate matter ("DPM") will be released.[60] DPM has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including forty known cancer-causing organic substances.[61] Dr. Clark notes that the California Air Resources Board found that the 1,810 additional stationary generators during a PSPS in October 2019 generated 126 tons of NOx, 8.3 tons of particulate matter, and 8.3 tons of DPM.[62] Therefore, the GHG, air quality, and DPM emission impacts associated with the use of the Backup Generator are significant, but the Addendum fails to adequately analyze or mitigate such impacts.[63] The failure to analyze is a failure to proceed in a manner required by law.[64] Challenges to an agency's failure to

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[57] Clark Comments, p. 9.
[58] Clark Comments, p. 9.
[59] 17 CCR 93115.4(a)(30)(A)(2).
[60] Clark Comments, p. 9.
[61] *Id.*
[62] California Air Resources Board, Potential Emissions Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020). Available at: https://ww2.arb.ca.gov/sites/default/files/2020-01/Emissions_Inventory_Generator_Demand%20Usage_During_Power_Outage_01_30_20.pdf.
[63] Clark Comments, p. 9.
[64] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

proceed in the manner required by CEQA, such as the failure to address a subject required to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[65] In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[66] Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"[67]

The Addendum must be withdrawn, and the City must remand the Project to Staff to circulate a subsequent EIR for public review which adequately analyzes impacts associated with emissions from the Backup Generators.

V. THE PROJECT RESULTS IN SIGNIFICANT HAZARDS AND HAZARDOUS MATERIALS IMPACTS NOT ANALYZED IN THE DOWNTOWN STRATEGY 2040 EIR

A. The Addendum Fails to Adequately Analyze the Impacts of Hazardous Contamination

CEQA requires EIRs to analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected.[68] Both CEQA and the CEQA Guidelines require an analysis of a project's effects on the environment and human health. CEQA also provides that the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions, including both short-term and long-term conditions.[69]

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[65] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[66] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
[67] *Berkeley Jets*, 91 Cal.App.4th at 1355.
[68] 14 CCR 15126.2(a); *Cal. Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 388.
[69] 14 CCR 15126.2(a).

The Project risks exacerbating hazardous contamination in soil and groundwater by bringing development and people to the area affected. According to the Office of Environmental Health Hazard Assessment (OEHHA), on behalf of the California Environmental Protection Agency (CalEPA), the Project site is within the 91st percentile in terms of groundwater threats.[70] The Project is also within the 41st percentile for toxic releases from facilities.[71] The Project site is adjoined on its northeastern corner by a site listed as an open Spills, Leaks, Investigations, and Cleanup (SLIC) release case in the regulatory database.[72] The site is contaminated with halogenated volatile organic compounds (HVOCs), including PCE, in soil, soil-gas, indoor air, and shallow groundwater at concentrations above their respective regulatory screening criteria at this site.[73] In addition, elevated HVOC levels have been detected in soil, soil-gas, groundwater, and indoor air samples collected from the properties located north/northeast of the Project site.[74]

The Addendum fails to analyze the Project's risk of exacerbating existing environmental conditions and bringing people to the area affected, in violation of CEQA. The Addendum must be withdrawn, and a Subsequent EIR pursuant to CEQA Guidelines Section 15162 must be prepared and circulated for public review.

B. The Addendum Fails to Mitigate the Impacts of Hazardous Contamination

"An EIR is inadequate if '[t]he success or failure of mitigation efforts ... may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.' "[75] Here, MM HAZ-1 would require additional analysis and provide mitigation measures that should have been included in an EIR. The Addendum fails as an informational document for impermissibly deferred analysis and mitigation.

Mitigation Measure HAZ-1 is inadequate because it constitutes impermissibly deferred analysis. The formulation of mitigation measures in the

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[70] CalEnviroScreen 3.0 Results (June 2018 Update) Available at: https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30.
[71] *Id.*
[72] Addendum p. 124.
[73] *Id.*
[74] Addendum p. 124.
[75] *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, quoting *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92, quoting *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 670.

proposed Site and Groundwater Management Plan is deferred until some future time in violation of CEQA.[76] "Impermissible deferral of mitigation measures occur when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR."[77] Here, the Addendum states that a Phase II Environmental Site Assessment will be conducted after Project approval, at which time additional groundwater sampling and mitigation may be proposed.[78]

> MM HAZ-1 provides:
> The project applicant shall retain a qualified consultant to conduct a Phase II analysis consisting of focused sampling and analysis for contamination of soil, soil vapor, and/or groundwater on-site prior to issuance of any grading, building, or demolition permits. Sampling on the site shall be under the regulatory oversight from the Santa Clara County Department of Environmental Health's (SCCDEHs) Voluntary Cleanup Program, or an equivalent program by another oversight agency, to address soil and groundwater contamination discovered on the property. *Removal and off-site disposal of the soil at appropriate landfills during construction of the basement level will likely constitute the mitigation required; however, the oversight agency will approve the proposed mitigation, or determine if additional groundwater sampling and mitigation is necessary*. Based on the results of the contamination levels at the site, the project applicant shall prepare, under the guidance of the oversight agency, a Site and Groundwater Management Plan (SGMP) or equivalent report. The *SGMP or equivalent report must establish and implement remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors*. The results of Phase II investigation and evidence of regulatory oversight, if required, and the appropriate plan such as an SGMP or equivalent document shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee.

The CEQA Guidelines provide that "[t]he specific details of a mitigation measure…may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review…"[79] The Addendum does not state why conducting a Phase II site assessment or

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[76] 14 CCR 15126.4(a)(1)(B).
[77] *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 915-916.
[78] Addendum p. 126-127.
[79] 14 CCR § 15126.4(a)(1)(B).

preparing a SGMP or identifying necessary mitigation measures were impractical or infeasible at the time the Addendum was drafted.

In *Preserve Wild Santee v. City of Santee,* the city impermissibly deferred mitigation where the EIR did not state why specifying performance standards for mitigation measures "was impractical or infeasible at the time the EIR was certified."[80] The court determined that although the City must ultimately approve the mitigation standards, this does not cure these informational defects in the EIR.[81] Further, the court in *Endangered Habitats League, Inc. v. County of Orange*, held that mitigation that does no more than require a report to be prepared and followed, or allow approval by a county department without setting any standards is inadequate.[82] Here, the fact that the Site and Groundwater Management Plan will be approved later by the Director of Planning, Building and Code Enforcement or the Director's designee does not cure the informational defects in this Addendum.[83] The City should grant this Appeal and remand the Project to City Planning Staff to prepare a legally adequate subsequent EIR which fully analyzes and mitigates the Project's hazards and hazardous contamination impacts to satisfy CEQA.

VI. THE HOUSING ACCOUNTABILITY ACT WOULD NOT PRECLUDE ADDITIONAL CEQA REVIEW

At the August 23, 2022 Planning Director's Hearing, a representative of YIMBY (Yes In My Backyard) Law stated that the Project is subject to the Housing Accountability Act ("HAA"), and that YIMBY Law would legally challenge any action by the City to disapprove the Project.

Upholding Silicon Valley Residents' Appeal and remanding the Project to City Staff to draft a Subsequent EIR would not be "disapproving" the Project within the meaning of the HAA.[84] Conducting additional and proper CEQA review prior to

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[80] *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.
[81] *Id.*
[82] *Endangered Habitats League, Inc. v. County of Orange,* (2005) 131 Cal.App.4th 777, 794.
[83] *See Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 194.
[84] Gov. Code, § 65589.5, subd. (h)(6) ("Disapprove the housing development project" includes any instance in which a local agency does either of the following: (A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit. (B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

a final decision on the Project is a reasonable, and good-faith exercise of the City's discretion. As detailed below, the City would not be subject to liability under the HAA for directing Staff to prepare a Subsequent EIR.

The HAA does not relieve the City of its obligations to comply with CEQA. HAA Subdivision (e) provides that nothing "in this section be construed to relieve the local agency from making one or more of the findings required pursuant to [CEQA]."[85] The legislative report on SB 2011 states that "[t]he bill provides an exception for…CEQA." The legislature specifically carved out the CEQA to ensure that the HAA is not used to circumvent it.[86]

As the court of appeal explained:

> "[T]he Housing Accountability Act has no provision automatically approving EIRs if local action is not completed within a specific period. It [ ] was enacted after CEQA, but there is no indication that the legislature meant to modify or accelerate CEQA's procedures. Again, the indication is to the contrary. The Housing Accountability Act expressly states that "Nothing in this section shall be construed… to relieve the local agency from making one or more of the findings required pursuant to Section 210118… or otherwise complying with the California Environmental Quality Act…" But it specifically pegs its applicability to the approval, denial or conditional approval of a "housing development project" which, as previously noted, can occur only after the EIR is certified."[87]

The HAA and subsequent caselaw upheld local agencies' duty to comply with CEQA, even if the Project is subject to the HAA. Here, the City's action to remand the Project to Staff to prepare a Subsequent EIR is required by CEQA and would not violate the HAA.

VII. CONCLUSION

For the reasons stated herein, we urge the City Council to vacate the Planning Director's environmental clearance determination and approval of the

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[85] Gov. Code, § 65589.5, subd. (e).
[86] California Renters Legal Advocacy and Education Fund et. al. v. City of Sonoma, Case No. SCV-262716, Order After Hearing, https://carlaef.org/legal-case/149-fourth-st-sonoma/documents/order-after-hearing/ (Superior Court of California, County of Sonoma).
[87] *Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245, 1262.

Project, and to remand the Project to Staff to prepare a revised environmental analysis in a Subsequent EIR as required by CEQA. The new analysis must identify and implement all feasible mitigation measures available to reduce the Project's potentially significant site-specific impacts to less than significant levels before the City reconsiders approving the Project.

Thank you for your attention to these comments. Please include them in the City's record of proceedings for the Project.

Sincerely,

Kelilah Federman

Kelilah D. Federman

Attachments
KDF:acp

5622-007acp

EXHIBIT A

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August 23, 2022

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Re: **Comments on the Eterna Tower Mixed-Use Development Project (H20-026) Agenda Item 4.a.**

Dear Ms. Blanco, Ms. Meiners, Mr. Manford, and Mr. Burton:

On behalf of Silicon Valley Residents for Responsible Development ("Silicon Valley Residents" or "Commenters"), we submit these comments on the Initial Study/Addendum ("Addendum") to the Downtown Strategy 2040 Final Environmental Impact Report ("Downtown Strategy 2040 FEIR") for the Eterna Tower Mixed-Use Development Project ("Project") proposed by ROYGBIV Real Estate Development LLC ("Applicant").[1] We are providing these comments in advance of the August 24, 2022 Director's Hearing on the Project.

The Project requires a Site Development Permit, and may require a Demolition Permit, Public Works Clearances including Grading Permit, Building Permit, and Lot Line Adjustment to allow demolition of the existing two-story buildings on the site and to allow construction of a 26-story, approximately 184,667-gross square foot mixed-use building on the approximately 0.18-acre site at 17 and 29 East Santa Clara Street in downtown San José. The Project would include 192

[1] City of San Jose, Addendum to the Downtown Strategy 2040 Final Environmental Impact Report for Eterna Tower Mixed-Use Development, File No. H20-026 (August 5, 2022). Available at: https://www.sanjoseca.gov/home/showpublisheddocument/88603/637958100844470000 (hereinafter "Addendum").

residential units and approximately 5,217 square feet of office space on the second floor. The Project would provide 22 percent of the residential units at Below Market Rate. The Project site is currently occupied by a pair of two-story buildings, one of which (17 East Santa Clara Street) is an identified Structure of Merit on the City's Historic Resources Inventory[2]; both are proposed for demolition. The Project would retain the street facing façade and parapet of the existing building at 17 East Santa Clara Street, which would be integrated into the new project.

The proposed building would have a height of just over 273 feet and would consist of a main lobby, 50 first floor long-term parking spaces for bicycles, 192 residential units, and a basement-level to house utilities for the building. Proposed common outdoor area for the building consists of a rooftop terrace. Private open space would be provided by balconies for most units. In addition, the project proposes to reserve approximately 5,438 square feet of the basement and floor level areas for an access point to the future BART/VTA station. The project would also install a backup generator that would be located on the basement level.

The Project is within the DC Downtown Primary Commercial Zoning District, and the Downtown General Plan Designation.[3] The Project is also located within the Downtown Employment Priority Area, which requires a minimum 4.0 FAR of commercial use within residential / commercial mixed-use projects.[4] Construction of the Project would occur over a period of 29 months.[5]

We have reviewed the Addendum, its technical appendices, and reference documents with assistance of Commenters' expert consultant James J.J. Clark of Clark & Associates.[6] Dr. Clark's comments are attached to this letter along with his curriculum vitae. Based on our review of the Addendum, it is clear that the Addendum fails as an informational document under CEQA and is inappropriate under CEQA because it identifies significant effects not discussed in the previous

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[2] Addendum, Appendix B, Historical Evaluation, p. 1; City of San Jose, Planning, Building & Code Enforcement, Historic Resources Inventory, available at: https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/historic-preservation/historic-resources-inventory.

[3] San Jose Zoning Code § 20.70.100.

[4] City of San Jose, Site Development Permit (H20-026) p. 10 of 28.

[5] Addendum p. 6.

[6] See Letter from James J.J. Clark, Clark & Associates, to Kelilah Federman re: Comments On Addendum to the San Jose Downtown Strategy 2040 Final Environmental Impact Report (SCH # 2003042127), H20-026 – 17 and 29 East Santa Clara Street, Eterna Tower Mixed-Use Development Project, August 23, 2022 (hereinafter, "Clark Comments"), **Attachment A**.

EIR,, fails to comply with the requirements for program-level environmental review, fails to evaluate the project-level impacts in the areas of public health, air quality, contaminant hazards and historical resources, and lacks substantial, if any, evidence to support the City's environmental conclusions.

I. STATEMENT OF INTEREST

Silicon Valley Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. Residents includes International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, along with their members, their families, and other individuals who live and work in the City of San José.

Individual members of Silicon Valley Residents live, work, recreate, and raise their families in the City and in the surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

In addition, Silicon Valley Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which is satisfied by the Addendum. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the

environment.[7] The EIR is the "heart" of this requirement.[8] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[9]

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[10] An adequate EIR must contain facts and analysis, not just an agency's conclusions.[11] CEQA requires an EIR to disclose all potential direct, indirect, and cumulative significant environmental impacts of a project.[12]

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.[13] If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.[14] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[15] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.[16] A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or

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[7] 14 CCR § 15002(a)(1) ("CEQA Guidelines"); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[8] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.
[9] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[10] 14 CCR, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[11] *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.
[12] PRC, § 21100(b)(1); 14 CCR, § 15126.2(a).
[13] 14 CCR, § 15002(a)(2) and (3); *Berkeley Jets,* 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.
[14] PRC, §§ 21002.1(a), 21100(b)(3).
[15] *Id.*, §§ 21002-21002.1.
[16] 14 CCR, § 15126.4(a)(2).

feasibility.[17] This approach helps "insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."[18]

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, or determine whether a previously prepared EIR could be used with the project, among other purposes.[19] CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.[20] A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project "would not have a significant effect on the environment."[21]

When an EIR has previously been prepared that could apply to the Project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

> (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
>
> (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
>
> (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.[22]

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

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[17] *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).
[18] *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.
[19] 14 CCR, §§ 15060, 15063(c).
[20] *See, e.g.,* PRC, § 21100.
[21] *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).
[22] PRC, § 21166.

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[23]

Only where ***none*** of the conditions described above calling for preparation of

[23] 14 CCR, § 15162(a)(1)-(3) (emphasis added).

a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum or no further documentation.[24] For addenda specifically, CEQA allows an addendum to a previously certified EIR if minor changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.[25] The City's decision not to prepare a Subsequent EIR must be supported by substantial evidence.[26]

Here, the City lacks substantial evidence for its decision not to prepare a Subsequent EIR because at least one of the triggering conditions in Section 15162 has occurred. As explained below, substantial evidence shows that the Project may have one or more significant effects not discussed in the Downtown Strategy 2040 EIR. Specifically, the Project may have significant impacts associated with, air quality and public health, as described by Dr. Clark. Moreover, the Addendum specifically recognizes potentially significant impacts with respect to air quality, soil and groundwater hazards, and noise and vibration that were not addressed in the 2040 Downtown Strategy EIR. This fact alone makes an addendum inappropriate under CEQA.

Accordingly, Dr. Clark's substantial evidence, and the City's own recognition of potentially significant impacts not previously addressed, require that the City prepare and circulate for public comment a Subsequent EIR that adequately addresses all of the Project's potentially significant impacts and proposes appropriate mitigation measures.[27]

III. THE CITY IMPROPERLY RELIED ON AN ADDENDUM

An addendum to an EIR is only appropriate if some changes or additions to the prior EIR are necessary, but none of the conditions described in Guidelines section 15162 have occurred. Where, as here, the project will have one or more significant impacts not discussed in the previous EIR, an addendum is inappropriate. The Addendum specifically identifies several potentially significant impacts not discussed in the Downtown Strategy 2040 EIR, including Impact AQ-1

[24] 14 CCR, § 15162(b).
[25] 14 CCR, § 15164.
[26] *Id*. §§ 15162 (a), 15164(e), and 15168(c)(4).
[27] 14 CCR, § 15162 ("no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one of more of the following [triggering actions has occurred]"); § 15164 ("The [agency's] explanation [to not prepare a subsequent EIR pursuant to Section 15162] must be supported by substantial evidence.").

(infant cancer risk from exposure to diesel particulate matter during project construction), Impact HAZ-1 (exposure of construction workers and the public to soil and groundwater contaminants), Impact NSE-1 (construction noise in excess of the City's General Plan thresholds) and Impact NSE-2 (vibrations from construction exceeding the City's General Plan thresholds).

As to each of these impacts, the Addendum also purports to adopt mitigation measures to address these impacts. None of these Project-specific impacts or mitigation measures were disclosed, analyzed or considered in the Downtown Strategy 2040 EIR. CEQA requires that these impacts and proposed mitigation measures be included in an EIR and circulated for public review and comment. Because the City has identified potentially significant impacts (and proposed mitigation measures) not discussed in the previous EIR, the Addendum is not appropriate and the City must prepare and circulate a subsequent EIR pursuant to Guidelines section 15162.

In addition, the City seeks to rely on CEQA Guidelines Section 15152 to tier from the Downtown Strategy 2040 EIR. The Downtown Strategy 2040 EIR does not contemplate the use of density bonuses to inflate the size and impacts of Projects tiering from it. The City's reliance on anticipated density bonus approvals to claim that the Project is currently "consistent" with existing zoning and land use plans so as to rely on an addendum to the Downtown Strategy 2040 EIR is entirely unsupported and contrary to CEQA.

CEQA requires that the lead agency determine the appropriate form of CEQA review at the time the project application is submitted, not based on speculative future approvals.[28] CEQA requires lead agency to analyze the 'whole' of the project – this includes all foreseeable discretionary approvals.[29] For example, in *Laurel Heights Improvement Association v. Regents of University of California*[30] the California Supreme Court rejected an EIR where the agency failed to consider the

[28] CEQA Guidelines, § 15063 (timing and process of initial study); Pub. Resources Code, §§ 21003.1 (early identification of environmental effects), 21006 (CEQA is integral to agency decision making).
[29] Pub. Resources Code, § 21082.2(a) ("The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record"); CEQA Guidelines, § 15003(h) ("The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect" and citing *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 401 ("*Laurel Heights I")*
[30] *Laurel Heights I, supra,* 47 Cal.3d 376.

whole of the project. The agency defined the project as involving "only the acquisition and operation of an existing facility and negligible or no expansion of use of existing use at that facility."[31] However, the Court found that future expansion of the project was a reasonably foreseeable consequence of the project and would likely change the scope or nature of the initial project or its environmental effects.[32] Here, approval of the Project's requested density bonus is a reasonably foreseeable consequence of the Project. The City therefore has a duty to analyze the impacts of the increase in density (and other associated impacts) that would result from approval of the density bonus.

When viewed as a whole, there is no dispute that the Project exceeds applicable zoning, density and height requirements, and does not qualify for approval under the City's Design Review and Historic Preservation requirements. Rather, the Project requires a conditional use permit ("CUP)", and must undergo applicable CUP permitting requirements.

By ignoring the Project's facial inconsistency with City land use requirements, the potentially significant impacts associated with those inconsistencies escape environmental review. As a result, the City has failed to comply with its CEQA obligations to disclose the nature and severity of the Project's impacts, and the City lacks substantial evidence to support its density bonus findings that the Project's proposed floor area ratio ("FAR") waiver and additional density bonus units would not have a specific adverse impact upon public health or safety, the environment, or harm historical property.[33] The Project's FAR waiver and density bonus may exacerbate the Project's impacts from air quality, public health, greenhouse gas emissions, and harm to historical property.

IV. THE PROJECT RESULTS IN SIGNIFICANT UNMITIGATED IMPACTS TO HISTORICAL RESOURCES

The Project site at 17 E. Santa Clara Street is listed as a Structure of Merit on the City of San Jose's local inventory.[34] San Jose Municipal Code provides that Structures of Merit are structures determined to be a resource through evaluation

[31] *Laurel Heights I, supra,* 47 Cal.3d at p. 388.
[32] *Laurel Heights I, supra,* 47 Cal.3d at p. 396.
[33] Gov. Code, § 65589.5(d)(2).
[34] Addendum, Appendix B, Historical Evaluation, p. 1; City of San Jose, Planning, Building & Code Enforcement, Historic Resources Inventory, available at: https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/historic-preservation/historic-resources-inventory.

by the Historic Landmarks Commission's Historic Evaluation Criteria and which preservation should be a high priority. A Structure of Merit (Defined in the San Jose 2040 General Plan is "An important historic property or feature of lesser significant, and that does not qualify as a City Landmark or for the California or National Registers but attempts should be made for preservation to the extent feasible under the 2040 General Plan goals and policies."[35] The Downtown Strategy 2040 EIR in Policy LU-14.4 provides that the City should "Discourage demolition of any building or structure listed on or eligible for the Historic Resources Inventory as a Structure of Merit by pursuing the alternatives of rehabilitation, re-use on the subject site, and/or relocation of the resource."[36] That the Project only preserves the Art Deco façade as a Structure of Merit, because it "contributes to the historical layers of downtown" per Historic Landmarks Commission (HLC) Design Review Committee recommendation, is insufficient to fully preserve the historical resources onsite.[37] The City must make all feasible efforts to preserve the Structure of Merit at the Project site, and analyze the significant detrimental effect of Project construction on historical resources in a subsequent EIR.

V. THE PROJECT RESULTS IN SIGNIFICANT AIR QUALITY IMPACTS NOT ANALYZED IN THE DOWNTOWN STRATEGY 2040 EIR

A. The Project Fails to Implement Feasible Mitigation to Reduce Construction Air Emissions

The Downtown Strategy 2040 EIR includes measures that may reduce air quality impacts, but the Addendum fails to implement them. The Downtown Strategy 2040 EIR provides that additional measures that would reduce emissions include "equip all construction equipment, diesel trucks, and generators with Best Available Control Technology for emission reductions of NOx and PM."[38]

New information shows that the Best Available Control Technology for emission reductions of NOx and PM is through the use of Tier 4 Final Emission standard engines.[39] The Downtown Strategy 2040 EIR does not require the use of

[35] City of San Jose Historic Resources Inventory, Classification of Resources, available at: https://www.sanjoseca.gov/home/showdocument?id=75623.
[36] City of San Jose, Downtown Strategy 2040 Integrated Final EIR, p. 97.
[37] City of San Jose, Site Development Permit (H20-026) p. 2 of 28.
[38] City of San Jose, Downtown Strategy 2040 Integrated Final EIR, p. 64.
[39] Clark Comments, p. 5.

Tier 4 final engines. The Addendum likewise does not require Tier 4 Final engines. But Mitigation Measure ("MM") AQ-1 provides:

1. 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 Tier 4 emission standards for particulate matter (PM10 and PM2.5), if feasible, otherwise,

a. If use of Tier 4 equipment is not available, alternatively use equipment that meets 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 minimum of 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.
b. Use of alternatively fueled or electric equipment.[40]

Dr. Clark concluded that, not only is MM AQ-1 not the Best Available Control Technology, but that Tier 4 Interim emissions and Tier 3 emissions standards would not adequately reduce the Project's construction emissions to less than significant levels.[41] Dr. Clark concludes that Tier 3 equipment would put out substantially more particulate matter (PM_{10} and $PM_{2.5}$) than Tier 4 Interim and Tier 4 Final equipment.[42] Tier 3 equipment puts out 80% to 89% more PM_{10} than Tier 4 Interim equipment and 85% to 91% more PM_{10} than Tier 4 Final equipment. Tier 3 equipment puts out 81% to 89% more $PM_{2.5}$ than Tier 4 Interim equipment and 85% to 92% more $PM_{2.5}$ than Tier 4 Final equipment.[43] Substantial evidence presented herein, and in Dr. Clark's comments, that the Project's air quality impacts may be reduced through the use of Tier 4 Final Mitigation, but such measures were not implemented in the Addendum nor the Downtown Strategy 2040 EIR.

A subsequent EIR must be prepared, as here, when mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the

[40] Addendum p. 59.
[41] Clark Comments, p. 5.
[42] Clark Comments, p. 6.
[43] *Id.*

environment, but the project proponents decline to adopt the mitigation measure or alternative.[44] Here, the Addendum fails to incorporate the Best Available Control Technology in the form of Tier 4 Final engine. A subsequent EIR must be prepared because Tier 4 Final mitigation measures are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. A subsequent EIR must be prepared and circulated for public review in compliance with CEQA.

B. The Addendum Relies on Inaccurate Air Quality Modeling

Dr. Clark concluded that the Addendum relies on modeling which assumes the use of Tier 4 Final emission standards, but Tier 4 Final engines are not required by the Addendum or the Downtown Strategy 2040 EIR.[45] This results in the artificial reduction of the Project's construction air emissions. Inaccurate modeling may not be relied on for determining the significance of air quality impacts. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.[46] An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[47]

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[48] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[49] In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[50]

Even when the substantial evidence standard is applicable to agency

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[44] 14 CCR, § 15162(a)(1)-(3) (emphasis added).
[45] *Id.* at 5.
[46] 14 CCR § 15064(b).
[47] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
[48] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[49] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[50] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"[51] Here, the City's failure to provide accurate air modeling associated with the Tier 4 Final mitigation results in a failure to proceed in the manner required by CEQA. A subsequent EIR must be prepared which accurately analyzes and mitigates the Project's air emissions associated.

C. The Project Fails to Mitigate Air Quality Impacts Associated with Project Operation and the Backup Generator

The Addendum's discussion of air quality impacts fails to comply with CEQA. First, the Addendum fails to analyze the full extent of the Project's operational air emissions by failing to accurately model the backup generators' air emissions. The Addendum fails to analyze any emissions associated with the backup generator during Project operation. According to SCAQMD Rules 1110.2, 1470, back-up generators are allowed to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year.[52] The Addendum must be revised to quantify and analyze the necessary maintenance and testing period for the generators onsite.

Second, the Addendum fails to analyze the Project's use of backup generator during a power outage. According to Commenters' air quality consultant Dr. Clark, it is more likely that the Backup Generators would need to be used more than 150 hours per year, due to increasing Public Safety Power Shutoff ("PSPS") events and extreme heat events.[53]

During a PSPS event, the use of stationary generators is permitted as an emergency use.[54] For every PSPS or extreme heat event, significant GHG emissions i.e., carbon dioxide equivalents and diesel particulate matter ("DPM") will be released.[55] DPM has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including forty known cancer-causing organic substances.[56] Dr. Clark notes that the California Air Resources Board

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[51] *Berkeley Jets*, 91 Cal.App.4th at 1355.
[52] Clark Comments, p. 9.
[53] *Id.*
[54] 17 CCR 93115.4(a)(30)(A)(2).
[55] Clark Comments, p. 9.
[56] *Id.*

found that the 1,810 additional stationary generators during a PSPS in October 2019 generated 126 tons of NOx, 8.3 tons of particulate matter, and 8.3 tons of DPM.[57] Therefore, the GHG, air quality, and DPM emission impacts associated with the use of the Backup Generator are significant, but the Addendum fails to adequately analyze or mitigate such impacts.[58] The failure to analyze is a failure to proceed in a manner required by law.[59] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[60] In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[61] Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"[62]

The Addendum must be withdrawn, and the City must circulate a subsequent EIR for public review to adequately analyze impacts associated with emissions from the Backup Generators.

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[57] California Air Resources Board, Potential Emissions Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020). Available at: https://ww2.arb.ca.gov/sites/default/files/2020-01/Emissions_Inventory_Generator_Demand%20Usage_During_Power_Outage_01_30_20.pdf.
[58] Clark Comments, p. 9.
[59] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[60] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[61] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
[62] *Berkeley Jets*, 91 Cal.App.4th at 1355.

VI. THE PROJECT RESULTS IN SIGNIFICANT HAZARDS AND HAZARDOUS MATERIALS IMPACTS NOT ANALYZED IN THE DOWNTOWN STRATEGY 2040 EIR

A. The Addendum Fails to Adequately Analyze the Impacts of Hazardous Contamination

The Project risks exacerbating hazardous contamination in soil and groundwater. According to the Office of Environmental Health Hazard Assessment (OEHHA), on behalf of the California Environmental Protection Agency (CalEPA), the Project site is within the 91st percentile in terms of groundwater threats.[63] The Project is also within the 41st percentile for toxic releases from facilities.[64] The Project site is adjoined on its northeastern corner by a site listed as an open Spills, Leaks, Investigations, and Cleanup (SLIC) release case in the regulatory database.[65] The site is contaminated with halogenated volatile organic compounds (HVOCs), including PCE, in soil, soil-gas, indoor air, and shallow groundwater at concentrations above their respective regulatory screening criteria at this site.[66] In addition, elevated HVOC levels have been detected in soil, soil-gas, groundwater, and indoor air samples collected from the properties located north/northeast of the Project site.[67]

CEQA requires EIRs to analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected.[68] Both CEQA and the CEQA Guidelines require an analysis of a project's effects on the environment and human health. CEQA also provides that the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions, including both short-term and long-term conditions.[69]

The Addendum fails to analyze the Project's risk of exacerbating existing environmental conditions and bringing people to the area affected, in violation of

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[63] CalEnviroScreen 3.0 Results (June 2018 Update) Available at: https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30.
[64] *Id.*
[65] Addendum p. 124.
[66] *Id.*
[67] *Id.*
[68] 14 CCR 15126.2(a); *Cal. Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 388.
[69] 14 CCR 15126.2(a).

CEQA. The Addendum must be withdrawn, and a Subsequent EIR pursuant to CEQA Guidelines Section 15162 must be prepared and circulated for public review.

B. The Addendum Fails to Mitigate the Impacts of Hazardous Contamination

Mitigation Measure HAZ-1 is inadequate because it constitutes impermissibly deferred analysis. CEQA Guidelines § 15126.4(a)(1)(B) provide that formulation of mitigation measures shall not be deferred until some future time.[70] "Impermissible deferral of mitigation measures occur when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR."[71] Here, the Addendum states that a Phase II Environmental Site Assessment will be conducted after Project approval, at which time additional groundwater sampling and mitigation may be proposed.[72]

"An EIR is inadequate if '[t]he success or failure of mitigation efforts ... may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.' "[73] Here, MM HAZ-1 would require additional analysis and provide mitigation measures that should have been included in an EIR, rather than an Addendum which is not required to be circulated for public review. The Addendum fails as an informational document for impermissibly deferred analysis and mitigation.

The CEQA Guidelines provide that "[t]he specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review…"[74] The Addendum does not state why specifying the Phase II site assessment and additional mitigation measures were impractical or infeasible at the time the Addendum was drafted. In *Preserve Wild Santee v. City of Santee,* the city impermissibly deferred mitigation where the EIR did not state why specifying performance standards for mitigation measures "was impractical or infeasible at

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[70] 14 CCR 15126.4(a)(1)(B).
[71] *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 915-916.
[72] Addendum p. 126-127.
[73] *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, quoting *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92, quoting *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 670.
[74] 14 CCR § 15126.4(a)(1)(B).

the time the EIR was certified."[75] The court determined that although the City must ultimately approve the mitigation standards, this does not cure these informational defects in the EIR.[76] Further, the court in *Endangered Habitats League, Inc. v. County of Orange*, held that mitigation that does no more than require a report to be prepared and followed, or allow approval by a county department without setting any standards is inadequate.[77] Here, the fact that the Site and Groundwater Management Plan will be approved later by the Director of Planning, Building and Code Enforcement or the Director's designee does not cure the informational defects in this Addendum.[78]

VII. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO APROVE THE SITE DEVELOPMENT PERMIT

In order to approve a Site Development Permit, the City must make all the following findings[79]:

1. The site development permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies.
2. The site development permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.
3. The site development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.
4. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.
5. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.
6. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor

[75] *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.
[76] *Id.*
[77] *Endangered Habitats League, Inc. v. County of Orange,* (2005) 131 Cal.App.4th 777, 794.
[78] *See Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 194.
[79] San Jose Zoning Code § 20.100.630.

which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

7. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.
8. Traffic access, pedestrian access and parking are adequate.

The director, the planning commission, or the city council shall deny the application where the information submitted by the applicant or presented at the public hearing fails to satisfactorily substantiate such findings.

The Addendum fails to analyze the Project's nonconformance with the Site Development Permit requirements with respect to the air quality, dust, and odor impacts associated with Project construction and operation of the Project. As Dr. Clark noted in his comments, the impacts from construction emissions and the backup generator may result in significant unacceptable negative effects on the adjacent property and properties. Additionally, absent the use of Tier 4 Final engines, the project will result in unacceptable negative effects associated with diesel particulate matter. These impacts will adversely impact sensitive receptors at adjacent properties. These include the future 19 North Second Street Affordable Senior Housing project to the northeast of the project site.[80] The maximum excess residential cancer risks at these locations would be 17.19 per million for infant risk, which is greater than the BAAQMD significance threshold of 10 in one million for cancer risk.[81] The dust from construction may negatively affect the sensitive receptors within adjacent properties, but the Addendum fails to adequately analyze and mitigate such impacts. As such, the City cannot make the necessary findings to approve the Site Development Permit, absent the circulation of a Subsequent EIR which adequately analyzes and mitigate the Project's significant air, dust, and health risk impacts.

VIII. CONCLUSION

For the reasons discussed above, the Addendum remains wholly inadequate under CEQA. The City must prepare a Subsequent EIR pursuant to CEQA Guidelines Section 15162 to provide legally adequate analysis of, and mitigation for,

[80] Addendum p. 54.
[81] *Id.*

all of the Project's potentially significant impacts. Until a subsequent EIR is circulated for public review, the City may not lawfully approve the Project, nor the Site Development Permit.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

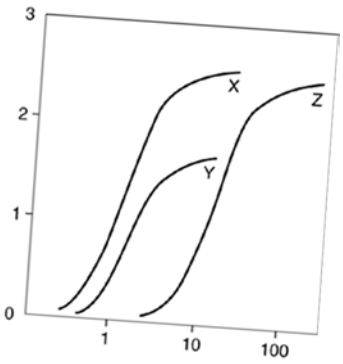
Sincerely,

Kelilah D. Federman

Attachments
KDF:acp

5622-006acp

ATTACHMENT A



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Attn: Ms. Kelilah D. Federman

Subject: Comments On Addendum to the San Jose Downtown Strategy 2040 Final Environmental Impact Report (SCH # 2003042127), H20-026 – 17 and 29 East Santa Clara Street, Eterna Tower Mixed-Use Development Project.

Dear Ms. Federman:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the August 5, 2022 City of San Jose's (the City's) Addendum for the above referenced project.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the plan. If we do not comment on a specific item this does not constitute acceptance of the item.

Project Description:

According to the City, the Site Development Permit would allow for the demolition of the existing two-story buildings on the site to construct a 26-story, approximately 184,667-gross square foot mixed-use building on an approximately 0.18-acre site at 17 and 29 East Santa Clara Street in downtown San José. The building would accommodate 192 residential units and approximately 5,217 square feet of office space on the second floor. The project would provide 22 percent of the units at Below Market Rate (BMR). The project site is currently occupied by a pair of two-story buildings, one of which (17 East Santa Clara Street) is an identified Structure of Merit on the City's Historic Resources Inventory; both are proposed for demolition. The project would retain

the street facing façade and parapet of the existing building at 17 East Santa Clara Street, which would be integrated into the new project.

The construction schedule assumes a start-up date of early 2023 with construction occurring over a period of approximately 29 months. At this time, the storage of materials would be provided offsite at 82 North Second Street and the project would use an onsite tower crane to load material for the building. A detailed Construction Management Plan and construction haul route plan would be required as part of the Grading Permit process.

The tower footings would be engineered in coordination with the BART tunnel, the tunnel platform, and the vertical circulation (e.g., elevators, stairs, and ventilation). The structural system for both the tower and the BART/VTA station would most likely need to be constructed simultaneously. According to the applicant, this process would involve consultation on the following items, but not limited to, architects, structural engineers, waterproofing techniques, geotechnical requirements, mechanical ventilation, lighting, fire safety, fireproofing, and sound abatement.

The proposed building would have a height of just over 273 feet and would consist of a main lobby, 50 first floor long-term parking spaces for bicycles, 192 residential units, and a basement-level to house utilities for the building. Proposed common outdoor area for the building consists of a rooftop terrace. Private open space would be provided by balconies for most units. In addition, the project proposes to reserve approximately 5,438 square feet of the basement and floor level areas for an access point to the future BART/VTA station. The project would also install a backup generator that would be located on the basement level.

Figure 1: Project Site Location

According to the Air Quality Analysis of the project prepared by Illingworth and Rodkin, LLC,[1] the air quality impacts from this project would be associated with construction of the new buildings and infrastructure and operation of the project. The closest sensitive receptors to the project site are the future adjacent senior residents (19 N. 2nd Street Senior Housing) to the northeast of the project site. There are additional sensitive receptors at farther distances surrounding the site. The project would introduce new sensitive receptors (i.e., new residents) to the area. [2]

The conclusion from the City that the Eterna Towers Project will have the same impacts as the approved Project is not supported by the facts of the Project. There are substantial impacts that are

[1] Illingworth and Rodkin, 2022. Eterna Tower Air Quality Assessment San José, California. Dated July 9, 2021 Revised January 13, 2022. Pgs 1-2.

[2] Illingworth and Rodkin, 2022. Eterna Tower Air Quality Assessment San José, California. Dated July 9, 2021 Revised January 13, 2022. Pgs 1-2.

not addressed in the City's analysis that must be addressed in a subsequent environmental impact report (SEIR).

Specific Comments:

1. The City's Air Quality Analysis Fails To Consider The Impact Of Adding Additional Diesel Particulate Matter (DPM) On The Already Impacted Census Tract.

The City's analysis of pollutants in this section of the response ignores the substantial evidence that the census tract in which the Project Site resides is in the top quartile for DPM exposure in California.

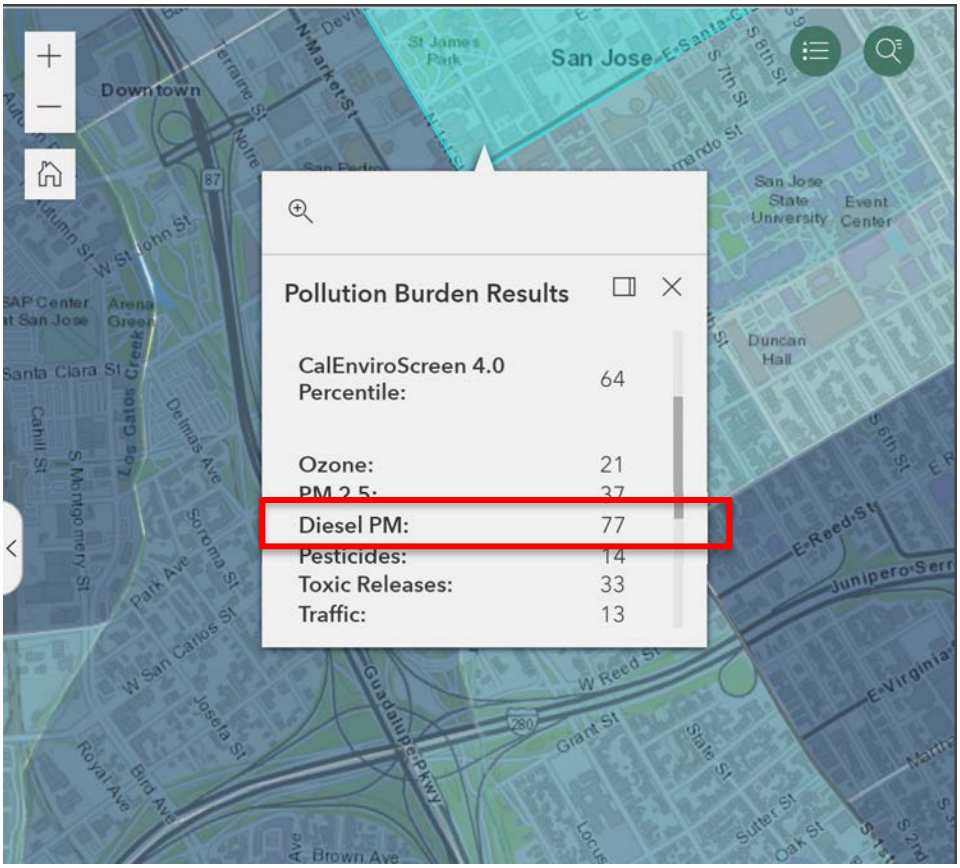


Figure 1: CalEnviroScreen 4.0 Analysis Of Census Tract 6085501000

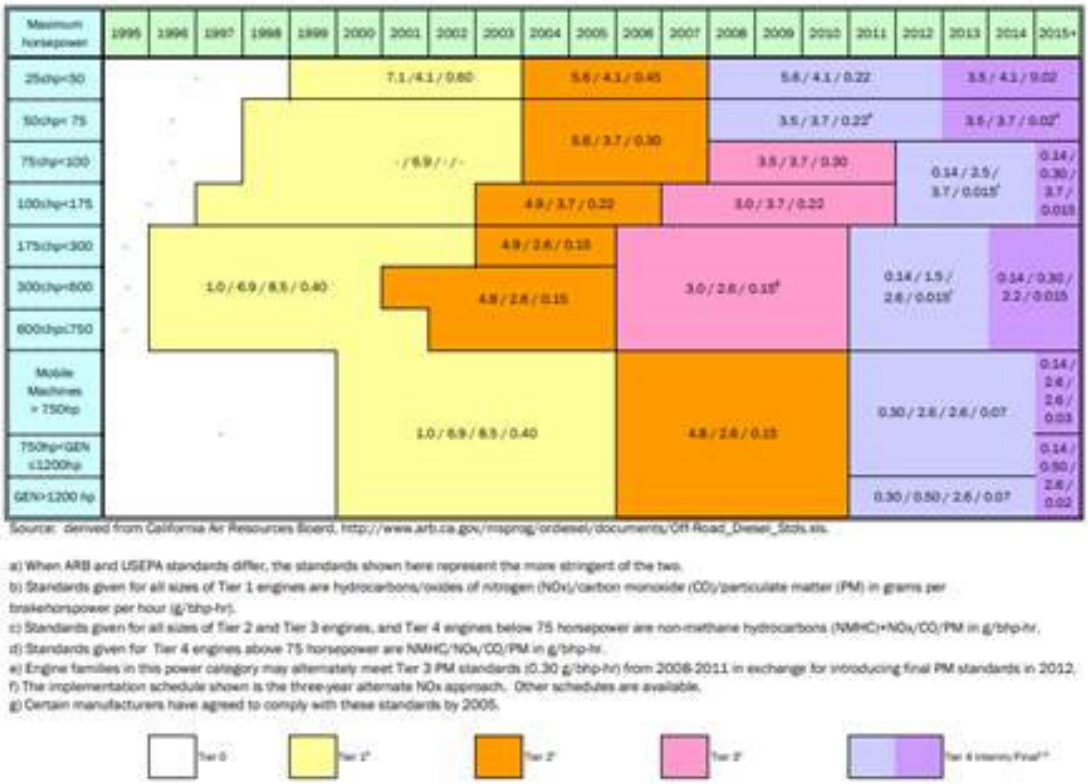
The City must reanalyze the air quality and traffic impacts of the Project and consider the public well-being of this already burdened community in a Subsequent EIR.

2. Air Quality Mitigation Measure (MM) 1 Fails To Require The Use Of Tier 4 Final Technology For Off-Road Sources Of Diesel Exhaust On-Site.

The list of mitigation measures to reduce construction related air quality emissions (particulate matter (PM_{10} and $PM_{2.5}$)) fails to require the best emission technology level, Tier 4 Final, on construction equipment with a horsepower (hp) rating greater than 25 hp while it utilizes the Tier 4 interim designation in the CalEEMOD analysis of the Project. MM AQ-1 first states that 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 Tier 4 emission standards for particulate matter, if feasible any construction equipment rated 75 hp or greater must be Tier 4 Certified. The measure does not specify whether the equipment must be Tier 4 Final or Tier 4 Interim Certified. MM AQ-1 goes on to state that if Tier 4 equipment is not available, alternatively use equipment that meets 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 minimum of 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment. Allowing the construction phase to use a lower tiered engine will produce more PM_{10} and $PM_{2.5}$ emissions than were accounted for in the CalEEMOD analysis.

The United States Environmental Protection Agency (U.S. EPA) and by agreement, CARB, have slowly adopted more stringent standards to lower the emissions from off-road construction equipment since 1994. Since 1994, Tier 1, Tier 2, Tier 3, Tier 4 Interim, and Tier 4 Final construction

equipment have been phased in over time. Tier 4 Final represents the cleanest burning equipment and therefore has the lowest emissions compared to other tiers, including Tier 4 Interim equipment.[3]



Source: derived from California Air Resources Board, http://www.arb.ca.gov/msprog/ordiesel/documents/Off-Road_Diesel_Stds.xls.

a) When ARB and USEPA standards differ, the standards shown here represent the more stringent of the two.
b) Standards given for all sizes of Tier 1 engines are hydrocarbons/oxides of nitrogen (NOx)/carbon monoxide (CO)/particulate matter (PM) in grams per brakehorsepower per hour (g/bhp-hr).
c) Standards given for all sizes of Tier 2 and Tier 3 engines, and Tier 4 engines below 75 horsepower are non-methane hydrocarbons (NMHC)+NOx/CO/PM in g/bhp-hr.
d) Standards given for Tier 4 engines above 75 horsepower are NMHC/NOx/CO/PM in g/bhp-hr.
e) Engine families in this power category may alternately meet Tier 3 PM standards (0.30 g/bhp-hr) from 2008-2011 in exchange for introducing final PM standards in 2012.
f) The implementation schedule shown is the three-year alternate NOx approach. Other schedules are available.
g) Certain manufacturers have agreed to comply with these standards by 2005.

When Tier 3 equipment is compared to Tier 4 Interim and Tier 4 Final equipment it is clear that the use of Tier 3 equipment would put out substantially more particulate matter (PM_{10} and $PM_{2.5}$).[4] Tier 3 equipment puts out 80% to 89% more PM_{10} than Tier 4 Interim equipment and 85% to 91% more PM_{10} than Tier 4 Final equipment. Tier 3 equipment puts out 81% to 89% more $PM_{2.5}$ than Tier 4 Interim equipment and 85% to 92% more $PM_{2.5}$ than Tier 4 Final equipment. Allowing the use of

[3] "San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects." August 2015, *available at:* https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf, p. 6.

[4] "San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects." August 2015, *available at:* https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf, p. 6.

Tier 3 or equivalent control technology for construction equipment as a mitigation measure does not provide the community with the greatest level of protection possible.

It is clear from the City's air quality analysis of the Project (CalEEMOD outputs) in Appendix A to the Addendum, that the City is assuming only Tier 4 Final certified equipment will be utilized onsite.

Construction Off-road Equipment Mitigation - BMPs, Tier 4 interim mitigation

Table Name	Column Name	Default Value	New Value
tblConstDustMitigation	WaterUnpavedRoadVehicleSpeed	0	15
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	3.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	2.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	2.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	4.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	Tier	No Change	Tier 4 Interim
tblConstEquipMitigation	Tier	No Change	Tier 4 Interim
tblConstEquipMitigation	Tier	No Change	Tier 4 Interim
tblConstEquipMitigation	Tier	No Change	Tier 4 Interim
tblConstEquipMitigation	Tier	No Change	Tier 4 Interim

The City must address the use of Tier 3, Tier 4 interim, and Tier 4 final certified equipment and the impacts that will have on the adjacent communities in a subsequent EIR for the Project.

3. The City's CalEEMOD Analysis Of Emissions From The Back Up Generator (BUG) On-Site Must Include The Testing And Non-Testing (Operational) Impacts Of The BUG

The assumption by the City that maintenance and testing of the BUG would not exceed 50 hours per year is unsupported. Underestimation of the use of the BUG has a direct impact on the health risk analysis presented in the Addendum. The City must revise its air quality analysis to include a realistic operations schedule for the BUG onsite in a subsequent EIR.

In addition to the testing emissions, the air quality analysis must include the substantial increase in operational emissions from BUGs in the Air Basin due to unscheduled events, including but not limited to Public Safety Power Shutoff (PSPS) events and extreme heat events. Extreme heat events are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.[5] From January, 2019 through December, 2019, Southern California Edison reported 158 of their circuits underwent a PSP event[6]. In Los Angeles County, two circuits had 4 PSPS events during that period lasting an average of 35 to 38 hours. The total duration of the PSPS events lasted between 141 hours to 154 hours in 2019. In 2021, the Governor of California declared that, during extreme heat events, the use of stationary generators shall be deemed an emergency use under California Code of Regulations (CCR), title 17, section 93115.4 sub. (a) (30) (A)(2). The number of Extreme Heat Events is likely to increase in California with the continuing change in climate the State is currently undergoing.

Power produced during PSPS or extreme heat events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts).[7] Of particular concern are health effects related to emissions from diesel back-up engines. DPM has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury.

According to the California Public Utilities Commission (CPUC) de-energization report[8] in October 2019, there were almost ***806 PSPS events*** (emphasis added) that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers, and the rest were commercial/industrial/medical baseline/other customers. CARB's data also

[5] Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

[6] SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6.

[7] CARB. 2019. Use of Back-up Engines For Electricity Generation During Public Safety Power Shutoff Events. October 25, 2019.

[8] https://ww2.arb.ca.gov/sites/default/files/2020-01/Emissions_Inventory_Generator_Demand%20Usage_During_Power_Outage_01_30_20.pdf as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

indicated that, on average, each of these customers had about 43 hours of power outage in October 2019.[9] Using the actual emission factors for each diesel BUG engines in the air district's stationary BUGs database, CARB staff calculated that the 1,810 additional stationary generators (like those proposed for the Project) running during a PSPS in October 2019 generated 126 tons of NOx, 8.3 tons or particulate matter, and 8.3 tons of DPM.

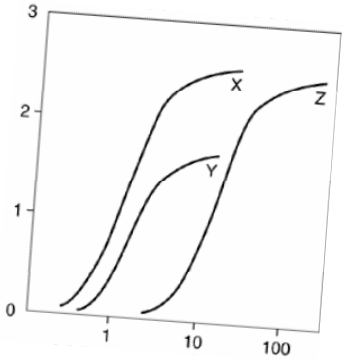
For every PSPS or Extreme Heat Event (EHE) triggered during the operational phase of the project, significant concentrations of DPM will be released that are not accounted for in the City's analysis. In 2021, two EHEs have been declared so far. For the June 17, 2021 Extreme Heat Event, the period for which stationary generator owners were allowed to use their BUGs lasted 48 hours. For the July 9, 2021 EHE, the period for which stationary generator owners were allowed to use their BUGs lasted 72 hours. These two events would have increased the calculated DPM emissions by a factor of 5 from the Project if only the 10 hours of testing that is allowed were quantified for the Project's operational emissions. A subsequent EIR must be written for the Project that includes an analysis of the additional operation of the BUG that will occur at the project site that is not accounted for in the current air quality analysis.

Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the Addendum is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a subsequent environmental impact report.

Sincerely,

[9] CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.



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James J. J. Clark, Ph.D.

Principal Toxicologist

Toxicology/Exposure Assessment Modeling

Risk Assessment/Analysis/Dispersion Modeling

Education:

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

Professional Experience:

Dr. Clark is a well recognized toxicologist, air modeler, and health scientist. He has 20 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

LITIGATION SUPPORT

Case: James Harold Caygle, et al, v. Drummond Company, Inc. Circuit Court for the Tenth Judicial Circuit, Jefferson County, Alabama. Civil Action. CV-2009

Client: Environmental Litgation Group, Birmingham, Alabama

Dr. Clark performed an air quality assessment of emissions from a coke factory located in Tarrant, Alabama. The assessment reviewed include a comprehensive review of air quality standards, measured concentrations of pollutants from factory, an inspection of the facility and detailed assessment of the impacts on the community. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Rose Roper V. Nissan North America, et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. NC041739

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to multiple chemicals, including benzene, who later developed a respiratory distress. A review of the individual's medical and occupational history was performed to prepare an exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to respiratory irritants. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: O'Neil V. Sherwin Williams, et al. United States District Court Central District of California

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to petroleum distillates who later developed a bladder cancer. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Summary judgment for defendants.

Case: Moore V., Shell Oil Company, et al. Superior Court of the State Of California for the County Of Los Angeles

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to chemicals while benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Raymond Saltonstall V. Fuller O'Brien, KILZ, and Zinsser, et al. United States District Court Central District of California

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Richard Boyer and Elizabeth Boyer, husband and wife, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-7G.

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: JoAnne R. Cook, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-9R

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of an individual exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Patrick Allen And Susan Allen, husband and wife, and Andrew Allen, a minor, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-W

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Michael Fahey, Susan Fahey V. Atlantic Richfield Company, et al. United States District Court Central District of California Civil Action Number CV-06 7109 JCL.

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Constance Acevedo, et al., V. California Spray-Chemical Company, et al., Superior Court of the State Of California, County Of Santa Cruz. Case No. CV 146344

Dr. Clark performed a comprehensive exposure assessment of community members exposed to toxic metals from a former lead arsenate manufacturing facility. The former manufacturing site had undergone a DTSC mandated removal action/remediation for the presence of the toxic metals at the site. Opinions were presented regarding the elevated levels of arsenic and lead (in attic dust and soils) found throughout the community and the potential for harm to the plaintiffs in question.

Case Result: Settlement in favor of defendant.

Case: Michael Nawrocki V. The Coastal Corporation, Kurk Fuel Company, Pautler Oil Service, State of New York Supreme Court, County of Erie, Index Number I2001-11247

Client: Richard G. Berger Attorney At Law, Buffalo, New York

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the

known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Judgement in favor of defendant.

SELECTED AIR MODELING RESEARCH/PROJECTS

Client – Confidential

Dr. Clark performed a comprehensive evaluation of criteria pollutants, air toxins, and particulate matter emissions from a carbon black production facility to determine the impacts on the surrounding communities. The results of the dispersion model will be used to estimate acute and chronic exposure concentrations to multiple contaminants and will be incorporated into a comprehensive risk evaluation.

Client – Confidential

Dr. Clark performed a comprehensive evaluation of air toxins and particulate matter emissions from a railroad tie manufacturing facility to determine the impacts on the surrounding communities. The results of the dispersion model have been used to estimate acute and chronic exposure concentrations to multiple contaminants and have been incorporated into a comprehensive risk evaluation.

Client – Los Angeles Alliance for a New Economy (LAANE), Los Angeles, California

Dr. Clark is advising the LAANE on air quality issues related to current flight operations at the Los Angeles International Airport (LAX) operated by the Los Angeles World Airport (LAWA) Authority. He is working with the LAANE and LAX staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

Client – City of Santa Monica, Santa Monica, California

Dr. Clark is advising the City of Santa Monica on air quality issues related to current flight operations at the facility. He is working with the City staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

Client: Omnitrans, San Bernardino, California

Dr. Clark managed a public health survey of three communities near transit fueling facilities in San Bernardino and Montclair California in compliance with California Senate Bill 1927. The survey included an epidemiological survey of the effected communities, emission surveys of local businesses, dispersion modeling to determine potential emission concentrations within the communities, and a comprehensive risk assessment of each community. The results of the study were presented to the Governor as mandated by Senate Bill 1927.

Client: Confidential, San Francisco, California

Summarized cancer types associated with exposure to metals and smoking. Researched the specific types of cancers associated with exposure to metals and smoking. Provided causation analysis of the association between cancer types and exposure for use by non-public health professionals.

Client: Confidential, Minneapolis, Minnesota

Prepared human health risk assessment of workers exposed to VOCs from neighboring petroleum storage/transport facility. Reviewed the systems in place for distribution of petroleum hydrocarbons to identify chemicals of concern (COCs), prepared comprehensive toxicological summaries of COCs, and quantified potential risks from carcinogens and non-carcinogens to receptors at or adjacent to site. This evaluation was used in the support of litigation.

Client – United Kingdom Environmental Agency

Dr. Clark is part of team that performed comprehensive evaluation of soil vapor intrusion of VOCs from former landfill adjacent residences for the United Kingdom's Environment

Agency. The evaluation included collection of liquid and soil vapor samples at site, modeling of vapor migration using the Johnson Ettinger Vapor Intrusion model, and calculation of site-specific health based vapor thresholds for chlorinated solvents, aromatic hydrocarbons, and semi-volatile organic compounds. The evaluation also included a detailed evaluation of the use, chemical characteristics, fate and transport, and toxicology of chemicals of concern (COC). The results of the evaluation have been used as a briefing tool for public health professionals.

EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS

Client: Ameren Services, St. Louis, Missouri

Managed the preparation of a comprehensive human health risk assessment of workers and residents at or near an NPL site in Missouri. The former operations at the Property included the servicing and repair of electrical transformers, which resulted in soils and groundwater beneath the Property and adjacent land becoming impacted with PCB and chlorinated solvent compounds. The results were submitted to U.S. EPA for evaluation and will be used in the final ROD.

Client: City of Santa Clarita, Santa Clarita, California

Dr. Clark is managing the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Immanent and Substantial Endangerment Order. Dr. Clark is assisting the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

Client: Confidential, Los Angeles, California

Prepared comprehensive evaluation of perchlorate in environment. Dr. Clark evaluated the production, use, chemical characteristics, fate and transport, toxicology, and remediation of perchlorate. Perchlorates form the basis of solid rocket fuels and have recently been detected in water supplies in the United States. The results of this research

were presented to the USEPA, National GroundWater, and ultimately published in a recent book entitled *Perchlorate in the Environment.*

Client – Confidential, Los Angeles, California

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

PUBLIC HEALTH/TOXICOLOGY

Client: Brayton Purcell, Novato, California

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature.

Client: Confidential, San Francisco, California

Identified and analyzed fifty years of epidemiological literature on workplace exposures to heavy metals. This research resulted in a summary of the types of cancer and non-cancer diseases associated with occupational exposure to chromium as well as the mortality and morbidity rates.

Client: Confidential, San Francisco, California

Summarized major public health research in United States. Identified major public health research efforts within United States over last twenty years. Results were used as a briefing tool for non-public health professionals.

Client: Confidential, San Francisco, California

Quantified the potential multi-pathway dose received by humans from a pesticide applied indoors. Part of team that developed exposure model and evaluated exposure concentrations in a comprehensive report on the plausible range of doses received by a specific person. This evaluation was used in the support of litigation.

Client: Covanta Energy, Westwood, California

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

Client – United Kingdom Environmental Agency

Oversaw a comprehensive toxicological evaluation of methyl-*tertiary* butyl ether (M*t*BE) for the United Kingdom's Environment Agency. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of M*t*BE. The results of the evaluation have been used as a briefing tool for public health professionals.

Client – Confidential, Los Angeles, California

Prepared comprehensive evaluation of *tertiary* butyl alcohol (TBA) in municipal drinking water system. TBA is the primary breakdown product of M*t*BE, and is suspected to be the primary cause of M*t*BE toxicity. This evaluation will include available information on the production, use, chemical characteristics, fate and transport in the environment, absorption, distribution, routes of detoxification, metabolites, carcinogenic potential, and remediation of TBA. The results of the evaluation were used as a briefing tool for non-public health professionals.

Client – Confidential, Los Angeles, California

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane

rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been were used as a briefing tool for non-public health professionals.

Client – Ministry of Environment, Lands & Parks, British Columbia

Dr. Clark assisted in the development of water quality guidelines for methyl tertiary-butyl ether (MTBE) to protect water uses in British Columbia (BC). The water uses to be considered includes freshwater and marine life, wildlife, industrial, and agricultural (e.g., irrigation and livestock watering) water uses. Guidelines from other jurisdictions for the protection of drinking water, recreation and aesthetics were to be identified.

Client: Confidential, Los Angeles, California

Prepared physiologically based pharmacokinetic (PBPK) assessment of lead risk of receptors at middle school built over former industrial facility. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client: Kaiser Venture Incorporated, Fontana, California

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS

Client: Confidential, Atlanta, Georgia

Researched potential exposure and health risks to community members potentially exposed to creosote, polycyclic aromatic hydrocarbons, pentachlorophenol, and dioxin compounds used at a former wood treatment facility. Prepared a comprehensive toxicological summary of the chemicals of concern, including the chemical characteristics, absorption, distribution, and carcinogenic potential. Prepared risk characterization of the carcinogenic and non-carcinogenic chemicals based on the exposure assessment to quantify the potential risk to members of the surrounding community. This evaluation was used to help settle class-action tort.

Client: Confidential, Escondido, California

Prepared comprehensive Preliminary Endangerment Assessment (PEA) of dense non-aqueous liquid phase hydrocarbon (chlorinated solvents) contamination at a former printed circuit board manufacturing facility. This evaluation was used for litigation support and may be used as the basis for reaching closure of the site with the lead regulatory agency.

Client: Confidential, San Francisco, California

Summarized epidemiological evidence for connective tissue and autoimmune diseases for product liability litigation. Identified epidemiological research efforts on the health effects of medical prostheses. This research was used in a meta-analysis of the health effects and as a briefing tool for non-public health professionals.

Client: Confidential, Bogotá, Columbia

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of a 13.7 hectares plastic manufacturing facility in Bogotá, Colombia The risk assessment was used as the basis for the remedial goals and closure of the site.

Client: Confidential, Los Angeles, California

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally cadmium) and VOCs from soil and soil vapor at 12-acre former crude oilfield and municipal landfill. The site is currently used as a middle school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and was used as the basis for regulatory closure of site.

Client: Confidential, Los Angeles, California

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner

that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

Client: Confidential, Los Angeles, California

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally lead), VOCs, SVOCs, and PCBs from soil, soil vapor, and groundwater at 15-acre former manufacturing facility. The site is currently used as a year round school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and will be basis for regulatory closure of site.

Client: Confidential, Los Angeles, California

Prepared comprehensive evaluation of VOC vapor intrusion into classrooms of middle school that was former 15-acre industrial facility. Using the Johnson-Ettinger Vapor Intrusion model, the evaluation determined acceptable soil gas concentrations at the site that did not pose health threat to students, staff, and residents. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client –Dominguez Energy, Carson, California

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of 6-acre portion of a 500-acre oil and natural gas production facility in Carson, California. The risk assessment was used as the basis for closure of the site.

Kaiser Ventures Incorporated, Fontana, California

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

ANR Freight - Los Angeles, California

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

Kaiser Ventures Incorporated, Fontana, California

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

Unocal Corporation - Los Angeles, California

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

Client: Confidential, Los Angeles, California

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a former hard chrome plating operation that operated for approximately 40-years.

Client: Confidential, San Francisco, California

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.

Client: Confidential, San Francisco, California

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

IT Corporation, North Carolina

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

Professional Associations

American Public Health Association (APHA)
Association for Environmental Health and Sciences (AEHS)
American Chemical Society (ACS)
California Redevelopment Association (CRA)
International Society of Environmental Forensics (ISEF)
Society of Environmental Toxicology and Chemistry (SETAC)

Publications and Presentations:

Books and Book Chapters

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Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

Journal and Proceeding Articles

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equialency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. Organohalogen Compounds, Volume 70 (2008) page 002254.

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Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.

Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13th Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.

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Exhibit B

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Planning, Building and Code Enforcement
CHRISTOPHER BURTON, DIRECTOR

SITE DEVELOPMENT PERMIT

FILE NO.	**H20-026**
LOCATION OF PROPERTY	**North of East Santa Clara Street, approximately 100 feet easterly of North First Street (17 – 31 East Santa Clara Street)**
ZONING DISTRICT	**DC Downtown Primary Commercial**
GENERAL PLAN DESIGNATION	**Downtown**
PROPOSED USE	**Site Development Permit to allow the demolition of two existing commercial buildings and the construction of a new mixed-use project with up to 192 residential units, including 20% restricted affordable units for low-income residents, approximately 5,400 square feet reserved for future VTA transit station purposes, approximately 6,644 square feet of commercial space, and no proposed parking on an approximately 0.18-gross acre site.**
ENVIRONMENTAL STATUS	**Addendum to Downtown Strategy 2040 Final Environmental Impact Report adopted by City Council Resolution No. 78942 on December 19, 2018 for the Eterna Tower Mixed-Use Development**
OWNER ADDRESS	**Downtown SJ Towers LLC** **1238 Sutter Street, Unit #801** **San Francisco, CA 94109**
APPLICANT ADDRESS	**Loida Kirkley** **ROYGBIV Real Estate Development LLC** **38 N Almaden Boulevard, Suite 1608** **San Jose, CA 95110**

The Director of Planning, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject site is currently developed with two commercial buildings, totaling approximately 14,623 square feet in size. The site is surrounded by mixed-use developments to the north, south, east, and west, including residential, restaurants, office, and commercial uses, with a vocational school to the north and medical offices to the south. There is no vehicular access to the site.

2. **Project Description.** Site Development Permit to allow the demolition of two existing commercial buildings (totaling approximately 14,623 square feet) and the construction of a new mixed-use project with up to 192 residential units, including 20% restricted affordable units for low-income residents (28 units), approximately 5,400 square feet reserved for future VTA transit station purposes, approximately 6,644 square feet of commercial space, and no proposed parking on an approximately 0.18-gross acre site.

   The existing structures to be demolished were constructed in 1876 and 1880 and remodeled in 1937 and 1946, respectively. Per the Historic Resource Assessment prepared by Treanor HL dated March 30, 2022, the subject parcels do not include any previously designated or potential historic resources. The building at 17 East Santa Clara Street is listed as a Structure of Merit on the San Jose Historic Resources Inventory (HRI). While structures of merit do not qualify as historic resources under CEQA, any development that includes the demolition of a structure on the HRI is required to salvage the resource's building materials and architectural elements per General Plan Policy LU-16.4. This is included as Condition #39.c in this document.

   Pursuant to the Council Development Policy for Preservation of Historic Landmarks, the project was heard at the Historic Landmarks Commission (HLC) Design Review Committee on May 19, 2021 and the HLC for Early Referral on September 1, 2021. The Committee and Commissioners concluded that there is a concern about the proposed demolition of the Art Deco building on site at 17 East Santa Clara Street. He noted that downtown San Jose does not have a large representation of Art Deco buildings and the building on site is one of the more visible representations, with a distinctive entry. The Commissioners recommended preservation of the Art Deco façade of the Structure of Merit because it contributes to the historical layers of downtown.

3. **General Plan Consistency.** The subject site is designated Downtown on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan, which allows residential density up to 800 dwelling units per acre (du/ac), intended for buildings between three and thirty stories in height. The Downtown designation is the primary designation for new high-intensity office, retail, service, residential, and entertainment uses in the Downtown area. All development within this designation should enhance the "complete community" in downtown, support pedestrian and bicycle circulation, and increase transit ridership.

   The project is also located within the Downtown Employment Priority Area, which requires a minimum 4.0 FAR of commercial use within residential / commercial mixed-use projects. This designation is applied to Downtown sites planned for intensive job growth because of the area's proximity and good access to the future Downtown BART station.

   Analysis: The project is proposing to provide 20% of the total number of units as restricted affordable to low-income residents (28 units). Per the State Density Bonus Law (Government Code Section 65915), the project is allowed a 35% Density Bonus. With the density bonus applied, the maximum density is 1,080 du/ac. The project includes 192 units on 0.18-gross acres, or 1,066 du/ac. The project density is therefore consistent with the General Plan Land Use Designation with the allowed density bonus.

   Additionally, the project applicant has requested a Waiver to reduce the required 4.0 FAR of commercial square footage to 1.56 FAR. The project has been deemed eligible for Density Bonus under State Law. Therefore, the request for reduced commercial square footage is allowed as a waiver as described in the Density Bonus Section below.

The project is consistent with the following key General Plan policies:

Major Strategy #3 - Focused Growth: The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified "Growth Areas" (Urban Villages, Specific Plan areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods.

Growth Area Policy LU-2.1: Provide significant job and housing growth capacity within strategically identified "Growth Areas" in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.

Analysis for Major Strategy #3 and Policy LU-2.1: The Downtown land use designation is listed as a Growth Area within the General Plan. The project includes the demolition of two existing commercial buildings and the construction of one building with 192 residential units and approximately 10,600 square feet of non-residential space, which is a significant intensification of the project site. This will enable the achievement of the City's housing goals and minimize the environmental impacts of new development elsewhere in the City. The project is consistent with this major strategy and policy of the General Plan.

Downtown Land Use Policy LU-3.5: Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.

Residential and Mixed-Use Policy LU-10.3: Develop residentially designated lands adjacent to major transit facilities at high densities to reduce motor vehicle travel by encouraging the use of public transit.

Public Transit Goal TR-3: Maximize use of existing and future public transportation services to increase ridership and decrease the use of private automobiles.

Analysis for Goal TR-3 and Policies LU-3.5 and LU-10.3: The project provides 50 bicycle parking spaces for the use of residents and visitors, which meets the code requirements as discussed below. There is no vehicular parking onsite, so the needs of pedestrian and bicycle safety is met. The project is within half a block from the Santa Clara VTA Light Rail Stations on North 1st Street and North 2nd Street, and is adjacent to VTA bus routes 17, 22, 23, 64A, 64B, Rapid 500, Rapid 522, and Rapid 523 along East Santa Clara Street. Therefore, the project is consistent with this policy.

Goal H-2 Affordable Housing: Preserve and improve San José's existing affordable housing stock and increase its supply such that 15% or more of the new housing stock developed is affordable to low, very low and extremely low-income households.

Housing Policy H-2.2: Integrate affordable housing in identified growth locations and where other housing opportunities may exist, consistent with the Envision General Plan.

Analysis for Goal H-2 and Policy H-2.2: The project includes 20% affordable housing within a growth area, including units affordable to low-income households. The project site is within the Downtown land use designation, an identified Growth Area, and is consistent with the General Plan

goals and policies. Additionally, per Site Development Permit Finding 'e' below, the project is integrated and harmonious with the surrounding neighborhood.

Community Design Policy CD-4.6: Support cohesive and architecturally distinctive urban development along Grand Boulevards and include such design elements as enhanced landscaping; attractive lighting; wide, comfortable sidewalks; and harmonious building scale features.

Analysis for Policy CD-4.6: East Santa Clara Street is listed as a Grand Boulevard within the General Plan. The project includes distinctive architectural projections along the street façade, and this permit includes a Condition of Approval to provide a Public Art Element of Distinction pursuant to the requirements of the Citywide Design Guidelines, as analyzed below. The project is required to widen its sidewalk along East Santa Clara Street to 15 feet to provide a comfortable pedestrian experience with room for street trees. The project is therefore consistent with the policy.

4. **State Density Bonus Law Consistency (Government Code Section 65915)**. The project includes 20% of the total units (28 units) restricted for low-income households earning up to 60% AMI, as defined in Section 65915 of the Government Code for the State of California and is therefore subject to the State Density Bonus Law for affordable housing projects. The project includes a density bonus and waivers pursuant to the Density Bonus Law, as follows:

   Density Bonus. As referenced above in the General Plan Consistency section, projects within the Downtown land use designation are allowed up to 800 du/ac. The project is proposing to provide 20% of the total number of units as restricted affordable to low-income residents (28 units). Per the State Density Bonus Law, the project is allowed a 35% Density Bonus. With the density bonus applied, the maximum density is 1,080 du/ac.

   Analysis: The project includes 192 units on 0.18-gross acres, or 1,066 du/ac. The project density is therefore consistent with the General Plan Land Use Designation with the allowed density bonus.

   Waivers. If any development standard would physically prevent the project from being built at the permitted density, the developer may propose to have those standards waived or reduced. The city or county is not permitted to apply any development standard which physically precludes the

   construction of the project at its permitted density. The City is not required to waive or reduce development standards that would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law. There is no limit on the number of development standard waivers that may be requested or granted.

   Analysis: Since the project includes 20% of the total units affordable to low-income households and is utilizing the Density Bonus to achieve more units than would otherwise be allowed, the project qualifies for unlimited waivers to development standards, unless a waiver would cause a public health or safety problem, would cause harm to the environment or historical property, or would be contrary to law.

   The project is requesting five waivers as follows:

   a. Reduce Parking Requirement to Zero

      Analysis: The development standard pursuant to Chapter 20.70.100 of the San Jose Zoning Ordinance requires one parking space per unit for residential use and no additional parking for general commercial retail uses, resulting in a vehicular parking requirement of 192 spaces. The applicant has requested to reduce the parking requirement to zero.

As described in the Density Bonus request provided by the Applicant, if the required parking was provided, the project would lose up to 24 units and the commercial space would be eliminated as well. This waiver request was not found to cause a public health or safety problem, cause an environmental problem, harm historical property, or be contrary to law. Therefore, since the provision of parking would physically preclude the project from providing residential units at the permitted density, and due to the small size of the project site and proximity to public transit, this waiver request can be granted.

b. Reduce Off-Street Loading Requirement to Zero

Analysis: The development standard pursuant to Chapter 20.70.435 of the San Jose Zoning Ordinance requires one loading space for residential uses of greater than fifty units and less than two hundred units. The applicant has requested to reduce the loading requirement to zero.

As described in the Density Bonus request provided by the Applicant, if the required loading space was provided, the project would lose up to 24 units. This waiver request was not found to cause a public health or safety problem, cause an environmental problem, harm historical property, or be contrary to law. Therefore, since the provision of the required loading space would physically preclude the project from providing residential units at the permitted density, and due to the small size of the project site, this waiver request can be granted.

c. Reduce Commercial Requirement from 4.0 FAR to 1.56 FAR

Analysis: The development standard pursuant to Chapter 5 of the General Plan requires 4.0 FAR of commercial space, which results in approximately 31,000 square feet of commercial space. The project includes approximately 6,644 square feet of commercial space and 5,400 square feet dedicated for a future VTA BART station, equal to 1.56 FAR.

As described in the Density Bonus request provided by the Applicant, if the required 4.0 FAR of commercial space were provided with the project, the project would lose up to 16 units. This waiver request was not found to cause a public health or safety problem, cause an environmental problem, harm historical property, or be contrary to law. Therefore, since the provision of the required commercial space would physically preclude the project from providing residential units at the permitted density, and due to the small size of the project site, this waiver request can be granted.

d. Eliminate Downtown Design Guidelines Section 4.2.2, Standard ‘a’ Height Transition

Analysis: The development standard pursuant to the Downtown Design Guidelines requires a step-back of the street-facing facade 5 feet minimum from the front parcel or setback line at an elevation between 25 and 50 feet if a new building 100 feet tall or more is across the street from or adjacent to a historic building 45 feet tall or less. The project is 271.6 feet in height and is across the street from the Bank of Italy, a historic structure which is 40 feet in height at the façade at East Santa Clara Street.

As described in the Density Bonus request provided by the Applicant, if the required height transition step-back were provided with the project, the project would lose up to 26 units along the front of the building. This waiver request was not found to cause a public health or safety problem, cause an environmental problem, harm historical property, or be contrary to law. Therefore, since the provision of the required height transition would physically preclude the project from providing residential units at the permitted density, and due to the small size of the project site, this waiver request can be granted.

e. Eliminate Downtown Design Guidelines Section 4.2.2, Standard 'c' Rear Transition

Analysis: The development standard pursuant to the Downtown Design Guidelines requires the rear portion of new building to maintain a transitional height of 70 feet or less within the first 20 feet from the property line if a new building 100 feet tall or more is across a parcel line interior to a block from a historic building 45 feet tall or less. The project is 271.6 feet in height and is across the street from the Bank of Italy, a historic structure which is 40 feet in height at the façade at East Santa Clara Street.

As described in the Density Bonus request provided by the Applicant, if the required rear transition step-back were provided with the project, the project would lose up to 52 units along the rear of the building. This waiver request was not found to cause a public health or safety problem, cause an environmental problem, harm historical property, or be contrary to law. Therefore, since the provision of the required rear transition would physically preclude the project from providing residential units at the permitted density, and due to the small size of the project site, this waiver request can be granted.

5. **Zoning Regulations.** The subject site is currently located in the **DC Downtown Primary Commercial** Zoning District, which allows for range of uses including residential, commercial, entertainment, education, and retail. The development must comply with the following development standards:

   a. Use: Residential and commercial uses are permitted with the DC Zoning designation for the subject site based on Table 20-140. The proposed uses are consistent with the allowed uses of the DC Zone with a Site Development Permit.

   b. Setbacks: Properties located in the DC Zoning District are not subject to minimum setback requirements per Section 20.70.210 of the Zoning Code.

   c. Height: Heights in Downtown are subject to FAA regulations per section 20.70.200 of the Zoning Code. The project has been reviewed by the City of San Jose Airport Department, and an FAA Determination of No Hazard must be obtained by the applicant prior to issuance of building permits. See the Airport Condition of Approval #34 of this document.

   d. Vehicular Parking: Per Table 20-140, the residential use has a parking rate of one per unit, and no additional parking is required for the general commercial use. With 192 units, this results in 192 parking spaces required.

   Analysis: The project does not include any vehicular off-street parking. However, the project has been deemed eligible for a Density Bonus under State Law, and the applicant has requested a waiver to reduce the parking requirement to zero. Therefore, the request for reduced parking is allowed as a waiver as described in the Density Bonus Section above.

   e. Loading: Per Section 20.70.435, residential uses of greater than fifty units and less than two hundred units are required to provide at least one off-street loading space.

   Analysis: The project does not include any loading spaces. However, the project has been deemed eligible for a Density Bonus under State Law, and the applicant has requested a waiver to reduce the loading requirement to zero. Therefore, the request for reduced loading is allowed as a waiver as described in the Density Bonus Section above.

f. Bicycle Parking: Per Table 20-210 of the Zoning Code, multifamily residential use requires one bicycle parking space per four units and general commercial space requires one space per 3,000 square feet of net floor area. This calculates to 48 bicycle spaces required for the residential use and two spaces for the commercial use, for a total of 50 bicycle spaces required.

Analysis: The project is providing 50 long-term bicycle spaces within a secured room on the first floor of the building. This is consistent with the requirement.

6. **Downtown Design Guidelines**. The project is subject to the applicable Downtown Design Guidelines. The Site Framework (Sections 2.2, 2.3, 2.4, 2.5, and 2.6) is listed below. The framework informs which guidelines and standards apply throughout the project.

a. East Santa Clara Street is a Primary Addressing Street. This is a primary commercial street that includes retail and other active ground floor uses.

b. East Santa Clara Street is a View Corridor. Natural View - Dramatic or characteristic views from the district to the eastern and western hills.

c. East Santa Clara Street is an Enhanced Lighting Corridor. These corridors form the core commercial and active districts in Downtown. Employing distinctive lighting techniques or artistic illumination along these streets will contribute to the creation of more interesting nighttime urban spaces for pedestrians and other occupants of the spaces.

d. The site is marked as a Transit Gateway. Rail transit stations are key permanent locations for entry into and exit from Downtown.

e. The site is subject to Historic Adjacency standards. The site qualifies for all three criteria within Section 4.2.4.

f. The site is subject to Civic Icon Adjacency standards. If a historic building is also a Civic Icon Building, it receives additional guidance for buildings within the Affected Area.

The project complies with the key guidelines below:

Section 4.3.2, Standard e. Since this project is a Transit Gateway, for approximately the top 25% of the Skyline Level massing, the project is required to use sculpted massing such as shifts in building planes, a gradual subtraction of mass toward the top, or a stepped or varied pitch roofline to lend a distinctive identity to orient people as they approach and move around Downtown. See Appendix A.2.1 for examples.

Analysis: As shown in the renderings and the elevations of the Project Plans, there is a rooftop terrace on the top floor (Skyline Level) of the building. This includes a stepback from the main façade of the building and a different roof plane. This feature adds a distinctive element to the Skyline Level and the building is consistent with this requirement.

Section 4.2.4, Standards h. and i. Use some building materials that respond to Historic Context building materials, such as masonry, terra cotta, limestone, stucco, glass, mosaic, cast stone, concrete, metal, glass, and wood (trim, finishes and ornament only).

Analysis: The historic building across the street uses terra cotta tile and cast stone trim. The project meets this requirement by including elongated rectangular storefront windows and stone trim to include reference to the building across the street.

Section 5.2, Standard a. For a development project at a Transit Gateway, create a Public Art Element of Distinction related to the gateway location, visible from the transit stop or pedestrian and bicycle route, and ideally including a reference to the site's neighborhood location in Downtown and status as a gateway.

Analysis: The Public Art Element of Distinction is included as a Condition of Approval within this document. See Condition #26.b. The project is therefore conditioned to be consistent with this standard.

Section 5.3.1.a, Standard a. Place Active Frontages along at least 80% of the Pedestrian Level Streetwall on a Primary Addressing Street. Active Frontage is a Pedestrian Level building frontage that allows visual or physical access to Active Use within the building via windows, doors, or both.

Analysis: The total frontage of the site is approximately 90 feet wide. With the exception of the roll-up trash door, the ground floor frontage will be active use. The trash door is approximately 10 feet wide, so the total active use area is 90% of the ground floor frontage. The project is consistent with this standard.

7. **City Council Policy Consistency.**

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Per this council policy, large development projects with over 50 residential units are required to provide Early Notification to the community by website, email, and postcard mailed to property owners and tenants within a 1,000-foot radius, and by on-site signage. Following City Council Policy 6-30, the on-site sign has been posted at the site since September 1, 2020 to inform the neighborhood of the project. A community meeting was held to discuss the project on October 14, 2021 via Zoom webinar. Approximately four members of the public were in attendance for the meeting. One comment was received at the meeting. A Union Representative requested local tradesmen to be the construction workforce. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Staff has been available to respond to questions from the public.

Preservation of Historic Landmarks

The existing structures to be demolished were constructed in 1876 and 1880 and remodeled in 1937 and 1946, respectively. Per the Historic Resource Assessment prepared by Treanor HL dated March 30, 2022, the subject parcels do not include any previously designated or potential historic resources. The building at 17 East Santa Clara Street is listed as a Structure of Merit on the San Jose Historic Resources Inventory (HRI). While structures of merit do not qualify as historic resources under CEQA, any development that includes the demolition of a structure on the HRI is required to salvage the resource's building materials and architectural elements per General Plan Policy LU-16.4. This is included as Condition #39.c in this document.

Pursuant to the Council Development Policy for Preservation of Historic Landmarks, the project was heard at the Historic Landmarks Commission (HLC) Design Review Committee on May 19, 2021 and the HLC for Early Referral on September 1, 2021. The Committee and Commissioners concluded that there is a concern about the proposed demolition of the Art Deco building on site at 17 East Santa Clara Street. He noted that downtown San Jose does not have a large representation of Art Deco buildings and the building on site is one of the more visible representations, with a distinctive entry. The Commissioners recommended preservation of the Art Deco façade of the Structure of Merit because it contributes to the historical layers of downtown.

8. **Environmental Review.** The environmental impacts of this project were addressed by the Downtown Strategy 2040 Final Environmental Impact Report adopted by City Council Resolution No. 78942 on December 19, 2018. CEQA Guidelines Section 15164, states that, "A lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent EIR have occurred. Pursuant to Section 15164, and as part of the entitlement processing for this project, an Addendum to the Downtown Strategy 2040 Final EIR was determined to be the appropriate CEQA clearance. The Addendum was posted to the environmental review page on August 10, 2022 and is available on the City's website at: www.sanjoseca.gov/activeeirs

   The Eterna Tower Mixed-Use Development Addendum analyzed the project which consists of a Site Development Permit to demolish two commercial buildings totaling 14,623 square feet and construct a 26-story building mixed-use building, consisting of 192 residential units, reservation of portion of the basement and first floor (5,438 square feet total) for an access point to a future Bay Area Rapid Transit (BART)/Valley Transit Authority (VTA) rail station, and approximately 5,217 square feet of second-floor office space on an approximately 0.18-acre site at 17 and 29 East Santa Clara Street in San José. No vehicle parking is proposed.

   The type and intensity of development proposed is consistent with the anticipated development in Downtown Strategy 2040 FEIR. The Downtown Strategy 2040 FEIR included the project site in the evaluation for the Downtown land use designation. This designation allows for office, retail, service, residential, and entertainment uses in the Downtown at very high intensities of up to 800 dwelling unit per acre and a floor-area-ratio of up to 30.0. The project conforms to the Downtown General Plan land use designation in that it proposes high-density residential and commercial uses, consistent with the Downtown Strategy 2040 FEIR.

   The Downtown Strategy 2040 FEIR identified measures to minimize impacts and adopted statements of overriding consideration for all identified significant impacts resulting from the maximum level of proposed development that could not be avoided. No new or more significant environmental impacts beyond those identified in the Downtown Strategy FEIR have not been identified, nor have any new mitigation measures or alternatives which are considerably different from those analyzed in the FEIR been incorporated. As analyzed in the Eterna Tower Mixed-Use Development Initial Study/Addendum, the project would comply with the Greenhouse Gas Reduction Strategy identified in the 2040 General Plan and would not result in greenhouse gas emission impacts beyond those identified in the General Plan EIR and SEIR.

   The project is located on a site that was analyzed as a potential BART station entrance in the combined NEPA/CEQA Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR) for the VTA's BART Silicon Valley – Phase II Extension Project. On June 8, 2021, the City Council, as a responsible agency under CEQA, adopted the Valley Transportation Authority's CEQA Findings for the Project as its own findings under CEQA, the Statement of Overriding Considerations, and reiterated the benefits of the project. The VTA/BART Silicon Valley project involves expansion of BART's rail service to Downtown San José via a new six-mile extension from the existing Berryessa/North San Jose Station through downtown San José to the Santa Clara Caltrain Station.

   A Mitigation, Monitoring and Reporting Program (MMRP), consistent with the Downtown Strategy 2040 FEIR, was prepared for the project and includes mitigations to bring impacts to Air Quality,

Biological Resources, Cultural Resources, Hazards and Hazardous Materials, and Noise to a less than significant level. A Condition of Approval implementing the MMRP is part of this permit as are standard environmental permit conditions to lessen the environmental effects of the project.

9. **Site Development Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Site Development Permit.

   a. The site development permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies; and

      Analysis: As analyzed above, the proposed mixed-use residential/commercial project is consistent with the Downtown Land Use Designation of the General Plan. The use is allowed within the designation and the project is providing a density consistent with the requirements with the Density Bonus Law applied. The project is within the Downtown Employment Priority Area, which requires a minimum 4.0 FAR of commercial use within residential/commercial mixed-use projects. However, the project qualifies for a Density Bonus waiver to reduce the FAR to 1.56 as analyzed above in the State Density Bonus Consistency section.

   b. The site development permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

      Analysis: Mixed-use residential/commercial uses are permitted within the DC Downtown Primary Commercial Zoning District. There are no required setbacks in this zone, and the maximum height is subject to FAA regulations per section 20.70.200. The conditions of approval related to the height is included in this document as Condition #34.

      The project is required to provide 192 vehicle parking spaces, one loading space, and 50 bicycle parking spaces. The project does not provide any on-site vehicular parking or loading, since the applicant has requested Density Bonus waivers to reduce the required parking and loading to zero. The project provides 50 bicycle parking spaces to fulfill the bicycle parking requirements. Therefore, the project conforms with the municipal code development standards.

   c. The site development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

      Analysis: The project is subject to and conforms to the Public Outreach Policy for Pending Land Use and Development Proposals. The on-site sign has been posted at the site since September 1, 2020 to inform the neighborhood of the project. A community meeting was held to discuss the project on October 14, 2021 via Zoom webinar. Approximately four members of the public were in attendance for the meeting. One comment was received at the meeting. A Union Representative requested local tradesmen to be the construction workforce. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Staff has been available to respond to questions from the public.

   d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

      Analysis: The subject building provides 192 multifamily residential units, including 28 affordable units, approximately 6,644 square feet of commercial use, and approximately 5,400 square feet for a future VTA BART Station, and will be the only structure on the site. The project design includes stone, metal, and wood accents at the ground floor and variations on color,

materials, projections, and recessions at the podium level, which contribute to an interesting and harmonious design.

e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The project includes architecture design that is compatible with the surrounding neighborhood. As previously identified, the surrounding uses are primarily mixed-use residential, restaurants, office, and commercial uses. The building is 26 stories tall with a roof terrace and is harmonious with the surrounding neighborhood, with other buildings of similar height and architecture surrounding the Downtown location, including City Hall and Miro Tower. The project design includes stone, metal, and wood accents at the ground floor and variations on color, materials, projections, and recessions at the podium level, which contribute to an interesting and varied design. The building is therefore aesthetically harmonious with the neighborhood.

f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: As described above, the project is to construct a new 26-story mixed-use residential/ commercial building with 192 units, including 28 units designated as restricted for low-income households, approximately 6,644 square feet of commercial use, and approximately 5,400 square feet reserved for a future VTA BART transit station. As further described in the CEQA Addendum, the project would not have significant CEQA impacts regarding noise, vibration, dust, drainage, erosion, stormwater runoff, and odor.

The development is located within the Downtown land use designation and is adequately served by all required utilities and public services, and the project's Stormwater Control Plan is in compliance with the City's stormwater policies that require low impact development stormwater treatment measures to minimize stormwater pollutant discharges. The project would also implement site design measures, such as directing runoff from roofs and patios into landscaped areas, reducing existing impervious surfaces, and creating new landscaped pervious areas, and source control measures such as use of efficient irrigation systems.

Construction activities would only result in temporary noise, vibration, and air quality impacts and the project would be subject to the City's Standard Permit Conditions in addition to the project-specific Mitigation Measures to reduce project impacts on the surrounding neighborhood. The project's operations would be primarily commercial and multifamily residential and compatible with the surrounding residential uses in the area. No odors are associated with the operation of the project.

g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: Landscaping is provided on the street level, including street trees in the front and within an approximately ten-foot wide common open space area to the rear of the site, and on the roof terrace level. Utilities associated with the building are shielded from view. The trash

enclosure is located inside the building and is shielded from the view from all adjacent public space.

h. Traffic access, pedestrian access and parking are adequate, in that the project is subject to construction of public improvements and sidewalk access.

Analysis: The project meets the requirements for pedestrian access, curb cuts, and street access per the San Jose Municipal Code. The main pedestrian access is from East Santa Clara Street. There is no parking on-site, as allowed by the Density Bonus Waiver request, analyzed above. Construction of public improvements and sidewalk access will be per the Public Works conditions of approval per the Final Memo dated February 1, 2022, and also included within this document as Condition #37.m.

10. **Affordable Housing Density Bonuses and Incentives findings.** Chapter 20.190.090 of the San José Municipal Code requires any project with a Density Bonus, or an Incentive must make the following findings:

a. The Housing Development is eligible for a Density Bonus and any Incentives, waivers or modifications requested.

Analysis: The project includes 20% of the total units restricted for low-income households earning up to 60% AMI, as defined in Section 65915 of the Government Code for the State of California and is therefore eligible for a density bonus and the waivers requested, pursuant to the State Density Bonus Law for affordable housing projects, including for reductions to parking, loading, commercial area, height transition, and rear transition standards.

b. If the Density Bonus is based all or in part on donation of land, a finding that all the requirements for a land transfer Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

Analysis: The project does not include a land donation.

c. If the Density Bonus or Incentive request is based all or in part on the inclusion of a Child Care Facility, a finding that all of the requirements for a Child Care Facility Density Bonus that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

Analysis: The project does not include a Child Care Facility.

d. If the Incentive request is for a Mixed-Use development, a finding that all the requirements for a Mixed-Use Incentive development approval that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

Analysis: The project is a mixed-use development but does not require an incentive to be allowed to develop a mixed-use project at the site. The project can develop as a mixed-use project per the General Plan land use designation and the San Jose Zoning Ordinance with a Site Development Permit.

e. If the Incentive includes a request for approval of condominium conversion, a finding that all the requirements for a condominium conversion Incentive that are specified in the State Housing Density Bonuses and Incentives Law have been or will be met.

Analysis: The project does not include a request for condominium conversions.

11. **Evaluation Criteria for Demolition.** Section 20.80.460 of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

    a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;

    b. The failure to approve the permit would jeopardize public health, safety or welfare;

    c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;

    d. The approval of the permit should maintain the supply of existing housing stock in the City of San Jose;

    e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;

    f. Rehabilitation or reuse of the existing building would not be feasible; and

    g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

    Analysis: As noted above, the project includes the demolition of two commercial buildings on site. As discussed in Site Development Permit Findings 'd' and 'e', the project is compatible with the surrounding neighborhood, and would not have an adverse impact. The demolition would facilitate a mixed-use residential/commercial project. Re-use of the buildings would not be feasible to implement the goals of the project. Existing supply of housing would be maintained through the provision of a greater number of residential units than the current housing on the site provides.

    The existing commercial buildings to be demolished were constructed in 1876 and 1880 and remodeled in 1937 and 1946, respectively. Per the Historic Resource Assessment prepared by Treanor HL dated March 30, 2022, the subject parcels do not include any previously designated or potential historic resources. The building at 17 East Santa Clara Street is listed as a Structure of Merit on the San Jose Historic Resources Inventory (HRI). While structures of merit do not qualify as historic resources under CEQA, any development that includes the demolition of a structure on the HRI is required to salvage the resources building materials and architectural elements per General Plan Policy LU-16.4. This is included as Condition #39.b in this document.

In accordance with the facts and findings set forth above, a Site Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the Permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to be constitute all of the following on behalf of the Permittee:

a. Acceptance of the Permit by the Permittee; and

b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the Director, if within such time period, the proposed use of the site or the construction of buildings has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Shoring and Basement Plans.** Prior to building permit issuance, all shoring and basement plans must be sent to and approved by the Santa Clara Valley Transportation Authority (VTA).

5. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Site Development Permit plans entitled, “Eterna Tower Proposed New Site Development” dated August 2, 2022, on file with the Department of Planning, Building and Code Enforcement (“Approved Plans”), and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.

7. **Demolition Permit**. A demolition permit may be issued for the two existing commercial buildings only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction. See Condition #39.b below for requirements regarding salvage of historic resources, including building materials and architectural elements.

8. **Regulatory Agreement**. The project is required to provide a minimum of 28 affordable housing units at 60% AMI as part of the State Density Bonus compliance requirements. Prior to the issuance of any Building Permit or Grading Permit, whichever comes first, the Permittee shall enter into a Regulatory Agreement with the City for the affordable housing units required.

   The final Regulatory Agreement, as amended and as approved by the City Attorney and by the Director of Planning, Building and Code Enforcement shall be recorded in the Office of the County Recorder by the City, and shall restrict the units as reserved for low-income households for no less than 55 years. This Permit shall take effect upon the date of recordation of the regulatory agreement in the form approved by the City and shall have no force and effect prior to that date.

9. **Housing Department Conditions of Approval**. The development is subject to the City's Inclusionary Housing Ordinance (IHO) and each of the conditions below:

   a. Prior to earliest of: approval of any parcel or final map or issuance of any building permits, the permittee must execute and record their Affordable Housing Agreement memorializing the IHO obligations against the property, any other property required for the satisfaction of the compliance option selected in the Plan, and record the Affordable Housing Agreement or a City covenant against contiguous property under common ownership and control. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.

   b. Permittee must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO or its guidelines and submit any additional or updated documents requested by the Housing Department in connection with the satisfaction of the compliance option selected in the Plan.

   c. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO, its guidelines and the Affordable Housing Agreement are met.

   d. For all Non-Residential development adding or constructing 5,000 square feet or more of new or additional floor area. An applicant is required to submit to the Housing Department, as part of its the application for First Approval the following: (a) a fully completed, executed Satisfaction Plan, (b) all attachments to the Satisfaction Plan, (c) the required application processing fee and (d)complete an addendum to the Satisfaction Plan, if the Project is requesting a secured deferred payment option or Affordable Housing Credits.

   e. No scheduling of the final building inspection will occur until all requirements of the Commercial Linkage Fee Ordinance and Guidelines are met.

10. **Lot Line Adjustment**. Prior to the issuance of a Building Permit the Permittee shall secure approval and provide proof of recordation of a Lot Line Adjustment to merge the existing two lots into one lot.

11. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
12. **Recycling**. Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
13. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
14. **Nuisance**. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
15. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
16. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
17. **Outdoor Storage**. No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
18. **Utilities**. All new on-site telephone, electrical, and other service facilities shall be placed underground.
19. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
20. **Anti-Litter**. The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly-used areas free of litter, trash, cigarette butts, and garbage.
21. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
22. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
23. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
24. **Required Bicycle Parking**. This project shall conform to the bicycle parking requirements of the Zoning Ordinance, as amended. Any changes to the required bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
25. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

26. **Permit Adjustment Required**. This Permit shall not be effective unless prior to the issuance of any Building Permit or any certificate of occupancy, Permittee obtains a Permit Adjustment which addresses the following items to the satisfaction of the Director of Planning:
    a. Back-up Generator: A back-up generator must meet the following:
        i. Be enclosed within the building
        ii. Be consistent with the Municipal Code Section 20.80.2030:
        iii. Operation of a temporary stand-by or backup power generation facility, by definition, shall not exceed a maximum time period of four (4) consecutive months in any twelve (12) month period.
        iv. Testing of generators is limited to 7:00 a.m. to 7:00 p.m., Monday through Friday.
    b. Transit Gateway Public Art: An Element of Distinction is required pursuant to the Downtown Design Guidelines, Section 5.2, Standard 'a'. If the Public Art is within the right-of-way, it must also be approved by the City's Public Art Committee.
27. **No Extended Construction Hours**. This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
28. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
29. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans. Changes to the landscaping requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
30. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
31. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
32. **Street Trees.** Street trees, as shown on Approved Plans, shall be planted on the street frontage, unless otherwise approved by the Public Works Department. A permit for planting street trees shall be obtained from the City Department of Transportation, Trees and Landscaping Section, (408) 794-1900.
33. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum

requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.

34. **Airport and FAA Permit Conditions**.

a. Avigation Easement. Prior to the issuance of a Building Permit for vertical construction, the property owner shall grant an Avigation Easement to the City of San José. Contact the San José Airport Department (408-392-1193) to initiate the easement dedication process.

b. FAA Clearance Required. Prior to issuance of any Building Permit for construction, the permittee shall obtain from the Federal Aviation Administration a "Determination of No Hazard to Air Navigation" for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and "No Hazard Determination" expiration date. The data on the FAA forms shall be prepared by a licensed civil engineer or surveyor, with location coordinates (latitude/longitude) in NAD83 datum out to hundredths of seconds, and elevations in NAVD88 datum rounded off to the next highest foot.

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

d. Subsequent Permit Adjustments/Amendments. Any Permit Adjustment/Amendment application filed by the permittee that proposes to increase the maximum structure elevations or change the location of the structure's highest point(s), will be referred by the Planning, Building, and Code Enforcement Department to the Airport Department for review prior to approval.

e. Construction Cranes. Prior to issuance of any Building Permit for construction, the permittee shall coordinate with the San Jose Airport Department to sign a Construction Crane Agreement and provide a crane fee deposit for the expected duration project will operate construction cranes above the Downtown Building Height Limits. Compliance shall become a condition of Building Permit issuance for construction. Contact Ryan Sheelen, rsheleen@sjc.org (408-392-1193), of the San José Airport Department to initiate the construction crane agreement coordination.

f. FAA guidance requires solar panels (and any other reflective materials) placed on the roof of any structure to be designed to minimize glare and to incorporate bird-safe design. A public-use solar glare hazard analysis tool is available at www.forgesolar.com. The Airport requests the applicant provide a completed solar glare hazard analysis report for this project evaluating potential impacts to the Airport's existing and future Air Traffic Control Tower and to ensure there are no hazards to aviation. Contact Ryan Sheelen rsheelen@sjc.org (408-392-1193) at the San Jose Airport Department, prior to preparing a solar glare hazard analysis report.

35. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
    a. *Construction Plans.* This permit file number, H20-007, shall be printed on all construction plans submitted to the Building Division.
    b. *San Jose's Natural Gas Infrastructure Prohibition and Reach Code Ordinances*. The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit www.sjenvironment.org/reachcode.
    c. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
    d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
    e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
    f. *Project Addressing Plan.* Prior to issuance of a Building Permit, the project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial).
36. **Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2019 California Fire Code, or as amended and adopted by the City.
37. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: http://www.sanjoseca.gov/devresources.
    a. **Construction Agreement**: The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
    b. **Transportation**: This project is located in the expanded Downtown Core and is covered under the San Jose Downtown Strategy 2040 EIR; therefore, no further traffic analysis is required. We conclude that the subject project will be in conformance with the City of San Jose Transportation Analysis Policy (Council Policy 5-1) and a determination for a negative declaration can be made with respect to traffic impacts.
    c. **Grand Boulevard**: This project fronts Santa Clara Street which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.

d. **Private Improvements within Public Property**: The proposed encroachment for balconies, windows and/or architectural features shall be subject to Chapter 13.37 of the Municipal Code. No further discretionary approval by City Council is required for balconies, windows and/or architectural features that comply with the San Jose Building Code. Property owner shall execute an Encroachment Agreement as part of Public Works Clearance requirement(s) and prior to Building Permit issuance.

e. **Grading/Geology**:

   i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.

   ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.

   iii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.

f. **Shoring**:

   i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.

   ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of $100,000. All other shoring will not be allowed to encroach more than 12” within the public right-of-way (i.e. soldier beams).

   iii. If tie-backs are proposed for use along the adjacent properties (467-21-023/025/028/054), agreements between the Applicant and the adjacent property owners will need to be secured, executed and provided to the Public Works Project Engineer prior to approval of the Grading Permit for this project.

g. **Stormwater Runoff Pollution Control Measures**: This project must comply with the City’s Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures and source controls to minimize stormwater pollutant discharges.

h. **Stormwater Peak Flow Control Measures**: The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).

i. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.

j. **Sewage Fees**: In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

k. **Parks**: This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.

l. **Assessment**: This project is located within the Premium Zone of the Downtown San Jose Property-Based Business Improvement District, which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year. The assessment is calculated based on the land use and its building and lot square footages. For 2020-2021, commercial properties pay $0.130274193 and residential properties pay $0.104996758 per building and lot square footages. Future year assessments will be adjusted accordingly and will continue to be collected through the Country property tax bills listed under Tax Code 0916 "DOWNTOWN PBID". Any questions may be directed to Thomas Borden at (408) 535-6831.

m. **Street Improvements**:

   i. Reconstruct 15' attached sidewalk with tree wells behind back of curb along project frontage.

   ii. Provide $25k contribution towards video detection implementation at the 1st Street/Santa Clara Street intersection.

   iii. Existing VTA BRT bus stop and elements to be protected in-place.

   iv. Remove proposed trash driveway curb cut along the Santa Clara St frontage shown on the landscape and civil plans.

   v. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.

n. **BART Phase II**: The project will be required to submit structural and shoring plans to the Santa Clara Valley Transportation Authority (VTA) for coordination with the future BART tunnel to ensure no conflicts or impacts to the proposed BART project. Tie-backs may not be acceptable at certain locations and/or elevations depending on the project's design.

o. **Downtown Construction**: This project is located within the General Plan Downtown Growth Area or the Diridon Station Area Plan and will be required to comply with the Downtown

Construction Guidelines (DCG). The DCG is for all work in the Public Right-of-Way to support the safe and orderly movement of people and goods by providing standards. The DCG serves as a guideline related to permits, coordination, and traffic control devices to entities performing work in downtown streets. A copy of the DCG can be found at: https://www.sanjoseca.gov/home/showdocument?id=56303

p. **Site Utilization Plan and Revocable Encroachment Permit** (Street/Sidewalk Closures): At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.

   i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:

      1) Site Utilization Plan and Letter of Intent: The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).

      2) Multi-Phased Site Specific Sketches: These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.

   ii. Developer shall minimize the potential impact to vehicular and pedestrian traffic by:

      1) Implementing the closures at the time the onsite activities dictate the need for the closure.

      2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition p.1.ii above.

   iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: http://www.sanjoseca.gov/?navid=1629. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.

q. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.

r. **Electrical**: Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.

s. **Street Trees**: The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. If street tree locations conflict with existing utilities, developer shall be solely responsible for relocating or adjusting utilities as necessary to resolve conflict. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

38. **Conformance to MMRP**. This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development, dated _____.

39. **Environmental Conditions of Approval**

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

i. The project's design shall provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on 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.

ii. The project shall provide preliminary calculations indicating that the residential units along the northern and eastern façades of proposed building would require windows and doors with a minimum rating of 28 STC to meet the interior noise threshold of 45 dBA DNL.

iii. A qualified acoustical specialist shall prepare a detailed analysis of interior residential noise levels resulting from all exterior sources during the design phase pursuant to requirements set forth in the State Building Code. The study will also establish appropriate criteria for noise levels inside the commercial spaces affected by environmental noise. The study will 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. Treatments would include, but are not limited to, sound-rated windows and doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what noise insulation treatments are necessary shall be conducted on a unit-by-unit basis during final design of the project. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City, along with the building plans and approved design, prior to issuance of a building permit.

The implementation of the above noise insulation features would reduce interior noise levels to 45 dBA DNL or less.

b. **Structure of Merit Requirements – 17 East Santa Clara Street**.

i. *Documentation*. Prior to the issuance of any grading, demolition, or building permit, the Structure of Merit located at 17 East Santa Clara Street structure shall be photo-documented to an archival level consisting of selected views of the building to the following standards:

ii. *Cover sheet*. The documentation shall include a cover sheet identifying the photographer, providing the address of building, common or historic name of the building, date of construction, date of photographs, and photograph descriptions.

iii. *Lenses*. No soft focus lenses. Lenses may include normal focal length, wide angle, and telephoto.

iv. *Filters*. Photographer's choice. Use of a polarized screen is encouraged.

v. *View*. Perspective view-front and other elevations. All photographs shall be composed to give primary consideration to the architectural and/or engineering features of the structure with aesthetic considerations necessary, but secondary.

vi. *Lighting*. Sunlight is usually preferred for exteriors, especially of the front facade. Light overcast days, however, may provide more satisfactory lighting for some structures. A flash may be needed to cast light into porch areas or overhangs.

vii. *Technical*. All areas of the photograph must be in sharp focus.

The documentation shall be reviewed and approved by the City's Historic Preservation Officer. After City review and approval, the documentation shall be submitted to the City of San José and to History San José. Proof of receipt by History San José shall be submitted to the City following submittal. Additional digital copies shall be made available to other local research institutions including San José Library's California Room and the City's Planning Division. The above documentation shall be accompanied by a transmittal stating that the documentation is submitted as a Standard Measure to address the loss of the Structure of Merit.

c. **Relocation or Salvage**. Prior to the issuance of any grading, demolition, or building permit the Permittee shall offer the Structure of Merit building located at 17 East Santa Clara Street for relocation by a third party. The public notice of "offer for relocation" shall be placed by the Permittee in a newspaper of general circulation, posted on a website, and posted on the site for a period of no less than 30 days. In the event that no response to the offer is received following the 30-day period, the building shall then be made available for salvage to the general public and companies facilitating the reuse of historic building materials for an additional 30-day period in the same manner as the required public notice for relocation.

40. **Standard Permit Conditions**

a. **Construction-related Air Quality.** The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site.

i. Water active construction areas at least twice daily or as often as needed to control dust emissions.

ii. 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.

iii. 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.

iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).

v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.

vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.

vii. All vehicle speeds on unpaved roads shall be limited to 15 mph

viii. Replant vegetation in disturbed areas as quickly as possible.

ix. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.

x. 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.

xi. Maintain and properly 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.

xii. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

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

c. **Geology and Soils.** Seismic Hazards.

i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.

iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.

iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.

v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

vi. If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.

d. **Paleontological Resources**. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of PBCE or the Director's designee.

e. **Hazards and Hazardous Materials.** Asbestos and Lead-Based Paint

i. In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).

ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.

iii. All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.

iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.

v. Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

f. **Hydrology and Water Quality.** Construction-related water quality.

i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.

ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.

iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.

iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.

v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.

vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).

vii. Vegetation in disturbed areas shall be replanted as quickly as possible.

viii. All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.

ix. The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

g. **Construction-related Noise.** Noise minimization measures include, but are not limited to, the following:

i. Pile Driving is prohibited.

ii. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. 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 use.

iii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.

iv. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.

v. Prohibit unnecessary idling of internal combustion engines.

vi. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.

vii. Utilize "quiet" air compressors and other stationary noise sources where technology exists.

viii. Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.

ix. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.

x. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.

xi. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

41. **Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

    a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

    b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

    c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **24th day of August 2022**.

Christopher Burton, Director

Planning, Building, and Code Enforcement

Deputy
Robert Manford

Exhibit C

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING AN ENVIRONMENTAL APPEAL OF AND UPHOLDING THE DIRECTOR OF PLANNING, BUILDING AND CODE ENFORCEMENT'S RELIANCE ON THE ETERNA TOWER MIXED-USE DEVELOPMENT PROJECT ADDENDUM TO THE DOWNTOWN STRATEGY 2040 FINAL ENVIRONMENTAL IMPACT REPORT (SCH 2003042127) AS THE ENVIRONMENTAL CLEARANCE FOR APPROVAL OF SITE DEVELOPMENT PERMIT, FILE NO. H20-026

WHEREAS, the City of San José ("City") acting as lead agency under the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively "CEQA"), prepared An Addendum to the Downtown Strategy 2040 Environmental Impact Report under File No. H20-026 for the Eterna Tower Mixed-Use Project to allow the demolition of two on-site two-story buildings and allow the construction of a 26-story, approximately 184,667-gross square foot mixed-use building consisting of 192 residential units and approximately 5,217 square feet of office space, on an approximately 0.18-acre site.; and

WHEREAS, on August 24, 2022, the Director of Planning, Building and Code Enforcement for the City of San Jose ("Planning Director") conducted a public hearing to consider the (i) Addendum to the Downtown Strategy 2040 Environmental Impact Report as the environmental clearance for Site Development Permit File No. H20-026 and (ii) approval of Site Development Permit File No. H20-026 authorizing the demolition of two on-site two-story buildings and allow the construction of a 26-story, approximately 184,667-gross square foot mixed-use building consisting of 192 residential units and approximately 5,217 square feet of office space, on the Project site; and

WHEREAS, the Addendum to the Downtown Strategy 2040 Environmental Impact Report concluded that approval of Site Development Permit File No. H20-026 and implementation of the Project would not result in new significant impacts and/or a substantial increase in the severity of previously identified significant effects that would warrant a supplemental or subsequent environmental impact report; and

WHEREAS, based on the entirety of the administrative record, the Planning Director determined the Addendum to the Downtown Strategy 2040 Environmental Impact Report was the appropriate environmental clearance under CEQA for approval of Site Development Permit File No. H20-026 on August 24, 2022; and

WHEREAS, on August 26, 2022, appellant Adams, Broadwell, Joseph & Cardozo, a Professional Corporation, on behalf of Silicon Valley Residents for Responsible Development ("Silicon Valley Residents"), filed a timely environmental appeal of the Planning Director's environmental determination in accordance with Section 21.04.140 of the San Jose Municipal Code; and

WHEREAS, Section 21.04.140 allows any determination regarding the appropriate environmental clearance for a project made by the Planning Director, Planning Commission, or other non-elected decision-making body to be appealed directly to the City Council; and

WHEREAS, notice of the date, time, and place of the hearing before the City Council on the appeal was duly and properly given pursuant to and in compliance with the provisions and requirements of Title 21 of the San José Municipal Code; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report, related Mitigation Monitoring and Report Program for the Project, other information in the record and has considered the information contained therein, prior to acting upon or denying the appeal and upholding the Director of Planning, Building and Code Enforcement's reliance on the Eterna Tower Mixed-Use Project Addendum to the Downtown Strategy 2040 Environmental Impact Report as the environmental clearance for approval of Site Development Permit, File No. H20-026 (2) the Addendum to the Downtown Strategy 2040 Environmental Impact Report prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, (3) the Addendum to the Downtown Strategy 2040 Environmental Impact Report represents the independent judgment and analysis of the City of San José, as lead agency for the Project, and (4) preparation of a new environmental document is not required because the Addendum to the Downtown Strategy 2040 Environmental Impact Report thoroughly and adequately analyzes the project and the environmental appeal does not raise any new significant impacts that have not already been analyzed or addressed in the Addendum to the Downtown Strategy 2040 Environmental Impact Report in accordance with Public Resources Code (PRC) Section 21083 or CEQA Guidelines Sections 15162 and 15185. The City Council designates the Director of Planning, Building and Code Enforcement, at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire administrative record of proceedings before it and all information received that there is no substantial evidence that the Project will result in any changes or new significant effects on the

environment beyond those already identified in the previously certified Downtown Strategy 2040 Final Environmental Impact Report, nor will the Project result in an increase in the severity of significant effects identified in the previously certified Downtown Strategy 2040 Final Environmental Impact Report, and that identified mitigation measures will continue to reduce each of those significant effects to a less-than-significant level; and does hereby deny the environmental appeal and uphold the Director of Planning, Building and Code Enforcement's reliance on the Eterna Tower Mixed-Use Project Addendum to the Downtown Strategy 2040 Final Environmental Impact Report. The Initial Study, Addendum, and Response to the Environmental Determination Appeal and FEIR and addenda thereto are: (1) on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and electronically on the City of San José's Department of Planning, Building and Code Enforcement website, and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC

City Clerk

Exhibit D

ADDENDUM
TO THE
DOWNTOWN STRATEGY 2040 FINAL ENVIRONMENTAL IMPACT REPORT

for

ETERNA TOWER
MIXED-USE DEVELOPMENT

File No. H20-026

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

CITY OF SAN JOSE
CALIFORNIA

August 5, 2022

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Chapter 1. Introduction

PURPOSE OF THE INITIAL STUDY/ADDENDUM

The California Environmental Quality Act (CEQA) recognizes that between the date an environmental document is completed and the date the project is fully implemented, one or more of the following changes may occur: 1) the project may change; 2) the environmental setting in which the project is located may change; 3) laws, regulations, or policies may change in ways that impact the environment; and/or 4) previously unknown information can arise. Before proceeding with a project, CEQA requires the Lead Agency to evaluate these changes to determine whether or not they affect the conclusions in the environmental document.

The City of San José, as the Lead Agency, has prepared this Initial Study (IS)/Addendum for the Eterna Tower Project in compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines (California Code of Regulations §15000 et. seq.) and the regulations and policies of the City of San José, California.

Downtown Strategy

On December 18, 2018, the City Council certified the Downtown Strategy 2040 Final Environmental Impact Report (FEIR) (Resolution No. 78942) and adopted the Downtown Strategy 2040, which updated the Downtown Strategy 2000 to be consistent with the Envision San José 2040 General Plan. This update included an increase in the amount of new commercial office and residential development capacity and revised development phasing to extend the horizon (buildout) year to 2040. The Downtown Strategy 2040 increased the amount of new commercial office by an additional three million square feet (approximately 10,000 jobs) to be transferred from other areas of the City consistent with the General Plan Four-Year Review recommendations. The amount of commercial office development would be 14.2 million square feet by the year 2040. The residential capacity of Downtown would be increased to 14,360 units. The amount of new retail development of 1.4 million square feet and 3,600 hotel rooms, identified in the Downtown Strategy 2000, would be maintained.

The Downtown Strategy 2040 FEIR provides project-level clearance for impacts related to vehicle miles traveled (VMT), traffic noise, and operational emissions of criteria pollutants associated with Downtown development. The Downtown Strategy 2040 FEIR evaluated these impacts for Downtown development projects, consistent with the General Plan land use designations and Downtown zoning districts, up to the year 2040. The Downtown Strategy 2040 FEIR evaluated all remaining resource areas at a program level for site-specific conditions, including construction-related impacts that could not be feasibly evaluated in the absence of specific development project details. The Downtown Strategy 2040 FEIR analysis assumed that project-level, site-specific environmental issues for a given parcel proposed for redevelopment would require additional review. This IS/Addendum provides that subsequent project-level environmental review for the project.

The Downtown Strategy 2040 FEIR identified measures to minimize impacts and adopted statements of overriding consideration for all identified significant impacts resulting from the maximum level of proposed development that could not be avoided. All subsequent development that occurs as part of the Downtown Strategy 2040 will require project specific supplemental environmental review.

Valley Transit Authority (VTA)/Bay Area Rapid Transit (BART) Silicon Valley – Phase II Extension Project

The project is located on a site that was analyzed as a potential BART station entrance in the combined NEPA/CEQA Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR) for the *VTA's BART Silicon Valley – Phase II Extension Project*. On June 8, 2021, the City Council, as a responsible agency under CEQA, adopted the Valley Transportation Authority's CEQA Findings for the Project as its own findings under CEQA, the Statement of Overriding Considerations, and reiterated the benefits of the project. The VTA/BART Silicon Valley project involves expansion of BART's rail service to Downtown San José via a new six-mile extension from the existing Berryessa/North San Jose Station through downtown San José to the Santa Clara Caltrain Station. Several alternatives were considered for the project, including single-bore, consisting of a single tunnel with dedicated directional travel on two vertical levels, and twin-bore designs, consisting of two tunnels with dedicated directional travel, and east and west options for the location of the proposed station and access points. The single-bore, west option includes the proposed project site, with access to the proposed station provided via the basement level at the Eterna Towers property located at 17 and 29 E. Santa Clara Street. The Final SEIR for the BART project was certified on April 5, 2018, with the VTA Board of Directors adopting the single-bore, west option alternative.[1] The other alternatives (twin-bore, west option, and both the single-bore, east option and the twin-bore, east option alternatives) which did not include station access at the Eterna Towers (project) site were not approved by the VTA Board.

Tiering from Previous EIRs

In accordance with CEQA, this EIR Addendum will tier from the Downtown Strategy 2040 FEIR. The CEQA Guidelines contain information on tiering an environmental document as follows:

§ 15152 – Tiering. (a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the EIR or negative declaration solely on the issues specific to the later project. (b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy or program to an EIR or negative declaration for another plan, policy or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

This EIR Addendum and all documents referenced in it are available for public review in the Department of Planning, Building and Code Enforcement at San José City Hall, located at 200 East Santa Clara Street, 3rd floor, during normal business hours by appointment.

[1] The Federal decision for the NEPA documentation of the project was made in June 2018.

Notice of Determination

If the project is approved, City will file a Notice of Determination (NOD), which will be available for public inspection and posted within 24 hours of receipt at the County Clerk's Office 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 15075(g)).

PROJECT DATA

1. **Project Title**: Eterna Tower Mixed-Use Development

2. **Lead Agency Contact:** City of San José Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San José, CA 95113
   Environmental Planner: Maira Blanco

3. **Project Owner:** ROYGBIV Real Estate Development, LLC (Attn: Loida C. Kirkley), 1238 Sutter St., Ste 801, San Francisco, CA 94109.

4. **Project Applicant:** Anderson Architects, Inc. (Attn: Kurt Anderson), 120 West Campbell Avenue, Suite D, Campbell, CA 95008 (408) 202-5462.

5. **Project Location:** The project is located on approximately 0.18 gross acres over two parcels located at 17 and 29 East Santa Clara Street, in San José, California. The two parcels are currently occupied by two-story buildings that are proposed to be demolished.

6. **Assessor's Parcel Numbers (APNs)**: 467-21-024 and 467-21-025. **Council District:** 3

7. **Project Description Summary:** The project includes the demolition of two commercial buildings totaling 14,623 square feet and the construction of a 26-story building mixed-use building, consisting of 192 residential units, reservation of portion of the basement and first floors (5,438 square feet total) for an access point to a future Bay Area Rapid Transit (BART)/Valley Transit Authority (VTA) rail station, and approximately 5,217 square feet of second-floor office space on an approximately 0.18-acre site at 17 and 29 East Santa Clara Street in San José. The proposed development includes a basement, main lobby, bicycle storage, and rooftop terrace. No vehicle parking is proposed.

8. **Envision 2040 San José General Plan Designation**: *Downtown*

9. **Zoning Designation**: DC – Downtown Primary Commercial

10. **Habitat Conservation Plan Designations**:
    Area 4: Urban Development Equal to or Greater than 2 Acres Covered
    Land Cover: Urban-Suburban
    Land Cover Fee Zone: Urban Areas (No Land Cover Fee)

11. **Surrounding Land Uses**:
    - North: Mixed-Use (residential, restaurants, office, vocational school, and commercial)
    - South: Mixed-Use (residential, restaurants, office, and commercial), medical offices, East Santa Clara Street
    - East: Mixed-Use (residential, restaurants, office, and commercial), North Second Street
    - West: Mixed-Use (residential, restaurants, office, and commercial), North First Street

Chapter 2. Project Description

PROJECT LOCATION

The project site is located within downtown San José, in Santa Clara County, on East Santa Clara Street between North First Street and North Second Street (refer to Figure 1). The project is located on a combined approximately 0.18 gross acre on two parcels at 17 and 29 East Santa Clara Street, in San José. The project is located on Assessor's Parcel Numbers 467-21-024 and 467-21-025 (see Figure 2). The two parcels are currently occupied by a pair of two-story buildings, which are proposed to be demolished (see Figure 3). The building at 17 East Santa Clara Street is identified as a City Structure of Merit.

PROJECT DESCRIPTION

The project includes a Site Development Permit to allow demolition of the existing two-story buildings on the site to allow construction of a 26-story, approximately 184,667-gross square foot mixed-use building on an approximately 0.18-acre site at 17 and 29 East Santa Clara Street in downtown San José. The building would accommodate 192 residential units and approximately 5,217 square feet of office space on the second floor. The project would provide 22 percent of the units at Below Market Rate (BMR). The project site is currently occupied by a pair of two-story buildings, one of which (17 E. Santa Clara Street) is an identified Structure of Merit on the City's Historic Resources Inventory; both are proposed for demolition. The project would retain the street facing façade and parapet of the existing building at 17 E. Santa Clara Street, which would be integrated into the new project.

The proposed building would have a height of just over 273 feet and would consist of a main lobby, 50 first floor long-term parking spaces for bicycles, 192 residential units, and a basement-level to house utilities for the building. Proposed common outdoor area for the building consists of a rooftop terrace (see Figure 5). Private open space would be provided by balconies for most units. In addition, the project proposes to reserve approximately 5,438 square feet of the basement and floor level areas for an access point to the future BART/VTA station. The project would also install a backup generator that would be located on the basement level.

The site is designated in the General Plan as *Downtown* in the City's 2040 General Plan. The *Downtown* designation allows a density of up to 800 du/ac and an FAR of up to 30.0 at heights of three to 30 stories.

The proposed site plan for the project is presented in Figure 4. Floor plans for the proposed building are provided in Figures 5a through 5f, and elevations for the proposed building are shown in Figures 6a through 6b. In addition, renderings of the proposed project are shown in Figure 7. Additional project details are described below.

Parking and Access. The project does not propose any automobile parking supported through Density Bonus incentives and the project's downtown location. However, the project would provide 51 long-term bicycle parking spaces on the first-floor level. No short-term bicycle spaces are proposed on-site. Pedestrian access to the proposed project site would be provided through the main lobby entrance on East Santa Clara Street. Direct access to basement utilities is provided via a roll-up utility door accessed via East Santa Clara Street.

Lighting. Outdoor lighting would be provided for site identification and security purposes. All outdoor exterior lighting will conform to the City Council's Outdoor Lighting Policy (4-3) and Interim Lighting Policy Broad Spectrum Lighting (LED) for Private Development.

Utilities. The project includes the provision of services and utilities to serve the project, including water, storm drainage, wastewater, and solid waste. All utilities for the building would be located in the proposed basement-level (see Figure 5a). A stormwater control plan is provided in Figure 8.

Grading. Development of the project would involve the excavation of approximately 6,800 cubic yards (CY) of material for the basement level, approximately 11 feet in depth; excavated material would be exported from the site. A grading and drainage plan for the project is provided in Figure 9.

Landscaping. Landscape plans have been prepared for the project, which are presented in Figure 10. Landscaping would consist of new planters at the front of the building on the street-level, as well as various trees and shrubs on the roof level. No trees are proposed for removal.

Building Design. Photographs of the existing site are presented in Figure 11. The proposed building design is that of a modern tower with cement cladding, some Art Deco elements, and color accents. The ground floor is more traditional, also with art deco elements. Figure 7 shows architectural renderings of the project. Visual simulations of the project from the vantage point along East Santa Clara Street were prepared for the site, shown in Figure 12.

PROJECT CONSTRUCTION

The construction schedule assumes a start-up date of early 2023 with construction occurring over a period of approximately 29 months. At this time, the storage of materials would be provided offsite at 82 North Second Street and the project would use an onsite tower crane to load material for the building. A detailed Construction Management Plan and construction haul route plan would be required as part of the Grading Permit process.

The tower footings would be engineered in coordination with the BART tunnel, the tunnel platform, and the vertical circulation (e.g., elevators, stairs, and ventilation). The structural system for both the tower and the BART/VTA station would most likely need to be constructed simultaneously. According to the applicant, this process would involve consultation on the following items, but not limited to, architects, structural engineers, waterproofing techniques, geotechnical requirements, mechanical ventilation, lighting, fire safety, fireproofing, and sound abatement.

Downtown Strategy 2040

The Downtown Strategy 2040 implements the Downtown Strategy 2000 strategies and actions for the six main urban systems within Downtown: Public Realm, Urban Form and Buildings, Transportation and Access, Historic Resources, Economic Projections, and Human Services. Applicable strategies and actions from the Downtown Strategy 2040 to the project include the following:

- The Downtown Strategy 2040 Guiding Principles, as listed below:

    1. Make Downtown a memorable and creative metropolitan center where people live, work, learn, play, shop, dine, and engage in public life;

2. Enhance the identity of Downtown San José as the urban and cultural center of Silicon Valley, and further enhance San José as an international city;
3. Create an accessible, walkable, bike-friendly, and transit-rich Downtown; and
4. Promote and prioritize development that serves the needs of the entire city, valley, and Bay Area region.

- General Strategy (f): Design the exterior lighting and building signage with a conscious effort to create the nighttime cityscape of downtown. Respect historic buildings and districts in development and redevelopment projects, without resorting to stylistic imitation.

General Plan

The following strategies and policies in the General Plan apply to the proposed project.

- Land Use and Employment Policy IE-1.5: Promote the intensification of employment activities on sites in close proximity to transit facilities and other existing infrastructure, in particular within the Downtown, North San José, the Berryessa International Business Park and Edenvale.

- Major Strategy #9: Support continued growth in the Downtown as the City's cultural center and as a unique and important employment and residential neighborhood. Focusing growth within Downtown will support the Plan's economic, fiscal, environmental, and urban design/placemaking goals.

- Community Design Policy CD-6: Promote and achieve the Downtown's full potential as a regional destination and diverse cultural, recreational, civic, and employment center through distinctive and high-quality design.

PROJECT APPROVALS

The City of San José is the lead agency with responsibility for approving the proposed project. The project may require the following permits and approvals from the Lead Agency:

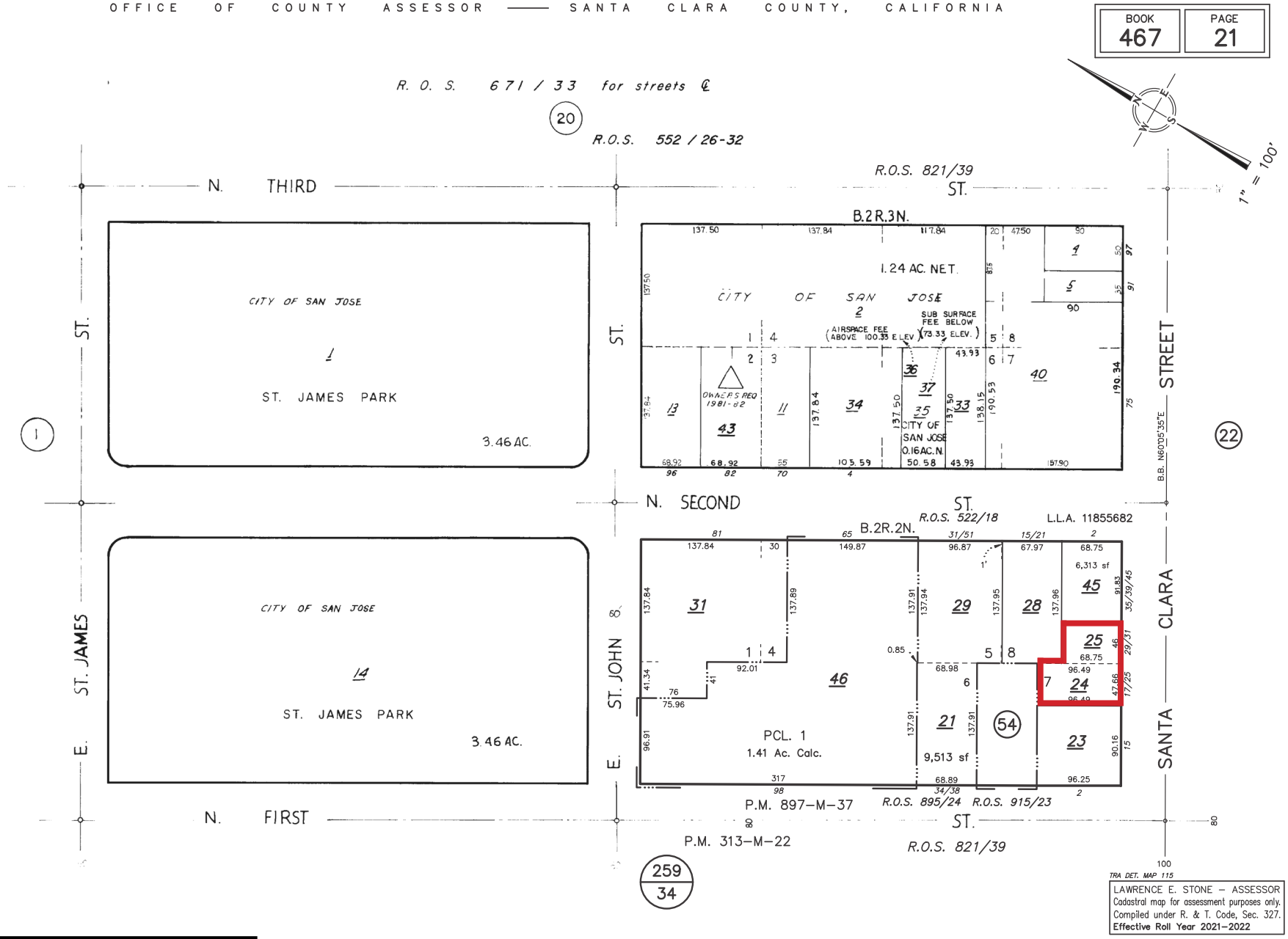
- Site Development Permit
- Demolition Permit
- Public Works Clearances, including Grading Permit
- Building Permit
- Lot Line Adjustment

Location Map

Eterna Tower
EIR Addendum

Figure
1

Path: D:\GIS\GIS_Projects\2021-19 Eterna Tower\Final Products\Fig 1 - Location Map.mxd



Project Site

Source: Santa Clara County Office of the Assessor, July 2021

APN Map

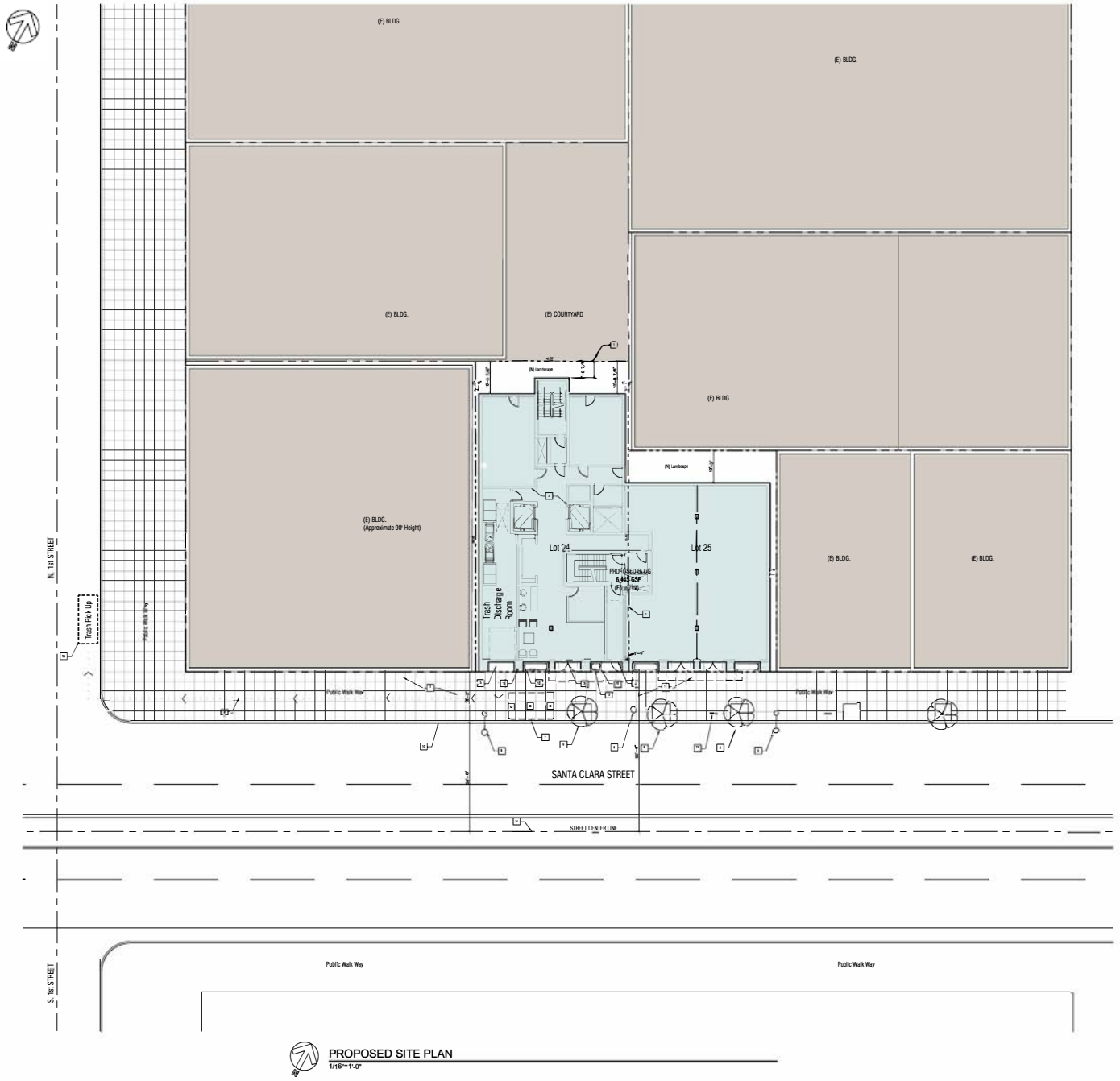
Figure 2

Eterna Tower
EIR Addendum

Vicinity Map

Eterna Tower
EIR Addendum

Figure
3



PROPOSED SITE PLAN
1/16"=1'-0"

SITE DATA

LOT 1 AREA	4,599 sq.ft.
LOT 2 AREA	3,163 sq.ft.
TOTAL	7,762 sq.ft.

SITE PLAN KEY NOTES

1. PROPERTY LINE
2. SHADED AREA INDICATES PROPOSED BLDG.
3. MAIN ENTRY/EXIT
4. BLDG. EXIT DOOR
5. ROLL UP UTILITY DOOR
6. PLANTER BOX
7. (E) BUS STOP SHELTER
8. (E) STREET LIGHT POLE
9. (E) STREET TREE
10. (E) TRANSFORMER
11. (E) PUBLIC WALKWAY
12. (E) BICYCLE RACK
13. DOWNSPOUT LEADER
14. STREET CENTERLINE
15. LOCATION OF TRASH CONTAINERS
16. PATH WAY OF TRASH CONTAINERS TO PICK UP LOCATION

Source: Anderson Architects, December 2021

Conceptual Site Plan

Figure 4

Eterna Tower
EIR Addendum

FLOOR PLAN KEY NOTES

1. PROPERTY LINE
2. WATER TANK FOR SPRINKLER SYSTEM
3. METER LOCATION
4. STRUCTURAL SUPPORT - SHEAR

2 PROPOSED BASEMENT FLOOR PLAN (6,644 sq.ft.)
1/8"=1'-0"

FLOOR PLAN KEY NOTES

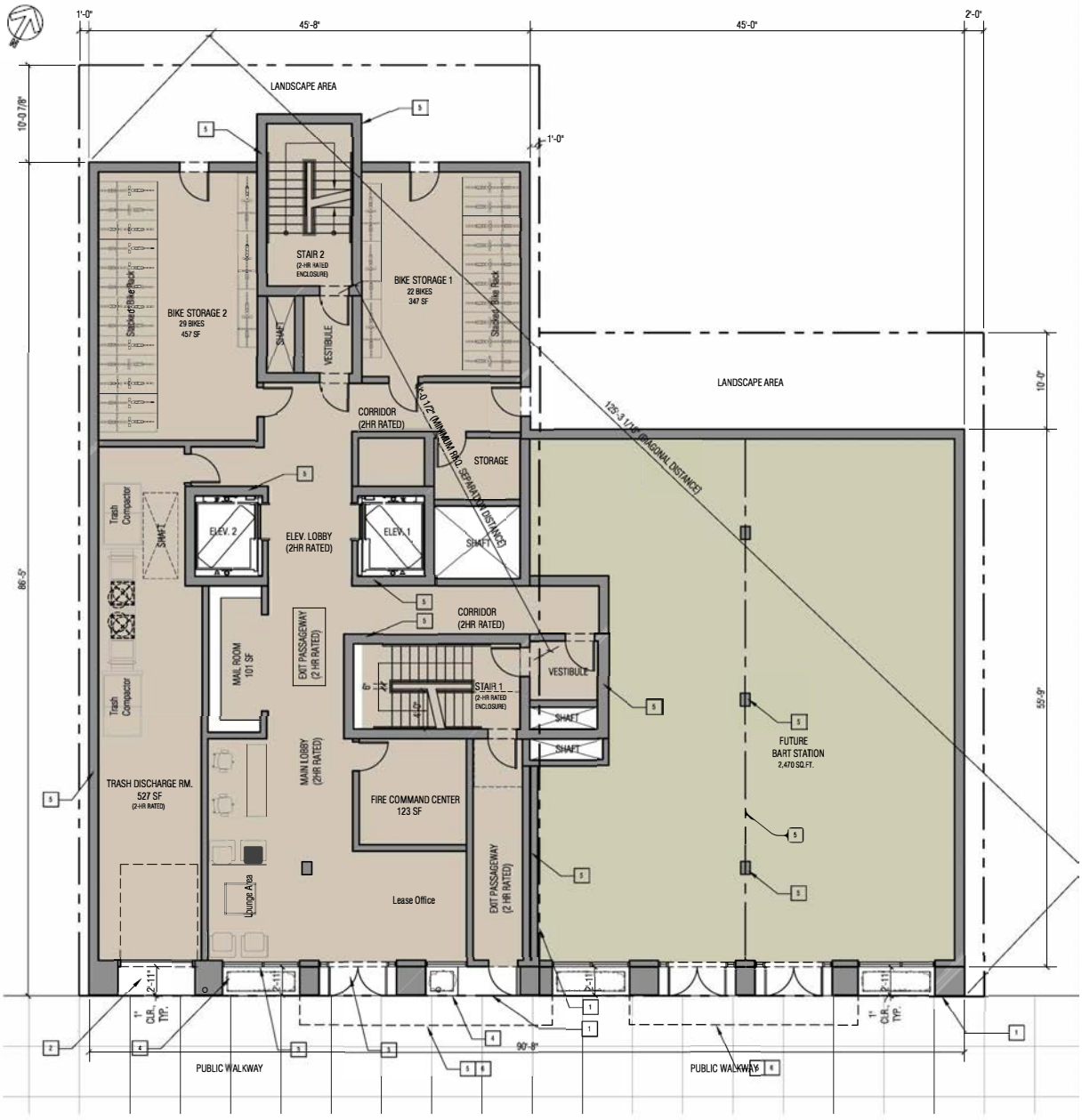
1. PROPERTY LINE
2. WATER TANK FOR SPRINKLER SYSTEM
3. METER LOCATION
4. STRUCTURAL SUPPORT - SHEAR WALLS / COLUMNS / BEAMS

Source: Anderson Architects, December 2021

Floor Plan - Basement

Eterna Tower
EIR Addendum

Figure
5a



1 PROPOSED 1ST FLOOR PLAN (6,445 sq.ft.)
1/8"=1'-0"

PROPOSED BIKE RACK (2-TIER)

FLOOR PLAN KEY NOTES

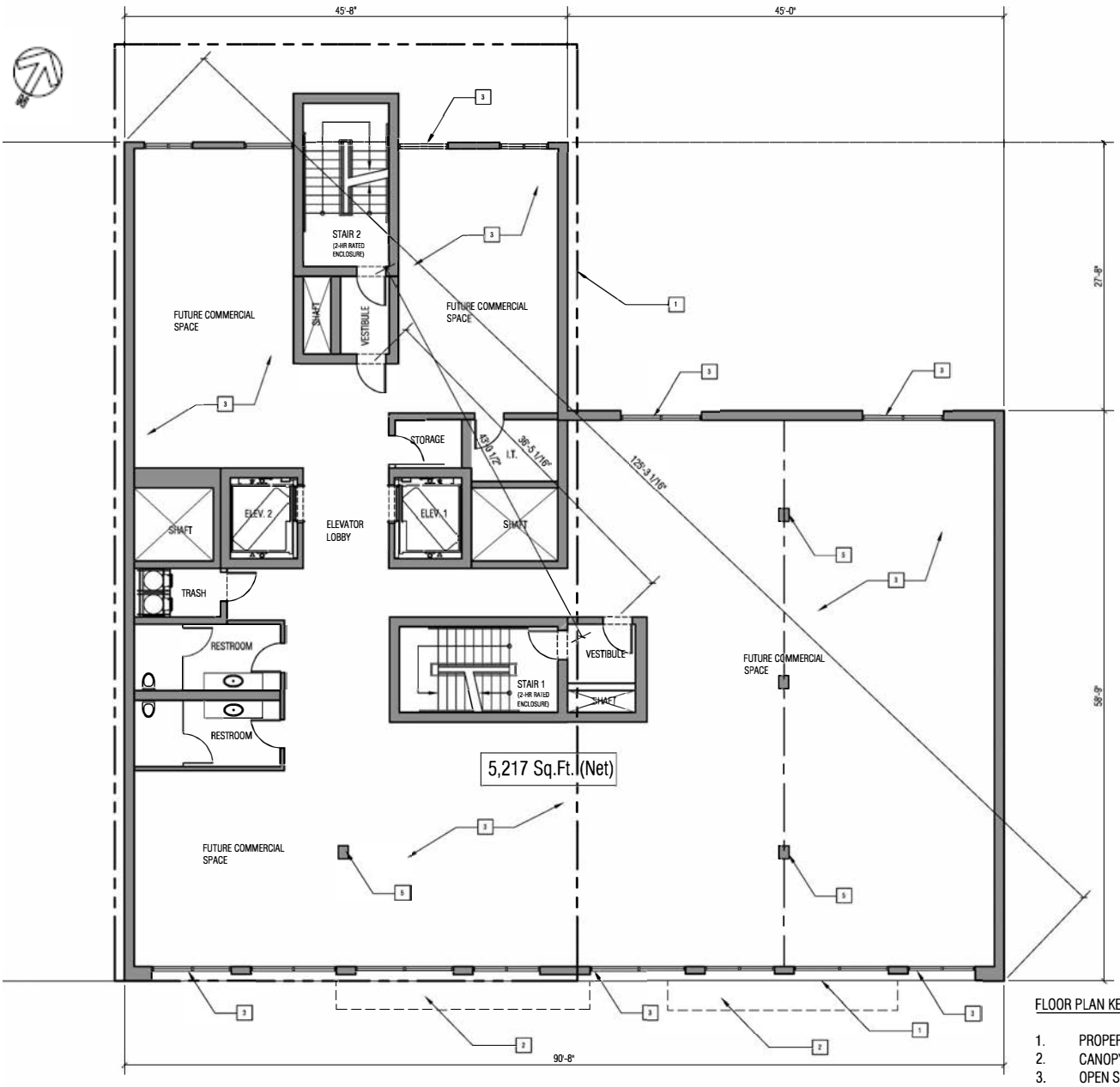
1. PROPERTY LINE
2. OVERHEAD GARAGE DOOR
3. FRAMELESS STOREFRONT WINDOW / DOOR
4. PLANTER BOX
5. STRUCTURAL SUPPORTS - SHEAR WALL, COLUMNS, BEAMS
5. ENTRY CANOPY ABOVE
6. THE PROJECT WILL ENTER TO A PUBLIC RIGHT OF WAY ENCROACHMENT PERMIT FOR THE ENTRY CANOPIES.

Source: Anderson Architects, December 2021

Floor Plan - First Floor

Eterna Tower
EIR Addendum

Figure
5b



FLOOR PLAN KEY NOTES

1. PROPERTY LINE
2. CANOPY BELOW
3. OPEN SPACE
4. PLANTER BOX
5. STRUCTURAL SUPPORTS - SHEAR WALL, COLUMNS, BEAMS

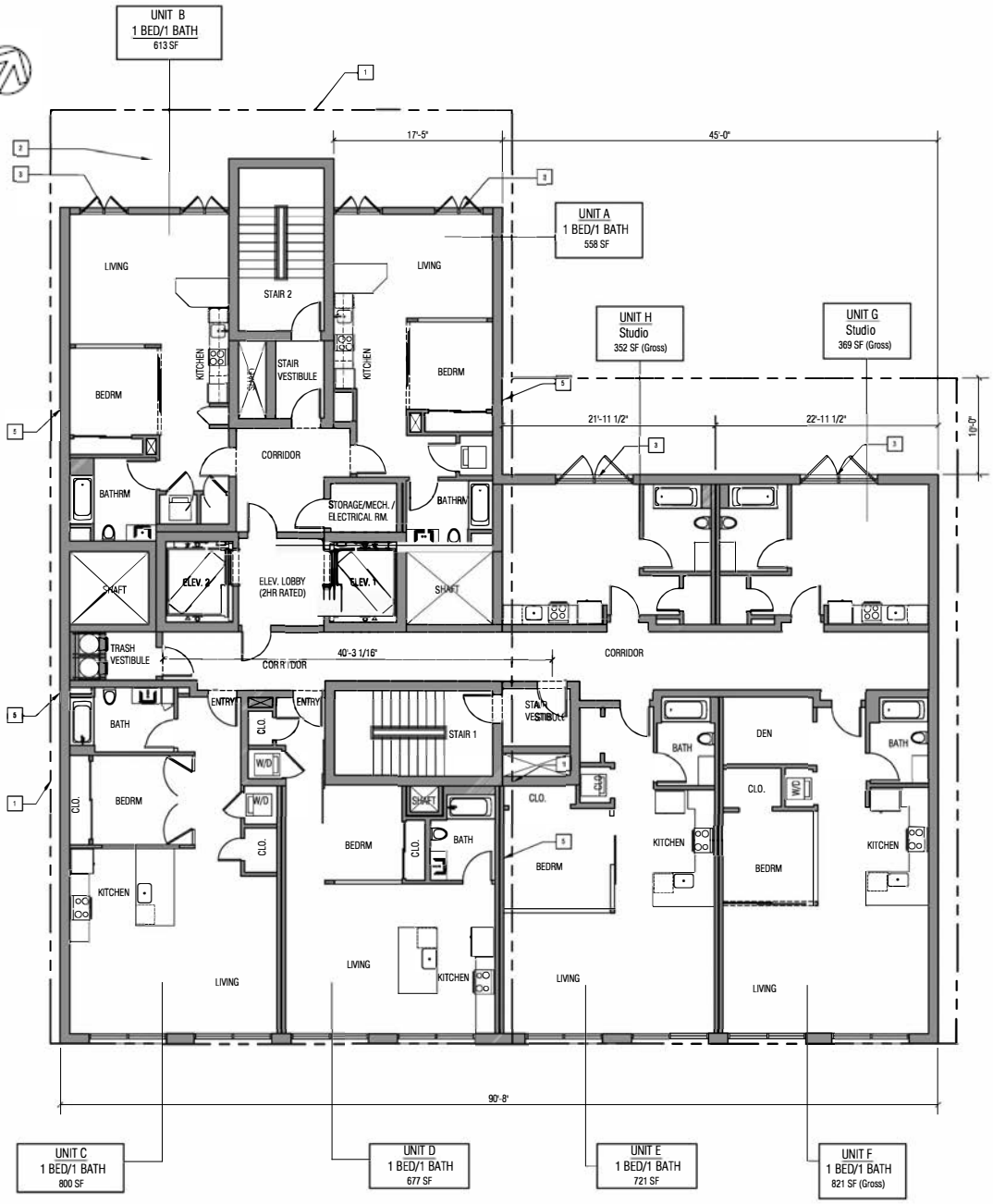
1 PROPOSED 2ND LEVEL FUTURE COMMERCIAL FLOOR PLAN (6,644 GROSS SQ.FT.) (5,217 NET SQ.FT.)
1/8" = 1'-0"

Source: Anderson Architects, December 2021

Commercial Floor Plan - Second Floor

Eterna Tower
EIR Addendum

Figure
5c



1 PROPOSED TYPICAL 2ND THRU 6TH LEVEL FLOOR PLAN (6,644 GSF)
1/8"=1'-0"

UNIT SUMMARY

UNIT MIX:	8 UNITS / FLOOR x 24 FLOORS = 192 UNITS (Studio w/ Bathrm.)
TOTAL AREA OF UNITS:	171,596 SQ.FT.
COMMON AREAS (STAIRS, ELEVATORS, CORRIDOR, ETC.)	- Sq.Ft.

OPEN SPACE SUMMARY

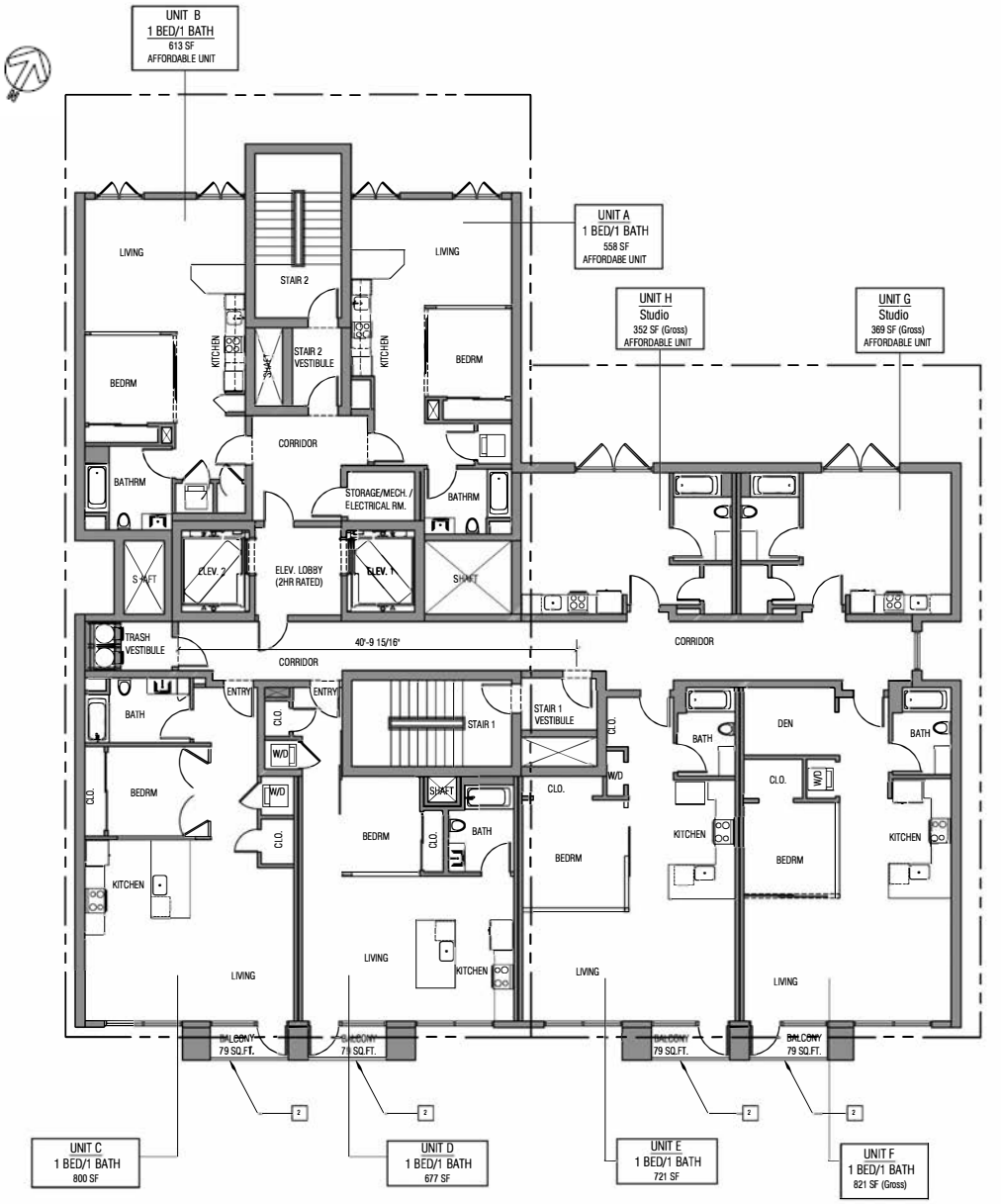
TOTAL UNIT BALCONIES:	158 Sq.Ft. / Floor x 6 Floors = 948 Sq.Ft.
AFFORDABLE UNITS (LOW INCOME)	42 UNITS TOTAL (A, B, G, H) AT LEVELS 3 THRU 8

Source: Anderson Architects, December 2021

Typical Residential Floor Plan - Floors 2 - 6

Eterna Tower
EIR Addendum

Figure
5d



2 PROPOSED TYPICAL 7TH THRU 26TH LEVEL FLOOR PLAN (6,644 GSF) w/ BALCONY 79 SQ.FT.
1/8"=1'-0"

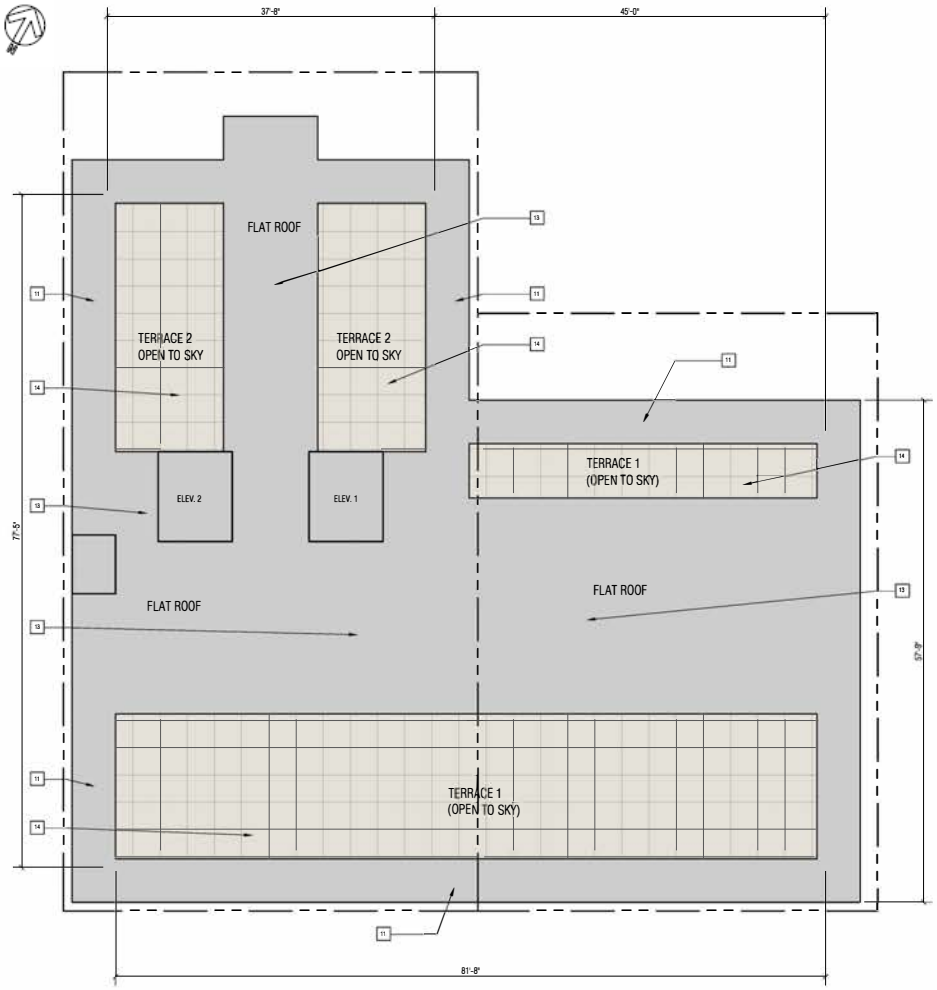
3 (NON-BALCONY UNITS) PROPOSED TYPICAL 3RD THRU 26TH LEVEL FLOOR PLAN (6,644 GSF)
1/8"=1'-0"

Source: Anderson Architects, December 2021

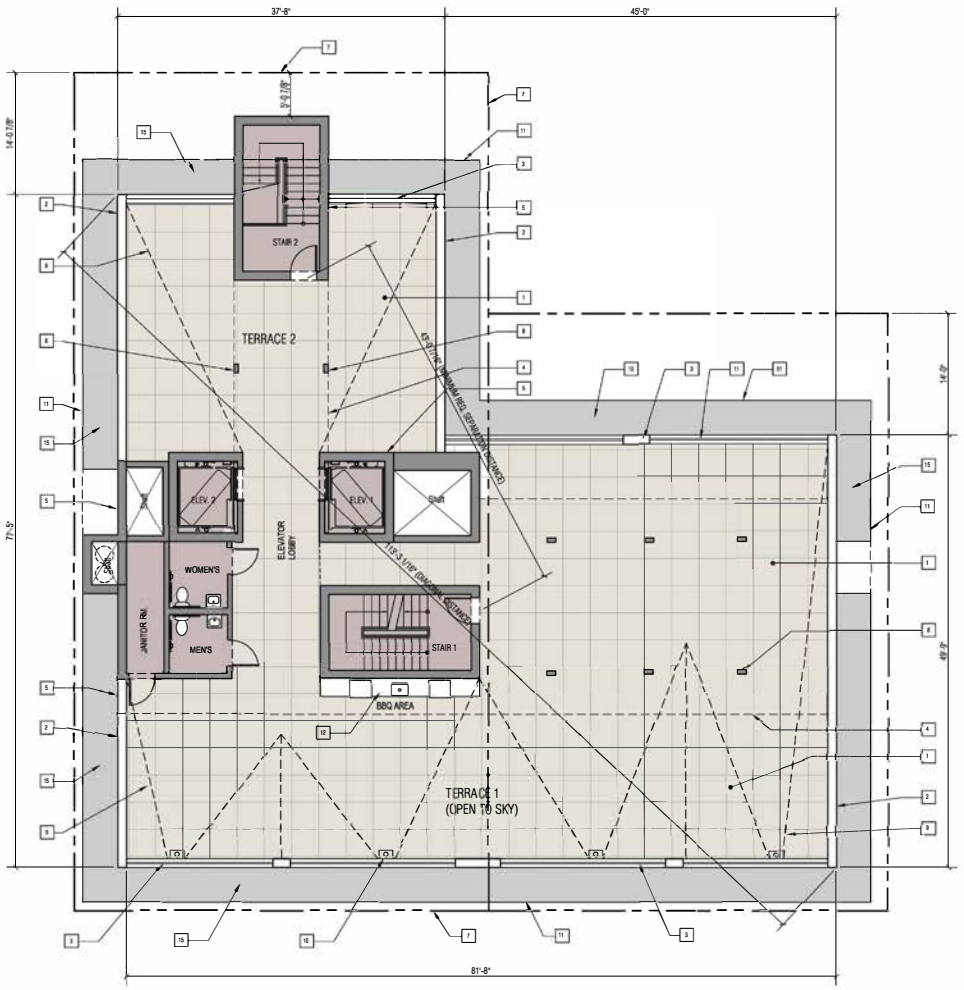
Typical Residential Floor Plan - Floors 7-26

Eterna Tower
EIR Addendum

Figure
5e



2 PROPOSED ROOFTOP
1/8"=1'-0"



1 PROPOSED ROOF DECK LEVEL 27TH FLOOR PLAN (5,279 Sq.Ft.)
1/8"=1'-0"

FLOOR PLAN KEY NOTES

1. RAISED PAVER PEDESTAL SYSTEM
2. PERIMETER WALL
3. 2 FT HIGH TEMPERED GLASS PANEL
4. ROOFTOP CANOPY / TRELLIS
5. EXTERIOR WALL: STUCCO FINISH
6. FULL HEIGHT WINDOW DUAL PANE
7. PROPERTY LINE
8. POSTS
9. ROOF DECK SLOPE
10. AREA DRAIN
11. HORIZONTAL OVERHANG ABOVE
12. COUNTERTOP W/ LOWER CABINETS
13. ROOFTOP-WATERPROOFING MEMBRANE
14. ROOF TERRACE BELOW
15. BOTTOM ROOF DECK

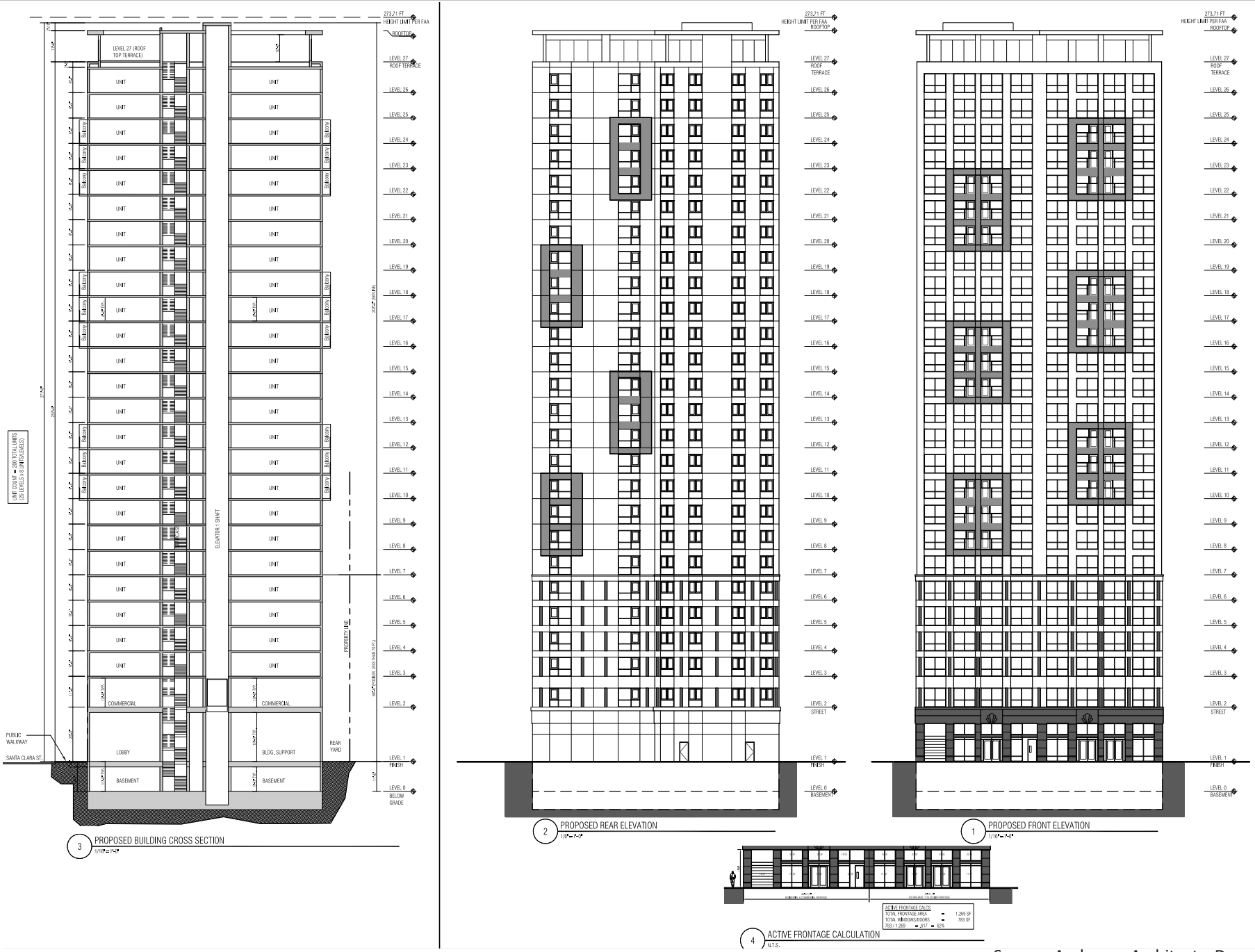
TERRACE 1 AREA	2,750 Sq.Ft.
TERRACE 2 AREA	930 Sq.Ft.

Source: Anderson Architects, December 2021

Floor Plan - Roof

Eterna Tower
EIR Addendum

Figure
5f

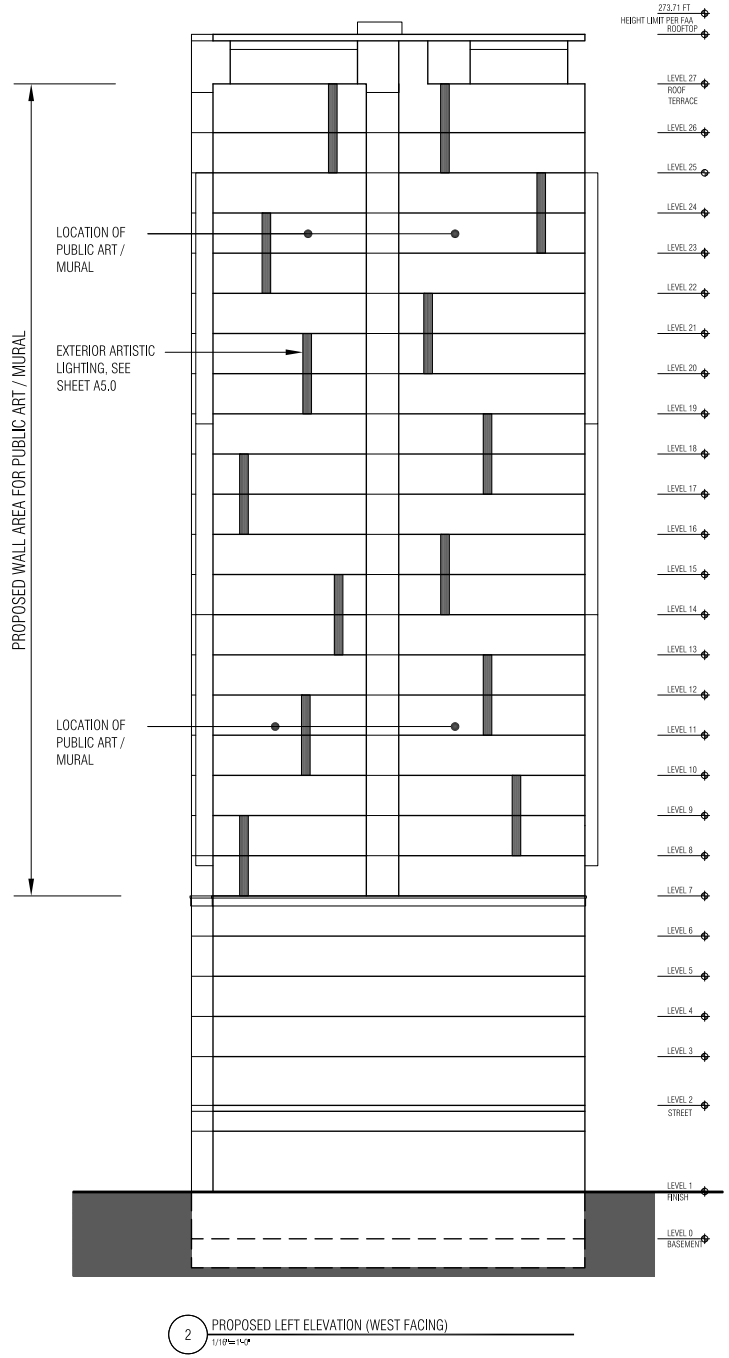


Source: Anderson Architects, December 2021

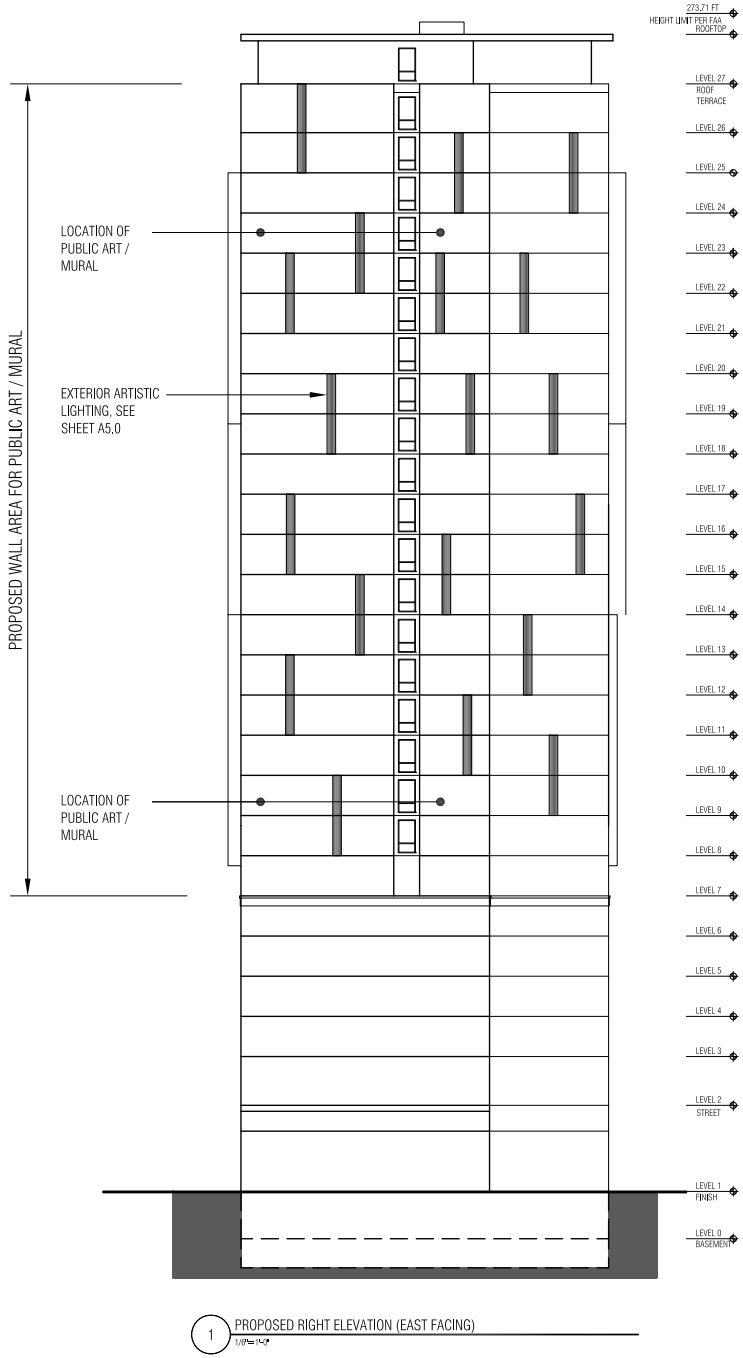
Elevations - Front & Rear

Figure 6a

Eterna Tower
EIR Addendum



2 PROPOSED LEFT ELEVATION (WEST FACING)



1 PROPOSED RIGHT ELEVATION (EAST FACING)

Source: Anderson Architects, December 2021

Elevations - East & West

Eterna Tower
EIR Addendum

Figure
6b

Aerial View Towards Southeast

Aerial View Towards West

Aerial View Towards Northeast

Aerial View Towards South

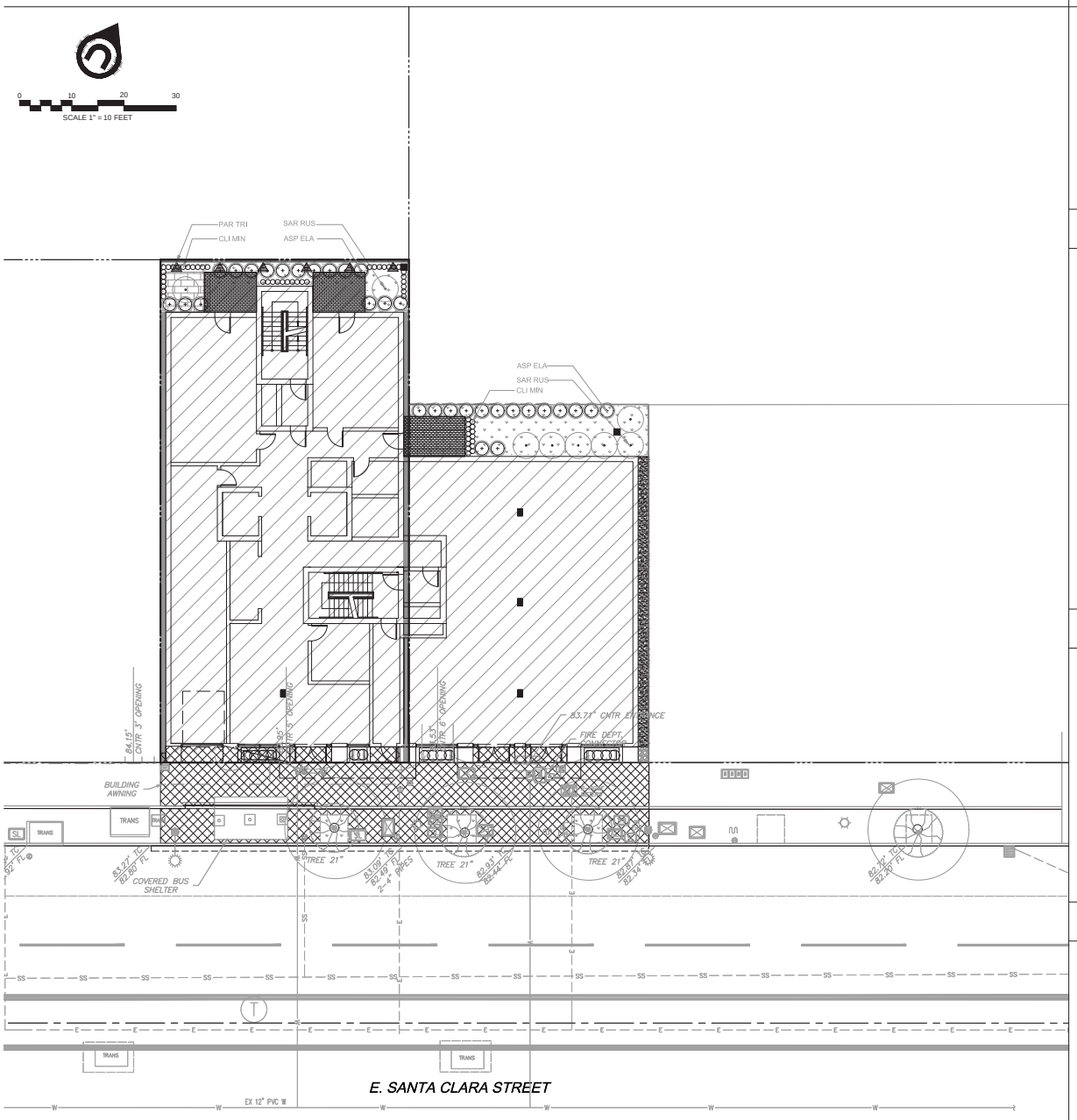
Source: Anderson Architects, December 2021

Renderings

Figure 7

Eterna Tower
EIR Addendum

GROUND LEVEL



TREATMENT NOTES

STANDARD STORMWATER CONTROL NOTES:

- STANDING WATER SHALL NOT REMAIN IN THE TREATMENT MEASURES FOR MORE THAN FIVE DAYS, TO PREVENT MOSQUITO GENERATION. SHOULD ANY MOSQUITO ISSUES ARISE, CONTACT THE SANTA CLARA VALLEY VECTOR CONTROL DISTRICT (DISTRICT). MOSQUITO LARVICIDES SHALL BE APPLIED ONLY WHEN ABSOLUTELY NECESSARY, AS INDICATED BY THE DISTRICT, AND THEN ONLY BY A LICENSED PROFESSIONAL OR CONTRACTOR. CONTACT INFORMATION FOR THE DISTRICT IS PROVIDED BELOW.
- DO NOT USE PESTICIDES OR OTHER CHEMICAL APPLICATIONS TO TREAT DISEASED PLANTS, CONTROL WEEDS OR REMOVED UNWANTED GROWTH. EMPLOY NON-CHEMICAL CONTROLS (BIOLOGICAL, PHYSICAL AND CULTURAL CONTROLS) TO TREAT A PEST PROBLEM. PRUNE PLANTS PROPERLY AND AT THE APPROPRIATE TIME OF YEAR. PROVIDE ADEQUATE IRRIGATION FOR LANDSCAPE PLANTS. DO NOT OVER WATER.

OVERALL SITE SURFACES

FORM #138 - Stormwater Evaluation Form — page 2 of 4

2. AREA DATA

2.a Enter the Project Phase Number (1, 2, 3, etc. or N/A if Not Applicable):			N/A
2.b Total area of site:	018	acres	
2.c Total area of site that will be disturbed:	0.18	acres	

COMPARISON OF IMPERVIOUS AND PERVIOUS AREAS AT PROJECT SITE:

2.d IMPERVIOUS AREAS - IA	Pre-Project Existing IA sq. ft.	Existing IA Retained As-Is[1] sq. ft.	Existing IA Replaced with IA[2] sq. ft.	New IA Created[2] sq. ft.	Total Post Project IA sq. ft.
Site Totals					
Total IA	d.1 7763	d.2 0	d.3 7122	d.4 0	d.5 (d.2+d.3+d.4) 7122
Total New and Replaced IA			d.6 (d.3+d.4) 7122		
Public Street Totals					
Total Public Streets IA[3]	d.7 1411	d.8 1265	d.10 0	d.11 0	d.12 (d.9+d.10+d.11) 1265
Total New and Replaced Public Streets IA			d.13 (d.10+d11) 0		
Total Site and Public Streets IA	d.14 (d.1.+d.8) 9174				d.15 (d.5+d.12) 8407
Percent Replacement of IA in Redevelopment Projects (d.3+d.1) x 100:					d.16 100 %

2.e PERVIOUS AREAS - PA	Pre-Project Existing PA sq. ft.	Total Post Project PA sq. ft.
Total PA[4]	e.1 98	e.2 857
2.f Total Area (IA + PA)	f.1 (d.14 +e.1) 9264	f.2 (d.15 + e.2) 9264

PROJECT SITE INFORMATION TABLE

PROJECT SITE INFORMATION:

1. SOILS TYPE: TBD
2. GROUND WATER DEPTH: TBD
3. NAME OF RECEIVING BODY: GUADALUPE CREEK
4. FLOOD ZONE: ZONE D
5. FLOOD ELEVATION (IF APPLICABLE): N/A

PLAN LEGEND

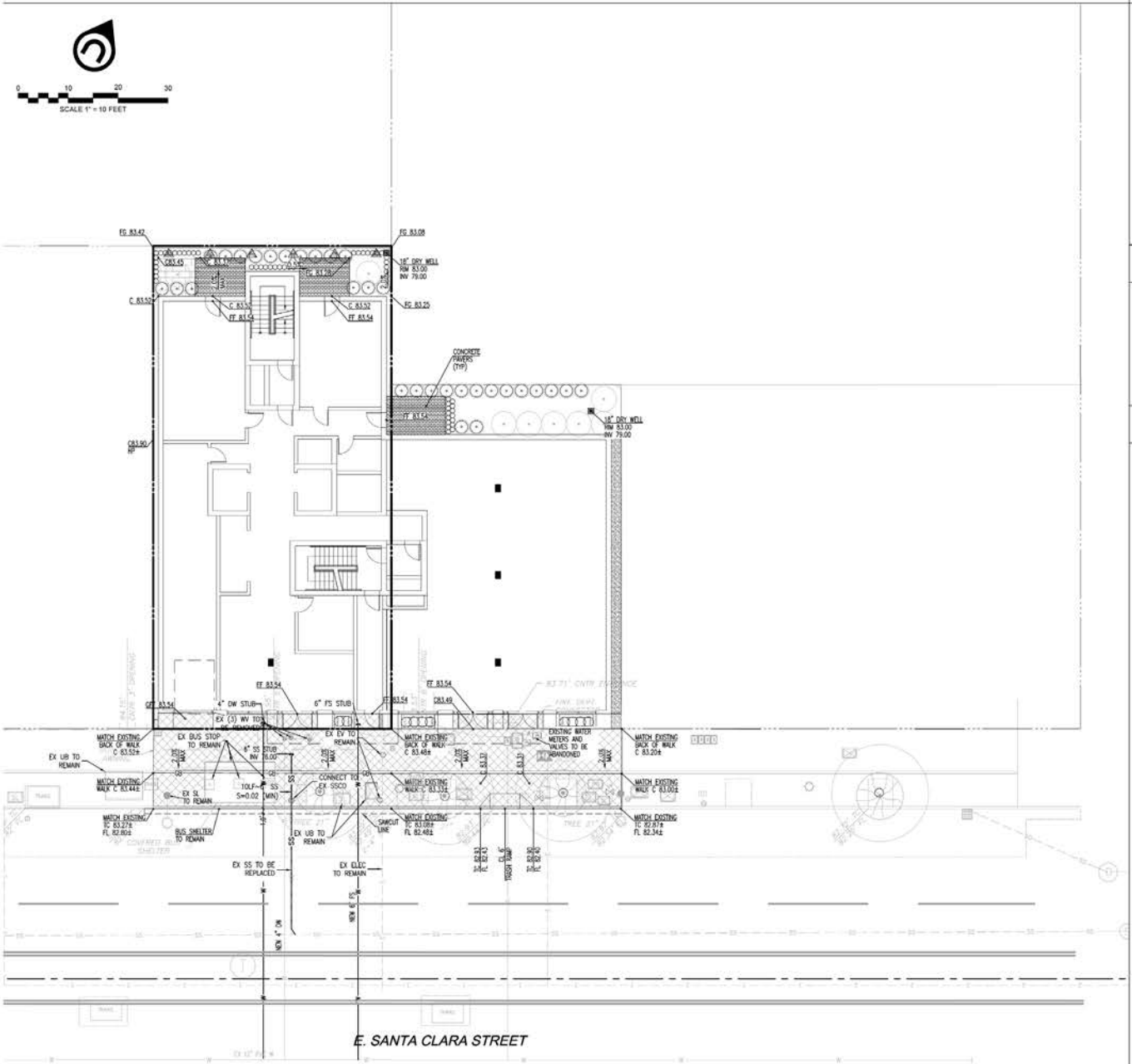
- IMPERVIOUS BUILDING AREA
- CONCRETE AREA
- PUBLIC STREET / SIDEWALK AREA
- PERVIOUS AREA
- CONCRETE PAVER AREA
- PERVIOUS GRAVEL AREA

Source: V&H Engineering, September 2021

Stormwater Control Plan

Eterna Tower
EIR Addendum

Figure
8



LEGEND

EXISTING	(Symbol Size May Vary)	PROPOSED
	Property Boundary	
	Lot Line	
	Easement Line	
	Building Line	
	Grade Break	
	Curb & Gutter	
	Sanitary Sewer Line	
	Water Line	
	Electric Line	
	City Standard Curb Inlet	
	Field Inlet / Flat Grate Inlet	
	Sanitary Sewer Clean Out	
	Water Valve	
	Streetlighting / Utility Box	
	Water Valve	

ABBREVIATIONS

BW	BACK OF WALK	INV	INVERT ELEVATION
CO	CLEAN OUT TO GRADE	MIN	MINIMUM
C	CONCRETE	PL	PROPERTY LINE
DW	DOMESTIC WATER	PV	PAVEMENT
EX	EXISTING	SD	STORM DRAIN
FC	FACE OF CURB	SDMH	STORM DRAIN MANHOLE
FF	FINISH FLOOR	SL	STREET LIGHT
FG	FINISH GRADE	SS	SANITARY SEWER
FS	FIRE SERVICE or FINISH SURFACE	SSCO	SANITARY SEWER CLEAN OUT
GB	GRADE BREAK	TC	TOP OF CURB
HP	HIGH POINT	UB	UTILITY BOX

CSJ GRADING & DRAINAGE NOTES

1. ALL GRADING IS SUBJECT TO OBSERVATION BY THE CITY. PERMITTEE OR REPRESENTATIVE (WHO) NOTIFY THE CITY OF SAN JOSE DEPARTMENT OF PUBLIC WORKS PROJECT INSPECTOR AT LEAST 48 HOURS BEFORE START OF ANY GRADING.

   THE PROJECT INSPECTOR IS _____ VOICEMAIL NO. (408) 975-_____

2. APPROVAL OF THIS PLAN APPLIES ONLY TO (A) THE EXCAVATION, PLACEMENT, AND COMPACTION OF NATURAL EARTH MATERIALS, (B) THE INSTALLATION OF ON-SITE (I.E. PRIVATE PROPERTY) STORM WATER CONVEYANCE AND TREATMENT FACILITIES THAT ARE OUTSIDE OF THE 5-FOOT BUILDING ENVELOPE, AND (C) THE INSTALLATION OF RETAINING STRUCTURES. THIS APPROVAL DOES NOT CONFER ANY RIGHTS OF ENTRY TO EITHER PUBLIC PROPERTY OR THE PRIVATE PROPERTY OF OTHERS. APPROVAL OF THIS PLAN ALSO DOES NOT CONSTITUTE APPROVAL OF ANY IMPROVEMENTS WITH THE EXCEPTION OF THOSE LISTED ABOVE. PROPOSED IMPROVEMENTS, WITH THE EXCEPTION OF THOSE LISTED ABOVE, ARE SUBJECT TO REVIEW AND APPROVAL BY THE RESPONSIBLE AUTHORITIES AND ALL OTHER REQUIRED PERMITS SHALL BE OBTAINED.
3. UNLESS OTHERWISE NOTED ON THE PLAN, ANY DEPICTION OF A RETAINING STRUCTURE ON THIS PLAN SHALL NOT CONSTITUTE APPROVAL FOR CONSTRUCTION OF THE RETAINING STRUCTURE UNLESS A SEPARATE STRUCTURAL REVIEW, BY THE DEPARTMENT OF PUBLIC WORKS IS COMPLETED AND APPROVED.
4. IT SHALL BE THE RESPONSIBILITY OF THE PERMITTEE OR AGENT TO IDENTIFY, LOCATE AND PROTECT ALL UNDERGROUND FACILITIES.
5. THE PERMITTEE OR AGENT SHALL MAINTAIN THE STREETS, SIDEWALKS AND ALL OTHER PUBLIC RIGHTS-OF-WAY IN A CLEAN, SAFE AND USABLE CONDITION. ALL SPILLS OF SOIL, ROCK OR CONSTRUCTION DEBRIS SHALL BE REMOVED FROM THE PUBLICLY OWNED PROPERTY DURING CONSTRUCTION AND UPON COMPLETION OF THE PROJECT. ALL ADJACENT PROPERTY, PRIVATE OR PUBLIC SHALL BE MAINTAINED IN A CLEAN, SAFE AND USABLE CONDITION.
6. ALL GRADING SHALL BE PERFORMED IN SUCH A MANNER AS TO COMPLY WITH THE STANDARDS ESTABLISHED BY THE AIR QUALITY MANAGEMENT DISTRICT FOR AIRBORNE PARTICULATES.
7. THIS PROJECT HAS BEEN DESIGNED TO COMPLY WITH THE FLOOD HAZARD AREA REGULATIONS AS STATED IN CHAPTER 17.08 OF THE SAN JOSE MUNICIPAL CODE.
8. ALL KNOWN WELL LOCATIONS ON THE SITE HAVE BEEN INCLUDED AND SUCH WELLS SHALL BE MAINTAINED OR ABANDONED ACCORDING TO CURRENT REGULATIONS ADMINISTERED BY THE SANTA CLARA VALLEY WATER DISTRICT. CALL (408) 765-2600 EXTENSION 2660 TO ARRANGE FOR DISTRICT OBSERVATION OF ALL WELL ABANDONMENTS.
9. IN THE EVENT THAT HUMAN REMAINS AND/OR CULTURAL MATERIALS ARE FOUND, ALL PROJECT-RELATED CONSTRUCTION SHOULD CEASE WITHIN A 100-FOOT RADIUS. THE CONTRACTOR SHALL, PURSUANT TO SECTION 7050.5 OF THE HEALTH AND SAFETY CODE, AND SECTION 5097.94 OF THE PUBLIC RESOURCES CODE OF THE STATE OF CALIFORNIA, NOTIFY THE SANTA CLARA COUNTY CORONER IMMEDIATELY.
10. THIS PLAN DOES NOT APPROVE THE REMOVAL OF TREES. APPROPRIATE TREE REMOVAL PERMITS AND METHODS OF TREE PRESERVATION SHOULD BE OBTAINED FROM THE CITY'S PLANNING DEPARTMENT AND THE CITY ARBORIST.
11. FOR NON-RESIDENTIAL PROJECTS, ANY NON-HAZARDOUS EXPORT RESULTING FROM PROJECT RELATED EXCAVATION OR LAND CLEARING SHALL BE 100% RECYCLED AND RECYCLED PER CALIFORNIA GREEN BUILDING STANDARDS CODE SECTION 5.408.
12. CIVIL ENGINEER INFORMATION AND STATEMENTS:
    A. THE CIVIL ENGINEER FOR THIS PROJECT IS (NAME AND ADDRESS):
       DAVE VOORHEIS, 1355 E. DUNNE AVE 4270 MORGAN HILL, CA 95037
    B. THIS ROUGH GRADING PLAN HAS BEEN PREPARED UNDER THE DIRECTION OF A LICENSED ENGINEER AND DESIGNED BASED ON THE RECOMMENDATIONS OF THE REFERENCED PROJECT GEOTECHNICAL REPORT.
    C. THE STORMWATER CONVEYANCE SYSTEM HAS BEEN DESIGNED IN ACCORDANCE WITH THE APPROPRIATE BUILDING AND PLUMBING CODES OR HAS BEEN PROVEN TO BE DESIGNED WITH ADEQUATE CAPACITY THROUGH SIGNED AND SEALED HYDRAULIC CALCULATIONS.
13. SOILS ENGINEER INFORMATION AND REQUIREMENTS:
    A. THE SOIL ENGINEER FOR THIS PROJECT IS: (NAME AND ADDRESS)
    B. THE GEOTECHNICAL REPORT FOR THIS PROJECT IS:
    C. ALL GRADING WORK SHALL CONFORM TO THE RECOMMENDATIONS OF THE PROJECT GEOTECHNICAL REPORT AND/OR THE PROJECT SOIL ENGINEER.
    D. ALL GRADING WORK SHALL BE OBSERVED AND APPROVED BY THE SOIL ENGINEER. THE SOIL ENGINEER SHALL BE NOTIFIED AT LEAST 48 HOURS BEFORE BEGINNING ANY GRADING. UNOBSERVED AND/OR UNAPPROVED GRADING WORK SHALL BE REMOVED AND REPLACED UNDER OBSERVATION.
14. A POST CONSTRUCTION "FINAL" REPORT IS REQUIRED BY THE DIRECTOR OF PUBLIC WORKS FROM A CIVIL ENGINEER RETAINED BY THE OWNER TO OBSERVE THE CONSTRUCTION STATING:
    A. "THAT THE CONSTRUCTION CONFORMS TO THE LINES AND GRADES ON THE APPROVED PLANS;" OR
    B. "THAT ALL SIGNIFICANT CHANGES WERE REVIEWED AND APPROVED IN ADVANCE BY THE DEPARTMENT OF PUBLIC WORKS" AND THE CIVIL ENGINEER SHALL SUBMIT A "RECORD DRAWING" PLAN.
15. A POST CONSTRUCTION "FINAL" REPORT IS REQUIRED BY THE DIRECTOR OF PUBLIC WORKS FROM A SOIL ENGINEER, AND ALSO FROM AN ENGINEERING GEOLOGIST IF THE PROJECT IS IN A GEOLOGIC HAZARD ZONE, STATING:
    A. "THAT THE ANTICIPATED CONDITIONS AND MATERIALS AND ACTUAL SITE CONDITIONS AND MATERIALS WERE COMPATIBLE;" AND SUPPLY SUPPORTING DATA, OR
    B. "THAT THE DESIGN WAS MODIFIED TO MEET THE NEW CONDITIONS AND WAS REVIEWED AND APPROVED IN ADVANCE BY THE DEPARTMENT OF PUBLIC WORKS;" AND PROVIDE SUPPORTING DATA FOR THESE STATEMENTS.
16. ACCORDING TO THE CITY'S WASTE WATER ORDINANCE, THE USE OF POTABLE (PIPED OR HYDRANT) WATER FOR BUILDING OR CONSTRUCTION PURPOSES INCLUDING CONSOLIDATION OF BACKFILL OR DUST CONTROL IS PROHIBITED.

    RECLAIMED WATER IS AVAILABLE AT MULTIPLE LOCATIONS ACROSS THE CITY. TO CONFIRM FOR A RECYCLED WATER METER, PLEASE CALL CYLE FROHMAN AT (408) 794-1903.

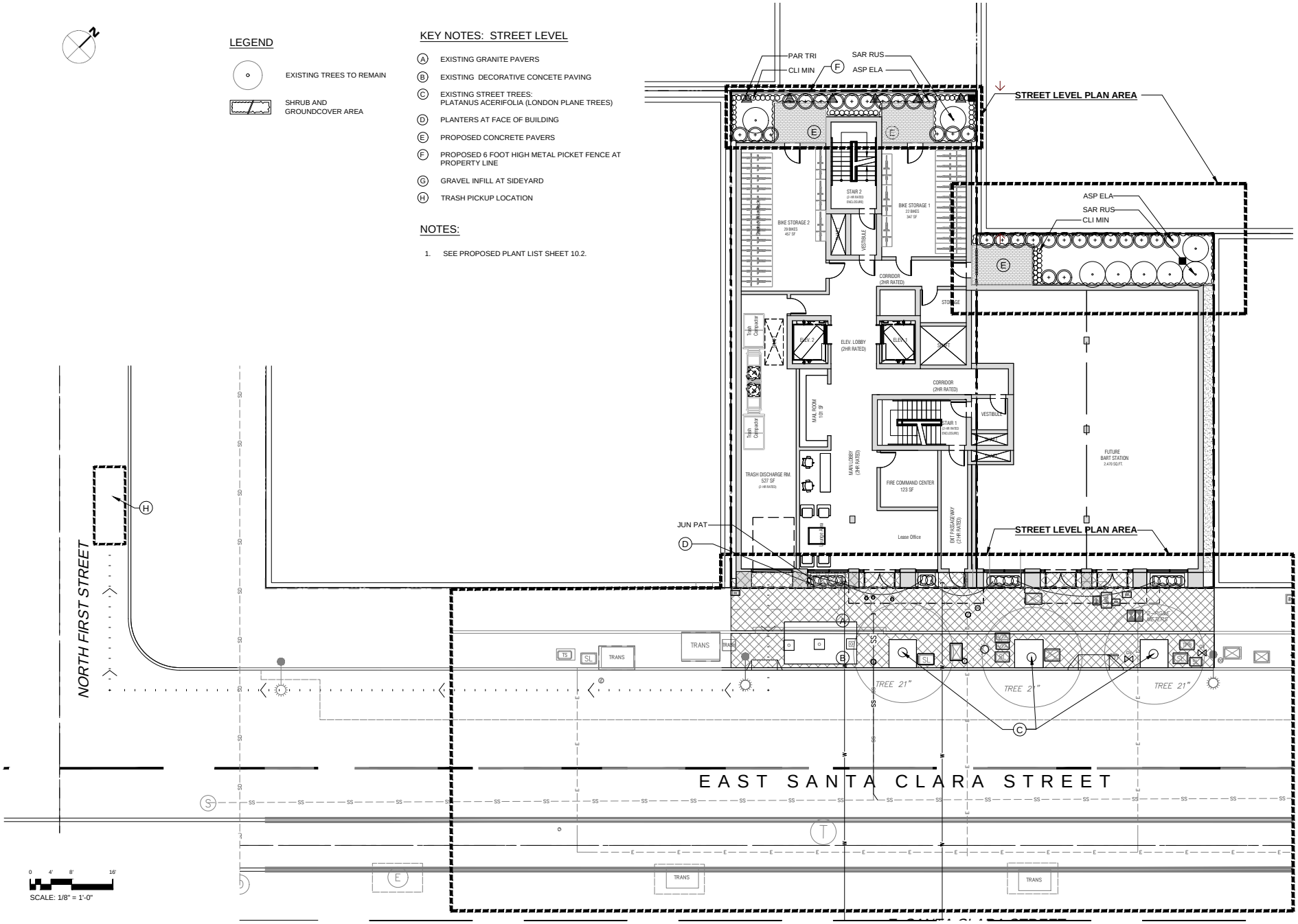
    AN APPLICATION FOR AN EXCEPTION PERMIT TO APPROVE USE OF HYDRANT WATER CAN BE CONSIDERED IN THE PW DEVELOPMENT SERVICES OFFICE. FAX BACK SERVICE IS PROVIDED FOR THIS PERMIT APPLICATION – CONTACT (408) 535-7402.
17. A HAUL ROUTE PERMIT IS REQUIRED FOR ALL PROJECTS MOVING MORE THAN 10,000 C.Y. OF EARTH. THIS GRADING PERMIT IS INVALID WITHOUT THE HAUL ROUTE PERMIT. HAUL ROUTE PERMITS SHOULD BE OBTAINED FROM THE CITY'S TRANSPORTATION DEPARTMENT.
18. GRADING WILL NOT BE ALLOWED BETWEEN OCTOBER 1ST AND APRIL 30TH OF ANY YEAR WITHOUT EROSION CONTROL PLANS AND MEASURES APPROVED BY THE DIRECTOR OF PUBLIC WORKS. STORMWATER POLLUTION PREVENTION MEASURES IN ACCORDANCE WITH CITY SPECIFICATIONS AND WITH THE DOCUMENT "CLEAN BAY BLUEPRINT" SHALL BE IMPLEMENTED THROUGHOUT THE YEAR TO THE SATISFACTION OF THE DIRECTOR OF PUBLIC WORKS.
19. A POST CONSTRUCTION "AS-BUILT" PLAN IS REQUIRED BY THE DIRECTOR OF PUBLIC WORKS FROM A CIVIL OR SOILS ENGINEER RETAINED BY THE OWNER TO PROVIDE THE FINAL HORIZONTAL AND VERTICAL LOCATIONS OF THE IMPROVEMENTS APPROVED WITH THIS PLAN SUCH AS SUBDRAINS, ON-SITE STORM WATER CONVEYANCE AND TREATMENT SYSTEMS, AND ON-SITE RETAINING STRUCTURES.

Source: V&H Engineering, September 2021

Grading and Drainage Plan

Figure 9

Eterna Tower
EIR Addendum

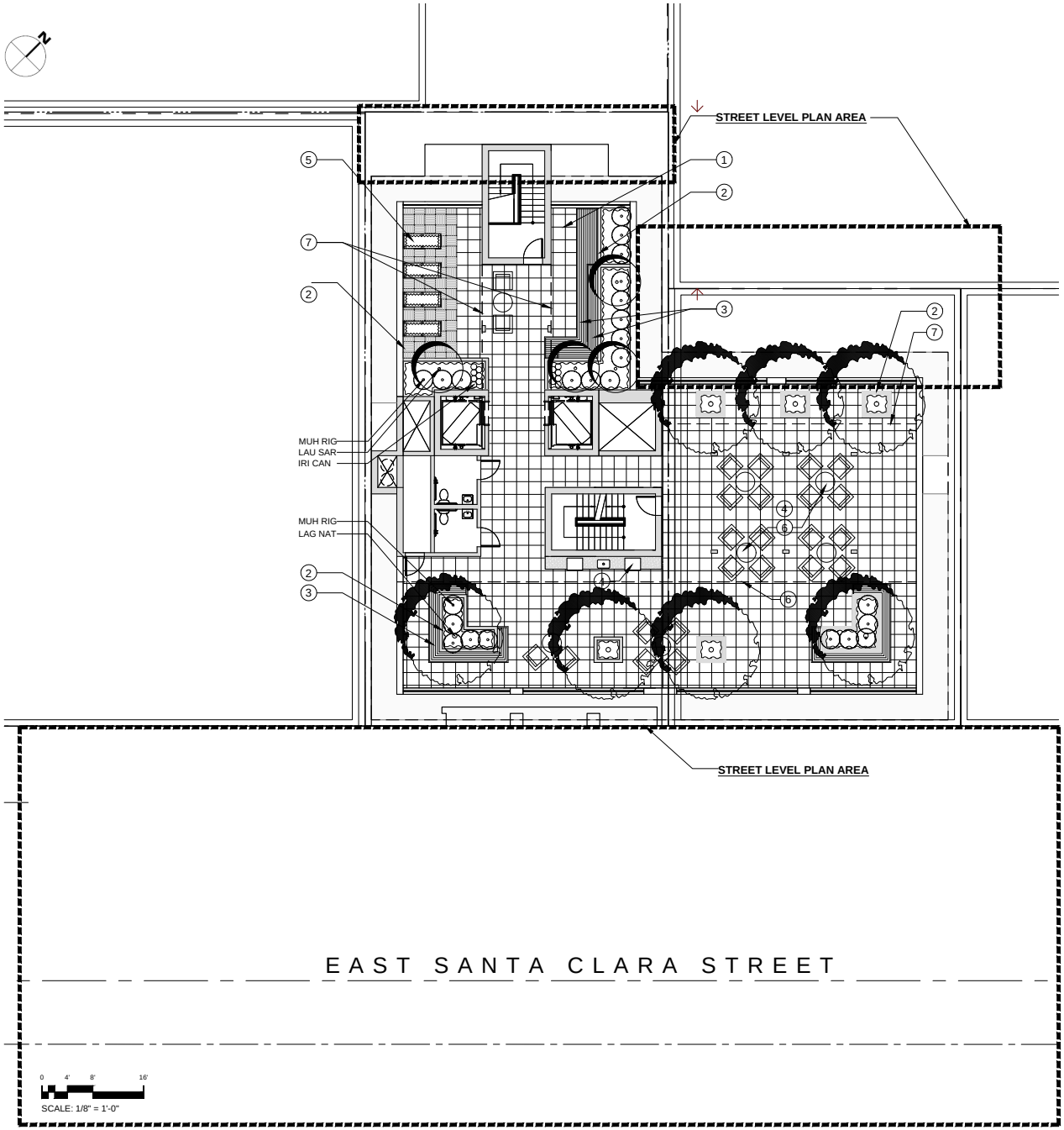


Source: Taniguchi Landscape Architecture, November 2021

Landscape Plan - Street Level

Figure 10a

Eterna Tower
EIR Addendum



LEGEND

PROPOSED TREES

SHRUB AND GROUNDCOVER AREA

KEY NOTES: ROOF TERRACE

1. ROOFTOP CONCRETE PEDESTAL PAVING SYSTEM
2. PLANTER WALLS
3. WOOD "BLEACHER SEATS": ONE OR TWO TIERS
4. BBQ AREA
   COVERED--SEE ARCHITECTURE DRAWINGS
   WITH COUNTERS FOR FOOD PREPARATION INCLUDING GAS GRILL AND SINK.
5. PLANTERS FOR RESIDENT GARDENING WITH WOOD PEDESTAL PAVER SURROUND TO CREATE DECK SURFACE AND DEFINE AREA
6. SITE FURNITURE
7. EDGE OF CANOPY/TRELLIS--SEE ARCHITECTURE DRAWINGS

PROPOSED PLANT LIST

ABBREV.	BOTANICAL NAME	COMMON NAME	SIZE	MISC. NOTES & REQUIREMENTS
TREES				
LAG NAT	Lagerstroemia f. 'Fauriei'	Crape Myrtle (White)	24" box	Stds. matched forms
LAU SAR	Laurus n. 'Saratoga'	Hybrid Laure	24" box	S.L.-No. Whorl. Br.-N. Drp. Br.-Match
SHRUBS				
SAR RUS	Sarcococca ruscifolia	Fragrant sarcococca	5 G.C.	F & B/Br. Gr.
PERENNIALS/BULBS/ANNUALS				
ASP ELA	Aspidistra elatior	Cast-Iron Plant	1 G.C.	
AST FRI	Aster x frikartii	Aster	1 G.C.	
CLI MIN	Clivia miniata	Kaffir Lily	1 G.C.	
IRI CAN	Iris d. 'Canyon Snow'	Pacific Coast Iris Hybrid	1 G.C.	
MUH RIG	Muhlenbergia rigens	Deer Grass		
VINES				
PAR TRI	Parthenocissus tricuspidata	Boston Ivy	5 G.C.	
SEDGE				
JUN PAT	Juncus patens	California Grey Rush	1 G.C.	

PLANT LIST ABBREVIATIONS:

SL	Single main, straight, dominant, leader
Br. Gr.	Branched to ground
F & B	Full dense, bushy, vigorous plants, with young growth closely spaced on branches, no old/woody plants.
No. Whorl. Br.	No closely spaced whirled branches. Select even symmetrical branch distribution
Match	Matched size, form, caliper branching and outline. Select from one lot, one grower, for guaranteed consistency through life of plants. In general, plants within a group or area are to be matched, unless noted otherwise.
N.F.	Narrow upright Form
B.R.	Bare Root
B & B	Balled and Burlap
G.C.	Gallon Can
N. Drp. Br.	No long heavy drooping branches

Source: Taniguchi Landscape Architecture, November 2021

Landscape Plan - Roof

Figure 10b

Eterna Tower
EIR Addendum

Photo 1: North facing view of the existing buildings at 17 and 29 E. Santa Clara Street.

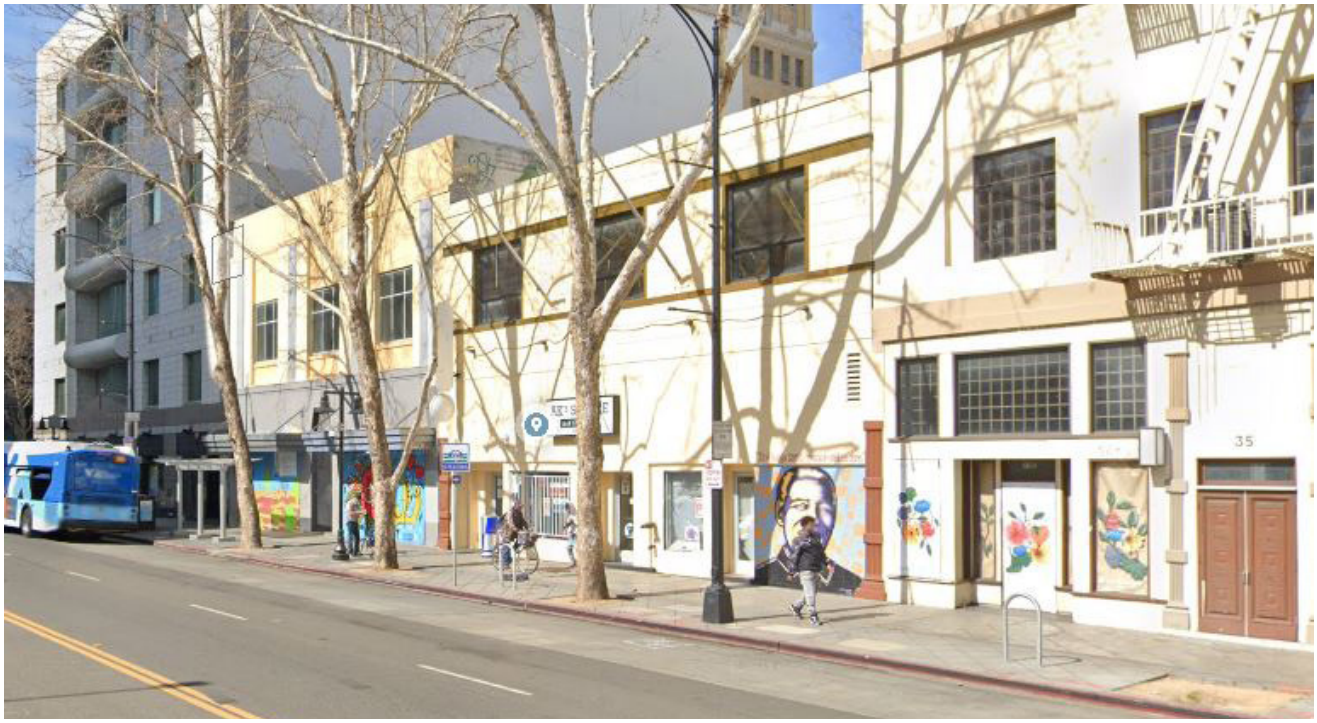


Photo 2: West facing view of the existing buildings at 17 and 29 E. Santa Clara Street.

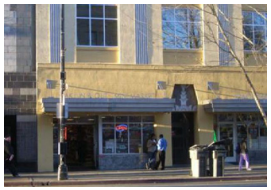
Source: Google, July 2020 and March 2021

Site Photos

Eterna Tower
EIR Addendum

Figure
11

EXISTING SITE ELEVATION
N.T.S.



PROPOSED BUILDING W/ EXISTING STREET ELEVATION CONTEXT
N.T.S.

Source: Anderson Architects, December 2021

Visual Simulations

Figure 12

Eterna Tower
EIR Addendum

Chapter 3. Environmental Evaluation

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The key environmental factors potentially impacted by the project are identified below and discussed within Chapter 3. Environmental Setting and Impacts. Sources used for analysis of environmental effects are cited in the checklist and listed in Chapter 4.

☒ Aesthetics	☒ Agricultural Resources	☒ Air Quality
☒ Biological Resources	☒ Cultural Resources	☒ Energy
☒ Geology/Soils	☒ Greenhouse Gas Emissions	☒ Hazards/Hazardous Materials
☒ Hydrology/Water Quality	☒ Land Use/Planning	☒ Mineral Resources
☒ Noise	☒ Population/Housing	☒ Public Services
☒ Recreation	☒ Transportation	☒ Tribal Cultural Resources
☒ Utilities/Service Systems	☒ Wildfire	☒ Mandatory Findings of Significance

EVALUATION OF ENVIRONMENTAL IMPACTS

The discussion for each environmental subject includes an Environmental subsection and Impact Discussion subsection.

ENVIRONMENTAL SETTING AND IMPACTS

The following section describes the environmental setting and identifies the environmental impacts anticipated from implementation of the proposed project. The criteria provided in the CEQA environmental checklist (Appendix G of the CEQA Statute and Guidelines) was used to identify potentially significant environmental impacts associated with the project. Sources used for the environmental analysis are cited in the checklist and listed in Chapter 4 of this IS/Addendum.

A brief explanation is required for all answers except “No Impact” answers. Answers need to be adequately supported by the information sources cited by the lead agency. A “No Impact” answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A “No Impact” answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on project-specific screening analysis).

The explanation of each issue should identify:

a) The significance criteria or threshold, if any, used to evaluate each question; and
b) The mitigation measure identified, if any, to reduce the impact to less than significance.

All answers must take into account the whole action involved, including offsite as well as onsite, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant.

- A "potentially significant impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "potentially significant impact" entries when the determination is made, an EIR is required.
- A “less than significant with mitigation incorporated” response applies where the incorporation of mitigation measures has reduced an effect from a potentially significant impact to less than significant impact. The lead agency must describe the mitigation measures and briefly explain how they reduce the effect to a less than significant level.

Important Note to the Reader:

In a December 2015 opinion [California Building Industry Association v. Bay Area Air Quality Management District, 62 Cal. 4th 369 (No. S 213478)], the California Supreme Court confirmed that CEQA, with several specific exceptions, is concerned with the impacts of a project on the environment and not the effects that the existing environment may have on a project. Therefore, the evaluation of the significance of project impacts under CEQA in the following sections focuses on impacts of the project on the environment, including whether a project may exacerbate existing environmental hazards.

The City of San José currently has policies that address existing conditions (e.g., air quality, hazards, noise, etc.) that may affect a proposed project, which are also addressed below. This is consistent with one of the primary objectives of CEQA and this document, which is to provide objective information to decision-makers and the public regarding a project as a whole. The CEQA Guidelines and the courts are clear that a CEQA document (e.g., EIR or Initial Study) can include information of interest even if such information is not an “environmental impact” as defined by CEQA.

Therefore, where applicable, in addition to describing the impacts of the project on the environment, this Initial Study discusses “planning considerations” that relate to City policies pertaining to existing conditions. Such examples include, but are not limited to, locating a project near sources of air emissions that can pose a health risk, in a floodplain, in a geologic hazard zone, in a high noise environment, or on/adjacent to sites involving hazardous substances.

A. AESTHETICS

Regulatory Framework

State

State Scenic Highways Program

The State Scenic Highways Program is managed by the California Department of Transportation (Caltrans) and is designed to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. The nearest state-designated scenic highway is State Route 9, located approximately 9.5 miles southwest of the project site in Saratoga. The project site is not located near this designated scenic highway.

Senate Bill 743

SB 743 establishes criteria for determining the significance of transportation impacts using a vehicle miles traveled metric intended to promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses. Specifically, SB 743 requires the replacement of automobile delay—described solely by level of service or similar measures of vehicular capacity or traffic congestion—with VMT as the recommended metric for determining the significance of transportation impacts. The Governor's Office of Planning and Research (OPR) approved the CEQA Guidelines implementing SB 743 on December 28, 2018. Local jurisdictions were required to implement a VMT policy by July 1, 2020. SB 743 did not authorize OPR to set specific VMT impact thresholds, but it did direct OPR to develop guidelines for jurisdictions to utilize. CEQA Guidelines Section 15064.3(b)(1) describes factors that might indicate whether a development project's VMT may be significant. Projects located within 0.50 mile of transit are generally be considered to have a less than significant transportation impact based on OPR guidance.

Local

Outdoor Lighting Policy (City Council Policy 4-3)

The City of San José's Outdoor Lighting Policy (City Council Policy 4-3) and City of San José Interim Lighting Policy Broad Spectrum Lighting for Private Development promote energy efficient outdoor lighting on private development to provide adequate light for nighttime activities while benefiting the continued enjoyment of the night sky and continuing operation of the Lick Observatory by reducing light pollution and sky glow.

City's Scenic Corridors Diagram

The City's General Plan defines scenic vistas in the City of San José as views of and from the Santa Clara Valley, surrounding hillsides, and urban skyline. Scenic urban corridors, such as segments of major highways that provide gateways into the City, can also be defined as scenic resources by the City. The designation of a scenic route applies to routes affording especially aesthetically pleasing views. The project is located northeast of the First Street Gateway, identified on the City General Plan Scenic Corridors Diagram, and would be subject to the Attractive Gateway Policies of the City's General Plan.

Downtown Design Guidelines and Standards

The City Council approved the latest San José Downtown Design Guidelines and Standards on April 23, 2019. The City's Downtown Design Guidelines provide guidance for the form and design of buildings in the Downtown area, their appearance in the larger Cityscape, and their interface with the street level "Public Realm." The Downtown Design Guidelines cover the design review process, site design and context, building massing and architecture, and other components of project design for projects located within the Downtown area.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating aesthetic impacts from development projects. The following policies are applicable to the proposed project.

Envision San José 2040 Relevant Aesthetic Policies	
Policy CD-1.1	Require the highest standards of architecture and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
Policy CD-1.8	Create an attractive street presence with pedestrian-scaled building and landscape elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity through the City.
Policy CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
Policy CD-1.13	Use design review to encourage creative, high-quality, innovative, and distinctive architecture that helps to create unique, vibrant places that are both desirable urban places to live, work, and play and that lead to competitive advantages over other regions.
Policy CD-1.17	Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm. Ensure that garage lighting does not impact adjacent uses, and to the extent feasible, avoid impacts of headlights on adjacent land uses.
Policy CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
Policy CD-1.26	Apply the Historic Preservation Goals and Policies of this Plan to proposals that modify historic resources or include development near historic resources.

Envision San José 2040 Relevant Aesthetic Policies	
Policy CD-2.3	Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate. • Include attractive and interesting pedestrian-oriented streetscape features such as street furniture, pedestrian scale lighting, pedestrian oriented way-finding signage, clocks, fountains, landscaping, and street trees that provide shade, with improvements to sidewalks and other pedestrian ways. • Strongly discourage drive-through services and other commercial uses oriented to occupants of vehicles in pedestrian-oriented areas. Uses that serve the vehicle, such as car washes and service stations, may be considered appropriate in these areas when they do not disrupt pedestrian flow, are not concentrated in one area, do not break up the building mass of the streetscape, are consistent with other policies in this Plan, and are compatible with the planned uses of the area. • Provide pedestrian connections as outlined in the Community Design Connections Goal and Policies. • Locate retail and other active uses at the street level. • Create easily identifiable and accessible building entrances located on street frontages or paseos. • Accommodate the physical needs of elderly populations and persons with disabilities. • Integrate existing or proposed transit stops into project designs.
Policy CD-2.11	Within the Downtown and Urban Village Area Boundaries, consistent with the minimum density requirements of the applicable Land Use / Transportation Diagram designation, avoid the construction of surface parking lots except as an interim use, so that long-term development of the site will result in a cohesive urban form. In these areas, whenever possible, use structured parking, rather than surface parking, to fulfill parking requirements. Encourage the incorporation of alternative uses, such as parks above parking structures.
Policy CD-4.9	For development subject to design review, ensure the design of new or remodeled structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).
Policy CD-6.1	Recognize Downtown as the most vibrant urban area of San José and maximize development potential and overall density within the Downtown.
Policy CD-6.2	Design new development with a scale, quality, and character to strengthen Downtown's status as a major urban center.
Policy CD-6.3	New development within the Downtown Growth Area that is adjacent to existing neighborhoods that are planned for lower intensity development should provide transitions in height, bulk and scale to ensure that the development is compatible with and respects the character of these neighborhoods, as they are designated in the General Plan.
Policy CD-6.4	Design publicly-accessible and welcoming areas, allow easy access and facilitate movement of pedestrians and bicyclists throughout the Downtown, and provide strong physical and visual connections across potential barriers (i.e., roadways and creeks). Promote Downtown as a focal point for community activity (e.g., festivals, parades, etc.) for the entire City.

Envision San José 2040 Relevant Aesthetic Policies	
Policy CD-6.5	Design quality publicly-accessible open spaces at appropriate locations that enhance the pedestrian experience and attract people to the Downtown. Use appropriate design, scale, and edge treatment to define, and create publicly accessible spaces that positively contribute to the character of the area and provide public access to community gathering, recreational, artistic, cultural, or natural amenities.
Policy CD-6.6	Promote iconic architecture and encourage and incorporate innovative, varied, and dynamic design features (e.g., appearance, function, sustainability aspects) into sites, buildings, art, streetscapes, landscapes, and signage to make Downtown visually exciting and to attract residents and visitors.
Policy CD-6.7	Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings taller than 75 feet, to create distinctive silhouettes for the Downtown skyline.
Policy CD-6.8	Recognize Downtown's unique character as the oldest part, the heart of the City, and leverage historic resources to create a unique urban environment there. Respect and respond to on-site and surrounding historic character in proposals for development.
Policy CD-6.9	Recognize Downtown as the hub of the County's transportation system and design buildings and public spaces to connect and maximize use of all types of transit. Design Downtown pedestrian and transit facilities to the highest quality standards to enhance the aesthetic environment and to promote walking, bicycling, and transit use. Design buildings to enhance the pedestrian environment by creating visual interest, fostering active uses, and avoiding prominence of vehicular parking at the street level.
Policy CD-6.10	Design buildings with site, façade, and rooftop locations and facilities to accommodate effective signage. Encourage Downtown businesses and organizations to invest in high quality signs, especially those that enliven the pedestrian experience or enhance the Downtown skyline.
Policy CD-6.11	Maintain Downtown design guidelines and policies adopted by the City to guide development and ensure a high standard of architectural and site design in its center.
Policy CD-8.1	Ensure new development is consistent with specific height limits established within the City's Zoning Ordinance and applied through the zoning designation for properties throughout the City. Land use designations in the Land Use/ Transportation Diagram provide an indication of the typical number of stories.

Existing Setting

The project site is located on two parcels within an urbanized area of San José. The parcels are occupied by two, two-story buildings. The site is located in a mixed commercial and residential area in downtown San José. The project site is bordered by the following land uses:

- North: Mixed-Use (residential, restaurants, office, vocational school, and commercial)
- South: Mixed-Use (residential, restaurants, office, and commercial), medical offices, East Santa Clara Street
- East: Mixed-Use (residential, restaurants, office, and commercial), North Second Street
- West: Mixed-Use (residential, restaurants, office, and commercial), North First Street

Photographs of the property are presented in Figure 11, and an aerial of the project area is provided in Figure 3. The site is fully developed with buildings and does not contain any landscaping. Surrounding

buildings range from two to 14 stories in height. Street trees are located along the site frontage on East Santa Clara Street.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
1. AESTHETICS. Except as provided in Public Resources Code Section 21099, would the project:						
a) Have a substantial adverse effect on a scenic vista?				X		1, 2, 3
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				X		1, 2
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?				X		1, 2
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?				X		1, 2, 3

Explanation

The following discussion addresses the proposed changes to the visual setting of the project area as a result of the proposed project, as well as factors that are part of the community's assessment of the aesthetic values of a project design, consistent with the assumptions in the Downtown Strategy 2040 EIR. As described above under Regulatory Framework, SB 743 exempts residential projects located on infill sites within a Transit Priority Area from the analysis for aesthetic impacts. However, the following discussion is provided to meet the City's requirements.

As discussed below, the proposed project would not result in a new or greater impact on aesthetics than previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. Most of downtown San José is relatively flat topographically and prominent views, other than those from taller buildings, are limited. The existing two-story buildings on the site afford minimal views due to the surrounding existing built environment that includes mid or high-rise buildings on most sides. Several buildings located in the immediate vicinity of the project site are over ten-stories in height. The project is located northeast of the First Street Gateway, identified on the City General Plan Scenic Corridors Diagram, and would be required to adhere to the Attractive Gateway Policies of the General Plan.

The existing buildings are visible from adjacent public streets, including East Santa Clara Street and portions of First and Second Streets. The proposed residential tower would be visible from locations in the vicinity of the project site. Visual simulations of the proposed project from East Santa Clara Street are presented in Figure 12. As shown in Figure 12, the proposed residential tower would be visible to those traveling along East Santa Clara Street. The project is located in the Downtown Core, where high-rise buildings contribute to the developed downtown skyline, and would be consistent with policies from the 2040 General Plan, including Policy CD-6.7. In summary, the project would not have a substantial adverse effect on a scenic vista.

b) **Same Impact as Approved Project**. The project site is not visible from any state-designated scenic routes, the nearest of which is Highway 9 located several miles away near Saratoga. The project site is not visible from Highway 9 and, therefore, would not impact scenic resources within a state-designated scenic highway. The project does not propose removal of any existing trees.

c) **Same Impact as Approved Project**. The project site is located on a developed parcel within urbanized downtown San José. The project would alter the existing visual character of the site and its immediate surroundings by introducing a new 26-story building onto a site that is currently occupied by two, two-story buildings. The building elevations (cross-section) is presented in Figure 6. The height of the proposed building is just over 273 feet.

Conceptual renderings were prepared for the project, showing the proposed development from aerial perspectives, as presented in Figure 7. The project would alter the existing public views of the site from East Santa Clara Street and other streets in the vicinity of the project. Other public views would be more distant and less noticeable.

Views from Public Viewpoints

The change in visual character from the public vantage point East Santa Clara Street is presented in Figure 12. As shown in the visual simulation, the project would introduce a building tower above the existing streetscape (to a height of approximately 273 feet). Although the project would substantially increase the density of development on the site, it is consistent with the urban concepts and strategies identified in the Downtown Strategy 2040 and would contribute to the developed downtown skyline, consistent with General Plan Policy CD-6.7.

Shade Effects

A Shade Simulation was prepared for the project by Anderson Architects and is presented in Figure 13, showing the increased shadows attributable to the proposed project. The results show that the proposed tower would not result in a 10 percent increase in shadows at St. James Park (i.e., the proposed tower would affect less than 29,620 square feet of the total 296,620 square foot St. James Park), located about 600 feet north of the project site. As shown in Figure 13, shadows from the proposed building appear to affect only a small portion of the southeast corner of the park. See Section K, Land Use and Planning, for additional discussion of shade effects of the project.

Conclusion

In summary, the proposed project is consistent with the existing DC-Primary Commercial zoning and General Plan designation for the project site. The proposed project would be required to 1) conform to the City's Design Guidelines, and 2) undergo design review to ensure the scale and mass are compatible with surrounding development. By adhering to these requirements, the project would not substantially degrade the existing visual character or quality of the site and its surroundings within this urbanized area.

d) **Same Impact as Approved Project**. Sources of nighttime light from the proposed residential tower would include external lights, security lights, and internal building lights. Projects within the Downtown Core are exempt from City Policy 4-3, Outdoor Lighting on Private Developments. Lighting would be designed and managed consistent with Building Code regulations and adopted City policies to control the amount of light spilling onto streets and sidewalks, adjacent properties, and to protect the night sky. Final lighting plans, including light brightness, intensity and shielding, would be reviewed subsequent to permit approval.

The proposed exterior materials of the building would generally consist of non-reflective glass and building materials to minimize glare, consistent with the relevant design guidelines and standards for downtown. It is not anticipated that glare from the glass on the exterior of the proposed building will adversely affect nearby uses or vehicles traveling on surrounding roadways.

The General Plan EIR concluded that new development and redevelopment allowed under the General Plan would result in new sources of nighttime light and daytime glare, but that implementation of existing regulations, General Plan policies, and provisions of other adopted plans would avoid substantial light and glare impacts. The proposed project would implement existing regulations and policies as identified in the General Plan EIR. Therefore, the project would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.

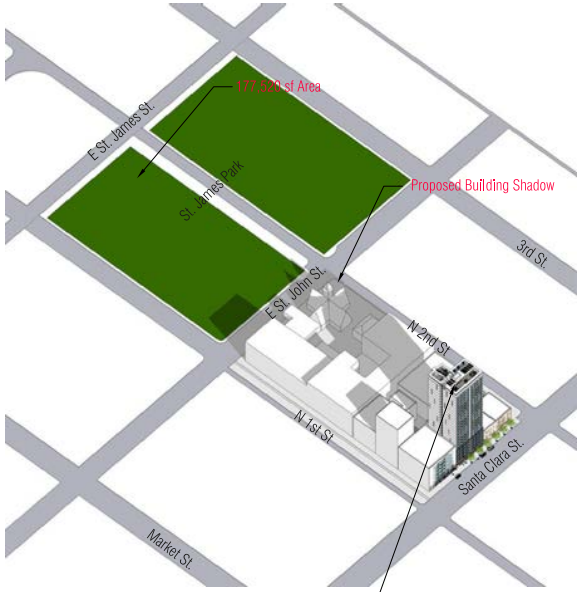
Aesthetics Chapter Conclusion

The Downtown Strategy 2040 EIR found that while new development and redevelopment would alter the appearance of the downtown area of the City of San José, the implementation of the Downtown Strategy 2040 and applicable General Plan policies would avoid substantial degradation of the existing visual character or quality of the City and its surroundings on local, downtown, and city-wide areas.

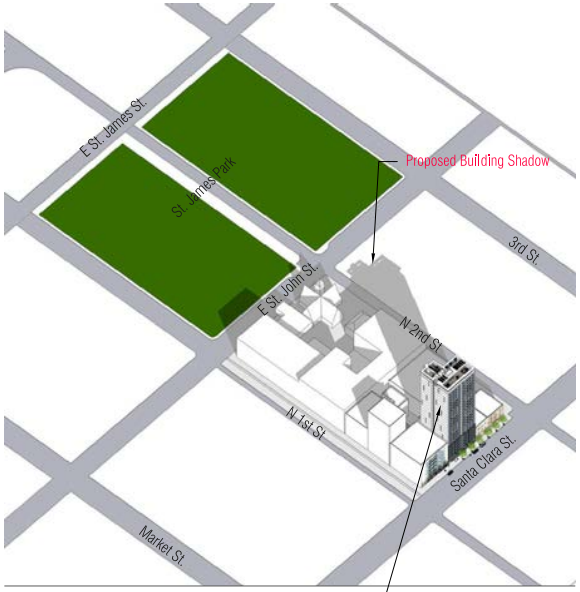
The project would not significantly impact designated scenic resources and scenic corridors. Compliance with adopted General Plan policies, the Downtown Strategy 2040, the Downtown Design Guidelines, and the San José Downtown Historic Design Guidelines would ensure that the project would not degrade the character of the existing community. New lighting would be comparable to ambient light levels in the immediate area, and appropriate building materials, as prescribed by the City, would be used to avoid impacts from glare. The project would have a less than significant impact on aesthetics and would not result in new or more severe aesthetic impacts than identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the VTA BART Silicon Valley - Phase II Extension Project (BART Extension Project). The Supplemental Environmental Impact

Statement/Subsequent Environmental Impact Report (SEIS/SEIR) for the BART Extension Project identified potential aesthetics impacts and mitigation related to the removal of trees to make way for the railway extension (AES-CNST-A: Replace Trees) and new sources of building glare (AES-A: Minimize Light and Glare). Construction of the proposed Eterna Towers project would not require the removal of any trees. As discussed above, the proposed project would be built using appropriate building materials to avoid impacts from glare. As a result, the proposed project would not result in new significant impacts to aesthetics, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact on aesthetics and would not result in new or more severe aesthetic impacts than identified in the SEIS/SEIR for the BART Extension Project.



DECEMBER 21ST AT 11 PM (0% COVERAGE)



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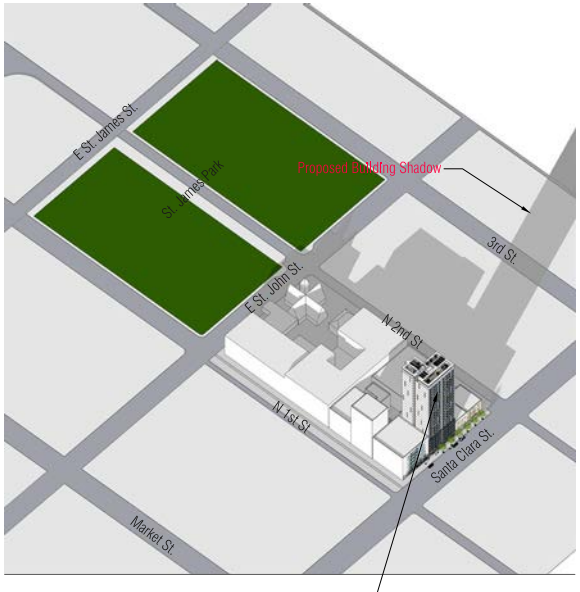

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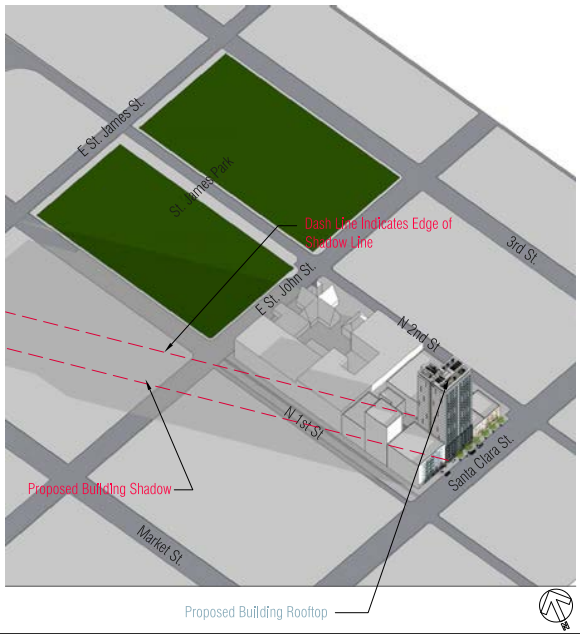
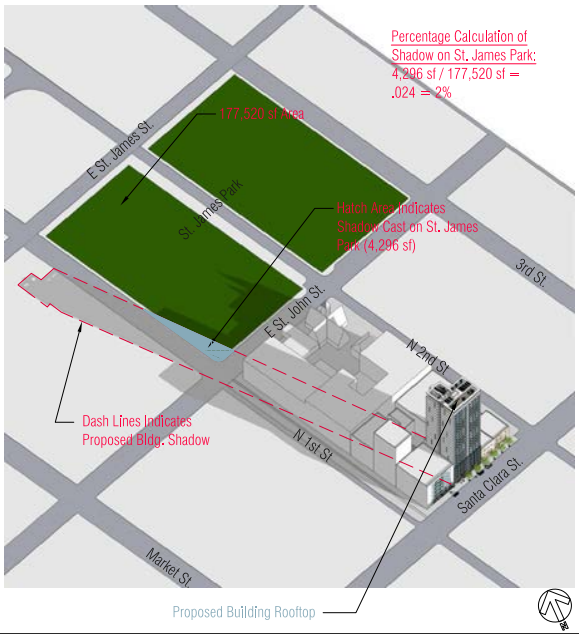
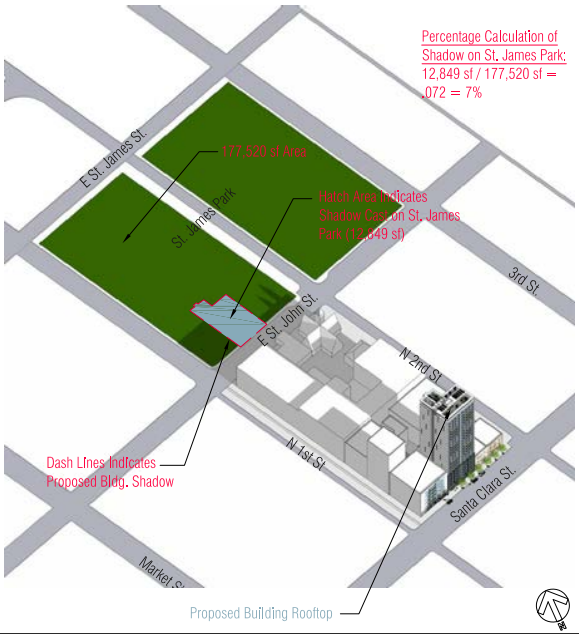


DECEMBER 21ST AT 8 AM (0% COVERAGE)



DECEMBER 21ST AT 9 AM (2% COVERAGE)



DECEMBER 21ST AT 10 AM (7% COVERAGE)

Source: Anderson Architects, May 2022

Shade Simulations

Eterna Tower
EIR Addendum

Figure
13

B. AGRICULTURAL AND FORESTRY RESOURCES

Regulatory Framework

State

California Land Conservation Act

The Williamson Act, officially designated as the California Land Conservation Act of 1965, enables local governments to enter into contracts with private landowners, for the purpose of restricting specific parcels of land to agricultural or related open space uses. In return, landowners receive lower property tax assessments that are based on farming and open space as opposed to full market value. Regulations and rules regarding implementation of Williamson Act contracts are established by local participating cities and counties, as guided by the Williamson Act.

Land Evaluation and Site Assessment

The California Agricultural Land Evaluation and Site Assessment (LESA) was developed by the California Department of Conservation to provide a standardized point-based approach for the rating of relative importance of agricultural land. The LESA model ensures that an optional methodology is available for lead agencies to determine if a project will result in potentially significant effects on the environment as a result of agricultural land conversion. The LESA model is based on specific measurable features, including project size, soil quality, surrounding agricultural and/or protected resource lands, and water resource availability, which are weighted, rated and combined to provide a numeric score. The score serves as the basis for making a determination of potential significance for a project.

Farmland Mapping and Monitoring Program

The California Department of Conservation prepares and maintains farmland map data for Counties throughout the state, including for Santa Clara County, through the Farmland Mapping and Monitoring Program (FMMP). The FMMP produces statistical data and maps for the purpose of analyzing potential impacts on agricultural resources. The FMMP is designed to regulate the conversion of agricultural land to permanent non-agricultural uses. The FMMP contains a rating system based on soil quality and irrigation status, with the best quality land being designated as “Prime Farmland”. Maps are updated every two years using computer mapping, aerial photography, public review, and field reconnaissance. The FMMP for Santa Clara County has data from 1984 to the present day, including historical land use conversion, PDF maps, and GIS data.

Local

General Plan

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating agricultural impacts from development projects. The following policies are applicable to the proposed project.

Envision San José 2040 Relevant Agricultural Resources Policies	
Policy LU-12.3	Protect and preserve the remaining farmlands within San José's sphere of influence that are not planned for urbanization in the timeframe of the Envision General Plan through the following means: • Limit residential uses in agricultural areas to those which are incidental to agriculture. • Restrict and discourage subdivision of agricultural lands. Encourage contractual protection for agricultural lands, such as Williamson Act contracts, agricultural conservation easements, and transfers of development rights. • Prohibit land uses within or adjacent to agricultural lands that would compromise the viability of these lands for agricultural uses. • Strictly maintain the Urban Growth Boundary in accordance with other goals and policies in this Plan.
Policy LU-12.4	Preserve agricultural lands and prime soils in non-urban areas in order to retain the aquifer recharge capacity of these lands.

Existing Setting

CEQA requires the evaluation of agricultural and forest/timber resources where they are present. The developed infill project site does not contain any agricultural or forest/timber resources.

In California, agricultural land is given consideration under CEQA. According to Public Resources Code §21060.1, "agricultural land" is identified as prime farmland, farmland of statewide importance, or unique farmland, as defined by the U.S. Department of Agriculture land inventory and monitoring criteria, as modified for California. CEQA also requires consideration of impacts on lands that are under Williamson Act contracts. The project area is identified as "Urban and Built-Up Land" on the 2016 Santa Clara County Important Farmland Map (California Department of Conservation).

The site does not contain any forest land as defined in Public Resources Code section 12220(g), timberland as defined by Public Resources Code section 4526, or property zoned for Timberland Production as defined by Government Code section 51104(g).

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
2. AGRICULTURAL AND FORESTRY RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:						

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X		4
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X		2
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?				X		2
d) Result in the loss of forest land or conversion of forest land to non-forest use?				X		2
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?				X		2

Explanation

As discussed below, the proposed project would not result in a new or greater impact on agriculture and forestry resources than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The project site is an infill property and designated as Urban and Built-Up Land on the Important Farmlands Map for Santa Clara County and does not contain any prime farmland, unique farmland, or farmland of statewide importance. The project would not affect agricultural land. The impact would be the same as the approved project.

b) **Same Impact as Approved Project**. The project is proposed on a developed infill property, is not zoned for agricultural use, and does not contain lands under Williamson Act contract; therefore, no conflicts with agricultural uses would occur.

c) **Same Impact as Approved Project**. The project would not impact forest resources since the site does not contain any forest land as defined in Public Resources Code section 12220(g), timberland as defined by Public Resources Code Section 4526, or property zoned for Timberland Production as defined by Government Code section 51104(g).

d) **Same Impact as Approved Project**. See c) above. No other changes to the environment would occur from the project that would result in the loss of forest land or conversion of forest land to non-forest uses.

e) **Same Impact as Approved Project**. As per the discussion above, the project would not involve changes in the existing environment which, due to their location or nature, could result in conversion of farmland or forest land, since none are present on this infill property.

Agriculture and Forest Resources Chapter Conclusion

The proposed project would not have an impact on agricultural or timber resources. The project would not result in new or more significant agricultural impacts beyond those in the Downtown Strategy 2040 EIR, since none were identified.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project did not identify any potentially significant impacts related to agricultural or timber resources. As a result, the proposed project would not result in new significant impacts to agriculture and timber resources, compared to what was analyzed in the SEIS/SEIR. The project would have a no impact on agriculture and timber resources and would not result in new or more severe agriculture and timber resources impacts than identified in the SEIS/SEIR for the BART Extension Project.

C. AIR QUALITY

An air quality assessment was prepared for the project by Illingworth & Rodkin, Inc. (updated January 13, 2022). This report is included as Appendix A.

Regulatory Framework

Federal

Federal Clean Air Act and United States Environmental Protection Agency

The Federal Clean Air Act (CAA) authorized the establishment of federal air quality standards and set deadlines for their attainment. The CAA identifies specific emission reduction goals, requires both a demonstration of reasonable further progress and attainment, and incorporates more stringent sanctions for failure to meet interim milestones. The U.S. EPA is the federal agency charged with administering CAA and other air quality-related legislation. The CAA of 1970, as amended, establishes air quality standards for several pollutants.

The United States Environmental Protection Agency (U.S. EPA) administers the National Ambient Air Quality Standards (NAAQS) under the Federal Clean Air Act. The U.S. EPA sets the NAAQS and determines if areas meet those standards. Violations of ambient air quality standards are based on air pollutant monitoring data and judged for each air pollutant. Areas that do not violate ambient air quality standards are considered to have attained the standard. The U.S. EPA has classified the region as a nonattainment area for the 8-hour O_3 standard and the 24-hour $PM_{2.5}$ standard. The Bay Area has met the CO standards for over a decade and is classified as an attainment area by the U.S. EPA. The U.S. EPA has deemed the region as attainment/unclassified for all other air pollutants, which include PM_{10}. At the State level, the Bay Area is considered nonattainment for ozone, PM_{10} and $PM_{2.5}$.

State

California Clean Air Act

The Federal Clean Air Act (CAA) allows California to seek a waiver of the federal preemption that prohibits states and local jurisdictions from enacting emission standards and other emission-related requirements for new motor vehicles and engines (CAA section 209(a)). The California Air Resources Board (CARB) serves as the representative of California in filing waiver requests with U.S. EPA. After California files a written request for a waiver, U.S. EPA will publish a notice for a public hearing and submission of comments in the *Federal Register*. After consideration of comments received, the Administrator of U.S. EPA will issue a written determination on California's request, which is also published in the *Federal Register*.

California Air Resources Board

The BAAQMD is primarily responsible for assuring that the federal and state ambient air quality standards for criteria pollutants are attained and maintained in the Bay Area. The BAAQMD's May 2017 CEQA Air Quality Guidelines update the 2010 CEQA Air Quality Guidelines, addressing the California Supreme Court's 2015 opinion in the *California Building Industry Association vs. Bay Area Air Quality Management District* court case.

Diesel Risk Reduction Plan

In September 2000, CARB adopted the Diesel Risk Reduction Plan, which recommended many control measures to reduce the risks associated with diesel PM and set Diesel PM reduction goals of 75 percent by 2010 and 85 percent by 2020. The Diesel Risk Reduction Plan includes various measures designed to reduce the localized risks associated with activities that expose individuals to diesel PM emissions, including construction activities.

Regional and Local

Bay Area Air Quality Management District

The BAAQMD is primarily responsible for assuring that the federal and state ambient air quality standards for criteria pollutants are attained and maintained in the Bay Area. The BAAQMD's May 2017 CEQA Air Quality Guidelines update the 2010 CEQA Air Quality Guidelines, addressing the California Supreme Court's 2015 opinion in the *California Building Industry Association vs. Bay Area Air Quality Management District* court case.

In an effort to attain and maintain federal and state ambient air quality standards, the BAAQMD establishes thresholds of significance for construction and operational period emissions for criteria pollutants and their precursors, which are summarized in Table 1 in the impact discussion below.

2017 Bay Area Clean Air Plan

The BAAQMD, along with other regional agencies such as the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC), develop plans to reduce air pollutant emissions. The most recent clean air plan is the *Bay Area 2017 Clean Air Plan: Spare the Air, Cool the Climate* (2017 CAP), which was adopted by BAAQMD in April 2017. This is an update to the 2010 CAP, and centers on protecting public health and climate. The 2017 CAP identifies a broad range of control measures. These control measures include specific actions to reduce emissions of air and climate pollutants from the full range of emission sources and is based on the following four key priorities:

- Reduce emissions of criteria air pollutants and toxic air contaminants from all key sources.
- Reduce emissions of "super-GHGs" such as methane, black carbon, and fluorinated gases.
- Decrease demand for fossil fuels (gasoline, diesel, and natural gas).
- Decarbonize our energy system.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating air quality impacts from development projects. The following policies are applicable to the proposed project.

Envision San José 2040 Relevant Air Quality Policies	
Policy MS-10.1	Assess projected air emissions from new development in conformance with the BAAQMD CEQA Guidelines and relative to state and federal standards. Identify and implement air emissions reduction measures.

Envision San José 2040 Relevant Air Quality Policies	
Policy MS-10.2	Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's Clean Air Plan and State law.
Policy MS-11.1	Require completion of air quality modeling for sensitive land uses such as new residential developments that are located near sources of pollution such as freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs or be located an adequate distance from sources of toxic air contaminants (TACs) to avoid significant risks to health and safety.
Policy MS-11.2	For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.
Policy MS-11.5	Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.
Policy MS-13.1	Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.
Policy CD-3.3	Within new development, create and maintain a pedestrian-friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.

Existing Setting

Air Pollutants and Contaminants

Multiple federal and state standards govern air pollution to regulate and mitigate health impacts. At the federal level, there are six criteria pollutants for which National Ambient Air Quality Standards (NAAQS) have been established: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), suspended particulate matter (PM: $PM_{2.5}$ and PM_{10}), and sulfur dioxide (SO_2). California sets standards similar to the NAAQS as California Ambient Air Quality Standards (CAAQS). Note that California includes pollutants or contaminants that are specific to certain industries and not associated with this project. These include hydrogen sulfide and vinyl chloride.

Ozone. Ozone is a secondary air pollutant produced in the atmosphere through a complex series of photochemical reactions involving reactive organic gases (ROG) and oxides of nitrogen (NO_X). The main sources of ROG and NO_X, often referred to as ozone precursors, are combustion processes (including combustion in motor vehicle engines) and the evaporation of solvents, paints, and fuels. In the Bay Area, automobiles are the single largest source of ozone precursors. Ozone is referred to as a regional air pollutant because its precursors are transported and diffused by wind concurrently with ozone production through the photochemical reaction process. Ozone causes eye irritation, airway

constriction, shortness of breath, and can aggravate existing respiratory diseases such as asthma, bronchitis, and emphysema.

Carbon Monoxide. Carbon monoxide is an odorless, colorless gas usually formed as the result of the incomplete combustion of fuels. The single largest source of CO is motor vehicles. While CO transport is limited, it disperses with distance from the source under normal meteorological conditions. However, under certain extreme meteorological conditions, CO concentrations near congested roadways or intersections may reach unhealthful levels that adversely affect local sensitive receptors (e.g., residents, schoolchildren, the elderly, hospital patients, etc.). Typically, high CO concentrations are associated with roadways or intersections operating at unacceptable levels of service (LOS) or with extremely high traffic volumes. Exposure to high concentrations of CO reduces the oxygen-carrying capacity of the blood and can cause headaches, nausea, dizziness, fatigue, impair central nervous system function, and induce angina (chest pain) in persons with serious heart disease. Very high levels of CO can be fatal.

Nitrogen Dioxide. Nitrogen Dioxide is a reddish-brown gas that is a byproduct of combustion processes. Automobiles and industrial operations are the main sources of NO_2. Aside from its contribution to ozone formation, NO_2 also contribute to other pollution problems, including a high concentration of fine particulate matter, poor visibility, and acid deposition. NO_2 may be visible as a coloring component on high pollution days, especially in conjunction with high ozone levels. NO_2 decreases lung function and may reduce resistance to infection. On January 22, 2010, the U.S. EPA strengthened the health-based NAAQS for NO_2.

Sulfur Dioxide. Sulfur dioxide is a colorless, irritating gas formed primarily from the incomplete combustion of fuels containing sulfur. Industrial facilities also contribute to gaseous SO_2 levels in the region. SO_2 irritates the respiratory tract, can injure lung tissue when combined with fine particulate matter and reduces visibility and the level of sunlight.

Particulate Matter. Particulate matter is the term used for a mixture of solid particles and liquid droplets found in the air. Coarse particles are those that are larger than 2.5 microns but smaller than 10 microns (PM_{10}). $PM_{2.5}$ refers to fine suspended particulate matter with an aerodynamic diameter of 2.5 microns or less that is not readily filtered out by the lungs. Nitrates, sulfates, dust, and combustion particulates are major components of PM_{10} and $PM_{2.5}$. These small particles can be directly emitted into the atmosphere as by-products of fuel combustion, through abrasions, such as tire or brake lining wear, or through fugitive dust (wind or mechanical erosion of soil). They can also be formed in the atmosphere through chemical reactions. Particulates may transport carcinogens and other toxic compounds that adhere to the particle surfaces and can enter the human body through the lungs.

Lead. Lead is a metal found naturally in the environment as well as in manufactured products. The major sources of lead emissions have historically been mobile and industrial. As a result of the phase-out of leaded gasoline, metal processing is currently the primary source of lead emissions. The highest levels of lead in the air are generally found near lead smelters. Other stationary sources are waste incinerators, utilities, and lead-acid battery manufacturers. Over 20 years ago, mobile sources were the main contributor to ambient lead concentrations in the air. In the early 1970s, the U.S. EPA established national regulations to gradually reduce the lead content in gasoline. In 1975, unleaded gasoline was introduced for motor vehicles equipped with catalytic converters. The EPA banned the use of leaded gasoline in highway vehicles in December 1995. As a result of the EPA's regulatory efforts to remove lead from gasoline, emissions of lead from the transportation sector and lead levels in the air decreased dramatically.

Air Pollutants of Concern in the Bay Area

High ozone levels are caused by the cumulative emissions of ROG and NO_X. These precursor pollutants react under certain meteorological conditions to form high ozone levels. Controlling the emissions of these precursor pollutants is the focus of the Bay Area's attempts to reduce ozone levels. The highest ozone levels in the Bay Area occur in the eastern and southern inland valleys that are downwind of air pollutant sources. High ozone levels aggravate respiratory and cardiovascular diseases, reduce lung function, and increase coughing and chest discomfort.

Particulate matter is another problematic air pollutant of the Bay Area. Particulate matter is assessed and measured in terms of respirable particulate matter (PM_{10}) and fine particulate matter ($PM_{2.5}$). Elevated concentrations of PM_{10} and $PM_{2.5}$ are the result of both region-wide (or cumulative) emissions and localized emissions. High particulate matter levels aggravate respiratory and cardiovascular diseases, reduce lung function, increase mortality (e.g., lung cancer), and result in reduced lung function growth in children.

Toxic Air Contaminants

In addition to the criteria pollutants discussed above, toxic air contaminants (TACs) are another group of pollutants of concern. TACs are injurious in small quantities and are regulated by the EPA and the California Air Resources Board (CARB). Some examples of TACs include benzene, butadiene, formaldehyde, and hydrogen sulfide. The identification, regulation, and monitoring of TACs is relatively recent compared to that of criteria pollutants.

High volume freeways, stationary diesel engines, and facilities attracting heavy and constant diesel vehicle traffic (distribution centers, truck stops) were identified as posing the highest risk to adjacent receptors. Other facilities associated with increased risk include warehouse distribution centers, large retail or industrial facilities, high-volume transit centers, or schools with a high volume of bus traffic. Community health risk assessments typically look at all substantial sources of TACs located within 1,000 feet of project sites and at new TAC sources that the project would introduce. These sources include railroads, highways, busy surface streets, and stationary sources identified by the Bay Area Air Quality Management District (BAAQMD).

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about three-quarters of the cancer risk from TACs (based on the Bay Area average). According to the CARB, diesel exhaust is a complex mixture of gases, vapors, and fine particles. This complexity makes the evaluation of health effects of diesel exhaust a complex scientific issue. Some of the chemicals in diesel exhaust, such as benzene and formaldehyde, have been previously identified as TACs by the CARB, and are listed as carcinogens either under the state's Proposition 65 or under the Federal Hazardous Air Pollutants programs. Because chronic exposure can result in adverse health effects, TACs are regulated at the regional, state, and federal level.

Air Quality Setting

The project is located in Santa Clara County, which is part of the San Francisco Bay Area Air Basin. The Air Basin includes the counties of San Francisco, Santa Clara, San Mateo, Marin, Napa, Contra Costa, and Alameda, along with the southeast portion of Sonoma County and the southwest portion of Solano County. This project is within the jurisdiction of the BAAQMD. Air quality conditions in the San Francisco Bay Area have improved significantly since the BAAQMD was created in 1955.

Ambient concentrations of air pollutants, and the number of days during which the region exceeds air quality standards, have fallen dramatically. Exceedances of air quality standards occur primarily during meteorological conditions conducive to high pollution levels, such as cold, windless winter nights or hot, sunny summer afternoons.

Local Climate and Air Quality

Air quality is a function of both local climate and local sources of air pollution. Air quality is the balance of the natural dispersal capacity of the atmosphere and emissions of air pollutants from human uses of the environment. Climate and topography are major influences on air quality.

Climate and Meteorology. During the summer, mostly clear skies result in warm daytime temperatures and cool nights in the Santa Clara Valley. Winter temperatures are mild, except for very cool but generally frost-less mornings. Further inland, where the moderating effect of the bay is not as strong, temperature extremes are greater. Wind patterns are influenced by local terrain, with a northwesterly sea breeze typically developing during the daytime. Winds are usually stronger in the spring and summer. Rainfall amounts are modest, ranging from 13 inches in the lowlands to 20 inches in the hills.

Air Pollution Potential. Ozone and fine particle pollution, or $PM_{2.5}$, are the major regional air pollutants of concern in the San Francisco Bay Area. Ozone is primarily a problem in the summer, and fine particle pollution in the winter. Most of Santa Clara County is well south of the cooler waters of the San Francisco Bay and far from the cooler marine air, which usually reaches across San Mateo County in summer. Ozone frequently forms on hot summer days when the prevailing seasonal northerly winds carry ozone precursors southward across the county, causing health standards to be exceeded. Santa Clara County experiences many exceedances of the $PM_{2.5}$ standard each winter. This is due to the high population density, wood smoke, industrial and freeway traffic, and poor wintertime air circulation caused by extensive hills to the east and west that block wind flows into the region. Recently, wildfires have caused many days per year of unhealthy air during summer and fall due to high particle pollution (e.g., $PM_{2.5}$ and PM_{10} levels that exceed standards).

Attainment Status Designations. The CARB is required to designate areas of the state as attainment, nonattainment, or unclassified for all state standards. An "attainment" designation for an area signifies that pollutant concentrations did not violate the standard for that pollutant in that area. A "nonattainment" designation indicates that a pollutant concentration violated the standard at least once, excluding those occasions when a violation was caused by an exceptional event, as defined in the criteria. An "unclassified" designation signifies that data does not support either an attainment or nonattainment status. The CCAA divides districts into moderate, serious, and severe air pollution categories, with increasingly stringent control requirements mandated for each category.

Existing Air Pollutant Levels. BAAQMD monitors air pollution at various sites within the Bay Area. The closest air monitoring station (158 Jackson Street) that monitored O_3, CO, NO, NO_2, PM_{10}, and $PM_{2.5}$ over the past five years (2015 through 2019) is in the City of San José, approximately 3.5 miles north of the project site. The data shows that the project area has exceeded the state and/or federal O3, PM_{10}, and $PM_{2.5}$ ambient air quality standards during the past few years. The most recent time-period available illustrating air quality trends collected by BAAQMD and CARB is presented in Appendix A. Ozone standards (including 1-hr concentration and 8-hr concentration) were exceeded for 1 to 4 days annually between 2015 and 2019. Measured 24-hour PM_{10} concentrations were exceeded for 4 to

6 days between 2017 and 2019, and $PM_{2.5}$ concentrations were exceeded for 6 to 15 days in 2017 and 2018. As a note, these levels were influenced by smoke from wildfires.

Sensitive Receptors

The BAAQMD defines sensitive receptors as facilities where sensitive population groups are located, including residences, schools, childcare centers, convalescent homes, and medical facilities. Land uses such as schools and hospitals are considered more sensitive than the general public to poor air quality because of increased susceptibility to respiratory distress within the populations associated with these uses. For cancer risk assessments, children are the most sensitive receptors since they are more susceptible to cancer-causing TACs. Residential locations are assumed to include infants and small children.

The project would introduce new sensitive residential receptors to the project vicinity with its housing component. In addition, the closest existing sensitive receptors to the project site are the residents on North Second Street, adjacent to the northern site boundary. Additional residents within multi-family residences are located north, south, east, and west of the site.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
3. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations. Would the project:						
a) Conflict with or obstruct implementation of the applicable air quality plan?				X		2, 5, 6, 7
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?				X		2, 5, 7
c) Expose sensitive receptors to substantial pollutant concentrations?				X		2, 5, 7
d) Result in other emissions (such as those leading to odors adversely affecting a substantial number of people?				X		2, 5, 7

Explanation

As discussed below, the proposed project would not result in a new or greater impact on air quality than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. Using the BAAQMD's methodology, a determination of consistency with the 2017 CAP should demonstrate that a project: 1) supports the primary goals of the air quality plan; 2) includes applicable control measures from the air quality plan, and

3) does not disrupt or impede implementation of air quality plan control measures. The consistency of the project with the applicable control measures is presented in Table 1 below.

Table 1
2017 CAP Applicable Control Measures

Control Measures	Description	Project Consistency
Transportation Measures		
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.	The project would include 50 long-term parking consistent with City's Zoning Ordinance standards. The project is consistent with this measure.
Energy Control Measures		
Decrease Electricity Demand	Work with local governments to adopt additional energy efficiency policies and programs. Support local government energy efficiency program via best practices, model ordinances, and technical support. Work with partners to develop messaging to decrease electricity demand during peak times.	The project would be required to comply with Building Energy Efficiency Standards (Municipal Code Title 24), which would help reduce energy consumption. The project would also be required to comply with the City's Green Building Policy (Council Policy 8-13), Private Sector Green Building Policy (Council Policy 6-32) and the City's Green Building Ordinance, which would increase building efficiency over standard construction. Therefore, the project is consistent with this control measure.
Building Control Measures		
Green Buildings	Identify barriers to effective local implementation of the CALGreen (Title 24) statewide building energy code; develop solutions to improve implementation/enforcement. Work with ABAG's BayREN program to make additional funding available for energy-related projects in the buildings sector. Engage with additional partners to target reducing emissions from specific types of buildings.	The project would be required to comply with CALGreen and the City's Green Building Policy (Council Policy 8-13), Private Sector Green Building Policy (Council Policy 6-32) the City's Green Building Ordinance, and the most recent California Building Code which would increase building efficiency over standard construction. Therefore, the project is consistent with this control measure
Water Management Control Measures		
Support Water Conservation	Develop a list of best practices that reduce water consumption and increase on-site water recycling in new and existing buildings; incorporate into local planning guidance.	The project would be required to adhere to State and local polices to conserve water. Therefore, the project is consistent with this control measure.

As summarized in the "Project Consistency" column of Table 1, the project would not conflict with the 2017 CAP's goal to attain air quality standards and would not result in exceedances of BAAQMD 2017 thresholds for criteria air pollutants as described in b) below. Therefore, the project would have the same impact as the approved project on clean air planning efforts.

b) **Same Impact as Approved Project**. The San Francisco Bay Area is considered a non-attainment area for ground-level ozone and $PM_{2.5}$ under both the Federal Clean Air Act and the California Clean Air Act. The area is also considered non-attainment for PM_{10} under the California Clean Air Act, but not the federal act. The area has attained both State and federal ambient air quality standards for carbon monoxide.

The City of San José uses the thresholds of significance established by the BAAQMD to assess air quality impacts of proposed development. The BAAQMD CEQA Guidelines include screening levels and thresholds for evaluating air quality impacts in the San Francisco Bay Area Air Basin. As part of an effort to attain and maintain ambient air quality standards for ozone and PM_{10}, the BAAQMD has established thresholds of significance for these air pollutants and their precursors. These thresholds are for ozone precursor pollutants (ROG and NO_X), PM_{10}, and $PM_{2.5}$ and apply to both construction period and operational period impacts. The applicable thresholds are presented below in Table 2.

Table 2
BAAQMD Air Quality Significance Thresholds

Pollutant	Construction Thresholds	Operational Thresholds	
	Average Daily Emissions (lbs./day)	Average Daily Emissions (lbs./day)	Annual Average Emissions (tons/year)
Criteria Air Pollutants			
ROG, NO_x, $PM_{2.5}$ (exhaust)	54	*Evaluated in Downtown Strategy Plan EIR*	
PM_{10} (exhaust)	82		
CO	Not Applicable		
Fugitive Dust ($PM_{2.5}$, PM_{10})	Construction Dust Ordinance or other Best Management Practices	Not Applicable	
Health Risks and Hazards for Sources within 1,000 Feet of Project			
Excess Cancer Risk	10 per one million	10 per one million	
Chronic or Acute Hazard Index	1.0	1.0	
Incremental annual average $PM_{2.5}$	0.3 µg/m^3	0.3 µg/m^3	
Health Risks and Hazards for Sensitive Receptors (Cumulative from All Sources within 1,000-Foot Zone of Influence) and Cumulative Thresholds for New Sources			
Excess Cancer Risk	100 per 1 million		
Chronic Hazard Index	10.0		
Annual Average $PM_{2.5}$	0.8 µg/m^3		

Notes: ROG = reactive organic gases, NOx = nitrogen oxides, PM_{10} = course particulate matter or particulates with an aerodynamic diameter of 10 micrometers (µm) or less, and $PM_{2.5}$ = fine particulate matter or particulates with an aerodynamic diameter of 2.5µm or less; ppm = parts per million; µg/m^3 = micrograms per cubic meter

The air quality assessment for the project (Appendix A) used the California Emissions Estimator Model (CalEEMod) Version 2016.3.2 to estimate air pollutant emissions from construction and operation of the project at buildout.

Operational Emissions

The impact of operational emissions was addressed in the Downtown Strategy Plan EIR and found to be significant and unavoidable for the entire plan. Emissions from the project were computed for informational purposes. Operational air emissions from the project would be generated primarily from the project generator and autos driven by future residents, employees, and customers. Evaporative emissions from architectural coatings and maintenance products (classified as consumer products) are typical emissions from mixed-use (residential/commercial) development. CalEEMod was used to estimate emissions from operation of the proposed project assuming full build-out. Inputs for this modeling scenario included project components with the results of the modeling are presented in Table 3. As shown in Table 3, operational emissions would not exceed the BAAQMD significance thresholds, representing the same impact as the approved project.

Table 3
Operational Emissions

Scenario	ROG	NOx	PM_{10}	$PM_{2.5}$
2031 Annual Project Operational Emissions *(tons/year)*	1.34	0.44	0.75	0.20
BAAQMD Thresholds (tons /year)	*10 tons*	*10 tons*	*15 tons*	*10 tons*
Exceed Threshold?	***No***	***No***	***No***	***No***
2031 Daily project Operational Emissions *(pounds/day)*	7.36	2.42	4.13	1.10
BAAQMD Thresholds (pounds/day)	*54* lbs.	*54* lbs.	*82* lbs.	*54* lbs.
Exceed Threshold?	***No***	***No***	***No***	***No***

[1] Assumes 365-day operation

Construction Emissions

On-site construction activities are primarily made up of construction equipment emissions, while off-site activity includes worker, hauling, and vendor traffic. A construction build-out scenario, including equipment list and schedule, was based on default CalEEMod information for a project of this type and size.

The project land use types and size, and anticipated construction schedule were input to CalEEMod, as follows:

- 200 dwelling units entered as "Apartment High Rise" on a 0.18-acre site
- 2,490 square feet entered as "Strip Mall"[2]

[2] Air quality modeling for the project was completed based on original project design assumptions. As stated in the air quality assessment in Appendix A, project modifications made following the conclusion of air quality modeling would result in similar or barely measurable increased emissions and risks, and would not change the project's impacts, as discussed further in the air quality report. While emissions (i.e., ROG, Energy) would increase slightly from these land uses changes, the project's criteria pollutant and GHG emissions and the community risk impacts are far below the thresholds that any minor increase should not cause the emissions and impacts to exceed the thresholds.

The default CalEEMod information also assumed project construction would begin May 2028 and last 28 months.[3] There were an estimated 604 construction workdays. Average daily emissions were computed by dividing the total construction emissions by the number of construction days.

Table 4 shows average daily construction emissions of ROG, NO_X, PM_{10} exhaust, and $PM_{2.5}$ exhaust during construction of the project. As indicated in Table 4, the predicted construction period emissions would not exceed the BAAQMD significance thresholds.

Table 4
Construction Period Emissions

Scenario	ROG	NOx	PM_{10} Exhaust	$PM_{2.5}$ Exhaust
Construction Emissions Per Year (Tons)				
2028	0.06	0.43	0.02	0.02
2029	0.93	0.66	0.03	0.03
2030	0.54	0.31	0.01	0.01
Construction Emissions Per Year (Pounds/Day)				
2028 (175 construction workdays)	0.71	4.93	0.25	0.19
2029 (261 construction workdays)	7.14	5.03	0.25	0.20
2030 (167 construction workdays)	6.49	3.69	0.14	0.10
BAAQMD Thresholds (pounds per day)	*54* lbs./day	*54* lbs./day	*82* lbs./day	*54* lbs./day
Exceed Threshold?	***No***	***No***	***No***	***No***

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

Although construction period emissions would not exceed the BAAQMD significance thresholds, the BAAQMD CEQA Air Quality Guidelines require implementation of best management practices. During any construction period ground disturbance, the project contractor would be required to implement measures to control dust and exhaust. Implementation of the measures recommended by BAAQMD and listed below as standard permit conditions for the future medical office or commercial equivalency would reduce the air quality impacts associated with grading and new construction to a less than significant level.

[3] According to the applicant, *"A construction schedule for the project has not been determined. The duration of construction for similar developments is approximately 20 months."* A detailed construction schedule was not provided at the time that the air quality analysis was prepared, so the CalEEMod default construction schedule of 12 months was used. Using the default schedule to analyze the construction emissions in the shorter amount of time, with more intensive construction activity, would yield higher construction impacts. Therefore, the more conservative construction scenario was assessed.

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.

In addition to the BAAQMD-recommended best management practices listed above as standard permit conditions, implementation of the mitigation measure in c) below would include construction equipment exhaust control measures to reduce construction particulate matter impacts. As the project would not result in emissions that exceed the BAAQMD thresholds, it would not contribute substantially to existing or projected violations of air quality standards.

c) **Same Impact as Approved Project.** Project impacts related to increased community risk can occur either by introducing a new sensitive receptor, such as a residential use, in proximity to an existing source of TACs, by introducing a new source of TACs with the potential to adversely affect existing sensitive receptors in the project vicinity, or by or by significantly

exacerbating existing cumulative TAC impacts. Project impacts would include construction activity and operation of the proposed project. The project would introduce new sources of TACs during construction (i.e., on-site construction and truck hauling emissions) and operation (i.e., stationary and mobile sources).

Temporary project construction activity would generate dust and equipment exhaust, in the form of DPM, on a temporary basis that could affect nearby sensitive receptors. The project would also include the installation of a stand-by generator powered by a diesel engine and would generate some traffic consisting of mostly light-duty vehicles, which would produce TAC and air pollutant emissions.

Project impacts to existing sensitive receptors were addressed for temporary construction activities and long-term operational conditions (see Appendix C). There are also several sources of existing TACs and localized air pollutants in the vicinity of the project. The impact of the existing sources of TAC was also assessed in terms of the cumulative risk which includes the project contribution, as well as the risk on the new sensitive receptors introduced by the project.

Community Health Risk Impacts Associated with Construction

Community risk impacts are addressed by predicting increased lifetime cancer risk, the increase in annual $PM_{2.5}$ concentrations and computing the Hazard Index (HI) for non-cancer health risks. Construction equipment and associated heavy-duty truck traffic generates diesel exhaust, which is a known TAC. These exhaust air pollutant emissions would not be considered to contribute substantially to existing or projected air quality violations. Construction exhaust emissions may still pose health risks for sensitive receptors such as surrounding residents. The primary community risk impact issues associated with construction emissions are cancer risk and exposure to $PM_{2.5}$. Diesel exhaust poses both a potential health and nuisance impact to nearby receptors.

A health risk assessment of the project construction activities was conducted that evaluated potential health effects to nearby sensitive receptors from construction emissions of DPM and $PM_{2.5}$.[4] The project would introduce new sensitive receptors in the form of residents of the new units. In addition, the closest sensitive receptors to the project site are the residents on North Second Street, adjacent to the northern site boundary. There are additional residents north, south, east, and west of the site.

The maximum DPM and $PM_{2.5}$ concentrations from project construction were located at two-places. The cancer risk maximally exposed individual (MEI) was located at a residence on the second floor (20 feet above ground) in the northeast corner of the future Fountain Alley project to the south of the project site opposite East Santa Clara Street. The $PM_{2.5}$ concentration MEI was located at the adjacent senior residence on the second floor (20 feet above ground) in the southwest corner of the future 19 North Second Street Affordable Senior Housing project to the northeast of the project site. The location of the MEIs and nearby sensitive receptors are shown in Figure 14. The maximum excess residential cancer risks at these locations would be 17.19 per million for infant risk, which is greater than the BAAQMD significance threshold of 10 in one million for cancer risk. Table 5 summarizes the maximum cancer risks, $PM_{2.5}$

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

concentrations, and health hazard indexes for project related construction activities affecting the construction MEIs.

Community Health Risk Impacts Associated with Operation

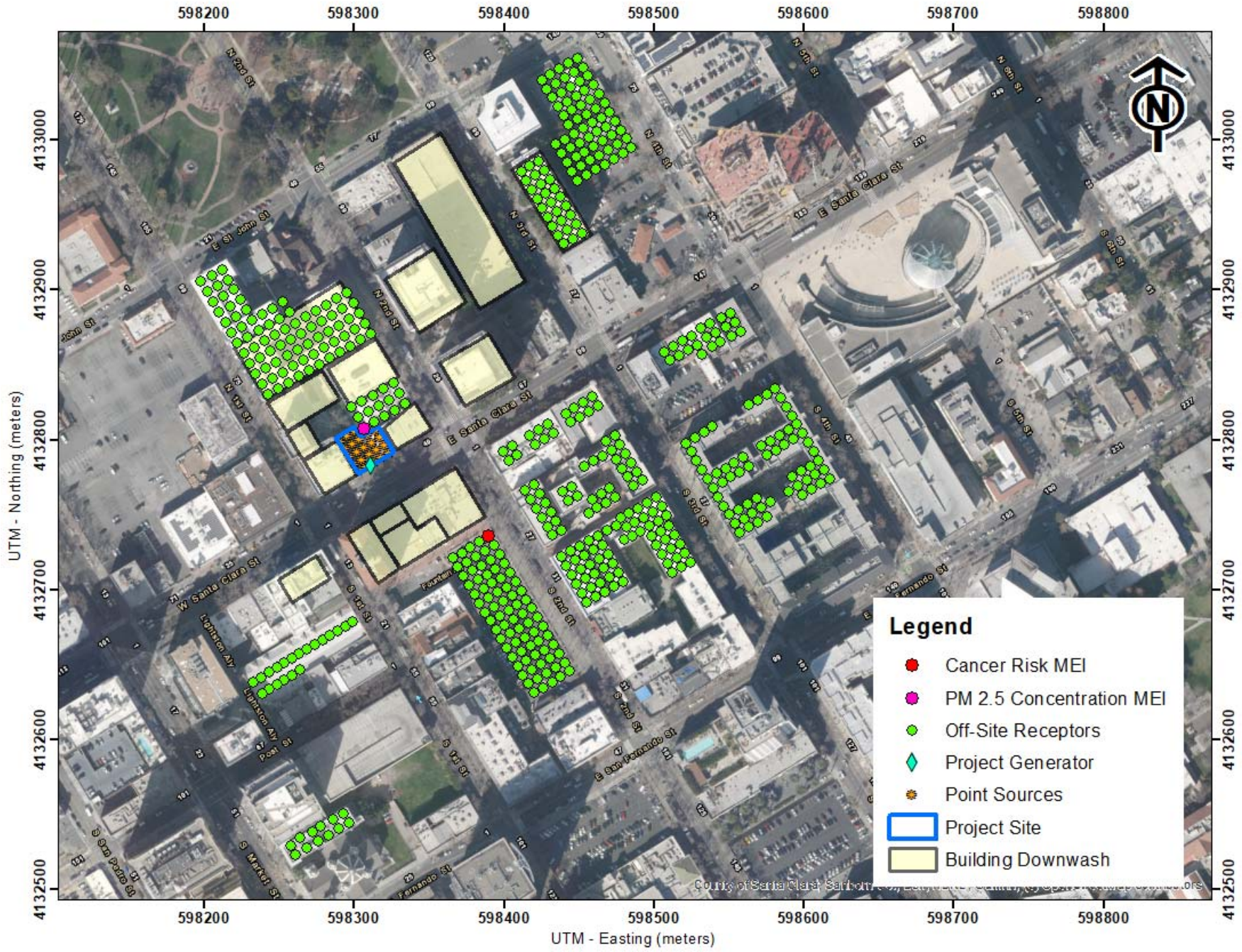
Operation of the project would have long-term emissions from mobile sources (i.e., traffic) and stationary sources (i.e., generator). While these emissions would not be as intensive at or near the site as construction activity, they could contribute to long-term effects to sensitive receptors.

Project Traffic. Diesel powered vehicles are the primary concern with local traffic-generated TAC impacts. Per BAAQMD recommended risks and methodology, a road with less than 10,000 total vehicles per day is considered a low-impact source of TACs and not considered in the CEQA analysis.[5] Project traffic data was not available at the time of this study because the project is not anticipated to generate substantial traffic and on-site parking is not proposed. Any project trips would mostly be from light-duty gasoline-powered vehicles (i.e., passenger cars). Therefore, emissions from project-generated traffic are considered negligible and not included in this analysis.

Project Stand-By Diesel Generator. The project proposes to include one stand-by emergency diesel generator along the southern border of the basement level near East Santa Clara Street. It was assumed that the generator's emissions would be released along the boundary of the building's generator room (see Figure 14). The generator was estimated to be 500-kW powered by a 670-HP diesel engine.

Operation of a diesel generator would be a source of TAC emissions. The generator would be operated for testing and maintenance purposes, with a maximum of 50 hours per year of nonemergency operation under normal conditions. During testing periods, the engine would typically be run for less than one hour under light engine loads. The generator engine would be required to meet EPA emission standards and consume commercially available low sulfur diesel fuel. The emissions from the operation of the generators were calculated using the CalEEMod model.

[5] Bay Area Air Quality Management District, 2012, *Recommended Methods for Screening and Modeling Local Risks and Hazards, Version 3.0.* May. Web: https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/risk-modeling-approachmay-2012.pdf?la=en



Source: Illingworth & Rodkin, July 2021

Location of Nearby Sensitive Receptors and Maximally Exposed Individual

Eterna Tower
EIR Addendum

Figure
14

This diesel engines would be subject to CARB's Stationary Diesel Airborne Toxics Control Measure (ATCM) and require permits from the BAAQMD, since it will be equipped with an engine larger than 50-HP. Best Available Control Technology for Toxics (BACT) requirements would apply to the generator that would limit DPM emissions. As part of the BAAQMD permit requirements for toxics screening analysis, the engine emissions will have to meet BACT and pass the toxic risk screening level of less than ten in a million. The risk assessment would be prepared by BAAQMD. Depending on results, BAAQMD would set limits for DPM emissions (e.g., more restricted engine operation periods). Sources of air pollutant emissions complying with all applicable BAAQMD regulations generally will not be considered to have a significant air quality community risk impact.

To obtain an estimate of potential cancer risks and $PM_{2.5}$ impacts from operation of the emergency generator the U.S. EPA AERMOD dispersion model was used to calculate the maximum annual DPM concentration at off-site sensitive receptor locations (nearby residences). The same receptors, breathing heights, and BAAQMD San José Airport meteorological data used in the construction dispersion modeling were used for the generator models. Stack parameters (stack height, exhaust flow rate, and exhaust gas temperature) for modeling the generators was based on BAAQMD default parameters for emergency generators.[6] Annual average DPM and $PM_{2.5}$ concentrations were modeled assuming that generator testing could occur at any time of the day (24 hours per day, 365 days per year).

To calculate the increased cancer risk from the generator at the MEIs, the cancer risks were also adjusted for exposure duration to account for the MEI being exposed to construction for the first three years of the 30-year period. The exposure duration was adjusted for 27 years of exposure. Table 5 lists the community risks from stand-by diesel generator at the location of residential MEIs.

Cumulative Community Health Risks of all TAC Sources at Project MEI

Table 5 reports both the project and cumulative community risk impacts at the sensitive receptors most affected by project construction and operation (i.e., the project MEIs). The project would have an exceedance with respect to community risk caused by project construction and operation activities, since the maximum unmitigated cancer risk exceeds the BAAQMD single-source threshold. With the implementation of best management practices to control dust and exhaust during construction and Mitigation Measure AQ-1, the project's cancer risk would be reduced to below the single-source thresholds. The cancer risk, annual $PM_{2.5}$ concentration, and HI, unmitigated and mitigated, do not exceed the cumulative thresholds.

[6] The San Francisco Community Risk Reduction Plan: Technical Support Document, BAAQMD, San Francisco Dept. of Public Health, and San Francisco Planning Dept., December 2012

Table 5 Impacts from Individual and Combined Sources at Construction MEI			
Source	**Maximum Cancer Risk (per million)**	**$PM_{2.5}$ Concentration ($\mu g/m^3$)**	**Hazard Index**
Project Impacts			
Total/Maximum Project Impact			
Unmitigated	**17.19 (infant)**	0.32*	0.01
Mitigated	4.24 (infant)	0.09	<0.01
BAAQMD Single-Source Threshold	***10***	***0.3***	***1.0***
Exceed Threshold?			
Unmitigated	***Yes***	*No*	*No*
Mitigated	*No*	*No*	*No*
Cumulative Sources			
East Santa Clara Street, ADT 17,810	0.88	0.07	<0.01
Verizon Business - SBEZCA (Facility ID #12969, Generator), MEI at 875 feet	2.31	<0.01	<0.01
60 SOMA Fee Owner CA, LLC c/o Harvest Properties (Facility ID #19758, Generator), MEI at 650 feet	0.51	<0.01	
Judicial Council of California, JCC 43-B2 (Facility ID #20324, Generator), MEI at 1,000 feet	4.99	0.01	0.01
CoreSite (Facility ID #20903, Generator), MEI at 875 feet	3.75	0.01	<0.01
Essex OSM Reit LLC (Facility ID #22415, Generator), MEI at 850 feet	0.18	-	-
Digital Realty (Facility ID #22612, Generator), MEI at 735 ft	0.10	-	-
SV Towers Investments LLC, C/O Harvest Properties (Facility ID #23479, Generator), MEI at 300 feet	0.68	-	-
Chevron #4259 (Facility ID #23479, Gas Station), MEI at 650 feet	0.39	-	<0.01
Combined Sources			
Unmitigated	30.98	<0.43	<0.06
Mitigated	18.03	<0.20	<0.06
BAAQMD Cumulative Source Threshold	***100***	***0.8***	***10.0***
Exceed Threshold?			
Unmitigated	*No*	*No*	*No*
Mitigated	*No*	*No*	*No*
*The project $PM_{2.5}$ concentration, when rounded, does not exceed the 0.3 $\mu g/m^3$ threshold.			

Impact AQ-1: Project construction would result in an infant cancer risk of 17.9 in one million at the maximally exposed individual (MEI), which exceeds the BAAQMD's cancer risk significance threshold of 10 in one million.

Mitigation Measures: Consistent with the standard measures in the Downtown Strategy 2040 FEIR and the recommendations of the Air Quality report prepared by Illingworth & Rodkin, the following mitigation measure shall be implemented to reduce impacts related to infant cancer risk.

MM AQ-1 Prior to the issuance of any grading or demolition permits, the project shall develop a Construction Operations Plan to reduce DPM and particulate matter emissions such that increased cancer risk and annual $PM_{2.5}$ concentrations from construction would be reduced below the significance level of 10 in one million as follows:

- 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 Tier 4 emission standards for particulate matter (PM_{10} and $PM_{2.5}$), if feasible; or

    - If use of Tier 4 equipment is not available, alternatively use equipment that meets 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 minimum of 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; or
    - Encourage the use of alternatively fueled or electric equipment.

- As an alternative measure, prior to the issuance of any demolition, grading, and/or building permits (whichever occurs first), The project applicant shall submit the construction operations plan accompanied by a letter signed by a qualified air quality specialist that confirms that the plan would reduce the on- and near-site construction diesel particulate matter emissions by a minimum of 50 percent or greater to the Director of Planning, Building, and Code Enforcement or Director's designee. The plan shall include, but not be limited to the following:

    - List of activities and estimated timing.
    - Equipment that would be used for each activity.
    - Manufacturer's specifications for each equipment that provides the emissions level; or the manufacturer's specifications for devices that would be added to each piece of equipment to ensure the emissions level meet the thresholds in the mitigation measure.
    - How the construction contractor will ensure that the measures listed are monitored.
    - How the construction contractor will remedy any exceedance of the thresholds.
    - How often and the method the construction contractor will use to report compliance with the mitigation measure.

CalEEMod was used to compute emissions associated with this mitigation measure assuming that all equipment met U.S. EPA Tier 4 interim engines standards and the best management practices for construction are included. With these measures implemented, the project's construction cancer risk levels (assuming infant exposure) would be reduced by 82 percent to 2.90 chances per million. Once the construction risk is combined with the operational generator cancer risk, the project's total mitigated cancer risk level would be 4.24 chances per million, and therefore, the project's risk impact would not exceed the BAAQMD single-source significance threshold of 10 in one million.

d) **Same Impact as Approved Project**. The project is a mixed-use development consisting of residential and commercial uses. The proposed project would not create other emissions including new sources of odor. Common sources of odors and odor complaints are land uses such as transfer stations, recycling facilities, painting/coating facilities, landfills, and wastewater treatment plants. During construction, use of diesel-powered vehicles and equipment could temporarily generate localized odors, which would cease upon project completion. Temporary impacts related to odor exposure were accounted for in the General Plan EIR and with implementation of abatement measures for construction period emissions identified in c) above would further assure that this impact remains less than significant.

Air Quality Chapter Conclusion

The Downtown Strategy 2040 EIR identified a significant project and cumulative increase in criteria air pollutants at buildout. Future implementation of transportation demand management (TDM) programs were identified to minimize this impact; however, it was deemed unavoidable since these measures could not fully mitigate the effect, and the City Council adopted a statement of overriding considerations for the impact. The Downtown Strategy 2040 EIR also addressed TAC impacts and require preparation of health risk assessments to avoid these impacts.

A health risk assessment was performed for the project and measures identified to reduce the effects of TACs to less than significant, consistent with the requirements in the Downtown Strategy EIR. The project would not result in new or more severe air quality impacts than identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project identified potential construction air quality impacts and mitigation related to the violation of an air quality standard (AQ-CNST-1 through AQ-CNST-I), causing a cumulatively considerable net increase in a criteria pollutant (AQ-CNST-1 through AQ-CNST-I), and exposure of sensitive receptors to substantial pollutant concentrations (AQ-CNST-B: Use U.S. Environmental Protection Agency (EPA) Tier 4 or Cleaner Engines). In addition, an operational impact and mitigation was identified related to violation of an air quality standard and causing a cumulatively considerable net increase in a criteria pollutant (AQ-CNST-I: Use Low-VOC Coatings). Some of the impacts to air quality identified in the SEIS/SEIR remained significant and unavoidable even with mitigation.

While the proposed project would result in potentially significant impacts to air quality, these would be reduced to a less than significant level through implementation of standard permit conditions and mitigation measures identified above. As a result, the proposed project would not result in new significant impacts to air quality, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact with mitigation on air quality and would not result in new or more severe air quality impacts than identified in the SEIS/SEIR for the BART Extension Project.

Non-CEQA Effects

The project would introduce new residents that are sensitive receptors. In December 2015, the California Supreme Court issued an opinion in the California Building Industry Association vs. Bay Area Air Quality Management District (CBIA vs. BAAQMD) case that CEQA is primarily concerned with the impacts of a project on the environment, not the effects of the existing environment on a

project. In light of this ruling, the effect of existing air pollutants from off-site sources on new sensitive receptors introduced by the project would not be considered an impact under CEQA.

However, General Plan Policy MS-11.1 requires completion of air quality modeling for new sensitive land uses located near sources of pollution and the identification of project design measures to avoid significant risks to future residents and users of the project. The project proposes new sensitive receptors (residential occupants) in the proximity of nearby potential TAC sources, as shown in Figure 15. Though not necessarily a CEQA issue, the effect of existing TAC sources on future project receptors was conducted to comply with the 2017 CAP goal of reducing TAC exposure and protecting public health as well as the City's General Plan Policy MS-11.1. The types of uses proposed by the project (retail and residential) would not create a substantial source of localized TACs.

Community health risk assessments typically consider all substantial sources of TACs that can affect sensitive receptors located within 1,000 feet of a project site. These sources can include rail lines, freeways or highways, busy surface streets, and stationary sources identified by BAAQMD. In order for the project to be consistent with General Plan Policy MS-11.1, MS-11.4, and MS-11.5, the following measures will be required as a condition of the Site Development Permit to reduce exposure to TAC emissions and avoid significant risks to health and safety. TAC sources in the project area are shown in Figure 15.

A review of the project area indicates that traffic on East Santa Clara Street has an average daily traffic (ADT) of over 10,000 vehicles, which are considered sources of TACs. All other roadways within the influence area are assumed to have an ADT that is less than 10,000 vehicles. Eight stationary sources were identified within the 1,000-foot influence area. In addition, there are several development projects whose construction would contribute to the cumulative risk. The risk impacts from these developments are included within the analysis. Figure 16 shows the location of the TAC sources affecting the MEIs. This project would include a stand-by diesel generator, which would constitute introduction of a new TAC source.

Roadway Sources. To assess potential health impacts at the project site from traffic on East Santa Clara Street, the health risk (potential cancer risks) impacts were computed using modeled TAC and $PM_{2.5}$ concentrations from traffic. The maximum modeled TAC and $PM_{2.5}$ concentrations from East Santa Clara Street occurred at the second-floor level in the southeast corner of the project residential area closest to East Santa Clara Street as shown in Figure 16. TAC and $PM_{2.5}$ concentrations from East Santa Clara Street traffic at the project site will decrease with distance from the roadway and with increasing height (floor levels).

The maximum increased lifetime cancer risk, annual $PM_{2.5}$ concentrations, and hazardous index for new residents at the project site from East Santa Clara Street are shown in Table 6.

Table 6
Community Risk Impact to Proposed Project Residents

Source	Cancer Risk (per million)	Annual $PM_{2.5}$ ($\mu g/m^3$)	Hazard Index
East Santa Clara Street, ADT 17,810	1.07	0.08	<0.01
Verizon Business - SBEZCA (Facility ID #12969, Generator), MEI at 875 feet	2.31	<0.01	<0.01

Table 6 Community Risk Impact to Proposed Project Residents			
Source	**Cancer Risk (per million)**	**Annual $PM_{2.5}$ ($\mu g/m^3$)**	**Hazard Index**
60 SOMA Fee Owner CA, LLC c/o Harvest Properties (Facility ID #19758, Generator), MEI at 650 feet	0.51	<0.01	-
Judicial Council of California, JCC 43-B2 (Facility ID #20324, Generator), MEI at 1,000 feet	6.24	0.01	0.01
CoreSite (Facility ID #20903, Generator), MEI at 875 feet	3.75	0.01	<0.01
Essex OSM Reit LLC (Facility ID #22415, Generator), MEI at 850 feet	0.25	-	-
Digital Realty (Facility ID #22612, Generator), MEI at 735 ft	0.06	-	-
SV Towers Investments LLC, C/O Harvest Properties (Facility ID #23479, Generator), MEI at 300 feet	1.37	-	-
Chevron #4259 (Facility ID #23479, Gas Station), MEI at 650 feet	0.42	-	<0.01
BAAQMD Single-Source Threshold	***10***	***0.3***	***1.0***
Exceed Threshold?	*No*	*No*	*No*
Cumulative Total	15.98	<0.12	<0.05
BAAQMD Cumulative Source Threshold	***100***	***0.8***	***10.0***
Exceed Threshold?	*No*	*No*	*No*

Stationary Sources. Eight stationary sources were identified (Facility ID #12969, #19785, #20324, #20903, #22415, #22612, #23479(1), and 23479(2), with one source being a gas dispensing facility and the other seven sources being generators. The emissions data for these stationary sources were provided by BAAQMD and adjusted for distance based on BAAQMD's *Distance Adjustment Multiplier Tool for Gasoline Dispensing Facilities* or *Distance Adjustment Multiplier Tool for Generic Engines* when appropriate.

As shown in Table 6, the annual cancer risks and HI are below their respective single and cumulative source significance thresholds. The risks from the singular TAC sources are compared against the BAAQMD single-source threshold. The risks from all the sources are then combined and compared against the BAAQMD cumulative-source threshold. As shown, none of the sources exceed the cancer risk, annual $PM_{2.5}$ concentration, or HI single-source or cumulative-source thresholds.

Source: Illingworth & Rodkin, July 2021

Nearby TAC and PM 2.5 Sources

Eterna Tower
EIR Addendum

Figure
15

Source: Illingworth & Rodkin, July 2021

Project Site and Location of Maximum TAC Impacts

Eterna Tower
EIR Addendum

Figure
16

D. BIOLOGICAL RESOURCES

Regulatory Framework

Federal and State

Special-Status Species

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 Stated 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 will 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" said species. "Take" is more broadly defined by the federal Endangered Species Act to include "harm" of a listed species.

In addition to species listed under state and federal Endangered Species Acts, Section 15380(b) and (c) of the CEQA Guidelines provided that all potential rare or sensitive species, or habitats capable of supporting rare species, are considered for environmental review per the CEQA Guidelines. These may include plant species of concern in California listed by the California Native Plant Society and CDFW listed "Species of Special Concern."

Migratory Bird and Birds of Prey Protection

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, possessing, or trading in migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs. Construction disturbances during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment, a violation of the MBTA. Additionally, nesting birds are considered special-status species are protected by the USFWS. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

Sensitive Habitats

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

Regional and Local

Santa Clara Valley Habitat Plan/Natural Communities Conservation Plan

The Santa Clara Valley Habitat Plan/Natural Communities Conservation Plan (Habitat Plan) was developed through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority, U.S. Fish and Wildlife Service, and California Department of Fish and Wildlife. The Habitat Plan is intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in approximately 500,000 acres of southern Santa Clara County. The project site is located within the boundaries of the Habitat Plan and is designated as follows:

- Area 4: Urban Development Equal to or Greater than 2 Acres Covered
- Land Cover: Urban-Suburban
- Land Cover Fee Zone: Urban Areas (No Land Cover Fee)

In addition, the Habitat Plan indicates that nitrogen deposition has damaging effects on many of the serpentine plants in the Habitat Plan area, including the host plants that support the Bay checkerspot butterfly. Because serpentine soils tend to be nutrient poor and nitrogen deposition artificially fertilizes serpentine soils, nitrogen deposition facilitates the spread of invasive plant species. Nitrogen tends to be efficiently recycled by the plants and microbes in infertile soils such as those derived from serpentine, so that fertilization impacts could persist for years and result in cumulative habitat degradation. All major remaining populations of the butterfly and many of the sensitive serpentine plant populations occur in areas subject to air pollution from vehicle exhaust and other sources throughout the Bay Area, including the project site. The displacement of native serpentine plant species and subsequent decline of several federally-listed species, including the butterfly and its larval host plants, has been documented on Coyote Ridge in central Santa Clara County.

City of San José Tree Ordinance

The City of San José's Municipal Code includes tree protection measures (Municipal Code Title 13, Chapters 13.28 [Street Trees, Hedges and Shrubs] and 13.32 [Tree Removal Controls]) that regulate the removal of trees. An "ordinance-sized tree" on private property is defined as any tree having a main stem or trunk, 12.1 inches in diameter (38 inches or more in circumference) at a height measured 54 inches (4.5 feet) above ground. For multi-trunk trees, the circumference is measured as the sum of the circumferences of all trunks at 54 inches above grade. On single-family or duplex lots, a permit is required to remove ordinance-sized trees, even if they are unhealthy or dead. On multi-family, commercial, or industrial lots, a permit is required to remove a tree of any size. The Code defines a "heritage tree" as any tree that because of factors including but not limited to its history, girth, height, species or unique quality, has been found by the City Council to have a special significance to the community. Pruning or removing a heritage tree is illegal without first consulting the City Arborist and obtaining a permit. Finally, street trees are those that are located in the public right-of-way between the curb and sidewalk. A permit is required before pruning or removing a street tree.

Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design

The City's Riparian Corridor Policy Study analyzed streams and riparian corridors in the City of San José and addresses how development should protect and preserve these riparian corridors. Furthermore, the City's Riparian Corridor Protection and Bird-Safe Design Policy (Council Policy 6-34) supplements the regulations for riparian corridors and provides guidance for project design that protects and preserves these riparian corridors (City of San José 2016). The Riparian Corridor Policy applies to projects within 300 feet of a riparian corridor's top of bank or edge of vegetation, whichever is greater. It requires commercial/industrial buildings to observe a 100-foot setback from the riparian corridor and orient loading docks and other major activity areas away from the riparian corridors (City of San José 2016).

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating biological resource impacts from development projects. The following policies are applicable to the proposed project.

Envision San José 2040 Relevant Biological Resource Policies	
Policy 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.
Policy ER-5.1	Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance of activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
Policy ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
Policy 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.
Policy MS-21.5	As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
Policy 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.
Policy 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.

Envision San José 2040 Relevant Biological Resource Policies	
	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. 6. Plant native oak trees and native sycamores on sites which have adequately sized landscape areas and which historically supported these species.

Existing Setting

The project site is located within an urbanized area. The existing property is developed with a pair of two-story buildings and paved areas. There are several street trees located along East Santa Clara Street in the project vicinity. The site is surrounded by urban development and the habitat value on the property is considered low.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
4. 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 Game or U.S. Fish and Wildlife Service?				X		1, 2
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 California Department of Fish and Game or US Fish and Wildlife Service?				X		1, 2
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?				X		1, 2
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?				X		1, 2
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X		1, 2, 8

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
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?				X		1, 2, 8, 9

Explanation

As discussed below, the proposed project would not result in a new or greater impact on biological resources than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The project site is fully developed with existing buildings and does not contain any on-site trees or other vegetation. The project, therefore, would not directly impact any habitat of species identified as a candidate, sensitive, or special-status species. However, mature street trees adjacent to the project site may provide nesting habitat for migratory birds, including raptors (birds of prey). Raptors and their nests are protected under the Migratory Bird Treaty Act of 1918 and California Fish and Game Code Sections 3503 and 3503.5. These species could be disturbed during construction activities.

Impact BIO-1: Construction activities associated with the project could result in the loss of fertile eggs of nesting raptors or other migratory birds, or nest abandonment in adjacent street trees.

Mitigation Measures: In accordance with the Downtown Strategy 2040 FEIR, the following mitigation measure shall be implemented related to reduce impacts to the loss of fertile eggs of nesting raptors or other migratory birds.

MM BIO-1 Tree removal and construction activities 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 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 ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist, will designate a construction-free buffer zone (typically 250 feet) to be

established around the nest, in consultation with California Department of Fish and Wildlife. The buffer would ensure that raptor or migratory bird nests shall not be disturbed during project construction.

The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, prior to the issuance of any grading or building permit.

b) **Same Impact as Approved Project**. The project site is located over 2,500 feet east of the Guadalupe River. The proposed project, therefore, would not affect riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations.

c) **Same Impact as Approved Project**. The project site is located within an urban area, surrounded by existing buildings and paved streets. State or federally protected wetlands do not occur within the boundaries of the project; therefore, the project would not have a substantial adverse effect on state or federally protected wetlands.

d) **Same Impact as Approved Project**. The project is proposed in an urbanized setting surrounded by existing development and has not been found to contain any native resident or wildlife species. However, construction activities could potentially disrupt nesting raptors in adjacent street trees. Implementation of MM BIO-1 would protect migratory nesting birds and assure that the project does not interfere with the movement of native resident or migratory bird species due to tree removal or construction disturbances.

e) **Same Impact as Approved Project**. As described above, there are no trees or landscaping on the site. However, adjacent street trees could be impacted by construction activities. As part of the development approval, the project would implement standard permit conditions to mitigate for potential impacts to street trees. The project, therefore, would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

f) **Same Impact as Approved Project**. The project is located within the SCVHP area and is considered a Covered Activity. The project is located on land designated by the SCVHP as Urban-Suburban. The nitrogen deposition fee applies to all projects that create new vehicle trips. A nitrogen deposition fee will be required for each new vehicle trip generated by the project, at the time of development. The project would implement the following standard permit condition in accordance with the SCVHP and would not conflict with the provisions of the Habitat Plan.

Standard Permit Condition

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

Biological Resources Chapter Conclusion

The Downtown Strategy 2040 EIR identified potential impacts on biological resources and identified mitigation for these impacts. The proposed project would not result in new or more severe impacts on biological resources than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project identified potential biological resources impacts and mitigation related to the nesting birds (BIO-CNST-A: Avoid Nesting Bird Season and BIO-CNST-B: Conduct Preconstruction/Predisturbance Surveys for Nesting Birds), roosting bats (BIO-CNST-C: Conduct Preconstruction Surveys for Roosting Bat and Implement Protective Measures), tri-colored blackbirds (BIO-CNST-E: Conduct Preconstruction Tricolored Blackbird Nesting Surveys and Determine Appropriate Action), burrowing owls (BIO-CNST-F: Conduct Preconstruction Burrowing Owl Surveys and Determine Appropriate Action), adversely affecting a sensitive natural community (BIO-CNST-D: Protect Riparian Habitat), interfering with wildlife movement (BIO-CNST-A: Avoid Nesting Bird Season and BIO-CNST-B: Conduct Preconstruction/Predisturbance Surveys for Nesting Birds), and conflicting with local policies or ordinances protecting biological resources (AES-CNST-A: Replace Trees). Construction of the proposed Eterna Tower project would not require the removal of any trees, and would not impact burrowing owls, riparian habitat, or roosting bats. The proposed project includes mitigation for bird surveys prior to construction. While the proposed project would result in potentially significant impacts to biological resources, these would be reduced to a less than significant level through implementation of standard permit conditions and mitigation measures identified above. As a result, the proposed project would not result in new significant impacts to biological resources, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact with mitigation on biological resources and would not result in new or more severe biological resources impacts than identified in the SEIS/SEIR for the BART Extension Project.

E. CULTURAL RESOURCES

The following discussion is based on the following historic evaluation and an archaeological literature review.

- Archaeological Literature Review prepared by Charles Mikulik Archaeological Consulting, LLC (CMAC) for the project site (May 2021). *The archaeological literature review may discuss locations of specific archaeological sites and is confidential. For this reason, it is not included in this document. Qualified personnel, however, may request to review a copy of the report from the Department of Planning, Building and Code Enforcement located at 200 East Santa Clara Street, 3rd Floor, by appointment during normal business hours, through the Lead Agency contact, Maira Blanco.*

- Historic Resource Assessment and Design Guidelines and Standards Compliance Review documents prepared by TreanorHL (March 2022). These reports are contained in Appendix C.

Regulatory Framework

Federal

National Register of Historic Places

The National Register of Historic Places (NRHP) is the nation's most comprehensive list of historic resources and includes historic resources significant in American history, architecture, archeology, engineering, and culture, at the local, State, and national level. National Register Bulletin Number 15, How to Apply the National Register Criteria for Evaluation, describes the Criteria for Evaluation as being composed of two factors. First, the property must be "associated with an important historic context" and second, the property must retain integrity of those features necessary to convey its significance. A resource is considered eligible for the NRHP if the quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

1. are associated with events that have made a significant contribution to the broad pattern of our history; or

2. are associated with the lives of persons significant to our past; or

3. embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

4. yielded, or may be likely to yield, information important in prehistory or history.

State

California Health and Safety Code Sections 7050.5 and 7054

Section 7050.5 states that "[i]n the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined… that the remains are not subject to the provisions of Section 27491 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation". The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains. If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact by telephone, within 24 hours, the Native American Heritage Commission.

Section 7054 of the California Health and Safety Code regulates the disposal of human remains, classifying the disposal of human remains in any place, except in a cemetery, as a misdemeanor offense, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or both that imprisonment and fine. This section does not apply to the reburial of Native American remains.

California Environmental Quality Act and California Register of Historical Resources

The California Environmental Quality Act (CEQA) requires regulatory compliance for projects involving historic resources throughout the State. Under CEQA, public agencies must consider the effects of their actions on historic resources (Public Resources Code, Section 21084.1). The CEQA Guidelines define a significant resource as any resource listed in or determined to be eligible for listing in the California Register of Historical Resources (California Register) [see Public Resources Code, Section 21084.1 and CEQA Guidelines Section 15064.5 (a) and (b)].

The California Register of Historical Resources (CRHR) was created to identify resources deemed worthy of preservation and was modeled closely after the NRHP. The criteria are nearly identical to those of the NRHP, which includes resources of local, State, and regional and/or national levels of significance. Under California Code of Regulation Section 4852(b) and Public Resources Code Section 5024.1, an historical resource generally must be greater than 50 years old and must be significant at the local, State, or national level under one or more of the following four criteria:

1. It is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States.

2. It is associated with the lives of persons important to local, California, or national history.

3. It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master or important creative individual or possesses high artistic values.

4. It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

Properties of local significance that have been designated under a local preservation ordinance (local landmarks register or landmark districts) or that have been identified in a local historical resources inventory may be eligible for listing in the CRHR and are presumed to be historical resources for the purposes of CEQA unless a preponderance of evidence indicates otherwise (Public Resources Code, Section 5024.1g; California Code of Regulations, Title 14, Section 4850).

California Code of Regulations Section 4852(c) addresses the issue of "integrity," which is necessary for eligibility for the CRHR. Integrity is defined as "the authenticity of an historical resource's physical identity evidenced by the survival of characteristics that existed during the resource's period of significance." Section 4852(c) provides that historical resources eligible for listing in the CRHR must meet one of the criteria for significance defined by 4852(b)(1 through 4), and retain enough of their historic character of appearance to be recognizable as historical resources and to convey the reasons for their significance.

Native American Heritage Commission

The Native American Heritage Commission (NAHC) was created by statute in 1976, is a nine-member body appointed by the Governor to identify and catalog cultural resources (i.e., places of special religious or social significance to Native Americans and known graves and cemeteries of Native Americans on private lands) in California. The Commission is responsible for preserving and ensuring accessibility of sacred sites and burials, the disposition of Native American human remains and burial items, maintaining an inventory of Native American sacred sites located on public lands, and reviewing current administrative and statutory protections related to these sacred sites.

California Assembly Bill 52

California Assembly Bill (AB) 52 went into effect on July 1, 2015 and establishes a new category of CEQA resources for "tribal cultural resources" (Public Resources Code §21074). The intent of AB 52 is to provide a process and scope that clarifies California tribal government's involvement in the CEQA process, including specific requirements and timing for lead agencies to consult with tribes on avoiding or mitigating impacts to tribal cultural resources. AB 52 also creates a process for consultation with California Native American Tribes in the CEQA process. Tribal Governments can request consultation with a lead agency and give input into potential impacts to tribal cultural resources before the agency decides what kind of environmental assessment is appropriate for a proposed project. The Public Resources Code requires avoiding damage to tribal cultural resources, if feasible. If not, lead agencies must mitigate impacts to tribal cultural resources to the extent feasible.

Archaeological Resources and Human Remains

Archaeological sites are protected by policies and regulations under the California Public Resources Code, California Code of Regulations (Title 14 Section 1427), and California Health and Safety Code. California Public Resources Code Sections 5097.9-5097.991 require notification of discoveries of Native American remains and identifies appropriate measures for the treatment and disposition of human remains and grave-related items.

Both State law and the County of Santa Clara County Code (Sections B6-19 and B6-20) require that the Santa Clara County Coroner be notified if cultural remains are found. If the Coroner determines the remains are Native American, the Native American Heritage Commission (NAHC) and a "most likely descendant" must also be notified.

Local

Historic Preservation Ordinance

Under the City of San José Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code), preservation of historically or architecturally significant structures and neighborhoods that impart a distinct aspect to the City of San José and that serve as visible reminders of the historical and cultural heritage of the City of San José, the State, and the nation is promoted. This is encouraged in order to 1) stabilize neighborhoods and areas of the city; 2) enhance, preserve and increase property values; 3) carry out the goals and policies of the City's General Plan; 4) increase cultural, economic, and aesthetic benefits to the City and its residents; 5) preserve, continue, and encourage the development of the City to reflect its historical, architectural, cultural, and aesthetic value or traditions; 6) protect and enhance the City's cultural and aesthetic heritage; and 7) promote and encourage continued private ownership and utilization of such structures.

The City Landmark and City Landmark District designation process requires that findings be made that proposed landmarks have special historical, architectural, cultural, aesthetic, or engineering interest or value of an historical nature, and that designation as a landmark conforms to the goals and polices of the General Plan, and proposed districts. For a historic resource to qualify as a City Landmark or City Landmark Historic District, it must have "special historical, architectural, cultural, aesthetic or engineering interest or value of an historic nature" and be one of the following resource types:

1. An individual structure or portion thereof;
2. An integrated group of structures on a single lot;
3. A site, or portion thereof; or
4. Any combination thereof.

In addition, the designation must conform to the goals and polices of the General Plan.

Part 5 of the City of San José Historic Preservation Ordinance includes provisions for the designation of Conservation Areas to recognize, preserve, and enhance the character of qualifying neighborhoods. A "conservation area" means a geographically definable area of urban or rural character with identifiable attributes embodied by: 1) architecture, urban design, development patterns, setting, or geography; and 2) history. Every potential conservation area proposed for designation must qualify as a conservation area pursuant to Section 13.48.610 and meet one or both of the following additional criteria: a) the neighborhood or area has a distinctive character conveying: (1) a sense of cohesiveness through its design, architecture, setting, materials, or natural features; and (2) its history; or b) the neighborhood or area reflects significant geographical or developmental patterns associated with different eras of growth in the city. Because the threshold of significance for this local designation is significantly lower than City Landmark Historic District designation, Conservation Areas are considered historic resources of lesser significance.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating cultural resource impacts from development projects. Policies applicable to the project are presented below.

Envision San José 2040 Relevant Cultural Resource Policies	
Policy LU-13.15	Implement City, State, and Federal historic preservation laws, regulations, and codes to ensure the adequate protection of historic resources.
Policy LU-13.22	Require the submittal of historic reports and surveys prepared as part of the environmental review process. Materials shall be provided to the City in electronic form once they are considered complete and acceptable.
Policy 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.
Policy LU-14.4	Discourage demolition of any building or structure listed on or eligible for the Historic Resources Inventory as a Structure of Merit by pursuing the alternatives of rehabilitation, re-use on the subject site, and/or relocation of the resource.
Policy LU-14.6	Consider preservation of Structures of Merit and Contributing Structures in Conservation Areas as a key consideration in the development review process. As development proposals are submitted, evaluate the significance of structure, complete non-Historic American Building Survey level documentation, list qualifying structures on the Historic Resources Inventory and consider the feasibility of incorporating structures into the development proposal, particularly those structures that contribute to the fabric of Conservation Areas.
Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
Policy ER-10.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
Policy ER-10.3	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.

City of San José Historic Resources Inventory

The Historic Resources Inventory (HRI) is a list of citywide historic resources identified and/or evaluated in surveys (including Contributing Structures and Structures of Merit), properties listed in the NRHP and CRHR, and properties that have been designated as City Landmarks, City Landmark Historic Districts and Conservation Areas in accordance with the City of San José's Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code).

Local Planning Regulations

The San José Downtown Design Guidelines and Standards (2019, updated 2020) were adopted by the City to assist with the design, construction, review and approval of development in Downtown San José. These guidelines provide the minimum design standards to be applied to various developments and land uses and serve to facilitate a consistent and efficient review process of proposed developments. The San Jose Downtown Design Guidelines and Standards provide guidance for the form and design of buildings in Downtown, their appearance in the larger cityscape, and their interface with the pedestrian level. The guidelines apply generally to the Downtown core. While the San José State University campus is not within the boundary of the Downtown Growth Area, it is included within the proposed Design Guidelines boundary since it contributes significantly to the vitality of downtown. The Design Guidelines also set rules for new buildings and external alterations to non-historic buildings being built near and adjacent to historic and other key structures within the Design Guidelines boundary.

Existing Setting

Archaeologic Resources

On April 2, 2021, a cultural resources records search was conducted for the project area at the Northwest Information Center (NWIC) of the California Historical Resources Information System (CHRIS), affiliated with Sonoma State University located in Rohnert Park. The purpose of the record search was to obtain and review previous cultural resource records, cultural resource studies, and any additional documentation pertaining to historic properties located within at least a quarter mile (0.25-mile, 1,350 feet) of the project site.

The report included a review of the files held by the NRHP, California Office of Historic Preservation under the California State Historic Preservation Officer, Directory of Properties in the Historic Property Data File, Built Environment Resource Directory, local government listings, and additional listings (i.e., historical society and museum records), as available, and a variety of historical maps and historic aerial imagery to determine past land use activities that could indicate the likelihood of encountering cultural resources.

The findings of the archaeological resources review report indicate the project site has a moderate to high sensitivity for historic-era archaeological deposits and a low sensitivity for buried pre-contact archaeological deposits.

Onsite Historic Resources

The project site is located on the north side of East Santa Clara Street in downtown San José. Located on the block bounded by East Santa Clara Street to the south, North First Street to the west, St. John Street to the north, and North Second Street to the east, and the project site encompasses two parcels featuring two commercial buildings. The surrounding area consists of a mix of commercial, institutional, and multi-family residential buildings.

TreanorHL conducted a site visit on March 12, 2021 to evaluate the existing conditions, historic features, and architectural significance of the subject properties. A limited reconnaissance survey of the surrounding properties was also carried out. In order to evaluate the historic significance of the existing buildings, online research was completed including consultation of San José City Directories,

historical aerials and photographs, newspaper articles, Santa Clara County Assessor's Office data, City of San José Online Permit Services, and various online repositories. TreanorHL also conducted a design guidelines and standards compliance review of the proposed project plan drawings dated December 14, 2021 (received March 2022; Anderson Architects, Inc., *Eterna Tower, Proposed New Site Development, Residential Apartments/Commercial Space, Future VTA/BART Station).*

17 East Santa Clara Street. The commercial building was originally constructed circa 1876v, and substantially modified in the 1940s with Streamline Modern/Art Deco detailing. The building was originally a three-story brick building designed in the Italianate architectural style. The top floor was removed and the front façade altered to reflect the popular Modern architectural styles of the period. Built out to the front property line on East Santa Clara Street, this two-story, now Art Deco building is roughly rectangular in plan with a flat roof and wide plain parapet. The symmetrical front (south) façade is stucco clad. The first floor has a central entrance topped with a carved panel of Egyptian-inspired design. Two store fronts sheltered by projecting metal canopies flank the entrance. All openings on the first floor were boarded at the time of the site visit. The second floor is embellished with four fluted pilasters. Metal casement windows with transoms are set within the pilasters. The east and west facades abut adjacent buildings. Visible portions of the north and east facades are exposed brick.

29 East Santa Clara Street. The commercial building was constructed in the 1880s and substantially modified in the 1940s. The building was originally a three-story brick building. The top floor was removed and the front façade altered to reflect the popular Modern architectural styles of the period. This two-story building is rectangular in plan and has a flat roof. It is clad in textured stucco on the first floor and smooth scored stucco on the second floor. String courses run at the cornice, above the windows, and below the window as a continuous sill. Two fluted columns/pilasters frame the first floor which features two storefronts and a recessed central entry with a glazed single door. All windows and doors are aluminum-sash. The west and east façades abut adjacent buildings and are not visible.

Historic Resources within 200 Feet

As part of the historic evaluation, a reconnaissance survey of 20 properties within 200 feet of the project site was conducted in March 2021. Multiple properties are also contributors to the nationally designated San José Downtown Commercial District. However, the project site is not located within this or any other historic district or conservation area.

Each property was photographed and is briefly described in the evaluation. Twelve of these properties have been previously identified on the City of San José HRI. Five properties, including the Bank of Italy at 8-14 South First Street (#1), 27-29 Fountain Alley (#2), 28 North First Street (#14), the Knights of Columbus Building at 34 North First Street (#15), and the Realty Building at 19 North Second Street (#18) are designated San José City Landmarks. The Moderne Drug building at 42-50 East Santa Clara Street (#7) is a Candidate City Landmark and 49 East Santa Clara Street (#11) was found individually eligible for the CRHR. These properties are identified below in Table 7.

Table 7 Properties Within 200 Feet of the Project Site on the City's HRI						
Survey #	**Address**	**APN**	**Name**	**Architectural Style**	**Year Built**	**Designation**
#1	8-14 South 1st Street	467-62-001	Bank of Italy	Renaissance Revival	1927	Designated City Landmark, district contributor
#2	27-29 Fountain Alley	467-22-158	N/A	Italianate	Ca. 1884	Individually listed on the NRHP, City Landmark, district contributor
#3	33 Fountain Alley	467-22-158	N/A	Italianate Commercial	Ca. 1884	District Contributor
#4	37 Fountain Alley	467-22-158	N/A	Vernacular	Ca. 1920	Identified Structure
#5	28 East Santa Clara St.	467-22-158	Firato Delicatessen	[Italianate]	Ca. 1880	District contributor
#6	36 East Santa Clara St.	467-22-158	N/A	Italianate Commercial	Ca. 1880	District contributor
#7	42 East Santa Clara St.	467-22-042	Moderne Drug	Moderne	1930s	Candidate City Landmark, district contributor
#8	17 South 2nd Street	467-22-041	N/A	[Moderne]	[ca. 1937]	District contributor
#9	49 East Santa Clara St.	467-54-001	N/A	[Renaissance Revival]	Ca. 1889	Eligible for California Registrar, Structure of Merit
#14	28 North 1st Street	467-54-001	N/A	Renaissance Revival	1926	Eligible for National Register and California Register, City Landmark
#15	34 North 1st Street	467-21-021	Knights of Columbus Building	Richardsonian Romanesque	1926	Eligible for National Register and California Register, City Landmark
#18	19 North 2nd Street	467-21-028	Realty Building	Beaux Arts	1925	Eligible for National Register and California Register, City Landmark

The reconnaissance survey of the surrounding 20 properties also identified one vacant lot and two properties that are not age eligible for listing as historic resources. The remaining 17 properties include 11 properties constructed between the 1880 – 1927, and six properties constructed between 1936-1960s. Architectural styles identified include Italianate, Renaissance Revival, Beaux Arts, Richardson Romanesque, Moderne, Modern, vernacular, and contemporary. None of the styles appear to be predominant within the area. All buildings were constructed mainly for commercial uses.

The survey area developed in the late nineteenth and early twentieth centuries as the commercial core of downtown San José along East Santa Clara and North First Streets. By 1950, most of the small

commercial buildings were replaced by more substantial concrete and brick structures with large footprints. The area changed drastically during the second half of the twentieth century with the remodeling of the existing buildings on site and construction of contemporary commercial and office buildings on the site's surrounds. More recently, multi-story contemporary apartment and mixed-use buildings have been added to the subject and neighboring blocks.

Summary of Significance Evaluations

Onsite Historic Resources

TreanorHL evaluated the historic significance of the two buildings on the project site. The evaluation utilized information included in DPR 523 forms[7] prepared for 17-25 East Santa Clara Street by Dill Design Group (F. Maggi/C.Duval, January 10, 2002) and for 29-31 East Santa Clara Street by Archives & Architecture (Glory Ann Laffey, January 2, 1992).

The significance evaluations concluded that the buildings at 17-25 and 29-31 East Santa Clara Street do not appear to be individually eligible for listing on the NRHP, CRHR or as City Landmarks as they do not possess sufficient historical significance under any criteria. Subsequently, neither property is considered a historical resource as defined by CEQA.

The building located at 17-25 East Santa Clara Street is listed as a Structure of Merit on the San José Historic Resources Inventory and this status was confirmed and supported by TreanorHL. While the City of San José deems Structures of Merit as important local resources, they are not considered historical resources under CEQA.

Offsite Historic Resources

There are 17 age-eligible properties within 200 feet of the project site. 12 of the 17 buildings maintain recognizable architectural styles and do not appear to have had significant alterations. Seven of these buildings were previously found eligible for listing on the NRHP (individually or as district contributors), CRHR, or as Candidate City Landmarks. Based on visual assessment, none of the remaining five buildings appear to have any individual historic architectural significance. They all appear modest in both size and character; no other single building stands out as a unique or exceptional example of a historic architectural style.

[7] California Department of Parks and Recreation (DPR) 523 series forms are used for recording and evaluating resources and for nominating properties as California Historical Landmarks, California Points of Historical Interest, and to the California Register of Historical Resources.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
5. CULTURAL RESOURCES. Would the project:						
a) Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5?				X		1, 2, 11
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?				X		1, 2, 10
c) Disturb any human remains, including those interred outside of dedicated cemeteries?				X		1, 2, 10

The proposed project would not result in a new or greater impact on cultural resources than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The project site does not contain any historical resources; therefore, the project would not have a significant impact on onsite historical resources. The project would not have a significant impact on offsite historic resources because it would not substantially impair their significance and historic integrity.

Analysis

Project Impacts to Onsite Historic Resources

The existing building at 17 East Santa Clara Street is listed as a Structure of Merit on the San José HRI. While the City of San José deems Structures of Merit as important local resources, they are not considered significant historical resources under CEQA. As such, the proposed project would not cause direct impacts to any historical resources as defined by CEQA.

While Structures of Merit do not qualify as historical resources under the CEQA, the City's General Plan includes land use policies that address structures of lesser historic significance. Therefore, any development that includes demolition of a structure eligible for or listed on the City's Historic Resources Inventory shall be required to salvage the resource's building materials and architectural elements to allow re-use of those elements and materials and avoid the energy costs of producing new and disposing of old building materials consistent with General Plan Policy LU-16.4. Consistent with the Downtown Strategy 2040 FEIR, the project would be required to comply with the following conditions. The standard permit conditions are identified below for the demolition of a Structure of Merit.

Standard Permit Conditions

Documentation. Prior to the issuance of any grading, demolition, or building permit, the Structure of Merit located at 17 East Santa Clara Street structure shall be photo-documented to an archival level consisting of selected views of the building to the following standards:

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

The documentation shall be reviewed and approved by the City's Historic Preservation Officer. After City review and approval, the documentation shall be submitted to the City of San José and made available to History San José. Proof of having provided the documentation to History San José shall be submitted to the City following submittal. Additional digital copies shall be made available to other local research institutions including San José Library's California Room and the City's Planning Division. The above documentation shall be accompanied by a transmittal stating that the documentation is submitted as a Standard Measure to address the loss of the Structure of Merit.

Relocation or Salvage. Prior to the issuance of any grading, demolition, or building permit the Permittee shall offer the Structure of Merit building located at 17 East Santa Clara Street for relocation by a third party. The public notice of "offer for relocation" shall be placed by the Permittee in a newspaper of general circulation, posted on a website, and posted on the site for a period of no less than 30 days. In the event that no response to the offer is received following the 30-day period, the building shall then be made available for salvage to the general public and companies facilitating the reuse of historic building materials for an additional 30-day period in the same manner as the required public notice for relocation.

Project Impacts to Offsite Historic Resources

TreanorHL reviewed the proposed project for consistency with the City's Downtown Design Guidelines for Historic Adjacency to inform the impacts analysis to offsite historic resources that were identified in the reconnaissance survey of properties within 200 feet of the project site. The following discussion outlines the analysis.

Consistency with San José Downtown Design Guidelines and Standards

Adopted in April 2019 and updated in May 2020, the *City of San José DDGS* provides a framework for addressing new construction adjacent to designated and eligible historic resources. The DDGS define historic adjacency as follows:

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

a. At least 50% of buildings fully or partially within 200 feet are on the San José Historic Resources Inventory (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.
c. The site is adjacent to a historic building on the Historic Resources Inventory (HRI) or eligible for HRI listing.

The building(s) within the categories above that cause a new building to have Historic Adjacency are the new building's Historic Context.

The project site has Historic Adjacency as defined by all subcategories: (a) 60% of buildings within 200 feet are on the HRI, (b) the site is within 100 feet of multiple Designated City Landmarks and district contributors (#1-6, #14, #15, and #18 in Table 7), and (c) it is adjacent to three historic buildings on the HRI (#9, #14, and #18 in Table 7).

The project site is also within the "Affected Area" of a Historic Civic Icon building, the Bank of Italy (#1). The project site is not within an identified historic district or conservation area. In this case, applicable guidelines are listed as "4.2.2 Massing Relationship to Context," "4.2.3 Civic Icon Adjacency," and "4.2.4 Historic Adjacency."

As discussed below, the proposed project does not fully comply with DDGS Standards a, b, and c of Section 4.2.2; Guidelines a and c of Section 4.2.3; and Standards Facade e and g of Section 4.2.4.

Guideline 4.2.2 Massing Relationship to Context. Create massing transitions between high-rises and lower-scale development.

a) Height transition: If a new building 100 feet tall or more is across the street from or adjacent to a historic building 45 feet tall or less, the new building must step back its front façade 5 feet minimum from the front parcel or setback line at an elevation between 25 and 50 feet.

Analysis. The proposed building is across the street from three historic buildings which are less than 45 feet tall: 28 East Santa Clara (#5), 36 East Santa Clara (#6), and 42 East Santa Clara (#7). The project features a 26-story tower. The storefronts and the doors of the podium level are inset almost 3 feet from the front property line at the podium level. Above that, the front facade is built out to the front property line from the second floor (at 20') up to the sixth floor (66' -8"). The project does not provide the recommended five-foot minimum setback. As proposed, the project does not comply with Standard a.

b) Width transition: If a new building is across the street from or adjacent to a historic building that is both 45 feet tall or less, and more than 30 feet narrower than the new building, the new building must create gaps in the Podium Level above the ground floor to divide its street-facing

massing into segments no more than 30 feet wider than the widest of the applicable historic buildings.

Analysis. The proposed building is across the street from three historic buildings which are less than 45 feet tall and more than 30 feet narrower than the new building: 28 East Santa Clara (#5), 36 East Santa Clara (#6), and 42 East Santa Clara (#7). The East Santa Clara Street-facing front facade of the proposed building does not have any gaps in the podium level above the ground floor. The ground level is divided into eight bays with columns, and a solid cornice crowns the transoms. Directly above the cornice are levels 2 through 6, built out to the property line without any gaps. As proposed, the project does not comply with Standard b.

c) Rear transition. If a new building 100 feet tall or more is across a parcel line interior to a block from a historic building that is both 45 feet tall or less, the rear portion of the new building must maintain a transitional height of 70 feet or less within the first 20 feet from the property line.

Analysis. The proposed building is across a parcel line interior to a block from the historic building at 19 North Second Street (#18) which is less than 45' tall. The new building is set back 10 feet from the rear property line and does not maintain a transitional height. Therefore, the project does not comply with Standard c.

Guideline 4.2.3 Civic Icon Adjacency
a) Use a Streetscape and landscape design that helps to unify the new and existing structure.

Analysis. The new building is within the affected area of a Historic Civic Icon, the Bank of Italy building. The podium level of the new building is divided into eight bays with columns, and features multiple storefronts and glazed doors with transoms which appears compatible with the Bank of Italy's primary facades. Although not fixed, the proposed planter boxes at the face of the building in front of the storefronts are not compatible with the streetscape or landscape design of the immediate area nor the Historic Civic Icon building. The Bank of Italy building does not have planters or any landscape features at the front facades. Therefore, the proposed project does not comply with Guideline a.

b) Design a new building in the Civic Icon building Affected Area to avoid dominating the icon to allow the icon to stand out.

Analysis. The new building is located within the Affected Area of the Bank of Italy building (#1 on the map below). At 26 stories and rising above 273 feet, the new building is significantly taller than the Bank of Italy. Even though the new tower will dominate the streetscape, the Bank of Italy building will still stand out on East Santa Clara Street, since it is across the street from the proposed project. The new tower will not dominate the primary views of the Historic Civic Icon building from East Santa Clara Street. Another Historic Civic Icon building, Trinity Episcopal Cathedral (#20 on the map below), is on the same block with the proposed project; however, the proposed project is not within the affected area of the cathedral, and it will not block any important view angles. The new building complies with Guideline b.

c) Protect and enhance views to the Civic Icon building.

Analysis. The new tower will be at the end of an important view angle that looks northeast from South First Street toward East Santa Clara Street and the Bank of Italy building. It appears that the new tower would be noticeable from this angle and would not allow the icon to stand out. The proposed project does not protect and enhance views to the Civic Icon building from S. 1st Street; therefore, it does not comply with Guideline c.

Guideline 4.2.4 Historic Adjacency. Incorporate essential urban and architectural characteristics of historic context.

Massing

a) Relate Podium Level building massing to the scale of Historic Context buildings by breaking a large building into masses of similar scale to Historic Context building.

Analysis. The proposed building's podium level massing relates to the scale of the Historic Context buildings on East Santa Clara Street. The podium level is divided into multiple bays by cast stone clad columns; recessed storefronts and glazed entries are between the columns. Therefore, the proposed project complies with Standard a.

b) Design buildings with rectilinear rather than curved and diagonal forms where rectilinear forms are typical of the Historic Context buildings.

Analysis. The proposed project complies with Standard b since the design is rectilinear rather than curved and diagonal.

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

Analysis. The new building has a 20-foot tall, well defined podium level which is crowned by a slightly projecting two-part cornice with Art Deco reliefs. The height of the cornice, above the transoms, is comparable to the ground floor heights of the adjacent Historic Context buildings. It also relates to the heights of the historic commercial buildings across the street. The proposed project complies with Standard c.

d) Maintain Streetwall Continuity with Historic Context buildings that are on the same side of the same street by placing the street-side facade of a new building within 5 feet of the average Historic Context building Streetwall distance from the front property line.

Analysis. The Historic Context buildings that are on the same side of East Santa Clara Street are built out to the property line without any setback. The new tower's podium level columns are built out to the property line while the openings are set back 3 feet. The proposed setbacks are within 5 feet of the average Historic Context building streetwall distance. As proposed, the project complies with Standard d.

Façade

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

Analysis. Two Historic Context buildings (#9 and #10) on the same side of the same block are 47 and 40 feet wide, respectively. The new building is approximately 90 feet wide, which is wider than the relevant Historic Context buildings. The front facade of the new building is divided into two 45-foot-wide sections above the podium level by a slightly wider central strip separating the facade into two sections, each with four rows of windows. TreanorHL recommends emphasizing this division by articulation of the facade, architectural features, and/or and material changes. As proposed, the new building complies with Standard e.

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

Analysis. The overall design of the proposed tower is largely contemporary in character and does not simulate historic architecture. However, the new building has two Art Deco panels above the entrance doors on the ground floor, and fluted pilasters flanking the windows on levels 2 through 6-all of which mimic the existing features of the 17 East Santa Clara Street property. As proposed, despite the overall contemporary design, some features of the new building simulate historic architecture and does not comply with Standard f.

g) Place windows on facades visible from the windows of the adjacent Historic Context buildings even if this requires that the facade be set back from the property line.

Analysis. The proposed building includes windows on the front and rear facades which would be visible from the adjacent Historic Context buildings. Therefore, the proposed project complies with Standard g.

Elements

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

Analysis. The Historic Context buildings mainly use stucco, masonry, terra cotta, metal, and wood trim on the exterior. The proposed building uses cast stone panels, fiber cement cladding, aluminum, and glass; therefore, it complies with Standard h.

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

Analysis. The new materials appear to be compatible with the historic materials in scale, proportion, design, finish, texture, and durability; therefore, it complies with Standard i.

Ground Floor

j) Space pedestrian entries at similar distances to Historic Context building entries.

Analysis. The Historic Context buildings on East Santa Clara Street have multiple pedestrian entries approximately 18 to 40 feet apart. The proposed building's East Santa Clara Street facing south facade has three pedestrian entries 10 to 35 feet away from each other which is similar to the Historic Context building entries. As proposed, the project complies with Standard j.

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

Analysis. The Historic Context building on the same side of East Santa Clara Street is a three-story building with a tall ground floor featuring glazed storefronts on both facades with divided transoms above. At 20 feet, the proposed podium level of the new building would be consistent with the adjacent Historic context building. The height is also comparable to the Historic Context buildings across the street on East Santa Clara. As proposed, the project complies with Standard k.

In summary, the proposed project design is not fully consistent with the San José Downtown Design Guidelines and Standards applicable to Historic Adjacency; however, the project would not have a significant impact on offsite historic resources because it would not substantially impair their significance and historic integrity. The proposed project would not result in the removal of these historic resources from the San José HRI or the National Register of Historic Places. However, proposed demolition and construction activities from the project do have the potential to physically damage adjacent, offsite historic resources. With implementation of the mitigation below, the potential for project construction-related impacts to the identified historic resources would be reduced to less than significant.

Impact CR-1: Demolition and construction activities for the project could physically damage adjacent historic resources due to potential noise vibration thresholds of 1.233 PPV which is above the City's threshold of 0.08 PPV for historic buildings.

In accordance with the Downtown Strategy 2040 FEIR and recommendations of the Historic Resource Evaluation and Design Review prepared by Treanor HL, the following mitigation measures shall be implemented to reduce impacts to adjacent historic resources. See also the analysis of noise and vibration impacts in Section M. Noise and Vibration.

Mitigation Measures

MM CR-1a Prior to the issuance of any grading, building, or demolition permits, the project applicant shall survey the adjacent historic resources to determine the existing condition. The survey shall be conducted by a historical architect meeting the Secretary of the Interior's Professional Qualifications Standards for Historic Architecture and a structural engineer with a minimum of five years of demonstrated experience with historic buildings. The purpose of the study is to establish the baseline condition of the historic buildings prior to construction, including the location and extent of any visible cracks or spalls. The

documentation shall take the form of written descriptions and photographs and shall include those physical characteristics of the resources that conveys their historic significance and that justifies their inclusion on the national, state, or local inventories. The documentation shall be reviewed and approved by the City of San José's Historic Preservation Officer (HPO) and Director of Planning, Building and Code Enforcement or Director's designee.

MM CR-1b A qualified geologist, or other professional with expertise in ground vibration and its effect on existing structures, shall prepare a study of the potential of vibrations caused by excavation and construction activities associated with the proposed project. Based on the results of the study, specifications regarding the restrictions shall be incorporated into all construction plans and specifications and implemented during all construction activities. The specifications shall also be included on project construction contracts with the applicant. Initial pile-driving shall be monitored and if vibrations are above threshold levels, modifications shall be made to reduce vibrations to below established levels. For sensitive historic structures, a vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A copy of the study, contract specifications, and monitoring reports shall be provided to the City of San José's HPO and Director of Planning, Building and Code Enforcement or Director's designee.

MM CR-1c Prior to issuance of any demolition, grading or building permits, and in combination with measures CR-1a, and CR-1b, the project applicant shall prepare a Historical Resources Protection Plan (HRPP) to protect offsite historic building fabric of the adjacent 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 project applicant shall include appropriate contract language to ensure the contractor follows this plan while working near the historic resources. The plan shall be prepared by a qualified historical architect and is subject to review by the City's HPO. At a minimum, the plan shall include:

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

MM CR-1d A team of at least one qualified historical architect and one qualified structural engineer shall make periodic site visits to monitor the condition of the identified historic resources. Any changes to existing conditions shall be reported, including, but not limited to, expansion of existing cracks, new spalls, or other exterior deterioration in detailed reports to the Director of Planning Building and Code Enforcement or Director's designee, noting any concerns as well as recommended corrective actions. Monitoring shall include the use of

any instruments deemed necessary by the historic architect or structural engineer.

For historic structures, the structural engineer shall consult with the historical architect, especially if any problems with character defining features of the historic resource are discovered.

If, in the opinion of the historical architect, substantial adverse impacts related to construction activities are found during construction, the historical architect shall inform the project applicant and the project applicant shall respond accordingly to the historical architect's recommendations for corrective measures, including halting construction in situations where construction activities would exceed the 0.08 PPV threshold for historic structures established by the City and imminently endanger historic resources.

In the event of damage to historic resources during construction the project applicant shall ensure that repair work complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties and shall appropriately restore the structure. The team shall prepare a report documenting the site visits and the corrective actions taken and provide to the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of monitoring or completion of corrective actions.

b) **Same Impact as Approved Project**. The conclusions of the archaeological report for the project are summarized below.

Historic-era Archaeology

Although much of the original soils in the project area have been disturbed by human activities, monitoring in the nearby area has indicated a likelihood of encountering historic-era deposits. While it is unlikely that intact surficial archaeological deposits are present on the property it is also known that previous nearby studies indicate the possibility of buried archaeological deposits. For these reasons, the archaeological report recommends archaeological construction monitoring.

Pre-contact Archaeology

The review of soils and geologic data indicates the project area has a low sensitivity for containing buried archaeological material. The location of the research extent contains alluvial material dating to the Holocene geological epoch (about 12,000-years-old to present), which represents a critical time when humans are known to have lived and occupied California in prehistory. Much of the project area has been paved over and disturbed by human activities. As such, this would diminish the likelihood of finding archaeological deposits in their original context. However, the nature of the project involves the construction of a 26-story building, which is particularly important because this would require foundations below the known USDA Soils Lab profile of 94 inches (approximately eight feet); while unlikely, it is possible that older soils with archaeological remains might be present. Although it is unlikely that intact surficial or buried pre-contact archaeological deposits are present on the property, given the

possibility for historic-era archaeological deposits archaeological construction monitoring for pre-contact resources is recommended.

Impact CR-2: Historic-era buried and pre-contact archaeological deposits may be encountered during excavation activities at the project site.

Mitigation Measures: In accordance with the Downtown Strategy 2040 FEIR and the recommendations of the Results of a Historical/Archaeological Review and Assessment for the Proposed Eterna Tower Development Project prepared by Charles Mikulik Archaeological Consulting, the following mitigation measures shall be implemented to reduce impacts to historic-era buried and pre-contact archaeological resources.

MM CR-2a **Cultural Sensitivity Training**. Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), the project applicant shall contract with a qualified archaeologist and a qualified Native American representative registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally affiliated with the geographic area prior to the start of any-ground disturbing activities for at least one cultural sensitivity training for construction personnel, which includes review of the cultural resource management protocols and coordinating the on-site monitoring effort.

MM CR-2b **On-site Monitoring**. In areas where ground disturbing activities are expected to occur, archaeological monitoring shall be conducted by a qualified archaeologist in in consultation with a Native American representative registered with the Native American Heritage Commission and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Monitoring is intended to ensure that appropriate cultural protective measures are effective prior to initiation of construction activities and to document and protect cultural resources from inadvertent damage. During ground-disturbing activities that may impact cultural resources, at least one archaeological monitor and one Native American monitor shall be on-site. Archaeological monitors have the authority to halt construction with the finding of an archaeological discovery and to authorize construction to resume. Construction that requires monitoring includes but is not limited to demolition activities that could disturb native soil, any earthmoving, (e.g., grading or excavation for foundations, footings, and trenching for underground utilities). Monitoring shall continue until the monitor has determined that excavation has reached the maximum depth at which archaeological remains could be expected to occur. To facilitate project planning the following must be furnished by the applicant: 1) plans, blueprints, conceptual drawings, etc., detailing proposed impacts to the project site (grading or excavation prints will normally be sufficient); and 2) the proposed construction schedule or activity to be monitored, with types of excavation and/or earth-moving identified. The results of the monitoring shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of monitoring activities.

MM CR 2c **Encountering Prehistoric or Historic Resources.** 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, and the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified. The on-site archaeologist and Native American representative 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 reinterment of artifacts and materials, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move away any cultural materials.

In addition, the following standard measures from the Downtown Strategy 2040 EIR would apply:

- If no resources are discovered, the consulting archaeologist shall submit a report to the Director of Planning, Building and Code Enforcement or Director's designee verifying that the required monitoring occurred and that no further mitigation is necessary.

- If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. In the event that human remains are found, the project shall comply with the procedures set forth by Health and Safety Code § 7050.5 and Public Resources Code § 5097.94 of the State of California.

- The archaeologist shall submit a report(s) describing the testing program and subsequent results, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. The report(s) shall identify any program mitigation that the project applicant shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources).

- A final report verifying completion of the mitigation program shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for approval prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and results of the mitigation, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.

c) **Same Impact as Approved Project**. Human remains may be encountered during construction activities, since in this area of Santa Clara County, Native American archaeological sites have been recorded adjacent to major creeks and tributaries, especially near confluences. Implementation of mitigation measures above, specifically MM CR-2c, will avoid impacts

associated with disturbance to human remains, including those interred outside of dedicated cemeteries.

Cultural Resources Chapter Conclusion

The Downtown Strategy 2040 EIR identified potential impacts on cultural resources from potential alteration of historic buildings and/or districts, disturbance to subsurface historic or prehistoric archaeological resources, and disturbance to human remains. The EIR identified mitigation for these impacts that requires evaluation of development sites by a qualified cultural resources consultant and adherence to specific recommendations of the consultant based on site-specific review. Other mitigation included standard measures for avoiding impacts to subsurface archaeological resources and/or human remains if discovered during construction activities. The impacts of the proposed development on cultural resources and mitigation measures for potentially significant impacts are identified for the project consistent with the findings of the Downtown Strategy 2040 EIR. Therefore, proposed project would not result in new or more severe impacts on cultural resources than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project identified potential cultural resources impacts and mitigation related to causing an adverse change in the significance of an historical resource (NV-CNST-B through NV-CNST-D and NV-CNST-P through NV-CNST-R) and causing an adverse change in the significance of an archaeological resource (CUL-CNST-A: Implement Programmatic Agreement and Archaeological Resources Treatment Plan). This is included in this document as part of the standard permit conditions. As a result, the proposed project would not result in new significant impacts to cultural resources, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact with mitigation on cultural resources and would not result in new or more severe cultural resources impacts than identified in the SEIS/SEIR for the BART Extension Project.

F. ENERGY

Regulatory Framework

Many federal, state, and local statutes and policies address energy conservation. At the federal level, energy standards set by the U.S. Environmental Protection Agency (EPA) apply to numerous consumer and commercial products (e.g., the EnergyStar™ program). The EPA also sets fuel efficiency standards for automobiles and other modes of transportation.

State

California Renewable Energy Standards

In 2002, California established its Renewables Portfolio Standard (RPS) Program, with the goal of increasing the percentage of renewable energy in the State's electricity mix to 20 percent of retail sales by 2010. In 2006, California's 20 percent by 2010 RPS goal was codified under Senate Bill (SB) 107. Under the provisions of SB 107 (signed into law in 2006), investor-owned utilities were required to generate 20 percent of their retail electricity using qualified renewable energy technologies by the end of 2010. In 2008, Executive Order S-14-08 was signed into law and requires that retail sellers of electricity serve 33 percent of their load with renewable energy by 2020. As described previously, PG&E's (the electricity provider to the project site) 2015 electricity mix was 30 percent renewable.

In October 2015, Governor Brown signed SB 350 to codify California's climate and clean energy goals. A key provision of SB 350 for retail sellers and publicly owned utilities, requires them to procure 50 percent of the State's electricity from renewable sources by 2030.

California Building Codes

At the state level, the Energy Efficiency Standards for Residential and Nonresidential Buildings, as specified in Title 24, Part 6, of the California Code of Regulations (Title 24), was established in 1978 in response to a legislative mandate to reduce California's energy consumption. Title 24 is updated approximately every three years. Compliance with Title 24 is mandatory at the time new building permits are issued by city and county governments.[8]

The California Green Building Standards Code (CalGreen) establishes mandatory green building standards for all buildings in California. The code covers five categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resource efficiency, and indoor environmental quality.

Local

Council Policy 6-32 Private Sector Green Building Policy

At the local level, the City of San José sets green building standards for municipal development. All projects are required to submit a Leadership in Energy and Environmental Design (LEED),[9]

[8] CEC. 2019 Building Energy Efficiency Standards for Residential and Nonresidential Buildings. December 2018. Accessed July 29, 2021. https://www.energy.ca.gov/sites/default/files/2021-06/CEC-400-2018-020-CMF_0.pdf

[9] Created by the U.S. Green Building Council, LEED is a certification system that assigns points for green building measures based on a 110-point rating scale.

GreenPoint,[10] or Build-It-Green checklist as part of their development permit applications. Council Policy 6-32 "Private Sector Green Building Policy," adopted in October 2008, establishes baseline green building standards for private sector new construction and provides a framework for the implementation of these standards. It fosters practices in the design, construction, and maintenance of buildings that will minimize the use and waste of energy, water and other resources in the City of San José. Private developments are required to implement green building practices if they meet the Applicable Projects criteria defined by Council Policy 6-32 and shown in Table 8 below.

Table 8
Private Sector Green Building Policy Applicable Projects

Applicable Project Minimum Green Building Rating	Minimum Green Building Rating
Commercial/Industrial – Tier 1 (Less than 25,000 square feet)	LEED Applicable New Construction Checklist
Commercial/Industrial – Tier 2 (25,000 square feet or greater)	LEED Silver
Residential – Tier 1 (Less than 10 units)	GreenPoint or LEED Checklist
Residential – Tier 2 (10 units or greater)	GreenPoint Rated 50 points or LEED Certified
High Rise Residential (75 feet or higher)	LEED Certified

Source: City of San José. Private Sector Green Building Policy: Policy Number 6-32. October 7, 2008. https://www.sanjoseca.gov/your-government/departments-offices/environmental-services/energy/green-building/private-sector-green-building

Municipal Code

The City's Municipal Code includes regulations associated with energy efficiency and energy use. City regulations include a Green Building Ordinance (Chapter 17.84) to foster practices to minimize the use and waste of energy, water and other resources in the City of San José, Water Efficient Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10), requirements for Transportation Demand Programs for employers with more than 100 employees (Chapter 11.105), and a Construction and Demolition Diversion Deposit Program that fosters recycling of construction and demolition materials (Chapter 9.10).

Climate Smart San José

Climate Smart San José is a plan developed by the City to reduce air pollution, save water, and create a healthier community. The plan articulates how buildings, transportation/mobility, and citywide growth need to change in order to minimize impacts on the climate. The plan outlines strategies that City departments, related agencies, the private sector, and residents can take to reduce carbon emissions consistent with the Paris Climate Agreement. The plan recognizes the scaling of renewable energy, electrification and sharing of vehicle fleets, investments in public infrastructure, and the role of local jobs in contributing to sustainability. It includes detailed carbon-reducing commitments for the City, as well as timelines to deliver on those commitments.

[10] Created by Build It Green, GreenPoint is a certification system that assigns points for green building measures based on a 381-point scale for multi-family developments and 341-point scale for single-family developments.

San José Reach Code Initiative for Building Efficiency

In January 2010, the State of California adopted the California Green Building Standards Code (CalGreen) that establishes mandatory green building standards for all buildings in California. The code was subsequently updated in 2013. The code covers five categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resource efficiency, and indoor environmental quality.

The City Council approved Ordinance No. 30311 in September 2019 to amend various sections of Title 24 of the City's Municipal Code to adopt provisions of the 2019 California Green Building Standards Code and California Building Energy Efficiency Standards with certain exceptions, modifications and additions which serve as a Reach Code to increase building efficiency, mandate solar readiness and increase requirements related to electric vehicle charging stations. The Reach Code goes into effect on January 1, 2020 and affects all new construction.

San José Clean Energy

San José Clean Energy (SJCE) is an electricity supplier operated by the City's Community Energy Department. Since launching in February 2019, SJCE has provided City businesses and residents with access to cheaper and cleaner energy sources. SJCE serves as an alternative to traditionally privatized energy sources by being a community-governed organization. Oversight for SJCE activities is provided by City Council in cooperation with a Community Advisory Commission.

General Plan

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating energy impacts from development projects. Policies applicable to the project are presented below.

Envision San José 2040 Relevant Energy Policies	
Policy MS-1.6	Recognize the interconnected nature of green building systems, and, in the implementation of Green Building Policies, give priority to green building options that provide environmental benefit by reducing water and/or energy use and solid waste.
Policy MS-2.1	Develop and maintain policies, zoning regulations, and guidelines that require energy conservation and use of renewable energy sources
Policy MS-2.2	Encourage maximized use of on-site generation of renewable energy for all new and existing buildings.
Policy MS-2.3	Utilize solar orientation (i.e., building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.
Policy MS-2.4	Promote energy efficient construction industry practices.
Policy MS-2.6	Promote roofing design and surface treatments that reduce the heat island effect of new and existing development and support reduced energy use, reduced air pollution, and a healthy urban forest. Connect businesses and residents with cool roof rebate programs through City outreach efforts.
Policy MS-2.11	Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques

Envision San José 2040 Relevant Energy Policies	
	(e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).
Policy MS-14.1	Promote job and housing growth in areas served by public transit and that have community amenities within a 20-minute walking distance.
Policy MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions
Policy MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City.
Policy MS-14.1	Promote job and housing growth in areas served by public transit and that have community amenities within a 20-minute walking distance.
Policy MS-14.4	Implement the City's Green Building Policies (see Green Building Section) so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, passive solar building design, and planting of trees and other landscape materials to reduce energy consumption.
Policy TR-2.8	Require new development where feasible to provide on-site facilities such as bicycle storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.
Policy TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute toward transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.

Existing Setting

San José Clean Energy (SJCE) is the electricity provider for residents and businesses in the City of San José. SJCE sources electricity, and the Pacific Gas and Electric Company (PG&E) delivers it to customers using existing PG&E utility lines. SJCE buys its power from a number of suppliers. Sources of renewable and carbon-free power include California wind, solar, and geothermal; Colorado wind; and hydroelectric power from the Pacific Northwest. SJCE customers are automatically enrolled in the GreenSource program, which provides 80 percent GHG emission-free electricity. Customers can enroll in the TotalGreen program through SJCE and receive 100 percent GHG-free electricity from entirely renewable resources. It is expected that the project would be enrolled in and receive energy from the SJCE program.

PG&E also furnishes natural gas for residential, commercial, industrial, and municipal uses. In 2018, natural gas facilities provided 15 percent of PG&E's electricity delivered to retail customers; nuclear plants provided 34 percent; hydroelectric operations provided 13 percent; renewable energy facilities including solar, geothermal, and biomass provided 39 percent, and two percent was unspecified.[11]

[11] PG&E, Delivering low-emission energy. Accessed September 19, 2018. Available at: https://www.pge.com/en_US/about-pge/environment/what-we-are-doing/clean-energy-solutions/clean-energy-solutions.page

Total energy usage in California was approximately 7,881 trillion British thermal units (Btu) in the year 2017, the most recent year for which this data was available. In 2017, California was ranked second in total energy consumption in the nation, and 48th in energy consumption per capita. The breakdown by sector was approximately 18 percent (1,416 trillion Btu) for residential uses, 19 percent (1,473 trillion Btu) for commercial uses, 23 percent (1,818 trillion Btu) for industrial uses, and 40 percent (3,175 trillion Btu) for transportation. This energy is mainly supplied by natural gas, petroleum, nuclear electric power, and hydroelectric power.

Electricity

Electricity in Santa Clara County in 2018 was consumed primarily by the commercial sector (77 percent), followed by the residential sector consuming 23 percent. In 2018, a total of approximately 16,668 gigawatt hours (GWh) of electricity was consumed in Santa Clara County.[12] SJCE is the electricity provider for residents and businesses in the City of San José. SJCE sources the electricity and PG&E delivers it via their existing utility lines. SJCE customers are automatically enrolled in the GreenSource program, which provides 60 percent GHG emission-free electricity. Customers can choose to enroll in SJCE's TotalGreen program at any time to receive 100 percent GHG emission-free electricity form entirely renewable sources.

Natural Gas

PG&E provides natural gas services within the City of San José. In 2018, approximately one percent of California's natural gas supply came from in-state production, while the remaining supply was imported from other western states and Canada.[13] In 2018, residential and commercial customers in California used 34 percent of the state's natural gas, power plants used 35 percent, the industrial sector used 21 percent, and other uses used 10 percent. Transportation accounted for one percent of natural gas use in California. In 2018, Santa Clara County used approximately 3.5 percent of the state's total consumption of natural gas.[14]

Fuel for Motor Vehicles

In 2018, 15.5 billion gallons of gasoline were sold in California.[15] The average fuel economy for light-duty vehicles (autos, pickups, vans, and sport utility vehicles) in the United States has steadily increased from about 13.1 miles per gallon (mpg) in the mid-1970s to 24.9 mpg in 2019.[16] Federal fuel economy standards have changed substantially since the Energy Independence and Security Act was passed in 2007. That standard, which originally mandated a national fuel economy standard of 35 miles

[12] California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." Accessed March 15, 2019. http://ecdms.energy.ca.gov/elecbycounty.aspx.
[13] California Gas and Electric Utilities. 2019 *California Gas Report.* Accessed August 27, 2019. https://www.socalgas.com/regulatory/documents/cgr/2019_CGR_Supplement_7-1-19.pdf.
[14] California Energy Commission. "Natural Gas Consumption by County." Accessed February 21, 2019. http://ecdms.energy.ca.gov/gasbycounty.aspx.
[15] California Department of Tax and Fee Administration. "Net Taxable Gasoline Gallons." Accessed February 11, 2020. https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=VehicleTaxableFuelDist.
[16] United States Environmental Protection Agency. "Highlights of the Automotive Trends Report, Accessed January 2021, Available at: https://www.epa.gov/automotive-trends/highlights-automotive-trends-report#:~:text=All%20vehicle%20types%20are%20at,are%20all%20at%20record%20highs

per gallon by the year 2020, was subsequently revised to apply to cars and light trucks model years 2011 through 2020.[17] [18]

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
6. ENERGY. Would the project:						
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?				X		1, 2, 7
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?				X		1, 2

Explanation

As discussed below, the proposed project would not result in a new or greater impacts related energy than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. Energy use consumed by the proposed project was estimated in the Air Quality Assessment prepared by Illingworth & Rodkin (July 2021). This included natural gas and electricity consumption for the proposed development. A discussion of the project's effect on energy use is presented below.

Construction Impacts

The anticipated construction schedule assumes that the project would be built out over a period of approximately 28 months. The project would require demolition, site preparation, grading, site construction, paving, and architectural coating. The construction phase would require energy for the manufacture and transportation of building materials, preparation of the site (e.g., excavation, and grading), and the actual construction of the building. Petroleum-based fuels such as diesel fuel and gasoline would be the primary sources of energy for these tasks.

The overall construction schedule and process is already designed to be efficient in order to avoid excess monetary costs. That is because equipment and fuel are not typically used wastefully due to the added expense associated with renting, maintaining, and fueling construction equipment. Therefore, the opportunities for future efficiency gains during construction are limited. The proposed project does, however, include several measures that would improve the efficiency of the construction process. Implementation of the BAAQMD

[17] United States Department of Energy. *Energy Independence & Security Act of 2007.* Accessed January 21, 2020. http://www.afdc.energy.gov/laws/eisa.
[18] Public Law 110–140—December 19, 2007. *Energy Independence & Security Act of 2007.* Accessed January 21, 2020. http://www.gpo.gov/fdsys/pkg/PLAW-110publ140/pdf/PLAW-110publ140.pdf.

BMPs detailed as Standard Permit Conditions in *Section C. Air Quality* would restrict equipment idling times to five minutes or less and would require the applicant to post signs on the project site reminding workers to shut off idle equipment. The project would also recycle or salvage at least 30 percent of construction waste as part of its LEED certification (discussed further below).

With implementation of the BAAQMD BMPs, the short-term energy impacts associated with use of fuel or energy related to construction would be less than significant.

Operational Impacts

Operation of the proposed project would consume energy, in the form of electricity, primarily for building heating and cooling, lighting, cooking, and water heating. The City of San José passed an ordinance in December 2020 that prohibits the use of natural gas infrastructure in new buildings. This ordinance applies to any new construction (with the exception of hospitals, restaurants, etc.) starting August 1, 2021. The ordinance is the latest milestone for Climate Smart San José, the City's GHG emission reduction plan adopted by City Council in 2018. Table 9 summarizes the estimated energy use of the proposed project.

Table 9
Estimated Annual Energy Use of Proposed Project (2030)

Proposed Project	Electricity Use (kWh)	Natural Gas Use[1] (kBtu)
Mixed-Use Development	799,653	0

Source: Illingworth & Rodkin, Inc., *Air Quality Assessment*, Attachment 2, Sections 5.2 and 5.3, pages 89-90, July 2021.
1 All project natural gas use was set to zero and assigned to electricity use in CalEEMod in accordance with Climate Smart San José.

The energy use increase is a conservative estimate, because these estimates for energy use do not take into account the efficiency measures incorporated into the project. In addition, the project would be built to the 2019 California Building Code standards and Title 24 energy efficiency standards (or subsequently adopted standards during the one-year construction term), and CALGreen code, which includes insulation and design provisions to minimize wasteful energy consumption, thereby improving the efficiency of the overall project. Although the proposed project does not include on-site renewable energy resources, the proposed project must meet the requirements of Council Policy 6-32.

Transportation-Related Energy-Use

The project, which consists of mixed-use development in a downtown location with access to ample public transit, is not anticipated to generate substantial traffic, and no onsite parking is proposed. Project trips would be limited to deliveries and some passenger cars.

The project is in close proximity to major transit services. The nearest bus stops to the project site are located at the intersections of North Second Street/East Santa Clara Street (Local Routes 72 & 73), East Santa Clara Street/First Street (Local Routes 22, 23, 64A, and 64 B, as well as Rapid Routes 500, 522, and 523), and North First Street/East Santa Clara Street (Local Routes 72 & 73). The St. James Light Rail Train (LRT) Station is located approximately 0.16

miles north of the project site on North First Street at St. James Park. The San Antonio LRT station is located approximately 0.29 miles south of the project site on South Second Street. The LRT and Caltrain services provide access to the Diridon Transit Center, located approximately 0.79 miles west of the project site at Cahill Street. Connections between local and regional bus routes, light rail lines, and commuter rail lines are provided within the Diridon Transit Center. Proximity to transit would encourage the use of alternative methods of transportation to and from the site reducing transportation-related energy use.

There are currently no existing dedicated bicycle facilities in the immediate area of the project site. However, there are bicycle facilities in the area surrounding the project site. Additionally, the City is proposing to install a bike path along North Second Street. The San José Better Bike Plan 2025 identifies Class II bike lanes along North Second Street in the vicinity of the project site.

The combination of existing and planned bike facilities in the project vicinity would provide bicyclists with connections to other bicycle facilities in the City and encourage the use of alternative methods of transportation to and from the site, further reducing transportation related energy use.

The proposed project would provide 50 long-term bicycle parking spaces, consistent with the requirements of the City of San José Municipal Code. The inclusion of bicycle parking and proximity to transit would offer future residents alternative methods of transportation to and from the site. Based on the measures required for LEED Certification, the proposed project would comply with existing State energy standards.

Based on the discussion above, the project would not result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation. Based on the discussion above, the project would not result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources during project construction or operation.

b) **Same Impact as Approved Project**. Operation of the proposed project would consume energy for building heating and cooling, lighting, cooking, and water heating. Energy would also be consumed during vehicle trips generated by residential occupants. Although the project would increase the project site's energy use, the proposed development would be completed in compliance with the current energy efficiency standards set forth in Title 24, CALGreen, and the City's Municipal Code. The project would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency.

Energy Chapter Conclusion:

The Downtown Strategy 2040 EIR addressed energy use. With implementation of 2040 General Plan policies and existing regulations, development allowed under the Downtown Strategy 2040 was found to have a less than significant impact related to energy consumption. This conclusion is consistent with the analysis in the Downtown Strategy 2040 EIR. The proposed project would not result in new or more significant energy impacts than identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project did not identify any potentially significant impacts

related to energy consumption. As a result, the proposed project would not result in new significant impacts to energy consumption, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact on energy consumption and would not result in new or more severe energy consumption impacts than identified in the SEIS/SEIR for the BART Extension Project.

G GEOLOGY AND SOILS

Regulatory Framework

State

Alquist-Priolo Earthquake Fault Zoning Act

The Alquist-Priolo Earthquake Zoning Act was passed in 1972 with the intent to reduce the loss of life and property associated with surface rupture caused by active fault lines. The Alquist-Priolo Earthquake Zoning Act prohibits the placement of structures for human occupancy above active faults and sets minimum distances for construction away from the fault line. These fault lines are shown on Alquist-Priolo Maps, which are produced by the California Geological Survey.

Seismic Hazards Mapping Act

The 1990 Seismic Hazards Mapping Act (SHMA) directs the California Geological Survey to identify and map areas prone to various earthquake-related hazards, including liquefaction, landslides, and amplified ground shaking. The SHMA is intended to reduce the threat of seismic hazards to public health and to minimize the loss of life and property through identification and mitigation of seismic hazards. The State Geologist establishes regulatory zones (Zones of Required Investigation) and issues Seismic Hazard Zone Maps. These maps are distributed to all affected cities, counties, and state agencies for their use in planning and controlling construction and development.

California Building Code

The 2019 California Building Standards Code (CBC) was published on July 1, 2019 and took effect on January 1, 2020. The CBC is a compilation of three types of building criteria from three different origins:

- Building standards that have been adopted by state agencies without change from building standards contained in national model codes;
- Building standards that have been adopted and adapted from the national model code standards to meet California conditions; and
- Building standards, authorized by the California legislature, that constitute extensive additions not covered by the model codes that have been adopted to address particular California concerns.

The CBC identifies acceptable design criteria for construction that addresses seismic design and load-bearing capacity, including specific requirements for seismic safety; excavation, foundation and retaining wall design, site demolition, excavation, and construction, and; drainage and erosion control.

Changes in the 2019 California Building Standards Code provide enhanced clarity and consistency in application. The basis for the majority of these changes resulted from California amendments to the 2018 model building codes. Some of the most significant change include the following:

- Aligns engineering requirements in the building code with major revisions to national standards for structural steel and masonry construction, minor revisions to standards for wood construction, and support and anchorage requirements of solar panels in accordance with industry standards;

- Clarifies requirements for testing and special inspection of selected building materials during construction; and

- Recognizes and clarifies design requirements for buildings within tsunami inundation zones.

Paleontological Resources Regulations - California Public Resources Code

Paleontological resources are the fossilized remains of organisms from prehistoric environments found in geologic strata. They range from mammoth and dinosaur bones to impressions of ancient animals and plants, trace remains, and microfossils. California Public Resources Code (Section 5097.5) stipulates that the unauthorized removal of a paleontological resource is a misdemeanor. Under the CEQA Guidelines, a project would have a significant impact on paleontological resources if it would disturb or destroy a unique paleontological resource or site or unique geologic feature.

Local

Municipal Code Chapter 17.10 – Geologic Hazard Regulations

Chapter 17.10 of the City's municipal code provides regulations for natural and artificial geologic hazards. Geologic hazard zones are defined as being any land in an area identified as very high, high, or moderate/high landslide susceptibility zones, being on a California earthquake fault zone map, or one of the City maps dated 1983 or 1985. Provisions made under this Chapter include prohibiting construction or grading of any property in a geologic hazard zone except in full compliance with Chapter 17.10, and granting any certificate holder, contractor, certified engineering geologist or consulting geotechnical and/or civil engineer the power to order immediate cessation of construction in the event a new geologic hazard is discovered.

Section 17.10.600 of this code states that "[n]o regional study which requires or contemplates any invasive testing or soil disturbance shall be conducted by an applicant unless and until the director approves a plan for the regional study." This section outlines various requirements for such a report, including requiring supervision of a certified engineering geologist or geotechnical engineer, incorporation of dust control measures to avoid air quality impacts from fugitive dust, requiring preparation of a cultural resources assessment to avoid cultural impacts, and other requirements.

Municipal Code Chapter 17.40 – Dangerous Building Code

Chapter 17.40 of the City's municipal code regulates dangerous buildings, defined as "any building or structure or portion thereof which creates an endangerment to the life, limb, health, property, safety or welfare of the occupants of the building or members of the public." Dangerous buildings are considered to be "public nuisances" and the City Manager has the power to restrict such buildings from use or occupancy and to initiate abatement procedures.

General Plan

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating geology and soils impacts from development projects. Policies applicable to the project are presented below.

Envision San José 2040 Relevant Geology and Soil Policies	
Policy EC-3.1	Design all new or remodeled habitable structures in accordance with the most recent California Building Code and California Fire Code as amended locally and adopted by the City of San José, including provisions regarding lateral forces.
Policy EC-4.1	Design and build all new or remodeled habitable structures in accordance with the most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and storm water controls.
Policy EC-4.2	Development in areas subject to soils and geologic hazards, including unengineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on the site or on adjoining properties. The City of San José Geologist will review and approve geotechnical and geological investigation reports for projects within these areas as part of the project approval process. [The City Geologist will issue a Geologic Clearance for approved geotechnical reports.]
Policy EC-4.4	Require all new development to conform to the City of San José's Geologic Hazard Ordinance.
Policy EC-4.5	Ensure that any development activity that requires grading does not impact adjacent properties, local creeks, and storm drainage systems by designing and building the site to drain properly and minimize erosion. An Erosion Control Plan is required for all private development projects that have a soil disturbance of one acre or more, adjacent to a creek/river, and/or are located in hillside areas. Erosion Control Plans are also required for any grading occurring between October 1 and April 30.
Action EC-4.11	Require the preparation of geotechnical and geological investigation reports for projects within areas subject to soils and geologic hazards, and require review and implementation of mitigation measures as part of the project approval process.
Action EC-4.12	Require review and approval of grading plans and erosion control plans prior to issuance of grading permits by the Director of Public Works.
Policy ES-4.9	Permit development only in those areas where potential danger to health, safety, and welfare of the persons in that area can be mitigated to an acceptable level.

Existing Setting

The project property is an essentially flat lot with an elevation of approximately 87 feet above mean sea level (Google Earth, July 2021). Regionally, the topographic slope is to the north, towards San Francisco Bay. The project site is currently occupied by a two-story commercial building that would be partially demolished as part of the project (the street facing façade and parapet of the existing building is proposed to be retained as part of the project).

The project site is located in Santa Clara Valley, an alluvial basin that lies between the Santa Cruz Mountains to the southwest and the Diablo Range to the northeast. Santa Clara Valley bedrock consists of Franciscan Complex and Cretaceous-age marine sediment. This bedrock is overlain by Santa Clara Formation sediments, which consist of a complex distribution of sand, silt, and clay lenses.

The project site is located within the seismically active San Francisco Bay Area. Santa Clara Valley is located between the active San Andreas Fault to the west, and the active Hayward and Calaveras faults to the east. Surface fault rupture tends to occur along existing fault traces. The California Geological Survey (formerly Division of Mines and Geology) has produced maps showing Alquist-Priolo Earthquake Fault Zones along faults that pose a potential surface faulting hazard. No Alquist-Priolo zones are mapped in the vicinity of the project.[19]

The site is located within an area zoned by the State of California as having potential for seismically induced liquefaction hazards.[20] However, the site is not located within an area zoned in the Santa Clara County Geologic Hazard Zone maps as a Liquefaction Hazard Zone.[21] Liquefaction is a phenomenon in which the strength and stiffness of a soil is reduced by seismic shaking or other rapid loading. Liquefied soil can also settle.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
7. GEOLOGY AND SOILS. Would the project:						
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:						
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X		1, 2
ii) Strong seismic ground shaking?				X		1, 2
iii) Seismic-related ground failure, including liquefaction?				X		1, 2
iv) Landslides?				X		1, 2
b) Result in substantial soil erosion or the loss of topsoil?				X		1, 2

[19] California Geological Service, Earthquake Zones of Required Investigation San Jose West Quadrangle, 2002.
[20] California Geological Service, EQ Zapp: California Earthquake Hazards Zone Application, 2019.
[21] Santa Clara County, Santa Clara County Geologic Hazard Zones, 2012.

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				X		1, 2
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?				X		1, 2
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?				X		1, 2
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				X		1, 2, 3

Explanation

As discussed below, the proposed project would not result in a new or greater impact on geology and soils than was previously disclosed in the Downtown Strategy 2040 FEIR.

ai) **Same Impact as Approved Project**. The site is not located within a State of California Earthquake Fault Hazard Zone and no known active faults cross the site. The risk of ground rupture within the site is considered low. The project site is not mapped within an Alquist-Priolo Earthquake Fault Zone. Furthermore, the project will be designed and developed in accordance with the California Building Code guidelines to avoid or minimize potential direct or indirect damage from seismic shaking on the project site as set forth in the standard permit conditions below.

Standard Permit Conditions

- To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

- All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.

- Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.

- Ditches shall be installed to divert runoff around excavations and graded areas if necessary.

- The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

Implementation of the standard permit conditions identified above would assure that the project has the same impact as the approved project as related to seismicity.

aii) **Same Impact as Approved Project**. Due to its location in a seismically active region, the proposed building and associated structures would likely be subject to strong seismic ground shaking during their design life in the event of a major earthquake on any of the region's active faults. This could pose a risk to proposed structures and infrastructure. Earthquake faults in the region, specifically the San Andreas, Calaveras, and Hayward faults are capable of generating earthquakes larger than 7.0 in magnitude. Seismic impacts would be minimized by implementation of standard engineering and construction techniques in compliance with the requirements of the California and Uniform Building Codes for Seismic Zone 4. The project will be designed and constructed in accordance with a design-level geotechnical investigation as a standard permit condition discussed in ai.) above.

aiii) **Same Impact as Approved Project**. As described above, the project site may be subject to strong ground shaking in the event of a major earthquake. The site is located within an area zoned by the State of California as having potential for seismically induced liquefaction hazards. However, the site is not located within an area zoned in the Santa Clara County Geologic Hazard Zone maps as a Liquefaction Hazard Zone. Nevertheless, impacts associated with seismic and liquefaction hazards would be minimized by applying appropriate engineering and construction techniques. A geotechnical analysis would be prepared to provide recommendations to minimize these hazards as presented in the standard permit conditions in ai.) above.

aiv) **Same Impact as Approved Project**. The project site is essentially flat and would not be subject to landslides.

b) **Same Impact as Approved Project**. Development of the project would involve the excavation of approximately 6,800 cubic yards (CY) of material, to be exported from the site. This could result in a temporary increase in erosion. The project will implement the standard measures identified in *Section J. Hydrology and Water Quality* section of this Initial Study as well as the standard permit conditions discussed in explanation ai).

c) **Same Impact as Approved Project**. The project may contain soil and geologic hazards that could result in lateral spreading, subsidence, or liquefaction, which could damage proposed structures. Impacts associated with these soil and geotechnical hazards would be minimized by applying appropriate engineering and construction techniques. A geotechnical analysis would

be prepared to provide recommendations to minimize these hazards as presented in the standard permit conditions in ai.) above.

d) **Same Impact as Approved Project**. The project may contain expansive soils, which could damage proposed structures on the site. Impacts associated with expansive soils or other soil hazards would be minimized by applying appropriate engineering and construction techniques. A geotechnical analysis would be prepared to provide recommendations to minimize these hazards as described in the standard permit condition for ai) above. This would reduce any new potentially significant direct or indirect geotechnical impacts to less than significant.

e) **Same Impact as Approved Project**. The project does not include any septic systems. The proposed project would connect to the City's existing sanitary sewer system.

f) **Same Impact as Approved Project**. The project site is located in an area mapped as "high sensitivity at depth" in the 2040 General Plan EIR.[22] The project proposes grading that could potentially disturb paleontological resources. Consistent with General Plan Policy ER-10.3, the following standard permit condition would be implemented by the project to avoid or minimize impacts to paleontological resources during construction. No other unique geological features are found on this developed infill site.

Standard Permit Condition

- If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or the Director's designee.

Geology and Soils Chapter Conclusion

The Downtown Strategy 2040 EIR identified potential geologic and geotechnical hazards and identified minimizing measures for these impacts. The project would be designed and constructed in accordance with a design-level geotechnical investigation consistent with the mitigation identified in the Downtown Strategy 2040 EIR. The proposed project would not result in new or more significant geology and soils impacts than identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project identified potential construction geology and soils impacts and mitigation related to liquefaction (GEO-CNST-A: Incorporate Design Specifications to Minimize Effects from Liquefaction Hazards), surface settlement (GEO-CNST-B through GEO-CNST-F) stability (GEO-CNST-F through GEO-CNST-G), expansive soils (GEO-CNST-H:

[22] Figure 3.11-1 "Paleontologic Sensitivity of City of San Jose Geologic Units," from the *Draft Program Environmental Impact Report (PEIR) for the Envision San José 2040 General Plan*, June 2011.

Incorporate Design Specifications to Minimize Effects from Expansive Soils) and paleontological resources (GEO-CNST-I: Stop Construction if Paleontological Resources Are Discovered and Determine Appropriate Action). In addition, an operational impact and mitigation was identified related to liquefaction (GEO-CNST-A: Incorporate Design Specifications to Minimize Effects from Liquefaction Hazards). All impacts to geology and soils identified in the SEIS/SEIR were reduced to less than significant with mitigation.

As described above, the proposed project resulted in less than significant impact through implementation of standard permit conditions. As a result, the proposed project would not result in new significant impacts to geology and soils, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact with respect to geology and soils and would not result in new or more severe geological impacts than identified in the SEIS/SEIR for the BART Extension Project.

H. GREENHOUSE GAS EMISSIONS

Regulatory Framework

Federal

The Federal Clean Air Act (CAA), first passed in 1970, is the overarching federal-level law that, as of 2007 via the U.S. Supreme court decision in Massachusetts v. EPA, enables the U.S. EPA to provide regulations of key GHG emissions sources (mobile emissions), established a mandatory emissions reporting program for large stationary emitters, and implementation of vehicle fuel efficiency standards.

State

Assembly Bill 32 – California Global Warming Solutions Act

Assembly Bill (AB) 32, the Global Warming Solutions Act of 2006, codifies the State of California's GHG emissions target by directing CARB to reduce the state's global warming emissions to 1990 levels by 2020. AB 32 was signed and passed into law by Governor Schwarzenegger on September 27, 2006. Since that time, the CARB, the California Energy Commission (CEC), the California Public Utilities Commission (CPUC), and the Building Standards Commission have all been developing regulations that will help meet the goals of AB 32 and Executive Order S-3-05.[23]

A Scoping Plan for AB 32 was adopted by CARB in December 2008. It contains the State of California's main strategies to reduce GHGs from business as usual (BAU) emissions projected in 2020 back down to 1990 levels. BAU is the projected emissions in 2020, including increases in emissions caused by growth, without any GHG reduction measures. The Scoping Plan has a range of GHG reduction actions, including direct regulations, alternative compliance mechanisms, monetary and non-monetary incentives, voluntary actions, and market-based mechanisms such as a cap-and-trade system. It required CARB and other state agencies to develop and adopt regulations and other initiatives reducing GHGs by 2012.

As directed by AB 32, CARB has also approved a statewide GHG emissions limit. On December 6, 2007, CARB staff resolved an amount of 427 MMT of CO_2e as the total statewide GHG 1990 emissions level and 2020 emissions limit. The limit is a cumulative statewide limit, not a sector-or facility-specific limit. CARB updated the future 2020 BAU annual emissions forecast, in light of the economic downturn, to 545 MMT of CO_2e. Two GHG emissions reduction measures currently enacted that were not previously included in the 2008 Scoping Plan baseline inventory were included, further reducing the baseline inventory to 507 MMT of CO_2e. Thus, an estimated reduction of 80 MMT of CO_2e is necessary to reduce statewide emissions to meet the AB 32 target by 2020.

Senate Bill 1368

Senate Bill (SB) 1368 is the companion bill of AB 32 and was signed by Governor Schwarzenegger in September 2006. SB 1368 required the CPUC to establish a greenhouse gas emission performance standard. Therefore, on January 25, 2007, the CPUC adopted an interim GHG Emissions Performance Standard in an effort to help mitigate climate change. The Emissions Performance Standard is a

[23] Note that AB 197 was adopted in September 2016 to provide more legislative oversight of CARB.

facility-based emissions standard requiring that all new long-term commitments for baseload generation to serve California consumers be with power plants that have emissions no greater than a combined cycle gas turbine plant. That level is established at 1,100 pounds of CO_2 per megawatt-hour. "New long-term commitment" refers to new plant investments (new construction), new or renewal contracts with a term of five years or more, or major investments by the utility in its existing baseload power plants. In addition, the CEC established a similar standard for local publicly owned utilities that cannot exceed the greenhouse gas emission rate from a baseload combined-cycle natural gas fired plant. On July 29, 2007, the Office of Administrative Law disapproved the CEC's proposed Greenhouse Gases Emission Performance Standard rulemaking action and subsequently, the CEC revised the proposed regulations. SB 1368 further requires that all electricity provided to California, including imported electricity, must be generated from plants that meet the standards set by the CPUC and CEC.

Senate Bill 32 – California Global Warming Solutions Act of 2006

In September 2015, the California Legislature passed SB 350 (de Leon 2015), which increases the State's Renewables Portfolio Standard (RPS) for content of electrical generation from the 33 percent target for 2020 to a 50 percent renewables target by 2030.

Senate Bill 375 – California's Regional Transportation and Land Use Planning Efforts

SB 375, signed in August 2008, requires sustainable community strategies (SCS) to be included in regional transportation plans (RTPs) to reduce emissions of GHGs. The MTC and ABAG adopted an SCS in July 2013 that meets GHG reduction targets. The Plan Bay Area is the SCS document for the Bay Area, which is a long-range plan that addresses climate protection, housing, healthy and safe communities, open space and agricultural preservation, equitable access, economic vitality, and transportation system effectiveness within the San Francisco Bay region (MTC 2013). The document is updated every four years so the MTC and ABAG are currently developing the Plan Bay Area 2040.

Executive Order S-03-05

On June 1, 2005 Governor Schwarzenegger signed Executive Order S-03-05, the purpose of which was to implement requirements for the California Environmental Protection Agency (EPA) to provide ongoing reporting on a biennial basis to the State Legislature and Governor's Office on how global warming is affecting the State. Required areas of impact reporting include public health, water supply, agriculture, coastline, and forestry. The EPA secretary is required to prepare and report on ongoing and upcoming mitigation designed to counteract these impacts.

Executive Order B-30-15

On April 15, 2015 Governor Brown signed Executive Order B-30-15, the purpose of which is to establish a GHG reduction of 40 percent below 1990 levels by 2030. The Executive Order is intended to help the State work towards a further emissions reduction target of 80 percent below 1990 levels by the year 2050. The order directed state agencies to prepare for climate change impacts through prioritization of adaptation actions to reduce GHG emissions, preparation for uncertain climate impacts through implementation of flexible approaches, protection of vulnerable populations, and prioritization of natural infrastructure approaches.

Executive Order B-55-18 and SB 100 – 100 Percent Clean Energy Act of 2018

On September 10, 2018 Governor Brown signed both SB 100 – 100 Percent Clean Energy Act of 2018 and Executive Order B-55-18 to Achieve Carbon Neutrality. SB 100 sets California on course to achieving carbon-free emissions from the electric power production sector by 2045. SB100 also increases the required emissions reduction generated by retail sales to 60% by 2030, an increase in 10% compared to previous goals. B-55-18 establishes a new goal of achieving statewide "carbon neutrality as early as possible and no later than 2045, and to achieve and maintain net negative emissions thereafter."

Regional and Local

Bay Area Air Quality Management District

The BAAQMD is primarily responsible for ensuring that the federal and state ambient air quality standards for criteria pollutants are attained and maintained in the Bay Area. The BAAQMD's May 2017 CEQA Air Quality Guidelines update the 2010 CEQA Air Quality Guidelines, addressing the California Supreme Court's 2015 opinion in the *California Building Industry Association vs. Bay Area Air Quality Management District* court case.

In an effort to attain and maintain federal and state ambient air quality standards, the BAAQMD establishes thresholds of significance for construction and operational period emissions for criteria pollutants and their precursors (see Table 2).

2017 Bay Area Clean Air Plan

The BAAQMD, along with other regional agencies such as the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC), develops plans to reduce air pollutant emissions. The most recent clean air plan is the *Bay Area 2017 Clean Air Plan: Spare the Air, Cool the Climate* (2017 CAP), which was adopted by BAAQMD in April 2017. This is an update to the 2010 CAP, and centers on protecting public health and climate. The 2017 CAP identifies a broad range of control measures. These control measures include specific actions to reduce emissions of air and climate pollutants from the full range of emission sources and is based on the following four key priorities:

- Reduce emissions of criteria air pollutants and toxic air contaminants from all key sources.
- Reduce emissions of "super-GHGs" such as methane, black carbon, and fluorinated gases.
- Decrease demand for fossil fuels (gasoline, diesel, and natural gas).
- Decarbonize our energy system.

City of San José Municipal Code

The City's Municipal Code includes the following regulations that would reduce GHG emissions from future development:

- Green Building Ordinance (Chapter 17.84)
- Water Efficient Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10)

- Transportation Demand Programs for employers with more than 100 employees (Chapter 11.105)
- Construction and Demolition Diversion Deposit Program (Chapter 9.10)
- Wood Burning Ordinance (Chapter 9.10)

Council Policy 6-32 Private Sector Green Building Policy

In October 2008, the City Council adopted the Council Policy 6-32 "Private Sector Green Building Policy", which identifies baseline green building standards for new private construction and provides a framework for the implementation of these standards. This Policy requires that applicable projects achieve minimum green building performance levels using the Council adopted standards.

City of San José Greenhouse Gas Reduction Strategy

On December 15, 2015, the San José City Council certified a Supplemental Program Environmental Impact Report to the Envision San José 2040 Final Program Environmental Impact Report and re-adopted the City's GHG Reduction Strategy in the General Plan. The GHG Reduction Strategy is intended to meet the mandates as outlined in the CEQA Guidelines and standards for "qualified plans" as set forth by BAAQMD. Projects that conform to the General Plan Land Use/Transportation Diagram and supporting policies are considered consistent with the City's GHG Reduction Strategy.

The GHG Reduction Strategy identifies GHG emissions reduction measures to be implemented by development projects in three categories: built environment and energy; land use and transportation; and recycling and waste reduction. Some measures are mandatory for all proposed development projects and others are voluntary. Voluntary measures can be incorporated as mitigation measures for proposed projects, at the City's discretion.

The Greenhouse Gas Reduction Strategy was updated for 2030. The 2030 GHG Reduction Strategy was adopted and the EIR Addendum were certified by the City Council on 11/17/2020. The 2030 GHG Reduction Strategy went into effect on 12/17/2020.

The 2030 GHG Reduction Strategy outlines the actions the City will undertake to achieve its proportional share of State GHG emission reductions for the interim target year 2030. The 2030 GHG Reduction Strategy presents the City's comprehensive path to reduce GHG emissions to achieve the 2030 reduction target, based on SB 32, BAAQMD, and OPR requirements. Additionally, the 2030 GHG Reduction Strategy leverages other important City plans and policies; including the General Plan, Climate Smart San José, and the City Municipal Code in identifying reductions strategies that achieve the City's target. CEQA Guidelines Section 15183.5 allows for public agencies to analyze and mitigate GHG emissions as part of a larger plan for the reduction of GHGs. Accordingly, the City of San José's 2030 GHG Reduction Strategy represents San José's qualified climate action plan in compliance with CEQA.

As described in the 2030 GHG Reduction Strategy, the GHG reductions will occur through a combination of City initiatives in various plans and policies to provide reductions from both existing and new developments. A GHG Reduction Strategy Compliance Checklist (checklist) was developed that applies to proposed discretionary projects that require CEQA review. Therefore, the checklist is a critical implementation tool in the City's overall strategy to reduce GHG emissions. Implementation of applicable reduction actions in new development projects will help the City achieve incremental

reductions toward its target. Per the 2030 GHG Reduction Strategy, the City will monitor strategy implementation and make updates, as necessary, to maintain an appropriate trajectory to the 2030 GHG target. Specifically, the purpose of the checklist is to:

- Implement GHG reduction strategies from the 2030 GHGRS to new development projects.
- Provide a streamlined review process for proposed new development projects that are subject to discretionary review and trigger environmental review pursuant to CEQA.

Climate Smart San José

Climate Smart San José is a plan to reduce air pollution, save water, and create a stronger and healthier community. The City approved goals and milestones in February 2018 to ensure the City can substantially reduce GHG emissions through reaching the following goals and milestones.

- All new residential buildings will be Zero Net Carbon Emissions (ZNE) by 2020 and all new commercial buildings will be ZNE by 2030 (Note that ZNE buildings would be all electric with a carbon-free electricity source).
- San José Clean Energy (SJCE) will provide 100-percent carbon-free base power by 2021.
- One gigawatt of solar power will be installed in San José by 2040.
- 61 percent of passenger vehicles will be powered by electricity by 2030.

The California Energy Commission (CEC) updates the California Building Energy Efficiency Standards every three years, in alignment with the California Code of regulations. Title 24, Parts 6 and 11, of the California Building Energy Efficiency Standards and the California Green Building Standards Code (CALGreen) address the need for regulations to improve energy efficiency and combat climate change. The 2019 CAL Green standards include some substantial changes intended to increase the energy efficiency of buildings. For example, the code encourages the installation of solar and heat pump water heaters in low-rise residential buildings. The 2019 California Code went before City Council in October 2019 for approval, with an effective date of January 1, 2020. As part of this action, the City adopted a "reach code" that requires development projects to exceed the minimum Building Energy Efficiency requirements.[24] The City's reach code applies only to new residential and non-residential construction in San José. It incentivizes all-electric construction, requires increased energy efficiency and electrification-readiness for those choosing to maintain the presence of natural gas. The code requires that non-residential construction include solar readiness. It also requires additional EV charging readiness and/or electric vehicle service equipment (EVSE) installation for all development types.

General Plan

In addition to the above, policies in the General Plan have been adopted for the purpose of avoiding or mitigating greenhouse gas emissions impacts from development projects. Policies applicable to the project are presented below.

[24] City of San José Transportation and Environmental Committee, *Building Reach Code for New Construction Memorandum,* August 2019.

Envision San José 2040 Relevant Greenhouse Gas Reduction Policies	
Policy MS-1.2	Continually increase the number and proportion of buildings within San José that make use of green building practices by incorporating those practices into both new construction and retrofit of existing structures.
Policy MS-2.3	Encourage consideration of solar orientation, including building placement, landscaping, design, and construction techniques for new construction to minimize energy consumption.
Policy MS-2.11	Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g. design to maximize cross ventilation and interior daylight) and through site design techniques (e.g. orienting buildings on sites to maximize the effectiveness of passive solar design).
Policy MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City
Policy MS-6.5	Reduce the amount of waste disposed in landfills through waste prevention, reuse, and recycling of materials at venues, facilities, and special events.
Policy MS-6.8	Maximize reuse, recycling, and composting citywide.
Policy MS-14.4	Implement the City's Green Building Policies so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, passive solar building design, and planting of trees and other landscape materials to reduce energy consumption.
Policy LU-5.4	Require new commercial development to facilitate pedestrian and bicycle access through techniques such as minimizing building separation from public sidewalks; providing safe, accessible, convenient, and pleasant pedestrian connections; and including secure and convenient bike storage.
Policy TR-2.18	Provide bicycle storage facilities as identified in the Bicycle Master Plan.
Policy CD-2.5	Integrate Green Building Goals and Policies of this Plan into site design to create healthful environments. Consider factors such as shaded parking areas, pedestrian connections, minimization of impervious surfaces, incorporation of stormwater treatment measures, appropriate building orientations, etc.
Policy CD-3.3	Within new development, create and maintain a pedestrian-friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.
Policy CD-5.1	Design areas to promote pedestrian and bicycle movements and to facilitate interaction between community members and to strengthen the sense of community.

Existing Setting

Various gases in the earth's atmosphere, classified as atmospheric greenhouse gases (GHGs), play a critical role in determining the earth's surface temperature. Solar radiation enters the atmosphere from space and a portion of the radiation is absorbed by the earth's surface. The earth emits this radiation back toward space, but the properties of the radiation change from high-frequency solar radiation to

lower-frequency infrared radiation. Greenhouse gases, which are transparent to solar radiation, are effective in absorbing infrared radiation. As a result, this radiation that otherwise would have escaped back into space is retained, resulting in a warming of the atmosphere. This phenomenon is known as the greenhouse effect. Among the prominent GHGs contributing to the greenhouse effect, or climate change, are carbon dioxide (CO_2), methane (CH_4), ozone (O_3), water vapor, nitrous oxide (N_2O), and chlorofluorocarbons (CFCs). Human-caused emissions of these GHGs in excess of natural ambient concentrations are responsible for enhancing the greenhouse effect. Climate change is a cumulative effect from local, regional, and global GHG emission contributions. According to the EPA on a Global scale, CARB on a state scale, and BAAQMD on a County scale, the transportation sector is the largest emitter of GHG emissions, followed by electricity generation and the industrial sector.[25],[26] ,[27] The City of San José also has the transportation sector as the largest emitter of GHG emission, but followed by residential and commercial development.[28]

The U.S. EPA reported that in 2018, total gross nationwide GHG emissions were 6,676.6 million metric tons (MMT) carbon dioxide equivalent (CO_2e).[29] These emissions were lower than peak levels of 7,416 MMT that were emitted in 2007. CARB updates the statewide GHG emission inventory on an annual basis where the latest inventory includes 2000 through 2017 emissions.[30] In 2017, GHG emissions from statewide emitting activities were 424 MMT. The 2017 emissions have decreased by 14 percent since peak levels in 2004 and are 7 MMT below the 1990 emissions level and the State's 2020 GHG limit. Per capita GHG emissions in California have dropped from a 2001 peak of 14.1 MT per person to 10.7 MT per person in 2017. The most recent Bay Area emission inventory was computed for the year 2011.[31] The Bay Area GHG emissions were 87 MMT. As a point of comparison, statewide emissions were about 444 MMT in 2011. According to San José's GHGRS, the City's emissions were 5.71 MMT.

The project site is developed with two existing commercial buildings. The existing GHG emissions at the site is from vehicles traveling to and from the site, as well as energy usage from natural gas and electricity.

[25] EPA, https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks
[26] CARB, https://ww2.arb.ca.gov/ghg-inventory-data
[27] BAAQMD. Available at: https://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/Emission%20Inventory/BY2011_GHGSummary.ashx?la=en&la=en
[28] City of San José, 2011. *Greenhouse Gas Reduction Strategy for the City of San José*. https://www.sanjoseca.gov/your-government/department-directory/planning-building-code-enforcement/planning-division/environmental-planning/greenhouse-gas-reduction-strategy
[29] United States Environmental Protection Agency, 2020. *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2018*. April. Web: https://www.epa.gov/sites/production/files/2020-04/documents/us-ghg-inventory-2020-main-text.pdf
[30] CARB. 2019. *2019 Edition, California Greenhouse Gas Emission Inventory: 2000 – 2017*. Web: https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000_2017/ghg_inventory_trends_00-17.pdf
[31] BAAQMD. 2015. *Bay Area Emissions Inventory Summary Report: Greenhouse Gases Base Year 2011*. January. Web: http://www.baaqmd.gov/~/media/files/planning-and-research/emission-inventory/by2011_ghgsummary.pdf accessed March 2021.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS		New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
8.	GREENHOUSE GAS EMISSIONS. Would the project:						
a)	Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?				X		1, 3
b)	Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?				X		1, 3

Explanation

As discussed below, the proposed project would not result in a new or greater impact on greenhouse gas emissions than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. CARB previously recommended use of URBEMIS for predicting construction and operational emissions. In 2012 URBEMIS was considered outdated and was replaced by CalEEMod Version 2016.3.2. In the 2017 update to the CEQA Air Quality Guidelines, BAAQMD identifies screening criteria for the sizes of land use projects that could result in significant GHG emissions. The GHG screening criteria was developed from default assumptions used by URBEMIS. If a project is below the BAAQMD screening sizes, then the project would not exceed the 1,100 MT of CO_2e/yr GHG threshold of significance. The project also would be considered less than significant if it demonstrates that it is consistent with the City's 2030 GHG Reduction Strategy.

GHG emissions associated with development of the project would occur over the short-term from construction activities, consisting primarily of emissions from equipment exhaust and worker and vendor trips. Long-term operational emissions would also be generated from vehicular traffic, energy and water use, and solid waste disposal. However, the project, which consists primarily of multi-family residential housing and some commercial space in a downtown location with access to ample public transit, is not anticipated to generate substantial traffic and no onsite parking is proposed. Project trips would be limited to deliveries and some passenger cars. Therefore, emissions from project-generated traffic are considered negligible.

The project is subject to the GHG reduction strategies identified in the City's 2030 GHG Reduction Strategy Compliance Checklist (see Appendix E). The project would implement and comply with all relevant GHG reduction measures as determined by the City. GHG reduction strategies to be incorporated into the project include the following (see also Appendix E):

- Implementation of green building measures through construction techniques and architectural design,
- Designation of areas for solar panels on the roof, and
- Integration of water and waste reduction features.

The project would not generate GHG emissions, either directly or indirectly, that would have a significant impact on the environment.

GHG emissions associated with construction were computed to be approximately 567 MT of CO_2e for the total construction period. These consist of emissions from on-site operation of construction equipment, vendor and hauling truck trips, and worker trips. Neither the City nor BAAQMD have an adopted threshold of significance for construction-related GHG emissions, although BAAQMD recommends quantifying emissions and disclosing GHG emissions during construction. BAAQMD also encourages the incorporation of best management practices to reduce GHG emissions during construction where feasible and applicable.

b) **Same Impact as Approved Project**. The City's 2030 GHG Reduction Strategy Compliance Checklist has been completed for the project, as presented in Appendix E. The GHG Reduction Strategy Compliance Checklist is intended to demonstrate a project's compliance with the City's 2030 GHG Reduction Strategy, as well as relevant policies from the City's General Plan. Since the residential component is the larger component of the proposed mixed-use development, the GHG Reduction Strategy Compliance Checklist was completed using the "residential" development type. The completed checklist indicated that the proposed project would either be consistent with each of the policies, or that individual policies were not applicable to the proposed project. The project would be consistent with the existing General Plan land use diagram, would be required to provide pedestrian and bicycle facilities consistent with the Municipal Code, and would comply with green building ordinances and all applicable energy efficiency measures. Therefore, the project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs, since the project would comply with the City's 2030 GHG Reduction Strategy.

Greenhouse Gas Emissions Chapter Conclusion

Development of the project would incorporate measures from applicable policies of the City's General Plan and adopted GHG Reduction Strategy. The Downtown Strategy 2040 FEIR identified significant GHG emissions under 2040 conditions under project and cumulative conditions. Given the uncertainties about the feasibility of achieving the needed 2040 GHG emissions reductions, the Downtown Strategy 2040's contribution to GHG emissions and climate change for the 2040 timeframe was determined to be significant and unavoidable. The City Council adopted a statement of overriding considerations for this impact. The proposed project would not result in new or more severe impacts on Greenhouse Gas Emissions than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project identified potential construction greenhouse gas emissions impacts and mitigation related to indirect or direct generation of GHG emissions (AQ-CNST-B through AQ-CNST-G). In addition, operational impacts and mitigation was identified related to indirect or direct generation of GHG emissions (GHG-CNST-A through GHG-CNST-D and AQ-CNST-I: Use Low-VOC Coatings). The operational impacts related to GHG emissions identified in the SEIS/SEIR remained significant and unavoidable even with mitigation.

As described above, the proposed project resulted in less than significant impact through implementation of Greenhouse Gas Reduction Strategies. As a result, the proposed project would not result in new significant impacts related to greenhouse gas emissions, compared to what was analyzed

in the SEIS/SEIR. The project would have a less than significant impact with respect to greenhouse gas emissions and would not result in new or more severe greenhouse gas emission impacts than identified in the SEIS/SEIR for the BART Extension Project.

I. HAZARDS AND HAZARDOUS MATERIALS

A Phase I Environmental Site Assessment was prepared for the project by AEI Consultants (August 11, 2021) and is contained in Appendix C.

Regulatory Framework

Federal

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress in 1980 and is administered by the U.S. EPA. This law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. CERCLA established prohibitions and requirements concerning closed and abandoned hazardous waste sites, provided for liability of persons responsible for releases of hazardous waste at these sites; and established a trust fund to provide for cleanup when no responsible party could be identified.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) is a Federal law passed by Congress in 1976 to address the increasing problems from the nation's growing volume of municipal and industrial waste. RCRA creates the framework for the proper management of hazardous and non-hazardous solid waste and is administered by the U.S. EPA. RCRA protects communities and resource conservation by enabling the EPA to develop regulations, guidance, and policies that ensure the safe management and cleanup of solid and hazardous waste, and programs that encourage source reduction and beneficial reuse. The term RCRA is often used interchangeably to refer to the law, regulations, and EPA policy and guidance.

State

California Department of Toxic Substances Control

The California Department of Toxic Substances Control (DTSC) is a State agency that protects State citizens and the environment from exposure to hazardous wastes by enforcing hazardous waste laws and regulations. DTSC enforces action against violators; oversees cleanup of hazardous wastes on contaminated properties; makes decisions on permit applications from companies that want to store, treat or dispose of hazardous waste; and protects consumers against toxic ingredients in everyday products.

Cortese List: Section 65692.5(a)

California Code of Regulations Section 65962.5(a) requires that the DTSC compile and update an annual list, known as the Cortese List, of all hazardous waste facilities subject to corrective action, pursuant to Section 25187.5 of the Health and Safety Code. Facilities are added to the Cortese List are those that have failed to comply with a posted date for taking corrective action for an existing hazard

or because DTSC determined that immediate corrective action is necessary to abate an imminent or substantial endangerment.

California Code of Regulations, Title 8 Section 1529 – Asbestos

California Code of Regulations, Title 8, Section 1529 regulates asbestos exposure in all construction work, including structure demolition, removal of asbestos-containing materials, activities involving construction or alteration of existing structures that contain asbestos, installation of asbestos-containing products, emergency cleanup, and other activities. Section 1529 regulates permissible exposure limits for individual employees, standards for demarcation of regulated asbestos work areas, and safety protocol and equipment.

California Code of Regulations, Title 8 Section 1532.1 – Lead

California Code of Regulations, Title 8, Section 1532.1 applies to all construction work where an employee may be occupationally exposed to lead. As defined in this section, an employer shall assure that no employee is exposed to lead at concentrations greater than fifty micrograms per cubic meter of air ($50\mu g/m^3$) averaged over an 8-hour period. Employers are required to identify hazards at existing job sites and provide workers with training and sanitation stations for decontamination. Compliance is regulated by the California Occupational Safety Health Program (CAL/OSHA).

California Accidental Release Prevention Program

The California Accidental Release Prevention (CalARP) program is designed to help prevent the accidental release of substances that pose harm to public health and the environment. CalARP also provides guidance for minimizing damage from spills and requires businesses to develop Risk Management Plans (RMPs) if they handle a certain amount of a regulated substance. RMPs are detailed engineering documents that analyze the potential accident factors and identify mitigation for rapid implementation to reduce accident potential and address any accidental releases. The CalARP program is implemented by Unified Program Agencies (UPAs) at the local government levels. UPAs work directly with businesses to review and approve RMPs, conduct inspections, and provide public-facing data.

California State Water Resources Control Board

The California State Water Resources Control Board (SWRCB) and its nine regional boards are responsible for preserving, enhancing, and restoring the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses. Through the 1969 Porter-Cologne Act, the State and Regional Water Boards have been entrusted with broad duties and powers to preserve and enhance all beneficial uses of the state's water resources.

Local

Regional Water Quality Control Board

The San Francisco Bay Regional Water Quality Control Board (RWQCB) is the lead agency responsible for identifying, monitoring and remediating leaking underground storage tanks in the Bay

Area. Local jurisdictions may take the lead agency role as a Local Oversight Program (LOP) entity, implementing State as well as local policies.

Municipal Regional Stormwater Permit – Provision C.12.f

Polychlorinated biphenyls (PCBs) were produced in the United States between 1955 and 1978 and used in hundreds of industrial and commercial applications, including building and structure materials such as plasticizers, paints, sealants, caulk, and wood floor finishes. In 1979, the EPA banned the production and use of PCBs due to their potential harmful health effects and persistence in the environment. PCBs can still be released to the environment today during demolition of buildings that contain legacy caulks, sealants, or other PCB-containing materials. With the adoption of the San Francisco Bay Region MRP by the San Francisco Bay RWQCB on November 19, 2015, Provision C.12.f requires that permittees develop an assessment methodology for applicable structures planned for demolition to ensure PCBs do not enter municipal storm drain systems.

Municipalities throughout the Bay Area are currently modifying demolition permit processes and implementing PCB screening protocols to comply with Provision C.12. Buildings constructed between 1950 and 1980 that are proposed for demolition must be screened for the presence of PCBs prior to the issuance of a demolition permit. Single family homes and wood-frame structures are exempt from these requirements.

Santa Clara Department of Environmental Health

The County of Santa Clara Department of Environmental Health reviews California Accidental Release Prevention (CalARP) risk management plans as the Certified Unified Program Agency (CUPA) for the City. The CalARP Program aims to prevent accidental releases of regulated hazardous materials that represent a potential hazard beyond property boundaries. Facilities that are required to participate in the CalARP Program use or store specified quantities of toxic and flammable substances (hazardous materials) that can have off-site consequences if accidentally released. A Risk Management Plan (RMP) is required for such facilities. The intents of the RMP are to provide basic information that may be used by first responders in order to prevent or mitigate damage to the public health and safety and to the environment from a release or threatened release of a hazardous material, and to satisfy federal and state Community Right-to-Know laws.

General Plan

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating hazardous materials impacts from development projects. All future development allowed by the proposed land use designation would be subject to the hazardous materials policies in the General Plan presented below.

Envision San José 2040 Relevant Hazardous Material Policies	
Policy EC-6.6	Address through environmental review for 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.

Envision San José 2040 Relevant Hazardous Material Policies	
Policy 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.
Policy 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.
Policy EC-7.3	Where a property is located in near proximity of known groundwater contamination with volatile organic compounds or within 1,000 feet of an active or inactive landfill, evaluate and mitigate the potential for indoor air intrusion of hazardous compounds to the satisfaction of the City's Environmental Compliance Officer and appropriate regional, state and federal agencies prior to approval of a development or redevelopment project.
Policy EC-7.4	On redevelopment sites, determine the presence of hazardous building materials during the environmental review process or prior to project approval. Mitigation and remediation of hazardous building materials, such as lead-paint and asbestos-containing materials, shall be implemented in accordance with state and federal laws and regulations.
Policy EC-7.5	In development and redevelopment sites, require all sources of imported fill to have adequate documentation that it is clean and free of contamination and/or acceptable for the proposed land use considering appropriate environmental screening levels for contaminants. Disposal of groundwater from excavations on construction sites shall comply with local, regional, and State requirements.
Action EC-7.8	Where an environmental review process identifies the presence of hazardous materials on a proposed development site, the City will ensure that feasible mitigation measures that will satisfactorily reduce impacts to human health and safety and to the environment are required of or incorporated into the projects. This applies to hazardous materials found in the soil, groundwater, soil vapor, or in existing structures.
Action 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.
Action EC-7.10	Require review and approval of grading, erosion control and dust control plans prior to issuance of a grading permit by the Director of Public Works on sites with known soil contamination. Construction operations shall be conducted to limit the creation and dispersion of dust and sediment runoff.
Action EC-7.11	Require sampling for residual agricultural chemicals, based on the history of land use, on sites to be used for any new development or redevelopment to account for worker and community safety during construction. Mitigation to meet appropriate end use such as residential or commercial/industrial shall be provided.
Policy MS-13.2	Construction and/or demolition projects that have the potential to disturb asbestos (from soil or building material) shall comply with all the requirements of the California Air Resources Board's air toxics control measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.

Existing Setting

The Phase I Environmental Site Assessment for the project site was prepared in conformance with ASTM E1527-13. The purpose of the Phase I Assessment is to identify the potential presence of any hazardous substances or petroleum products, their use, storage, and disposal at and in the vicinity of the site. The study focused on the following tasks: 1) a review of federal, state, tribal, and local databases that identify and describe underground fuel tank sites, leaking underground fuel tank sites, hazardous waste generation sites, and hazardous waste storage and disposal facility sites on or near the site; 2) a property and surrounding site reconnaissance and interviews with the past and present owners and current occupants and operators to identify potential environmental contamination; and 3) a review of historical sources to help ascertain previous land use at the site and in the surrounding area.

The existing property is currently occupied by two existing buildings. According to reviewed historical sources, the project site was developed as early as 1884 and utilized as unspecified storefronts, commercial offices, and a hotel through 1891. The building at 17 East Santa Clara was constructed by 1898 and the building at 29 East Santa Clara was constructed between 1898 and 1915. From 1922 to present day, the existing buildings have been occupied by various commercial and retail tenants, including hotels, restaurants, cafes, jewelry shops, drug stores, barbers, salons, wig stores, markets, and commercial offices.

The Phase I Assessment included a regulatory database review. In determining if a listed site is a potential environmental concern to the subject property, AEI generally applies the following criteria to classify the site as lower potential environmental concern: 1) the site only holds an operating permit (which does not imply a release), 2) the site's distance from, and/or topographic position relative to, the subject property, and/or 3) the site has recently been granted "No Further Action" by the appropriate regulatory agency. Below is a summary of the findings of the Phase I Assessment including the database search.

The northeastern adjoining property is listed as an open Spills, Leaks, Investigations, and Cleanup (SLIC) release case in the regulatory database. The Bassler-Haynes Building and Dr. EU Building, located in a cross-gradient direction to the project site at 35 and 43 East Santa Clara Street, are listed as the same active Cleanup Program Site (CPS)-SLIC case. The San Francisco Bay Regional Water Quality Control Board (RWQCB) is providing regulatory oversight of this CPS-SLIC case. Based on information reviewed on the GeoTracker online database, the Bassler-Hayne building was formerly occupied by a hotel. A dry-cleaning facility was located in the hotel basement that operated from about 1950 to 1969 and released perchloroethylene (PCE), a solvent used for dry cleaning. Since 1997, several environmental investigations have been conducted that included soil and grab groundwater samples, installation of groundwater monitoring wells, collection of soil-gas samples, and collection of indoor air samples. Results from these investigations indicated the presence of halogenated volatile organic compounds (HVOCs), including PCE, in soil, soil-gas, indoor air, and shallow groundwater at concentrations above their respective regulatory screening criteria at this site.[32] In addition, elevated HVOC levels have been detected in soil, soil-gas, groundwater, and indoor air samples collected from the properties located north/northeast of the site (cross to down-gradient) at 15-25 North Second Street, 65 North Second Street, 4 North Second Street (Silicon Valley Towers), and 70 North Second Street; north of the site (down-gradient) at 50, 52, 60, 66, 80, and 90 North First Street; and east (cross-gradient) of the site at 75 East Santa Clara Street.

[32] Commercial/Industrial Environmental Screening Levels (RWQCB 2016).

In November 2018, analytical results of a soil gas sample obtained from sampling location SS-2, located approximately 10 feet northeast of the subject property, indicated that PCE was measured at 27.9 µg/m3 (with a duplicate sample concentration of 24.6 µg/m3). This concentration was noted to be below the cleanup level of 2,100 µg/m3. This sample point is estimated to be approximately 25 to 60 feet cross-gradient of the suspected source area. Sample SS-2 was located approximately 25 and 50 feet (horizontally) from groundwater monitoring well MW-6. When last sampled in 2016, monitoring well MW-6 had a PCE concentration of 2,400 µg/L. In June 2020, a Soil Vapor Extraction (SVE) Pilot Test demonstrated that SVE is an effective remediation method of the vadose zone (which extends from the top of the ground surface to the water table) at the site and full implementation was recommended. As of the most recent Bimonthly Status Report (June 2021) full-scale implementation of the SVE system is ongoing at the site. Based on the analytical results obtained from the 35 and 43 East Santa Clara Street property and other nearby vicinity properties, the adjoining open release case constitutes a Recognized Environmental Concern (REC) to the project site.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
9. HAZARDS AND HAZARDOUS MATERIALS. Would the project:						
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X		1, 2, 12
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?				X		1, 2, 12
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X		1, 2, 12
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?				X		1, 2, 12
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, would the project result in a safety hazard or excessive noise for people residing or working in the project area?				X		1, 2
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X		1, 2

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires				X		1, 2

Explanation

As discussed below, the proposed project would not result in a new or greater impact on hazards and hazardous materials than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The proposed development would not involve the routine transport, use, or disposal of hazardous materials. The residential and retail uses may use small quantities of miscellaneous household cleaning supplies and other chemicals. These materials would be stored and used in accordance with the manufacturer's specifications.

The project would use fuels, lubricants, paints, and solvents during construction activities. The project would prepare and implement a Storm Water Pollution Prevention Plan and appropriate best management practices to minimize the impact on water quality from release of hazardous materials during construction. In addition, the applicant proposes to implement standard protection measures for the temporary onsite storage of fuel and other hazardous materials used during construction.

b) **Same Impact as Approved Project**. The Phase I Assessment identified hazardous materials contamination at the adjoining site located at 35 and 43 East Santa Clara Street from high volatility organic compounds (HVOCs). Based on the analytical results obtained from this property and other nearby vicinity properties, the adjoining open release case constitutes a REC. The Phase I Assessment recommends development and implementation of a Soil Management Plan (SMP) for the project during excavation and grading activities to provide measures to manage encountering, handling, and disposing of soil potentially impacted by hazardous substances.

Impact HAZ-1: Development of the proposed project could potentially expose construction workers and the public to soil, soil vapor and groundwater contaminants from HVOCs during the excavation/construction phase of the project, and future users to soil and soil vapor contamination from HVOCs after construction.

Mitigation Measures

In accordance with the Downtown Strategy 2040 FEIR and recommendations of the Phase I Environmental Site Assessment prepared by AEI Consultants, the following mitigation measure shall be implemented to reduce impacts related to soil and soil vapor contamination.

MM HAZ-1: The project applicant shall retain a qualified consultant to conduct a Phase II analysis consisting of focused sampling and analysis for contamination of soil, soil vapor, and/or groundwater on-site prior to issuance of any grading, building, or demolition permits. Sampling on the site shall be under the

regulatory oversight from the Santa Clara County Department of Environmental Health's (SCCDEHs) Voluntary Cleanup Program, or an equivalent program by another oversight agency, to address soil and groundwater contamination discovered on the property. Removal and off-site disposal of the soil at appropriate landfills during construction of the basement level will likely constitute the mitigation required; however, the oversight agency will approve the proposed mitigation, or determine if additional groundwater sampling and mitigation is necessary. Based on the results of the contamination levels at the site, the project applicant shall prepare, under the guidance of the oversight agency, a Site and Groundwater Management Plan (SGMP) or equivalent report. The SGMP or equivalent report must establish and implement remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors.

The results of Phase II investigation and evidence of regulatory oversight, if required, and the appropriate plan such as an SGMP or equivalent document shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee.

Asbestos & Lead Based Paint in Demolished Buildings

Development of the project would require the demolition of the two existing buildings on the site. Due to their age, these structures likely contain asbestos building materials and/or lead-based paint. Demolition conducted in conformance with federal, state and local regulations will avoid significant exposure of construction workers and/or the public to asbestos and lead-based paint. As a part of the development permit approval, the project will conform to the following standard permit conditions.

Standard Permit Conditions

- In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).

- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.

- All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.

- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above. Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

- Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers:

    - Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
    - During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, CCR, Section 1532.1, including employee training, employee air monitoring and dust control.
    - Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of waste being disposed.

Polychlorinated Biphenyls

The buildings on-site were constructed between 1950 and 1980 and may contain PCBs in the building materials. Demolition of the buildings on-site could release PCBs in the environment. Therefore, as part of the City's permit process, the proposed project would be required to comply with the City of San José permitting requirements, consistent with Regional Water Quality Control Board (RWQCB) regulations, the project applicant shall be required to submit a polychlorinated biphenyls (PCB) Screening Assessment Form when applying for a demolition permit to demolish the existing building(s) on the project site, and shall comply with any resulting sampling and abatement procedures as directed by federal and state agencies.

With implementation of the identified Standard Permit Conditions, demolition of the buildings containing PCBs would reduce potential hazardous materials impacts to construction workers, adjacent uses, and nearby residences to a less than significant level.

c) **Same Impact as Approved Project**. The project is not located within ¼ mile of a school. The nearest school is Horace Mann Elementary, located approximately 1,600 feet east of the project site. In addition, mitigation is identified above for potential hazardous materials contamination of the site.

d) **Same Impact as Approved Project**. The project is not located on property that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 (i.e., Cortese List).

e) **Same Impact as Approved Project**. The Norman Y. Mineta San José International Airport is located approximately 1.7 miles northwest of the project site. The project is not located within the Santa Clara County Airport Land Use Commission's adopted Airport Influence Area for the airport. However, Federal Aviation Regulations, Part 77, "Objects Affecting Navigable

Airspace" (referred to as FAR Part 77) set 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 to aircraft such as reflective surfaces, flashing lights, and electronic interference. 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. Since the proposed residential tower would be approximately 273 feet above ground, FAA notification and airspace safety review are required. In compliance with ALUC and City General Plan policy, the project would be required to obtain an FAA issued "Determination of No Hazard" for each of the proposed structure high points and comply with any conditions set forth by the FAA in its determinations. This process would ensure that project development would not be a potential aviation hazard. Additionally, the project would be required to grant an Avigation Easement to the City accepting elevation restrictions on the property as well as aircraft noise impacts.

As described in *Section M. Noise and Vibration*, the project site lies adjacent to or slightly outside of the 60 dBA CNEL/DNL contour line. The proposed project was found to be compatible with the City's exterior noise standards for aircraft noise and would not be subject to excessive noise from the Mineta San José International Airport.

f) **Same Impact as Approved Project**. The proposed development would not interfere with any adopted emergency or evacuation plans. The project would not create any barriers to emergency or other vehicle movement in the area and would be designed to incorporate all Fire Code requirements.

g) **Same Impact as Approved Project**. The project would not expose people or structures, either directly or indirectly, to risk of loss, injury or death from wildland fires since it is located in a highly urbanized area that is not prone to such events. See also *Section T. Wildfire* of this document for further discussion of wildfire impacts, which were determined to result in no impact given the site location and low wildfire hazard.

Hazards and Hazardous Materials Chapter Conclusion

Development of the project would result in less than significant airport hazards and hazardous material transport-related impacts, consistent with the findings of the Downtown Strategy 2040 EIR. Standard permit conditions are identified to reduce potential impacts from impacted soil and groundwater from the project to a less than significant level, consistent with mitigation identified in the EIR. The project would not result in new or more significant impacts associated with hazards and hazardous materials than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project identified potential construction hazards and hazardous materials impacts and mitigation related to release of hazardous materials (HAZ-CNST-A: Prepare Remedial Action Plans) and being located on a site that is listed as a hazardous material sites (HAZ-CNST-A: Prepare Remedial Action Plans). In addition, an operational impact and mitigation was identified related being located on a site that is listed as a hazardous material sites (HAZ-CNST-A: Prepare Remedial Action Plans). All impacts to hazards and hazardous materials identified in the SEIS/SEIR were reduced to less than significant with mitigation.

While the proposed project would result in potentially significant impacts related to hazards and hazardous materials, these would be reduced to a less than significant level through implementation of standard permit conditions and mitigation measures identified above. As a result, the proposed project would not result in new significant impacts to hazards and hazardous materials, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact with mitigation on hazards and hazardous materials and would not result in new or more severe hazardous materials impacts than identified in the SEIS/SEIR for the BART Extension Project.

J. HYDROLOGY AND WATER QUALITY

Regulatory Framework

The federal Clean Water Act and California's Porter-Cologne Water Quality Control Act are the primary laws regulating water quality in California. Requirements established by the U.S. Environmental Protection Agency (EPA) and the State Water Resources Control Board (SWRCB) have been developed to fulfill the requirements of this legislation. EPA regulations include the National Pollutant Discharge Elimination System (NPDES) permit program, which controls sources that discharge pollutants into the waters of the United States (e.g., streams, lakes, bays, etc.). These regulations are implemented at the regional level by the Regional Water Quality Control Boards (RWQCBs). The project site is within the jurisdiction of the San Francisco Bay RWQCB.

Federal and State

Clean Water Act – Section 404

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States (waters of the U.S.) and regulating quality standards for surface waters. Its goals are to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Under the CWA, the US EPA has implemented pollution control programs and established water quality standards, and together with the U.S. Army Corps of Engineers, regulates discharge of dredged and fill material into waters of the U.S. under Section 404 of the CWA and its implementing regulations. Waters of the U.S. are defined broadly as waters susceptible to use in commerce (including waters subject to tides, interstate waters, and interstate wetlands) and other waters.

National Flood Insurance Program

FEMA established the National Flood Insurance Program (NFIP) in order to reduce flooding on private and public properties. The program provides subsidized flood insurance to communities that comply with FEMA regulations protecting development in floodplains. As part of the program, FEMA publishes Flood Insurance Rate Maps (FIRM) that identify Special Flood Hazard Areas (SFHA). An SFHA is an area that would be inundated by the one-percent annual chance flood, which is also referred to as the base flood or 100-year flood.

Porter-Cologne Water Quality Act

The Porter-Cologne Act delegates authority to the SWRCB to establish regional water quality control boards. The San Francisco Bay Area RWQCB has authority to use planning, permitting, and enforcement to protect beneficial uses of water resources in the project region. Under the Porter-Cologne Water Quality Control Act (California Water Code Sections 13000-14290), the RWQCB is authorized to regulate the discharge of waste that could affect the quality of the state's waters, including projects that do not require a federal permit through the USACE. To meet RWQCB 401 Certification standards, all hydrologic issues related to a project must be addressed, including the following:

- Wetlands
- Watershed hydrograph modification
- Proposed creek or riverine related modifications

- Long-term post-construction water quality

Any construction or demolition activity that results in land disturbance equal to or greater than one acre must comply with the Construction General Permit (CGP), administered by the SWRCB. The CGP requires the installation and maintenance of BMPs to protect water quality until the site is stabilized. The project would not require CGP coverage, as the area of land disturbed (0.18 acres) would be less than one acre.

Statewide Construction General Permit

The SWRCB has implemented a NPDES General Construction Permit for the State of California (CGP). For projects disturbing one acre or more, a Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) must be prepared by a qualified professional prior to commencement of construction. The CGP includes requirements for training, inspection, record keeping, and for projects of certain risk levels, monitoring. The general purpose of the requirements is to minimize the discharge of pollutants and to protect beneficial uses and receiving waters from the adverse effects of construction-related storm water discharges.

Regional and Local

San Francisco Bay Basin Plan

The San Francisco Bay RWQCB regulates water quality in accordance with the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). The Basin Plan lists the beneficial uses that the San Francisco Bay RWQCB has identified for local aquifers, streams, marshes, rivers, and the San Francisco Bay, as well as the water quality objectives and criteria that must be met to protect these uses. The San Francisco Bay RWQCB implements the Basin Plan by issuing and enforcing waste discharge requirements, including permits for nonpoint sources such as the urban runoff discharged by a City's stormwater drainage system. The Basin Plan also describes watershed management programs and water quality attainment strategies.

Municipal Regional Stormwater Permit

The San Francisco Bay RWQCB has issued a Municipal Regional Stormwater NPDES Permit (MRP) to regulate stormwater discharges from municipalities and local agencies (co-permittees) in Alameda, Contra Costa, San Mateo, and Santa Clara Counties, and the cities of Fairfield, Suisun City, and Vallejo. The City of San José is required to operate under the MRP to discharge stormwater from the City's storm drain system to surface waters. The MRP mandates that the City of San José use its planning and development review authority to require that stormwater management measures are included in new and redevelopment projects to minimize and properly treat stormwater runoff. Provision C.3 of the MRP regulates the following types of development projects:

- Projects that create or replace 10,000 square feet or more of impervious surface.
- Special Land Use Categories that create or replace 5,000 square feet or more of impervious surface.

The MRP requires regulated projects to include Low Impact Development (LID) practices. These include site design features to reduce the amount of runoff requiring treatment and maintain or restore

the site's natural hydrologic functions, source control measures to prevent stormwater from pollution, and stormwater treatment features to clean polluted stormwater runoff prior to discharge into the storm drain system. The MRP requires that stormwater treatment measures are properly installed, operated, and maintained.

City of San José Post-Construction Urban Runoff Management (Policy 6-29)

The City of San José's Policy 6-29 implements the stormwater treatment requirements of Provision C.3 of the Municipal Regional Stormwater NPDES Permit. The City of San José's Policy 6-29 requires all new development and redevelopment projects to implement post-construction BMPs and Treatment Control Measures (TCMs). This policy also establishes specific design standards for post-construction TCM for projects that create, add, or replace 10,000 square feet or more of impervious surfaces.

City of San José Hydromodification Management (Policy 8-14)

The City of San José's Policy No. 8-14 implements the stormwater treatment requirements of Provision C.3 of the MRP. Policy No. 8-14 requires all new and redevelopment projects that create or replace one acre or more of impervious surface to manage development-related increases in peak runoff flow, volume, and duration, where such hydromodification is likely to cause increased erosion, silt pollutant generation or other impacts to beneficial uses of local rivers, streams, and creeks. The policy requires these projects to be designed to control project-related hydromodification through a Hydromodification Management Plan (HMP).

Green Stormwater Infrastructure Plan

The City of San José has developed a Green Stormwater Infrastructure Plan (GSI Plan) to lay out the approach, strategies, targets, and tasks needed to transition traditional "gray" infrastructure to include green stormwater infrastructure over the long term and to implement and institutionalize the concepts of GSI into standard municipal engineering, construction, and maintenance practices. The GSI Plan is intended to serve as an implementation guide for reducing the adverse water quality impacts of urbanization and urban runoff on receiving waters over the long term, and a reporting tool to provide reasonable assurance that specific pollutant reductions from discharges to local creeks and San Francisco Bay will be met. The GSI Plan is required by the City's MRP for the discharge of stormwater runoff from the City's storm drain system.

General Plan

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating hydrology and water quality impacts from development projects. Policies applicable to the project are presented below.

Envision San José 2040 Relevant Hydrology and Water Quality Policies	
Policy IN-3.7	Design new projects to minimize potential damage due to stormwaters and flooding to the site and other properties.
Policy IN-3.9	Require developers to prepare drainage plans for proposed developments that define needed drainage improvements per City standards.
Policy MS-3.4	Promote the use of green roofs (i.e., roofs with vegetated cover), landscape-based treatment measures, pervious materials for hardscape, and other stormwater management practices to reduce water pollution.

Envision San José 2040 Relevant Hydrology and Water Quality Policies	
Policy ER-8.1	Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
Policy ER-8.3	Ensure that private development in San José includes adequate measures to treat stormwater runoff.
Policy ER-8.5	Ensure that all development projects in San José maximize opportunities to filter, infiltrate, store and reuse or evaporate stormwater runoff onsite.
Policy EC-4.1	Design and build all new or remodeled habitable structures in accordance with the most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and stormwater controls.
Policy EC-5.7	Allow new urban development only when mitigation measures are incorporated into the project design to ensure that new urban runoff does not increase flood risks elsewhere.
Policy EC-5.16	Implement the Post-Construction Urban Runoff Management requirements of the City's Municipal NPDES Permit to reduce urban runoff from project sites.
Policy EC-7.10	Require review and approval of grading, erosion control and dust control plans prior to issuance of a grading permit by the Director of Public Works on sites with known soil contamination. Construction operations shall be conducted to limit the creation and dispersion of dust and sediment runoff.

Existing Setting

The project site is essentially flat and lies at an elevation of about 87 feet above mean sea level. The 0.18-acre site is developed with a pair of two-story buildings. The current runoff from the site is directed into existing inlets that discharge to the City's drainage system.

The project site does not contain any natural drainages or waterways. The nearest waterway is the Guadalupe River located about 2,770 feet west of the site. The Flood Insurance Rate Maps issued by the Federal Emergency Management Agency (FEMA) indicate that the project site is located within Zone D.[33] Zone D is defined as an area of undetermined but possible flood hazard outside the 100-year floodplain. The City does not have any floodplain restrictions for development in Zone D.

The City owns and maintains the storm drainage system in the project area. The drainage lines that serve the project site drain into Guadalupe River, located approximately 2,770 feet west of the site. No over-land release of stormwater drains directly into any water body from the project site.

The project site is located within the inundation area for the Leroy Anderson Dam, based on the "California Dam Breach Inundation Maps" map provided by the California Department of Water Resources.[34]

[33] Panel # 0234H, Map # 06085C0234H
[34] https://fmds.water.ca.gov/webgis/?appid=dam_prototype_v2

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
10. HYDROLOGY AND WATER QUALITY. Would the project:						
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?				X		1, 2
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?				X		1, 2
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:						
i) Result in substantial erosion or siltation on- or off-site;				X		1, 2
ii) Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;				X		1, 2
iii) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or				X		1, 2
iv) Impede or redirect flood flows?				X		1, 2, 13
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?				X		1, 2, 3, 13
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?				X		1, 2

Explanation

As discussed below, the proposed project would not result in a new or greater impact on hydrology and water quality than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The City's National Pollutant Discharge Elimination System (NPDES) Municipal Regional Permit, urban runoff policies, and the Municipal Code are the primary means of enforcing water quality measures through the grading and building permit process. All construction/demolition projects must comply with the City of San José's Grading Ordinance, which requires the use of erosion and sediment controls to protect water quality while the site is under construction. The project is subject to Municipal Code Section 20.100.470, which requires the project to incorporate BMPs to control the discharge of storm

water pollutants including sediments associated with construction activities including erosion, as outlined in the standard permit conditions in item ci) below. The project is located in an urban environment and operation of the residential project would not utilize materials that would significantly harm the water quality in the area. Furthermore, the project would comply with applicable regulations and laws to ensure proper discharge into the City's stormwater and sanitary infrastructure, would not violate any water quality standards or waste discharge requirements, or degrade surface or groundwater quality as described below.

b) **Same Impact as Approved Project**. Groundwater levels in the area are estimated to be on the order of 30-50 feet below ground surface (V&H Engineering, Stormwater Control Plan, April 2021). The project is located within the Santa Clara Plain Recharge Area of the Santa Clara Subbasin.[35] However, the project site is currently developed and excavation for the proposed approximately 10-foot deep basement would not reach groundwater levels. Thus, it is not anticipated that the project would decrease groundwater supplies or interfere substantially with groundwater recharge (such that the project may impede sustainable groundwater management of the basin), because 1) the project is proposed on a developed site that is not recharging groundwater through injection well-related measures (e.g., infiltration trenches, infiltration galleries), and 2) project construction would not involve excavation that would result in access to groundwater beneath the property. This represents a less than significant impact.

ci) **Same Impact as Approved Project**. Construction of the project would require grading activities that could result in a temporary increase in erosion affecting the quality of storm water runoff. This increase in erosion is expected to be minimal, due to the small size and flatness of the site. The City's implementation requirements to protect water quality are described below.

Construction Impacts

The project shall incorporate Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with construction activities. Examples of BMPs are contained in the publication *Blueprint for a Clean Bay*[36], and include preventing spills and leaks, cleaning up spills immediately after they happen, storing materials under cover, and covering and maintaining dumpsters. Prior to the issuance of a grading permit, the project applicant may be required to submit an Erosion Control Plan to the Department of Public Works. The Erosion Control Plan may include BMPs as specified in ABAG's *Manual of Standards Erosion & Sediment Control Measures* for reducing impacts on the City's storm drainage system from construction activities.

The project applicant is required comply with the City of San José Grading Ordinance, including erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. Typical measures that will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction include but are not limited to:

- Restriction of grading to the dry season (April 30 through October 1) or meet City requirements for grading during the rainy season;

[35] Santa Clara Valley Water District, *2016 Groundwater Management Plan,* Figure 2-1.
[36] Bay Area Stormwater Management Agencies Association.

- Utilize on-site sediment control BMPs to retain sediment on the project site;
- Utilize stabilized construction entrances and/or wash racks;
- Implement damp street sweeping;
- Provide temporary cover of disturbed surfaces to help control erosion during construction; and
- Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

The project would somewhat modify the drainage pattern on the site. Consistent with the regulations and policies described above, the project will follow all standard permit conditions, as listed below. The standard permit conditions would be implemented prior to and during earthmoving activities on-site and would continue until the construction is complete and during the post-construction period as appropriate.

Standard Permit Conditions

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Post-Construction Impacts

The project is required to comply with applicable provisions of the following City Council Policies: Council Policy 6-29 Post-Construction Urban Runoff Management and Council Policy 8-14 Post-Construction Hydromodification Management. For Council Policy 6-29 Post-Construction Urban Runoff Management, the project will be required to implement BMPs, which includes site design measures, source controls, and numerically-sized LID stormwater treatment measures to minimize stormwater pollutant discharges. The project site is not located in a Hydromodification Management (HM) area. However, details of specific Site Design, Pollutant Source Control, and Stormwater Treatment Control Measures demonstrating compliance with Provision C.3 of the MRP (NPDES Permit Number CAS612008), will be

included in the project design, to the satisfaction of the Director of Public Works Department or Director's designee.

In conclusion, the project would not substantially alter existing drainage patterns or cause alteration of streams or rivers by conforming with the requirements of Council Policy 6-29 and 8-14. The project would not result in substantial erosion or siltation on or off site by complying with the State's Construction Stormwater Permit and the City's Grading Ordinance. Implementation of the standard permit conditions identified above would result in the same level of impact as the approved project.

cii) **Same Impact as Approved Project**. The project proposes to implement a stormwater control plan to manage runoff from the site consisting of the following source control measures:

- Beneficial Landscaping
- Use of Water Efficient Irrigation Systems
- Connect the Following to the Sanitary Sewer: covered trash/recycling enclosures
- Provide Regular Maintenance (e.g., pavement sweeping, catch basin cleaning, good housekeeping)

Runoff would primarily be collected in stormwater treatment systems where flow rates would be decreased and treated prior to discharging into the City's drainage system. New storm drain laterals would be built and connect to the existing 12-inch storm drain main in North Second Street. As a result, the proposed project would have a less than significant impact associated with flooding on- or off-site due to increased surface runoff.

ciii) **Same Impact as Approved Project**. The project proposes to connect to the City's existing storm drainage system. The project is not expected to contribute runoff that would exceed the capacity of existing or planned stormwater drainage systems or result in substantial additional sources of polluted runoff. See also cii) above.

civ) **Same Impact as Approved Project**. The project site is located in Zone D, defined as an area of undetermined but possible flood hazard outside the 100-year floodplain. The City does not have any floodplain restrictions for development in Zone D. Therefore, the project would not impede or redirect flood flows.

d) **Same Impact as Approved Project**. The project site is not located in an area subject to significant seiche or tsunami effects. The project site is located within an inundation area for the Anderson Dam, based on the map entitled "Dam Failure Inundation Areas" in the General Plan EIR (Association of Bay Area Governments). This map assumes complete failure with a full reservoir. The actual extent and depth of inundation in the event of a failure would depend on the volume of storage in the reservoir at the time of failure. The risks of failure are reduced by several regulatory inspection programs, and risks to people and property in the inundation area are reduced by local hazard mitigation planning. The California Department of Water Resources (DWR), Division of Safety of Dams is responsible for regular inspection of dams in California. DWR and local agencies (e.g., Valley Water) are responsible for minimizing the risks of dam failure thus avoiding the release of pollutants due to project inundation.

e) **Same Impact as Approved Project**. The project consists of development on an approximately 0.18-acre infill site. As discussed under a) and b) above, the proposed project would comply with the City's standard permit conditions, Policy 6-32, and the City of San José Grading Ordinance. In addition, the infill project would not impact groundwater recharge. Therefore, the project would not result in significant water quality or groundwater quality impacts that would conflict or obstruct implementation of a water quality control plan or sustainable groundwater management plan.

Hydrology and Water Quality Chapter Conclusion

Development of the project would have less than significant hydrology and water quality impacts comparable to those identified in the Downtown Strategy 2040 EIR. The proposed project would not result in new or more significant impacts associated with hydrology and water quality than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project identified potential construction hydrology and water quality impacts and mitigation related to degrading water quality or violating water quality standards (Mitigation Measure NV-CNST-D: Operate Equipment to Minimize Annoying Noise and Vibration), and depleting groundwater supplies or interfering with groundwater recharge (Mitigation Measure HAZ-CNST-A: Prepare Remedial Action Plans). In addition, an operational impact and mitigation was identified related to degrading water quality or violating water quality standards (Mitigation Measure WQ-A: Design and Implement Stormwater Control Measures). All impacts to hydrology and water quality identified in the SEIS/SEIR were reduced to less than significant with mitigation. The proposed project would result in less than significant impact through implementation of standard permit conditions. The project would have a less than significant impact with respect to hydrology and water quality and would not result in new or more severe water quality impacts than identified in the SEIS/SEIR for the BART Extension Project.

K. LAND USE AND PLANNING

Regulatory Framework

State

The California State Density Bonus Law (California Government Code Section 65915) was adopted in 1979 in recognition of California's acute and growing affordable housing needs. The State Density Bonus Law has been amended multiple times since adoption, in response to evolving housing conditions, to provide clarification on the legislation, to respond to legal and implementation challenges, and to incorporate new or expanded provisions.

Assembly Bill 1763 – Density Bonus Law

In 2019, Governor Newsom signed AB 1763, which amended the State's Density Bonus Law to encourage housing project consisting completely of affordable units. The purpose of AB 1763 is to increase the available units from new affordable housing development to the maximum possible on any given development site. Under AB 1763, these housing projects can receive an 80 percent density bonus from the maximum allowable density otherwise allowed on the site. Cities are unable to apply any density limits to projects within half of a mile of a major transit stop and can be granted a height increase of an additional three stories. Additionally, these projects are not subject to any City-mandated minimum parking requirements. All bonuses conferred under AB 1763 have to be requested by the developer during the planning phase of the project.

Regional and Local

Santa Clara Valley Habitat Plan

As discussed in Section 3.4, Biological Resources, the HCP was developed 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, U.S. Fish and Wildlife Service, and California Department of Fish and Wildlife. As it pertains to issues of land use, the HCP helps public and private entities within the HCP's jurisdiction plan and conduct projects and activities in ways that lessen the impact on natural resources.

San José Municipal Code Chapter 20.190 – Affordable Housing Density Bonuses and Incentives

Chapter 20.190 of the City's Municipal Code provides density bonuses for eligible residential development projects within City limits. This section largely contains the mechanism for enforcing the density bonuses mandated at the State level (see discussion of AB 1763, above). This section mandates that density bonuses are ineligible for sites where dwelling units were demolished within the last five years. This section also sets out development standards for affordable units, including requiring concurrent construction with market rate units in the same development and various design standards to ensure that affordable units are constructed in a uniform manner compared to market-rate units constructed as part of the same development.

General Plan Designation

The project site is designated *Downtown* in the City's Envision San José 2040 General Plan Land Use/Transportation Diagram.

General Plan

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating land use impacts from development projects. Policies applicable to the project are presented below.

Envision San José 2040 Relevant Land Use and Planning Policies	
Policy CD-1.1	Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
Policy CD-1.8	Create an attractive street presence with pedestrian-scaled building and landscape elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity through the City
Policy CD-4.9	For development subject to design review, ensure the design of new or remodeled structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).
Policy IP-2.8	Allow development of residential units at the density and in the form approved in land use entitlements in place upon adoption of the Envision San José 2040 General Plan, including capacity specified in the adopted Downtown Strategy, North San José Area Development Policy, Evergreen-East Hills Development Policy, Specific Plans, and potential dwelling unit yield from residential properties identified on the City's Vacant Land Inventory. When the City Council commences the second Horizon of the Envision General Plan, new or revised proposals for development on sites with previously approved residential entitlements should conform to the Land Use / Transportation Diagram.
Policy LU-1.2	Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.
Policy LU-1.6	With new development or expansion and improvement of existing development or uses, incorporate measures to comply with current Federal, State, and local standards.
Policy LU-2.2	Include within the Envision General Plan Land Use / Transportation Diagram significant job and housing growth capacity within the following identified Growth Areas: • Downtown – The City's Downtown Strategy plans for ambitious job and housing growth capacity in the Downtown area to reinforce its role as San Jose's civic, cultural and symbolic center and to support key infrastructure investments, including the planned BART and High-Speed Rail systems.
Policy LU-3.1	Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the Envision General Plan.

Envision San José 2040 Relevant Land Use and Planning Policies	
Policy LU-3.2	Support Downtown as a primary employment center in the region, especially for financial institutions, insurance companies, government offices, professional services, information and communication technology companies, and businesses related to conventions.
Policy LU-3.3	Support the development of Downtown as an arts, cultural, and entertainment center for San José and the region. Promote special events, parades, celebrations, performances, concerts, and festivals.
Policy LU-3.4	Facilitate development of retail and service establishments in Downtown, and support regional- and local-serving businesses to further primary objectives of this Plan.
Policy LU-3.5	Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.
Policy LU-3.6	Prohibit uses that serve occupants of vehicles (such as drive-through windows) and discourage uses that serve the vehicle (such as car washes and service stations), except where they do not disrupt pedestrian flow, are not concentrated, do not break up the building mass of the streetscape, and are compatible with the planned uses of the area.
Policy LU-3.7	Recognize the urban nature of Downtown and support 24-hour uses and outdoor uses, so long as significant adverse impacts do not occur.
Policy LU-3.8	Leverage Downtown's urban nature and promote projects that will help achieve economic, fiscal, environmental, cultural, transportation, social, or other objectives of this plan.
Policy LU-9.7	Ensure that new residential development does not impact the viability of adjacent employment uses that are consistent with the Envision General Plan Land Use / Transportation Diagram.
Policy VN-1.7	Use new development within neighborhoods to enhance the public realm, provide for direct and convenient pedestrian access, and visually connect to the surrounding neighborhood. As opportunities arise, improve existing development to meet these objectives as well.
Policy VN-1.11	Protect residential neighborhoods from the encroachment of incompatible activities or land uses which may have a negative impact on the residential living environment.
Policy VN-1.12	Design new public and private development to build upon the vital character and desirable qualities of existing neighborhoods

Santa Clara County Airport Land Use Commission Airport Plan

The project site is located outside of the "Airport Influence Area" established by the Santa Clara County Airport Land Use Commission (ALUC). As a result, the project would not be subject to the policies of the Santa Clara County Airport Land Use Commission's Comprehensive Land Use Plan (CLUP). Refer also to the discussion in *Section I. Hazards and Hazardous Materials*.

Existing Setting

The project site is designated *Downtown* in the City's Envision San José 2040 General Plan Land Use/Transportation Diagram. The property is currently zoned DC – Downtown Primary Commercial.

The project is located in an urbanized area of the City, with a mix of commercial and residential uses. The site consists of two lots, each occupied by a two-story building. Land uses surrounding the site are listed below and shown in the aerial in Figure 3.

- North: Mixed-Use (residential, restaurants, office, vocational school, and commercial)
- South: Mixed-Use (residential, restaurants, office, and commercial), medical offices, East Santa Clara Street
- East: Mixed-Use (residential, restaurants, office, and commercial), North Second Street
- West: Mixed-Use (residential, restaurants, office, and commercial), North First Street

The project site is designated *Downtown* in the City's Envision San José 2040 General Plan Land Use/Transportation Diagram. The property is currently zoned DC - Downtown Primary Commercial. The *Downtown* designation supports high-density development in the office, retail, service, residential, and entertainment use categories. The DC zoning district conforms to the *Downtown* land use designation and supports the enumerated uses.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
11. LAND USE AND PLANNING. Would the project:						
a) Physically divide an established community?				X		1, 2
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?				X		1 - 15
c) Result in a 10 percent or greater increase in the shadow cast onto any one of the six major open space areas in the Downtown San José area (St. James Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park, and McEnery Park)? Per the Downtown Strategy 2040 FEIR, a significant shade and shadow impact would occur if a project would result in a 10 percent or greater increase in the shadow cast onto one of the six major open space areas in downtown San José (St. James Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park, and McEnery Park)?				X		1, 2, 3

Explanation

As discussed below, the proposed project would not result in a new or greater impact on land use and planning than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The project is proposed on an existing developed site in downtown San José. The proposed mixed-use commercial and residential project would not physically divide an established community.

b) **Same Impact as Approved Project**. The project site is designated *Downtown* in the City's 2040 General Plan. This designation allows office, retail, service, residential, and entertainment uses in the Downtown area, at very high intensities unless incompatible with other major policies within the Envision General Plan. Development within this designation should enhance the downtown community, support pedestrian and bicycle circulation, and increase transit ridership. Under this designation, allowed density is up to 800 dwelling units per acre (du/ac), allowed floor area ratio up to 30.0, and allowable building heights are 3 to 30 stories.

The project would be consistent with the *Downtown* designation, which supports high-density development as described above. The project proposes an infill mixed use commercial and residential development with 192 apartment units and 2,500 square feet of commercial space in a 26-story building on an approximately 0.18-gross acre site. The project proposes a density of approximately 1,066 dwelling units per acre (du/ac) with the affordable housing density bonus, an FAR of 24, and a maximum building height of 26 floors, consistent with the *Downtown* land use designation.

The project site is located in the DC – Downtown Primary Commercial zoning district, intended to compliment and support the *Downtown* land use designation by allowing for more flexible zoning/mixed uses. The proposed high density mixed-use project is consistent with this zoning district. The DC Downtown Primary Commercial zoning of the project site permits uses including multiple dwelling unit residential, office/business/administrative uses, accessory buildings and structures, and off-street/off-site parking arrangements. Properties located within downtown zoning districts are only subject to height limitations necessary for the safe operation of San José International Airport. As such, the proposed building height of approximately 273 feet would be consistent with this requirement because FAA review and issuance of "determination of no hazard" clearances would have to be obtained prior to construction approval pursuant to federal regulations, as described in *Section I. Hazards and Hazardous Materials.*

The proposed project is consistent with the permitted uses under the current DC Downtown Primary Commercial District Zoning. The project's site design and layout would generally be consistent with the development standards of the current zoning district and final design would be subject to the City's design review process. The project would not fully comply with the City's Downtown Design Standards and Guidelines specifically related to historic resources, as described in *Section E. Cultural Resources*; however, these conflicts were not found to result in a significant impact and are reviewed through the exception process for planning conformance. Finally, the project would not require a General Plan amendment or rezoning. The project, therefore, would not result in an environmental impact associated with conflicts with the General Plan or Zoning Code.

In terms of physical impacts on the environment, this IS/Addendum analyzes the environmental impacts of the project for each identified environmental resource area and provides measures and permit conditions to reduce the physical impacts of the project. Therefore, the project would have a less than significant impact related to conflicts with a land

use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

c) **Same Impact as Approved Project**. The nearest major open space area to the project site is St. James Park, a 6.8-acre park located approximately 600 feet north of the project site. A solar/shade simulation was prepared for the project by Anderson Architects, as presented in Figure 13, showing the increased shadows attributable to the proposed residential tower. As indicated in Figure 13, the project would increase shade in the area, affecting primarily adjacent streets, sidewalks, and buildings. The proposed residential tower would slightly increase shadows on a small portion on the southeast corner of the 6.8-acre park during the winter months, as shown in Figure 13. The project would result in a less than 10 percent increase (i.e., less than 29,620 square feet of the total 296,620 square foot St. James Park) in the shadow cast onto St. James Park, which would not result in a significant impact related to shade and shadows.

Land Use and Planning Chapter Conclusion

The project would have a less than significant impact related to land use and planning, consistent with the findings of the Downtown Strategy 2040 EIR. The project would not result in new or more significant land use impacts than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project identified potential land use impacts and mitigation related to conflicting with applicable habitat conservation plans (BIO-CNST-E and BIO-CNST-F). The proposed Eterna Towers project is not located in an area deemed environmentally sensitive based on the SCVHP. As a result, the proposed project would not result in new significant impacts to land use, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact on land use and would not result in new or more severe land use impacts than identified in the SEIS/SEIR for the BART Extension Project.

L. MINERAL RESOURCES

Regulatory Framework

State

Surface Mining and Reclamation Act

Under the Surface Mining and Reclamation Act of 1975 (SMARA), the State Mining and Geology Board has designated only the Communications Hill Area of San José as containing mineral deposits of regional significance for aggregate (Sector EE). There are no mineral resources in the project area. Neither the State Geologist nor the State Mining and Geology Board has classified any other areas in San José as containing mineral deposits that are of statewide significance or for which the significance requires further evaluation. Other than the Communications Hill area cited above, San José does not have mineral deposits subject to SMARA.

Existing Setting

Under the Surface Mining and Reclamation Act of 1975 (SMARA), the State Mining and Geology Board has designated only the Communications Hill Area of San José as containing mineral deposits of regional significance for aggregate (Sector EE).

There are no mineral resources in the project area. Neither the State Geologist nor the State Mining and Geology Board has classified any other areas in San José as containing mineral deposits that are of statewide significance or for which the significance requires further evaluation. Other than the Communications Hill area cited above, San José does not have mineral deposits subject to SMARA. The project site lies outside of the Communications Hill area.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
12. MINERAL RESOURCES. Would the project:						
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X		1, 2
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				X		1, 2

Explanation

As discussed below, the proposed project would not result in a new or greater impact on mineral resources than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The project site is located over three miles northwest of the Communications Hill area, the only area in San José containing mineral deposits subject to SMARA; therefore, the project will not result in a significant impact from the loss of availability of a known mineral resource.

b) **Same Impact as Approved Project**. The project site is located over three miles northwest of the Communications Hill area, the only area in San José containing mineral deposits subject to SMARA; therefore, the project will not result in a significant impact from the loss of availability of a known mineral resource.

Mineral Resources Chapter Conclusion

The project would not result in the loss of availability of known mineral resources, consistent with the findings of the Downtown Strategy 2040 EIR. The project would not result in new or more significant mineral resource impacts than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project did not identify any potentially significant impacts related to mineral resources. As a result, the proposed project would not result in new significant impacts to mineral resources compared to what was analyzed in the SEIS/SEIR.

M. NOISE & VIBRATION

A noise and vibration assessment has been prepared for the project by Illingworth & Rodkin, Inc. (July 2021), which is contained in Appendix D.[37] The following discussion summarizes the results of this assessment.

Regulatory Setting

Federal

Federal Highway Administration Roadway Construction Noise Model

The Federal Highway Administration (FHWA) Roadway Construction Noise Model (RNCM) is the national model for prediction of noise generated by construction projects. Since construction frequently occurs near residences and businesses, the FHWA developed the RNCM in an effort to control and monitor construction noise to avoid impacts on surrounding communities and neighborhoods. The RNCM provides a federally-recognized construction noise screening tool to reliably and easily predict construction noise levels and to determine compliance with noise limits for construction projects of varying types.

State

California Building Code

The 2019 California Building Code (CBC) requires interior noise levels attributable to exterior environmental noise sources to be limited to a level not exceeding 45 dBA DNL/CNEL in any habitable room. The State of California established exterior sound transmission control standards for new non-residential buildings as set forth in the California Green Building Standards Code (Section 5.507.4.1 and 5.507.4.2). These sections identify the standards, such as Sound Transmission Class ratings,[38] that project building materials and assemblies need to comply with based on the noise environment.

Local

San José General Plan Noise Compatibility Guidelines

The City's General Plan includes goals and policies pertaining to noise and vibration. Community Noise Levels and Land Use Compatibility (commonly referred to as the Noise Element) of the General Plan utilizes the DNL descriptor and identifies interior and exterior noise standards for residential uses. The General Plan include the following criteria for land use compatibility and acceptable exterior noise levels in the City based on land use types.

[37] Noise/vibration modeling for the project was completed based on original project design assumptions. After consultation with report consultation, project modifications made following the conclusion of noise/vibration modeling would result in similar or barely measurable increased noise and vibration levels

[38] Sound Transmission Class (STC) is a single figure rating designed to give an estimate of the sound insulation properties of a partition. Numerically, STC represents the number of decibels of speech sound reduction from one side of the partition to the other.

EXTERIOR NOISE EXPOSURE (DNL IN DECIBELS DBA) FROM GENERAL PLAN TABLE EC-1: Land Use Compatibility Guidelines for Community Noise in San José							
Land Use Category	**Exterior DNL Value In Decibels**						
	55	**60**	**65**	**70**	**75**	**80**	
1. Residential, Hotels and Motels, Hospitals and Residential Care							
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 Arenas, Outdoor Spectator Sports							
6. Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters							
	Normally Acceptable: Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.						
	Conditionally Acceptable: Specified land use may be permitted only after detailed analysis of the noise reduction requirements and noise mitigation features included in the design.						
	Unacceptable: New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies. (Development will only be considered when technically feasible mitigation is identified that is also compatible with relevant design guidelines.)						

Additionally, policies in the General Plan have been adopted for the purpose of avoiding or mitigating noise and vibration impacts from development projects. Policies applicable to the project are presented below.

Envision San José 2040 Relevant Noise and Vibration Policies	
Policy 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: Interior Noise Levels • The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected *Envision General Plan* traffic volumes to ensure land use compatibility and General Plan consistency over the life of this plan. Exterior Noise Levels • The City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (refer to Table EC-1 in the General Plan. Residential uses are considered "normally acceptable" with exterior noise exposures of up to 60 dBA DNL and "conditionally compatible" where the exterior noise exposure is between 60 and 75 dBA DNL such that the specified

Envision San José 2040 Relevant Noise and Vibration Policies	
	land use may be permitted only after detailed analysis of the noise reduction requirements and needed noise insulation features are included in the design.
Policy EC-1.2	Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Land Use Categories 1, 2, 3 and 6 in Table EC-1 in the General Plan by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would: • Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or • Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.
Policy EC-1.3	Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise-sensitive residential and public/quasi-public land uses.
Policy EC-1.6	Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City's Municipal Code.
Policy EC-1.7	Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would: • Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months. For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.
Policy EC-1.9	Require noise studies for land use proposals where known or suspected loud intermittent noise sources occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, implement mitigation so that recurring maximum instantaneous noise levels do not exceed 50 dBA Lmax in bedrooms and 55 dBA Lmax in other rooms.
Policy EC-1.11	Continue to require safe and compatible land uses within the Norman Y. Mineta International Airport noise zone (defined by the 65 CNEL contour as set forth in State law) and encourage aircraft operating procedures that minimize noise.
Policy EC-2.3	Require new development to minimize continuous vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, including ruins and ancient monuments or buildings that are documented to be structurally weakened, a continuous vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A continuous vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of a historical building, or

Envision San José 2040 Relevant Noise and Vibration Policies	
	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.

San José Municipal Code

Per the San José Municipal Code Title 20 (Zoning Ordinance) Noise Performance Standards, the sound pressure level generated by any use or combination of uses on a property shall not exceed the decibel levels indicated in the table below at any property line, except upon issuance and in compliance with a Special Use permit or Conditional Use Permit as provided in Chapter 20.100.

City of San José Zoning Ordinance Noise Standards	
Land Use Types	**Maximum Noise Levels in Decibels at Property Line**
Residential, open space, industrial or commercial uses adjacent to a property used or zoned for residential purposes	55
Open space, commercial, or industrial use adjacent to a property used for zoned for commercial purposes or other non-residential uses	60
Industrial use adjacent to a property used or zoned for industrial use or other use other than commercial or residential purposes	70

Chapter 20.100.450 of the Municipal Code establishes allowable hours of construction within 500 feet of a residential unit between 7:00 AM and 7:00 PM Monday through Friday and no construction activities are permitted on the weekends, unless permission is granted with a development permit or other planning approval.

Existing Setting

Noise Fundamentals

Noise is measured in decibels (dB) and is typically characterized using the A-weighted sound level or dBA. This scale gives greater weight to the frequencies to which the human ear is most sensitive. The City's Envision San José 2040 General Plan applies the Day-Night Level (DNL) descriptor in evaluating noise conditions. The DNL represents the average noise level over a 24-hour period and penalizes noise occurring between the hours of 10 PM and 7 AM by 10 dB.

Vibration Fundamentals

Several different methods are typically used to quantify vibration amplitude. One method, used by the City, is Peak Particle Velocity (PPV). The PPV is defined as the maximum instantaneous positive or negative peak of the vibration wave. For this analysis, the PPV descriptor with units of millimeters per second (mm/sec) or inches per second (in/sec) is used to evaluate construction generated vibration for building damage and human annoyance.

Existing Noise Environment

The existing noise environment at the site results primarily from vehicular traffic along East Santa Clara Street and from local traffic along First and Second Streets, which intersect East Santa Clara Street to the west and to the east, respectively. Aircraft associated with Mineta San José International Airport and Santa Clara Valley Transportation Authority (VTA) light rail operations contribute to the noise environment at times, but to a lesser extent as compared to local vehicular traffic.

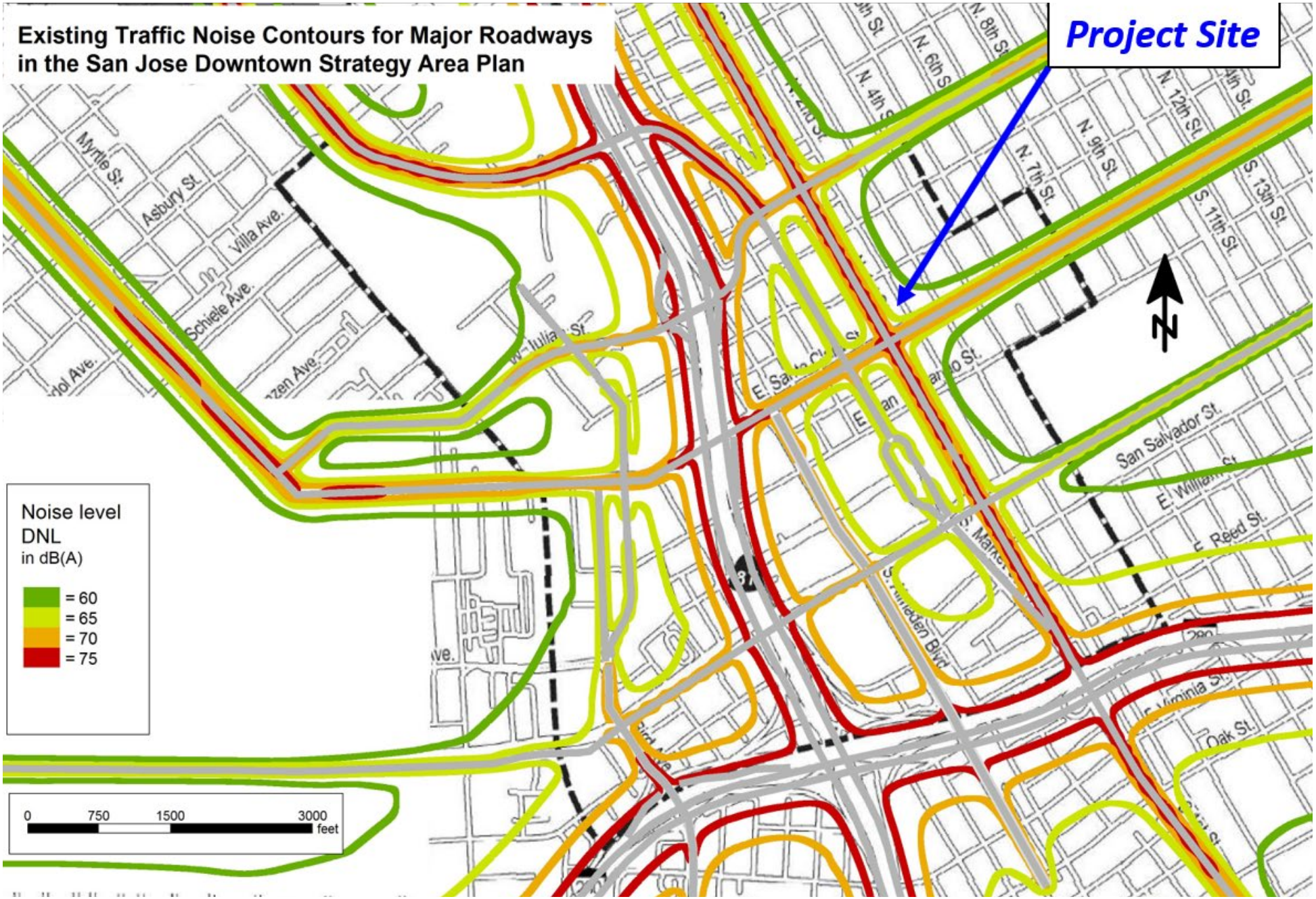
Due to the Shelter-in-Place restrictions in the Bay Area at the time of this study, traffic volumes along the surrounding roadways were reduced from typical conditions. A noise monitoring survey was not completed to document ambient noise levels during this unique time period because resultant noise levels would not be representative of typical ambient conditions. However, the project site and the surrounding area falls within the plan area for the Downtown San José Strategy Plan 2040 EIR. Measurements and noise contours generated for the Downtown Strategy Plan were reviewed to establish the existing noise environment baseline.

As part of the ambient noise measurements made for the Downtown Strategy Plan, the existing traffic noise contours, based on peak hour traffic volumes provided in 2015, were generated for the Plan Area. Noise levels at the project site would range from 64 to 69 dBA DNL in 2015, as shown in in Figure 17. In the model, a receptor was positioned 75 feet from the centerline of East Santa Clara Street, east of Market Street. At this distance, noise levels in 2015 were 67 dBA DNL.

Assuming about a 1% increase in traffic volumes along East Santa Clara Street each year, which would represent standard growth in a built-out area, noise levels by 2021 would increase by less than 1 dBA DNL.

Nearest Sensitive Receptors

The nearest sensitive receptors with respect to noise and vibration would be those located on the upper floors of the building at the southeast corner of the intersection of East Santa Clara/North First Street intersection and in the upper floors the buildings north of the project site along North First Street. The existing hourly average noise levels range from 64 to 69 dBA Leq during daytime hours.



Source: Illingworth & Rodkin, July 2021

Noise Contour Map

Figure 17

Eterna Tower
EIR Addendum

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
13. 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?				X		14
b) Generation of excessive groundborne vibration or groundborne noise levels?				X		14
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?				X		14

Explanation

As discussed below, the proposed project would not result in a new or greater impacts related to noise than was previously disclosed in the Downtown Strategy 2040 FEIR.
Significance Criteria

The following criteria were used to evaluate the significance of environmental noise resulting from the project:

- A significant noise impact would be identified if the project would generate a substantial temporary or permanent noise level increase over ambient noise levels at existing noise-sensitive receptors surrounding the project site and that would exceed applicable noise standards presented in the General Plan at existing noise-sensitive receptors surrounding the project site.

- A significant noise impact would be identified if construction-related noise would temporarily increase ambient noise levels at sensitive receptors. The City of San José considers large or complex projects involving substantial noise-generating activities and lasting more than 12 months significant when within 500 feet of residential land uses or within 200 feet of commercial land uses or offices.

- A significant permanent noise level increase would occur if project-generated traffic would result in: a) a noise level increase of 5 dBA DNL or greater, with a future noise level of less than 60 dBA DNL, or b) a noise level increase of 3 dBA DNL or greater, with a future noise level of 60 dBA DNL or greater.

- A significant noise impact would be identified if the project would expose persons to or generate noise levels that would exceed applicable noise standards presented in the General Plan.

- A significant impact would be identified if the construction of the project would generate excessive vibration levels surrounding receptors. Groundborne vibration levels exceeding 0.2 in/sec PPV would have the potential to result in cosmetic damage to normal buildings. For sensitive historic structures, a continuous vibration limit of 0.08 in/sec PPV is used to determine the impact significance.

a) **Same Impact as Approved Project**. The following addresses the temporary and permanent increase in ambient noise levels in the vicinity of the project in excess of applicable standards. The noise and vibration effects associated with the project are described below based on the results of the noise and vibration study (see Appendix D).

Project-Generated Noise Impacts During Operations

Mechanical Equipment Noise. The City's General Plan does not include policies specifically addressing mechanical noise generated by residential land uses. However, the residential mechanical noise should be addressed with respect to the City's Municipal Code threshold of 55 dBA to minimize disturbance to the existing and future residences surrounding the project site.

The site plan shows mechanical and electrical rooms in the basement, as well as a pump room and a water tank. The proposed project would also include an emergency generator, which would also be located in the basement level. For a building of this size, an emergency generator with a capacity of 500 kW would be expected. Due to the location of the generator and other equipment in the basement, noise levels generated by such equipment would be shielded from existing receptors surrounding the project site. Therefore, the City's 55 dBA DNL threshold would not be exceeded at nearby residential land uses.

According to the applicant, the proposed building would also include air handling units (AHU) on the roof, located at the staircase towers. Details pertaining to the number, size, and type of AHU units are unavailable at this time. AHU equipment can generate noise levels from 68 to 83 dBA at a distance of 3 feet from the source. Due to have a wide range of source levels and other unknown variables, an accurate assessment of mechanical equipment noise should be completed once manufacturer-provided noise level information of equipment expected for the proposed project is available.

Conservatively, the AHU equipment located on the roof of the proposed building would potentially exceed the City's Municipal Code threshold of 55 dBA at the adjoining residential properties. Since the City's General Plan does not include policies specifically addressing mechanical noise generated by residential land uses, no General Plan policies would be violated by noise levels generated by the AHU equipment, and this would be considered a less-than-significant impact. However, mechanical equipment noise generated from the rooftop of the proposed building could potentially exceed the City's Municipal Code thresholds at the nearest receptors.

The final design plans should be reviewed by a qualified acoustical consultant to address any potential conflicts with the General Plan or Municipal Code. For noise-generating land uses, the Downtown San José Strategy Plan 2040 EIR states the following:

> The implementation of General Plan Policies EC-1.2, EC-1.3, and EC-1.9 would reduce potential impacts associated with new noise-producing land uses facilitated by the plan to a less-than-significant level. Policy EC-1.2 limits noise generation by requiring use of noise attenuation measures, such as acoustical enclosures and sound barriers, where feasible, to avoid substantial increases to ambient noise. General Plan Policy EC-1.3 would be implemented and would require new projects to mitigate noise generation to 55 dBA DNL at the property line. Lastly, General Plan Policy EC-1.9 would be implemented and would require that studies be conducted to mitigate loud intermittent noise sources associated with new projects.

The implementation of the policies from the Downtown San José Strategy Plan 2040 EIR would reduce noise levels originating from the project site to a less than significant level.

Noise from Project Traffic. According to Policy EC-1.2 of the City's General Plan, a significant noise increase would occur if the project would increase noise levels at noise-sensitive receptors by 3 dBA DNL or more where ambient noise levels exceed the "normally acceptable" noise level standard. Where ambient noise levels are at or below the "normally acceptable" noise level standard, noise level increases of 5 dBA DNL or more would be considered significant. The City's General Plan defines the "normally acceptable" outdoor noise level standard for the nearby residential land uses to be 60 dBA DNL. Existing ambient levels, based on the measurements made in the project vicinity, exceed 60 dBA DNL. Therefore, a significant impact would occur if traffic due to the proposed project would permanently increase ambient levels by 3 dBA DNL. For reference, a 3 dBA DNL noise increase would be expected if the project would double existing traffic volumes along a roadway.

A traffic study was not required for the proposed project since parking and vehicular access to the site is not part of the project description. While bicycle parking will be included in the project, the project will not generate vehicular traffic trips. Therefore, the project would not result in a permanent noise increase of 3 dBA DNL or more at noise-sensitive receptors in the project vicinity. This represents a less than significant impact.

Project-Generated Noise Impacts During Construction

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

Policy EC-1.7 of the City's General Plan requires that all construction operations within the City to use best available noise suppression devices and techniques and to limit construction hours near residential uses per the Municipal Code allowable hours, which are between the

hours of 7:00 a.m. and 7:00 p.m. Monday through Friday when construction occurs within 500 feet of a residential land use. Further, 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. Project construction proposes work hours from 8:00 a.m. to 5:00 p.m., Monday through Friday, which would fall within the City's allowable construction hours.

The nearest noise-sensitive receptors would be located in the upper floors of a building in the southeast corner of the East Santa Clara Street/North First Street intersection and in the upper floors the buildings north of the project site along North First Street. In 2005, Illingworth & Rodkin conducted a monitoring survey at a nearby project site (35 South Second Street).[39] The hourly average noise levels measured in 2005 ranged from 64 to 69 dBA L_{eq} during daytime hours. The day-night average noise level measured at this location in 2005 was within 1 dBA of the day-night average noise level along First Street measured in 2018 for the Downtown Strategy Plan; therefore, these ambient noise levels would adequately establish the existing noise environment at the noise-sensitive receptors in the project vicinity.

Construction activities generate considerable amounts of noise, especially during earth-moving activities when heavy equipment is used. The construction of the proposed project would involve demolition of the existing buildings located on the site, grading and trenching, and building construction. The hauling of excavated materials and construction materials would generate truck trips on local roadways, as well. For the proposed project, pile driving is not proposed or anticipated.

Construction activities for individual projects are typically carried out in phases. During each phase of construction, there would be a different mix of equipment operating, and noise levels would vary by phase and vary within phases, based on the amount of equipment in operation and the location at which the equipment is operating. The typical range of maximum instantaneous noise levels for the proposed project would be 70 to 90 dBA L_{max} at a distance of 50 feet (see Table 10) from the equipment. Table 11 shows the average noise level ranges, by construction phase. Hourly average noise levels generated by construction are about 65 to 88 dBA L_{eq} for a residential building measured at a distance of 50 feet from the center of a busy construction site. Construction-generated noise levels drop off at a rate of about 6 dBA per doubling of the distance between the source and receptor. Shielding by buildings or terrain often result in lower construction noise levels at distant receptors.

Table 10
Construction Equipment 50-Foot Noise Emission Limits[40]

Equipment Category	L_{max} Level (dBA)[1,2]	Impact/ Continuous
Arc Welder	73	Continuous
Auger Drill Rig	85	Continuous
Backhoe	80	Continuous
Bar Bender	80	Continuous
Boring Jack Power Unit	80	Continuous
Chain Saw	85	Continuous

[39] Illingworth & Rodkin, Inc., "Fountain Alley Project Draft Noise Assessment," October 31, 2005.
[40] Construction equipment listed in this table is provided for informational purposes and is not necessarily representative of the equipment proposed for use during construction of the proposed project. No pile driving is proposed for this project.

Table 10 Construction Equipment 50-Foot Noise Emission Limits[40]		
Equipment Category	**L_{max} Level (dBA)[1,2]**	**Impact/ Continuous**
Compressor[3]	70	Continuous
Compressor (other)	80	Continuous
Concrete Mixer	85	Continuous
Concrete Pump	82	Continuous
Concrete Saw	90	Continuous
Concrete Vibrator	80	Continuous
Crane	85	Continuous
Dozer	85	Continuous
Excavator	85	Continuous
Front End Loader	80	Continuous
Generator	82	Continuous
Generator (25 KVA or less)	70	Continuous
Gradall	85	Continuous
Grader	85	Continuous
Grinder Saw	85	Continuous
Horizontal Boring Hydro Jack	80	Continuous
Hydra Break Ram	90	Impact
Impact Pile Driver	105	Impact
Insitu Soil Sampling Rig	84	Continuous
Jackhammer	85	Impact
Mounted Impact Hammer (hoe ram)	90	Impact
Paver	85	Continuous
Pneumatic Tools	85	Continuous
Pumps	77	Continuous
Rock Drill	85	Continuous
Scraper	85	Continuous
Slurry Trenching Machine	82	Continuous
Soil Mix Drill Rig	80	Continuous
Street Sweeper	80	Continuous
Tractor	84	Continuous
Truck (dump, delivery)	84	Continuous
Vacuum Excavator Truck (vac-truck)	85	Continuous
Vibratory Compactor	80	Continuous
Vibratory Pile Driver	95	Continuous
All other equipment with engines larger than 5 HP	85	Continuous

Notes:
[1] Measured at 50 feet from the construction equipment, with a "slow" (1 sec.) time constant.
[2] Noise limits apply to total noise emitted from equipment and associated components operating at full power while engaged in its intended operation.
[3] Portable Air Compressor rated at 75 cfm or greater and that operates at greater than 50 psi.

Table 11 Typical Ranges of Construction Noise Levels at 50 Feet, L_{eq} (dBA)								
Activity	**Domestic Housing**		**Office Building, Hotel, Hospital, School, Public Works**		**Industrial Parking Garage, Religious Amusement & Recreations, Store, Service Station**		**Public Works Roads & Highways, Sewers, and Trenches**	
	I	**II**	**I**	**II**	**I**	**II**	**I**	**II**
Ground Clearing	83	83	84	84	84	83	84	84
Excavation	88	75	89	79	89	71	88	78

Table 11 Typical Ranges of Construction Noise Levels at 50 Feet, L_{eq} (dBA)								
Activity	**Domestic Housing**		**Office Building, Hotel, Hospital, School, Public Works**		**Industrial Parking Garage, Religious Amusement & Recreations, Store, Service Station**		**Public Works Roads & Highways, Sewers, and Trenches**	
	I	**II**	**I**	**II**	**I**	**II**	**I**	**II**
Foundations	81	81	78	78	77	77	88	88
Erection	81	65	87	75	84	72	79	78
Finishing	88	72	89	75	89	74	84	84
I - All pertinent equipment present at site. **II** - Minimum required equipment present at site. Source: U.S.E.P.A., Legal Compilation on Noise, Vol. 1, p. 2-104, 1973.								

A detailed list of equipment expected to be used during each phase of project construction was provided and is summarized in Table 12. The Federal Highway Administration's (FHWA's) Roadway Construction Noise Model (RCNM) was used to calculate the hourly average noise levels for each phase of construction, assuming every piece of equipment would operate simultaneously, representing the worst-case scenario. This construction noise model includes representative sound levels for the most common types of construction equipment and the approximate usage factors of such equipment.

For each phase, the worst-case hourly average noise level, as estimated at the property line of each surrounding land use, is also shown in Table 12. For overall construction noise levels, multiple pieces of equipment used simultaneously would combine to create a collective noise source.

While every piece of equipment per phase would likely be scattered throughout the site, the noise-sensitive receptors surrounding the site would be subject to the collective noise source generated by all equipment operating at once. Therefore, to assess construction noise impacts at the receiving property lines of noise-sensitive receptors, the collective worst-case hourly average noise level for each phase was centered at the geometrical center of the site and propagated to the nearest property line of the surrounding land uses. These noise level estimates are also shown in Table 12. Noise levels in Table 12 do not assume reductions due to intervening buildings or existing barriers.

Table 12
Estimated Construction Noise Levels at Nearby Land Uses

Phase of Constr.	Time Duration	Construction Equipment (Quantity)	Calculated Hourly Average Noise Levels, L_{eq} (dBA)									
			Ambient Noise Levels = 64 to 69 dBA L_{eq}									
			North Comm. (30 ft)		East & West Comm. (45 ft)		NW Res. & Comm. (65 ft)		Nearby Res. North (125 ft)		Nearby Res. SW (155 ft)	
			Level dBA	Exceeds Ambient by 5 dBA or more?	Level, dBA	Exceeds Ambient by 5 dBA or more?	Level, dBA	Exceeds Ambient by 5 dBA or more?	Level, dBA	Exceeds Ambient by 5 dBA or more?	Level, dBA	Exceeds Ambient by 5 dBA or more?
Demolition	5/1/2028-9/1/2028	Concrete/Ind. Saw (1) Excavator (1) Rubber-Tired Dozer (1) Tractor/Loader/ Backhoe (1)	90	Yes	87	Yes	84	Yes	78	Yes	76	Yes
Site Preparation	5/1/2028-9/1/2028	Grader (1) Rubber-Tired Dozer (1) Tractor/Loader/ Backhoe (1)	89-93[a]	Yes	86-89[a]	Yes	82-86[a]	Yes	77-80[a]	Yes	75-78[a]	Yes
Grading/ Excavation	7/1/2028-1/1/2029	Excavator (1) Concrete/Ind. Saw (1) Tractor/Loader/ Backhoe (1)	90-94[b]	Yes	86-91[b]	Yes	83-88[b]	Yes	77-82[b]	Yes	75-80[b]	Yes
Trenching/ Foundation	1/1/2029-6/15/2029	Tractor/Loader/ Backhoe (1) Excavator (1)	86	Yes	83	Yes	79	Yes	74	Yes	72	No
Building – Exterior	6/1/2029-8/22/2030	Crane (1) Forklift (1) Generator Set (1) Welder (1)	84-88[c]	Yes	81-85[c]	Yes	77-82[c]	Yes	71-76[c]	Yes	70-74[c]	Yes
Building – Interior/ Architectural Coating	6/1/2029-5/1/2030	Air Compressor (1) Aerial Lift (1)	79-85[d]	Yes	76-82[d]	Yes	72-79[d]	Yes	67-73[d]	Yes	65-71[d]	No

[a] Range of hourly average noise levels reflects the site preparation phase only and in combination with the demolition phase.
[b] Range of hourly average noise levels reflects the grading/excavation phase only and in combination with the demolition and site preparation phases.
[c] Range of hourly average noise levels reflects the building – exterior phase only and in combination with the trenching/foundation phase.
[d] Range of hourly average noise levels reflects the building – interior phase only and in combination with the building – exterior phase.

As shown in Table 12, ambient levels at the existing land uses in the project site vicinity would potentially be exceeded by 5 dBA L_{eq} or more at various times throughout construction. Project construction is expected to last for approximately 28 months. Considering that the project site is within 500 feet of existing residences and within 200 feet of existing commercial uses, and construction would last longer than 12 months, the proposed project would be considered a significant temporary noise impact per Policy EC-1.7 of the City's General Plan.

Impact NSE-1: Construction noise would exceed ambient levels by five dBA for a period of more than one year, which exceeds City thresholds defined in General Plan Policy EC-1.7, within 500 feet of residential uses or 200 feet of commercial or office uses.

Mitigation Measures: In accordance with the Downtown Strategy 2040 FEIR and recommendations of the Noise and Vibration Assessment prepared by Illingworth & Rodkin, the following mitigation measure shall be implemented to reduce construction noise impacts to sensitive receptors during all phases of construction on the project site.

MM NSE 1 Prior to the issuance of any grading, building 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 to the Director of Planning, Building and Code Enforcement or Director's Designee. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and the construction noise logistics plan implemented during construction to reduce noise impacts on neighboring residents and other uses below the threshold of 5 dBA within 500 feet of residential uses or 200 feet of commercial or office uses. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site. The notice sent to neighbors regarding the construction schedule shall be included in the posted sign.

Consistent with the Downtown Strategy 2040 FEIR, the noise logistic plan shall include, but is not limited to, the following measures:

- The project 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.

- The project 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.

- The project contractor shall locate staging areas and construction material areas as far away as possible from adjacent land uses.

Standard Permit Conditions

- Pile driving is prohibited.

- Limit construction hours to between 7:00 AM and 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.

- Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.

- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.

- Prohibit unnecessary idling of internal combustion engines.

- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.

- Utilize "quiet" air compressors and other stationary noise sources where technology exists.

- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.

- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.

- If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.

- Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

  Implementation of Mitigation Measure NSE-1 and the Standard Permit Conditions, the temporary construction noise would be reduced to a less than significant level, which is the same as the approved project.

b) **Same Impact as Approved Project**. The construction of the project may generate perceptible vibration when heavy equipment or impact tools (e.g., jackhammers, hoe rams) are used. Construction activities would include demolition, site preparation work, foundation work, and new building framing and finishing. Pile driving equipment, which can cause excessive vibration, is not expected to be required for the proposed project because no pile driving is proposed.

According to Policy EC-2.3 of the City of San José General Plan, a vibration limit of 0.08 in/sec PPV is used to minimize the potential for cosmetic damage to sensitive historical structures, and a vibration limit of 0.20 in/sec PPV is used to minimize damage at buildings of normal conventional construction. The vibration limits contained in this policy are conservative and designed to provide the highest level of protection for existing buildings in San José. As discussed below, vibration levels exceeding these thresholds would be capable of cosmetically damaging adjacent buildings. Cosmetic damage (also known as threshold damage) is defined as hairline cracking in plaster, the opening of old cracks, the loosening of paint or the dislodging of loose objects. Minor damage is defined as hairline cracking in masonry or the loosening of plaster. Major structural damage is defined as wide cracking or the shifting of foundation or bearing walls.

Table 13 presents typical vibration levels that could be expected from construction equipment at a distance of 25 feet. Project construction activities, such as drilling, the use of jackhammers, rock drills and other high-power or vibratory tools, and rolling stock equipment (tracked vehicles, compactors, etc.), may generate substantial vibration in the immediate vicinity. 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. Vibration levels would vary depending on soil conditions, construction methods, and equipment used. Table 13 also summarizes the distances to the 0.08 in/sec PPV threshold for historical buildings and to the 0.2 in/sec PPV threshold for all other buildings.

Table 13
Vibration Source Levels for Construction Equipment

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
(slurry wall)	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, United States Department of Transportation, Office of Planning and Environment, Federal Transit Administration, September 2018, as modified by Illingworth & Rodkin, Inc., March 2021

As shown in Figure 18, three existing buildings classified as historical in the City's inventory adjoin the site to the east, northeast, and northwest. In addition, the nearest building of normal conventional construction would adjoin the site to the west. All three historical buildings and the conventional building would be located within five feet of the project site. Figure 18 shows a historical building to the north of the project site and additional historical buildings to the south of East Santa Clara Street. The building to the north would be approximately 70 feet from the project's northern boundary, and the buildings to the south would be approximately 95 feet from the project site. As shown in Table 14, a historical building located 60 feet or more from potential construction activities would not be exposed vibration levels exceeding 0.08 in/sec PPV.

Table 12 summarizes the vibration levels at the three historical buildings and the conventional building immediately adjoining the site. Vibration levels are highest close to the source and then attenuate with increasing distance. While construction noise levels increase based on the cumulative equipment in use simultaneously, construction vibration levels would be dependent on the location of individual pieces of equipment. That is, equipment scattered throughout the site would not generate a collective vibration level, but a vibratory roller, for instance, operating near the project site boundary would generate the worst-case vibration levels for the receptor sharing that property line. Further, construction vibration impacts are assessed based on damage to buildings on receiving land uses, not receptors at the nearest property lines. Therefore, the distances used to propagate construction vibration levels (as shown in Table 12), which are different than the distances used to propagate construction noise levels (as shown in Table 13), were estimated under the assumption that each piece of equipment from Table 11 was operating along the nearest boundary of the project site, which would represent the worst-case scenario.

Project construction activities, such as drilling, the use of jackhammers, rock drills and other high-power or vibratory tools, and rolling stock equipment (tracked vehicles, compactors, etc.) may generate substantial vibration in the immediate vicinity of the historical or conventional buildings adjoining the project site. As shown in Table 14, the 0.08 in/sec PPV threshold would potentially be exceeded within about 60 feet of the surrounding buildings, and the 0.2 in/sec PPV threshold for conventional buildings would be exceeded within 27 feet. Due to the close proximity of the buildings immediately surrounding the site, the use of most construction equipment along the shared property line would potentially exceed the City's thresholds, as shown in Table 14.

Source: Illingworth & Rodkin, July 2021

Historical Buildings Near Project Site

Eterna Tower
EIR Addendum

Figure
18

Table 14
Vibration Levels at Nearby Buildings

Equipment		PPV (in/sec) North Conventional Building (5 feet)	South & SW Historical Buildings (5 feet)	West Historical Building (35 feet)	NW Historical Building (25 feet)	East Conventional Building (75 feet)
Clam Shovel Drop		**1.186**	**1.186**	**0.140**	**0.202**	0.060
Hydromill (slurry wall)	in soil	0.047	0.047	0.006	0.008	0.002
	in rock	**0.100**	**0.100**	0.012	0.017	0.005
Vibratory Roller		**1.233**	**1.233**	**0.145**	**0.210**	0.063
Hoe Ram		**0.523**	**0.523**	0.061	**0.089**	0.027
Large Bulldozer		**0.523**	**0.523**	0.061	**0.089**	0.027
Caisson Drilling		**0.523**	**0.523**	0.061	**0.089**	0.027
Loaded Trucks		**0.446**	**0.446**	0.052	0.076	0.023
Jackhammer		**0.206**	**0.206**	0.024	0.035	0.010
Small bulldozer		0.018	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., July 2021.

Heavy vibration-generating construction equipment, such as vibratory rollers or clam shovel drops, would have the potential to produce vibration levels of 0.08 in/sec PPV or more at historic buildings within 60 feet of the project site and to produce vibration levels of 0.2 in/sec PPV or more at conventional buildings within 27 feet of the project site.

Neither cosmetic, minor, or major damage would occur at historical or conventional buildings located more than 60 feet from the project site. At these locations, and in other surrounding areas where vibration would not be expected to cause cosmetic damage, vibration levels may still be perceptible. However, as with any type of construction, this would be anticipated and would not be considered significant, given the intermittent and short duration of the phases that have the highest potential of producing vibration (use of jackhammers and other high-power tools). By use of administrative controls, such as notifying neighbors of scheduled construction activities and scheduling construction activities with the highest potential to produce perceptible vibration during hours with the least potential to affect nearby businesses, perceptible vibration can be kept to a minimum.

In summary, the construction of the project would generate vibration levels exceeding the General Plan threshold of 0.08 in/sec PPV at historic properties adjoining the site and 0.2 in/sec PPV at conventional buildings adjoining the site. Such vibration levels would be capable of cosmetically damaging the adjacent buildings.

Impact NSE-2: Construction of the project would generate vibration levels exceeding the General Plan threshold of 0.08 in/sec PPV or more at historic buildings within 60 feet of the project site and of 0.2 in/sec PPV or more at buildings of normal conventional construction located within 25 feet of the project site.

Mitigation Measures: In accordance with the Downtown Strategy 2040 FEIR and recommendations of the Noise and Vibration Assessment prepared by Illingworth & Rodkin, the following mitigation measure shall be implemented to reduce impacts related to generation of construction vibrations on adjacent historic buildings.

MM NSE 2 Prior to the issuance of any grading, building or demolition permits (whichever occurs first), the project applicant shall implement a construction vibration monitoring 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 construction vibration monitoring plan shall include, but not be limited to, the following measures:

- The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.

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

- Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent historical building and within 30 feet of any adjacent conventional building.

- Document conditions at all historic structures located within 60 feet of construction and at all conventional structures within 30 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 and for each conventional structure within 30 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, and shall include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations, walls

and other structural elements in the interior and exterior of said structures.

- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.

- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.

- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.

- Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. The survey shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of repairs.

Implementation of the above measures would reduce the vibration impact to less than significant level.

c) **Same Impact as Approved Project**. Norman Y. Mineta San José International Airport is a public-use airport located approximately 1.7 miles northwest of the project site. According to the City's new Airport Master Plan Environmental Impact Report,[41] the project site is located outside of the 60 dBA CNEL/DNL contour line. According to Policy EC-1.11 of the City's General Plan, the required safe and compatible threshold for exterior noise levels would be at or below 65 dBA CNEL/DNL for aircrafts. Therefore, the proposed project would be compatible with the City's exterior noise standards for aircraft noise.

Assuming standard construction materials for aircraft noise below 60 dBA DNL, the future interior noise levels resulting from aircraft would below 45 dBA DNL. Therefore, future interior noise at the proposed building would be compatible with aircraft noise.

Noise and Vibration Chapter Conclusion

The Downtown Strategy 2040 EIR found that buildout would result in significant unavoidable noise impacts at existing noise-sensitive land uses adjacent to various roadway segments downtown due to increases in traffic noise. In addition, the Downtown Strategy 2040 FEIR identified significant construction vibration impacts that would be reduced to a less than significant level with implementation of the identified minimization measures. The noise and vibration impacts from the

[41] David J. Powers & Associates, Inc., Integrated Final Environmental Impact Report, Amendment to Norman Y. Mineta San Jose International Airport Master Plan, April 2020.

proposed development would be reduced to a less than significant level with the incorporation of mitigation measures and standard permit conditions consistent with the Downtown Strategy 2040 FEIR. The project would not result in new or more significant noise/vibration impacts than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project identified potential construction noise and vibration impacts and mitigation related to the temporary increase of ambient noise levels (NV-CNST-A through NV-CNST-O), exposure of persons to noise in excess of local or agency standards (NV-CNST-A through NV-CNST-O), and exposure of persons to groundborne vibration (NV-CNST-P through NV-CNST-S). In addition, operational impacts and mitigation were identified related to exposure of persons to noise from ancillary facilities in excess of local or agency standards (NV-A: Implement Noise Reduction Treatments at Ancillary Facilities) and exposure of persons to groundborne vibration (Mitigation Measure NV-B: Reduce Groundborne Noise Levels). Impacts related to exposure of persons to construction noise identified in the SEIS/SEIR remained significant and unavoidable even with mitigation.

While the proposed project would result in potentially significant impacts to noise and vibration, these would be reduced to a less than significant level through implementation of standard permit conditions and mitigation measures identified above. As a result, the proposed project would not result in new significant impacts to noise and vibration, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact with mitigation on noise and vibration and would not result in new or more severe noise and vibration impacts than identified in the SEIS/SEIR for the BART Extension Project.

Non-CEQA Effects

In December 2015, the California Supreme Court issued an opinion in the California Building Industry Association vs. Bay Area Air Quality Management District (*CBIA vs. BAAQMD*) case that CEQA is primarily concerned with the impacts of a project on the environment, not the effects of the existing environment on a project. In light of this ruling, the effect of existing ambient noise on future users or residents of the project would not be considered an impact under CEQA. However, General Plan Policy EC-1.1 requires that existing ambient noise levels be analyzed for new residences, hotels, motels, residential care facilities, hospitals, and other institutional facilities, and that noise attenuation be incorporated into the project in order to reduce interior and exterior noise levels to acceptable limits.

The exterior noise threshold established in the City's General Plan for new residential projects and for the residential component of mixed-use development is 60 dBA DNL at usable outdoor activity areas, excluding balconies and porches. For commercial uses, the City's "normally acceptable" threshold for outdoor activity areas is 70 dBA DNL. The City requires that interior noise levels be maintained at 45 dBA DNL or less for residential land uses, and the Cal Green Code applies to the non-residential components of the proposed mixed-use project.

According to the site plan, residential units would be located on floors two through 26 of the proposed building. The commercial component would be located on the first floor.

The future noise environment at the project site would continue to result primarily from vehicular traffic along East Santa Clara Street and other local roadways. According to the traffic study completed

for the Downtown San José Strategy Plan 2040 EIR,[42] the traffic noise level increase at the project site would be 2 dBA DNL under each of the 2040 cumulative buildout alternatives.

Future Exterior Noise Environment within Project Site

The City of San José does not consider private balconies as outdoor use areas subject to the General Plan exterior noise thresholds. The only common use outdoor area associated with the proposed project would include the rooftop terrace. According to the site plan, the rooftop terrace would be divided into two sections: a covered section located towards the back of the building and an open section near the front.

The center of the open rooftop terrace would be set back approximately 65 feet from the centerline of East Santa Clara Street, while the center of the covered rooftop terrace would have a setback of approximately 110 feet from the centerline of the roadway. The site plan shows the elevation of the rooftop to be over 250 feet. Additionally, the site plan shows a six-foot barrier along the edge of the terrace. The overhang of the covered section would also provide some shielding. Future exterior noise levels at the centers of both rooftop terrace sections would be below 60 dBA DNL.

The future noise levels at the centers of the common use outdoor areas associated with the proposed residential building would meet the City's normally acceptable threshold of 60 dBA DNL.

Future Interior Noise Environment

The State of California and the City of San José require that interior noise levels be maintained at 45 dBA DNL or less for residential land uses and that all non-residential land uses follow the requirements of the Cal Green Code. Interior noise levels vary depending on the design of the buildings and the selected construction materials and methods.

Residential Uses. The residential units would be located on floors three through 26 of the proposed building. Units located along the southern façade nearest East Santa Clara Street would be set back from the centerline of the roadway by approximately 50 feet. At this distance, the units facing East Santa Clara Street would be exposed to future exterior noise levels up to 71 dBA DNL. Assuming windows to be partially open, future interior noise levels would be 56 dBA DNL.

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

Units along the northern façade would be shielded from traffic along East Santa Clara Street. Additionally, the existing buildings located to the east and to the west of the proposed building would

[42] City of San José, *Downtown San José Strategy Plan 2040 Integrated Final Environmental Impact Report*, December 2018.

provide adequate shielding from traffic noise along North First Street and North Second Street for units located on the lower floors. However, units located on floors 7 through 26 would have some exposure to traffic noise along the surrounding roadways and nearby SR 87. Residential units on the lower floors located along the northern façade would be exposed to future exterior noise levels at or below 60 dBA DNL, while the upper floors would be exposed to future exterior noise levels up to 65 dBA DNL. Assuming windows to be partially open, future interior noise levels would be up to 50 dBA DNL. To meet the interior noise requirements set forth by the City of San José of 45 dBA DNL, implementation of noise insulation features would be required for units facing East Santa Clara Street.

Commercial Retail Uses. Ground-level commercial uses are proposed as part of the project. Daytime hourly average noise levels at the ground level of the building exterior would be up 72 dBA L_{eq} at the southern building façade, with day-night average noise levels up to 72 dBA DNL. Standard construction materials for commercial uses would provide about 25 dBA of noise reduction in interior spaces. The inclusion of adequate forced-air mechanical ventilation systems is normally required so that windows may be kept closed at the occupant's discretion and would provide an additional 5 dBA reduction. The standard construction materials in combination with forced-air mechanical ventilation would satisfy the daytime threshold of 50 dBA $L_{eq(1\text{-}hr)}$.

Conditions of Approval

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

- The project's design shall provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on 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.

- The project shall provide preliminary calculations indicating that the residential units along the northern and eastern façades of proposed building would require windows and doors with a minimum rating of 28 STC to meet the interior noise threshold of 45 dBA DNL.

- A qualified acoustical specialist shall prepare a detailed analysis of interior residential noise levels resulting from all exterior sources during the design phase pursuant to requirements set forth in the State Building Code. The study will also establish appropriate criteria for noise levels inside the commercial spaces affected by environmental noise. The study will 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. Treatments would include, but are not limited to, sound-rated windows and doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what noise insulation treatments are necessary shall be conducted on a unit-by-unit basis during final design of the project. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City, along with the building plans and approved design, prior to issuance of a building permit.

The implementation of the above noise insulation features would reduce interior noise levels to 45 dBA DNL or less.

N. POPULATION AND HOUSING

Regulatory Framework

State

Housing-Element Law

State requirements mandating that housing be included as an element of each jurisdiction's general plan is known as housing-element law. The Regional Housing Need Allocation (RHNA) is the state mandated process to identify the total number of housing units (by affordability level) that each jurisdiction must accommodate in its housing element. California housing-element law requires cities to: 1) zone adequate lands to accommodate its RHNA; 2) produce an inventory of sites that can accommodate its share of the RHNA; 3) identify governmental and non-governmental constraints to residential development; 4) develop strategies and a work plan to mitigate or eliminate those constraints; and 5) adopt a housing element and update it on a regular basis.[43] The City of San José Housing Element and related land use policies were last updated in January 2015.

Regional and Local

Plan Bay Area 2040

Plan Bay Area 2040 is a long-range transportation, land-use, and housing plan intended support a growing economy, provide more housing and transportation choices, and reduce transportation related pollution and greenhouse gas (GHG) emissions in the Bay Area. Plan Bay Area 2040 promotes compact, mixed-use residential and commercial neighborhoods near transit, particularly within identified Priority Development Areas (PDAs).[44]

The Association of Bay Area Governments (ABAG) allocates regional housing needs to each city and county within the nine-county San Francisco Bay Area, based on statewide goals. ABAG also develops forecasts for population, households, and economic activity in the Bay Area. ABAG, the Metropolitan Transportation Commission (MTC), and local jurisdiction planning staff created the Regional Forecast of Jobs, Population, and Housing, which is an integrated land use and transportation plan through the year 2040 (upon which Plan Bay Area 2040 is based).

General Plan

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating population and housing impacts from development projects. There are no General Plan Policies related to population and housing that are applicable to the project.

Existing Setting

Based on information from the Department of Finance, the City of San José's population was estimated to be 1,029,782 in January 2021 and had an estimated total of 37,442 housing units, with an average

[43] California Department of Housing and Community Development. "Regional Housing Needs Allocation and Housing Elements" Accessed April 27, 2018. http://hcd.ca.gov/community-development/housingelement/index.shtml
[44] Association of Bay Area Governments and Metropolitan Transportation Commission. "Project Mapper." http://projectmapper.planbayarea.org/

of 3.14 persons per household.[45] ABAG projects that the City's population will reach 1,445,000 with 472,000 households by 2040.

A project can induce substantial population growth by: 1) proposing new housing beyond projected or planned development levels, 2) generating demand for housing as a result of new businesses, 3) extending roads or other infrastructure to previously undeveloped areas, or 4) removing obstacles to population growth (e.g., expanding capacity of a wastewater treatment plant beyond that necessary to serve planned growth). The General Plan EIR concluded that the potential for direct growth inducing impacts from buildout of the General Plan would be minimal because planned growth would consist entirely of development within the City's existing Urban Growth Boundary and Urban Service Area.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
14. POPULATION AND HOUSING. Would the project:						
a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				X		1, 2
b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?				X		1, 2

Explanation

As discussed below, the proposed project would not result in a new or greater impact on population and housing than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The project proposes up to 192 units with total future population at the proposed project site estimated at 614 individuals (based on 3.2 residents per unit). This does not represent substantial population growth. The General Plan EIR concluded that the potential for direct growth inducing impacts from buildout of the General Plan would be minimal because planned growth would consist entirely of development within the City's existing Urban Growth Boundary and Urban Service Area. With implementation of the proposed density bonus, the development is consistent with the project site's General Plan land use designation and, therefore, would not add growth beyond what was anticipated from buildout of the General Plan. Please refer to *Section K. Land Use and Planning.*

[45]State of California, Department of Finance. "E-5 Population and Housing Estimates for Cities, Counties, and the State—January 1, 2011-2021." January 2021. Accessed July 2021. http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/

b) **Same Impact as Approved Project**. The project consists of the development of residential on an infill site that contains two, two-story buildings. The project site does not contain any housing. Thus, the residential project would not displace existing housing or require the construction of replacement housing.

Population and Housing Chapter Conclusion

The project would have the same less than significant impact on population and housing as identified in the Downtown Strategy 2040 EIR. The project would not result in new or more significant population or housing impacts than those in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project did not identify any potentially significant impacts related to population and housing. As a result, the proposed project would not result in new significant impacts to population and housing compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact on population and housing and would not result in new or more severe population and housing impacts than identified in the SEIS/SEIR for the BART Extension Project.

O. PUBLIC SERVICES

Regulatory Framework

State

California Government Code Section 65996

California Government Code Section 65996 stipulates that an acceptable method of offsetting a project's effect on the adequacy of school facilities is the payment of a school impact fee prior to issuance of a building permit. The legislation states that payments of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA [§65996(b)]. The school district is responsible for implementing the specific methods of school impact mitigation under the Government Code. The CEQA documents must identify that school impact fees and the school districts' methods of implementing measures specified by Government Code 65996 would adequately mitigate project-related increases in student enrollment.

Quimby Act – California Code Sections 66475-66478

The Quimby Act (California Government Code Sections 66475-66478) was approved by the California legislature to preserve open space and parkland in the State. The Quimby Act authorizes local governments to establish ordinances requiring developers of new subdivisions to dedicate parks, pay an in-lieu fee, or perform a combination of the two. As described below, the City has adopted a Parkland Dedication Ordinance and a Park Impact Ordinance, consistent with the Quimby Act.

Local

Parkland Dedication Ordinance and Park Impact Ordinance

The City of San José has adopted the Parkland Dedication Ordinance (PDO, Municipal Code Chapter 19.38) and Park Impact Ordinance (PIO, Municipal Code Chapter 14.25), requiring new residential development to either dedicate sufficient land to serve new residents or pay fees to offset the increased costs of providing new park facilities for new development. Under the PDO and PIO, a project can satisfy half of its total parkland obligation by providing private recreational facilities onsite. For projects exceeding 50 units, the City decides whether the project will dedicate land for a new public park site or provide a fee in-lieu of land dedication. The acreage of parkland required is based on the minimum acreage dedication formula outlined in the PDO.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating public service impacts from development projects. Policies applicable to the project are presented below.

Envision San José 2040 Relevant Public Service Policies	
Policy CD-5.5	Include design elements during the development review process that address security, aesthetics, and safety. Safety issues include, but are not limited to, minimum clearances around buildings, fire protection measures such as peak load water requirements, construction techniques, and minimum standards for vehicular

Envision San José 2040 Relevant Public Service Policies	
	and pedestrian facilities and other standards set forth in local, state, and federal regulations.
Policy FS-5.6	When reviewing major land use or policy changes, consider the availability of police and fire protection, parks and recreation and library services to the affected area as well as the potential impacts of the project on existing service levels.
Policy ES-2.2	Construct and maintain architecturally attractive, durable, resource-efficient, and environmentally healthful library facilities to minimize operating costs, foster learning, and express in built form the significant civic functions and spaces that libraries provide for the San José community. Library design should anticipate and build in flexibility to accommodate evolving community needs and evolving methods for providing the community with access to information sources. Provide at least 0.59 SF of space per capita in library facilities.
Policy ES-3.1	Provide rapid and timely Level of Service (LOS) response time to all emergencies: 1. For police protection, use as a goal a response time of six minutes or less for 60 percent of all Priority 1 calls, and of eleven minutes or less for 60 percent of all Priority 2 calls. 2. For fire protection, use as a goal a total response time (reflex) of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents.
Policy ES-3.9	Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publicly-visible and accessible spaces.
Policy ES-3.11	Ensure that adequate water supplies are available for fire-suppression throughout the City. Require development to construct and include all fire suppression infrastructure and equipment needed for their projects. PR-1.1 Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
Policy PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
Policy PR-1.2	Provide 7.5 acres per 1,000 population of citywide /regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
Policy PR-1.12	Regularly update and utilize San José's Parkland Dedication Ordinance/Parkland Impact Ordinance (PDO/PIO) to implement quality facilities.
Policy PR-2.4	To ensure that residents of a new project and existing residents in the area benefit from new amenities, spend Park Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees for neighborhood serving elements (such as playgrounds/tot-lots, basketball courts, etc.) within a ¾ mile radius of the project site that generates the funds.
Policy PR-2.5	Spend, as appropriate, PDO/PIO fees for community serving elements (such as soccer fields, community gardens, community centers, etc.) within a 3-mile radius of the residential development that generates the PDO/PIO funds.

Existing Setting

Fire Protection: Fire protection services are provided to the project site by the San José Fire Department (SJFD). The closest fire station to the project site is Station #1, located about 0.3 miles northwest of the site at 225 North Market Street.

Police Protection: Police protection services are provided to the project site by the San José Police Department (SJPD) headquartered at 201 West Mission Street. The City has four patrol divisions and 16 patrol districts. Patrols are dispatched from police headquarters and the patrol districts consist of 83 patrol beats, which include 357 patrol beat building blocks.

Parks: Parks and recreation facilities within the project area are provided by the City of San José. The closest park facility to the project site is St. James Park, a 6.8-acre City neighborhood park located about 650 feet north of the project site. It contains youth playgrounds, community center, barbecue pits, restrooms, an exercise course, and picnic areas.

Schools: The project site is in the San José Unified School District (SJUSD) area boundary. This district operates a combined 42 schools (27 elementary schools, six middle schools, and nine high schools) serving approximately 31,524 students.[46] Schools serving the project site are presented below.

Schools in Project Area		
Elementary	**Middle**	**High**
Horace Mann Elementary School 55 North Seventh Street San José, CA 95112	Muwekma Ohlone Middle School 805 North Second Street San José, CA 95112	San José High School 275 North 24th Street San José, CA 95116

State law (Government Code §65996) identifies the payment of school impact fees as an acceptable method of offsetting a project's impact on school facilities. In San José, developers can either negotiate directly with the affected school district or make a payment per square foot of multi-family units and new commercial uses, prior to issuance of a building permit. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code.

Libraries: The City of San José is served by the San José Public Library System. The San José Public Library System consists of one main library (Dr. Martin Luther King Jr.) and 22 branch libraries. The nearest public library is the Dr. Martin Luther King Jr. Library, approximately 0.28 miles southeast of the project site.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
15. PUBLIC SERVICES. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:						
a) Fire protection?				X		1, 2
b) Police protection?				X		1, 2

[46] Envision San José 2040 General Plan Final Program EIR, certified November 2011.

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
c) Schools?				X		1, 2
d) Parks?				X		1, 2
e) Other public facilities?				X		1, 2

Explanation

As discussed below, the proposed project would not result in a new or greater impact public services than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The project proposes to redevelop the site, which would intensify the use of the site and generate additional occupants in the area. This would result in an incremental increase in the demand for fire protection services. The project site, however, is currently served by the SJFD and the amount of proposed development represents a small fraction of the total growth identified in the General Plan and downtown area. The project, by itself, would not preclude the SJFD from meeting their service goals and would not require the construction of new or expanded fire facilities. In addition, the proposed project would be constructed in accordance with current building and Fire codes and would be required to be maintained in accordance with applicable City policies to promote public and property safety. Therefore, the proposed mixed-use development would not significantly impact fire protection services or require the construction of new or remodeled facilities.

The General Plan EIR concluded that, with the buildout of the General Plan, additional fire staff and equipment may be required to adequately serve a larger population, but no new fire stations would be required other than those already planned. Periodic operation and capital improvements may be required for fire protection services, but those improvements would not result in significant environmental impacts.

b) **Same Impact as Approved Project**. The project proposes to redevelop the site, which would intensify the use of the site and generate additional occupants in the area. This would result in an incremental increase in the demand for police protection services. The site, however, is currently served by the SJPD and the amount of proposed development represents a relatively small fraction of the total growth projected in the General Plan and the downtown area. The project, by itself, would not preclude the SJPD from meeting their service goals and would not require the construction of new or expanded fire facilities. In addition, the proposed project would be constructed in accordance with current building codes and would be required to be maintained in accordance with applicable City policies to promote public and property safety.

The General Plan EIR and Downtown Strategy 2040 concluded that buildout under the General Plan and Downtown Strategy could require new police facilities, which will require supplemental environmental review but are not anticipated to result in significant, adverse environmental impacts. Periodic operation and capital improvements may be required for police services, but those improvements would not result in significant environmental impacts.

Finally, the project applicant would consult with the SJPD during final project design to assure appropriate security measures are incorporated. Therefore, the proposed mixed-use development would not significantly impact police protection services or require the construction of new or remodeled facilities.

c) **Same Impact as Approved Project**. The project proposes to redevelop the site with residential and commercial uses, which would potentially generate new students. The project site is currently served by the SJUSD. The project, by itself, would not preclude the SJUSD from meeting their service goals and would not require the construction of new or expanded schools. In addition, in accordance with California Government Code Section 65996, the developer would be required to pay a school impact fee to the School District to offset the increased demands on school facilities caused by the proposed project. Development fees for SJUSD are currently set at a base-level of $3.48/square foot for new residential development and $0.56/square foot for commercial/retail development. [47]

d) **Same Impact as Approved Project**. The proposed residential development would generate additional park users. While occupants of the site may utilize nearby parks, they are unlikely to place a major physical burden on these facilities. The City's Parkland Dedication Ordinance and Park Impact Ordinance require residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for the increase in demand for neighborhood parks.

e) **Same Impact as Approved Project.** Although the project would incrementally increase residential development and population growth, the proposed 192 units would not require the construction or expansion of additional public facilities or libraries. With implementation of the proposed density bonus, the project is consistent with the General Plan designation for the site; the General Plan EIR concluded that development allowed under the General Plan would be adequately served by existing and planned library facilities.

Public Services Chapter Conclusion

The Downtown Strategy 2040 EIR found no significant impacts to public services. The project would not result in new or more significant population or housing impacts than those in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project did not identify any potentially significant impacts related to public services. As a result, the proposed project would not result in new significant impacts to public services compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact on public services and would not result in new or more severe public services impacts than identified in the SEIS/SEIR for the BART Extension Project.

[47] SJUSD no-longer posts multi-unit rates, rather, the developer is directed to contact the District for an assessment of fees.

P. RECREATION

Regulatory Framework

State

Assembly Bill 1191 and 1359 – Quimby Act

The Quimby Act, which is within the Subdivision Map Act, authorizes the legislative body of a city or county to require the dedication of land or impose fees for park or recreational purposes as a condition to the approval of a tentative or parcel subdivision map, if specified requirements are met. On September 8th, 2015 Governor Brown signed the AB 1359, the purpose of which was to amend the existing Quimby Act to authorize local governments to spend Quimby Act funds beyond parks that serve the development from where the funds were sourced. To reallocate the funds in this manner, AB 1359 requires the legislative body to hold a public hearing before using fees as prescribed in the bill.

Subsequently, on September 8th, 2015 Governor Brown signed the AB 1191, the purpose of which was to amend the existing Quimby Act to authorize the legislative bodies of cities and counties to require land dedication or to impose fees for future park or recreational purposes as a required condition of approval of a tentative or parcel subdivision map. AB 1191 also eliminated the requirement for a local municipality to repay any unspent funds accrued through the Quimby Act after a five-year period resulting from such fees.

Local

Parkland Dedication Ordinance and Park Impact Ordinance

The City of San José has adopted the Parkland Dedication Ordinance and Park Impact Ordinance, which require residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for the increase in demand for neighborhood parks. See *Section O. Public Services* for additional discussion.

Activate SJ Strategic Plan

The Activate SJ Strategic Plan was developed by the City of San José as a replacement to the Greenprint 2009 Plan. The Plan serves as an outline of goals and policies of the City's Department of Parks, Recreation, and Neighborhood Services, and is intended to act as a 20-year strategic plan in alignment with the Envision San José 2040 General Plan. The Activate SJ Strategic Plan will be updated at five-year intervals. The Plan identifies five major guiding principles, Stewardship, Nature, Equity & Access, Identity, and Public Life, to achieve the City's goal of connecting people through parks, recreation, and neighborhood services.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating recreation impacts from development projects. Policies applicable to the proposed project are presented below.

Envision San José 2040 Relevant Recreation Policies	
Policy PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
Policy PR-1.2	Provide 7.5 acres per 1,000 population of citywide/regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
Policy PR-1.3	Provide 500 SF per 1,000 population of community center space.
Policy PR-2.4	To ensure that residents of a new project and existing residents in the area benefit from new amenities, spend Park Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees for neighborhood serving elements (such as playgrounds/tot-lots, basketball courts, etc.) within a 3/4 mile radius of the project site that generates the funds.
Policy PR-2.5	Spend, as appropriate, PDO/PIO fees for community serving elements (such as soccer fields, dog parks, sport fields, community gardens, community centers, etc.) within a 3-mile radius of the residential development that generates the PDO/PIO funds.
Policy CD-6.5	Design quality publicly-accessible open spaces at appropriate locations that enhance the pedestrian experience and attract people to the Downtown. Use appropriate design, scale, and edge treatment to define, and create publicly-accessible spaces that positively contribute to the character of the area and provide public access to community gathering, recreational, artistic, cultural, or natural amenities.

Existing Setting

The City of San José owns and maintains approximately 3,502 acres of parkland, including neighborhood parks, community parks, and regional parks. The City has 51 community centers and over 57 miles of trails. The City's Department of Parks, Recreation, and Neighborhood Services is responsible for development, operation, and maintenance of all City park facilities.

St. James Park, a 6.8-acre City neighborhood park, is located to the north of the site between East St. John Street and East St James Street. It contains youth playgrounds, a community center, barbecue pits, restrooms, an exercise course, and picnic areas.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
16. RECREATION. Would the project:						
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X		1, 2

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?				X		1, 2

Explanation

As discussed below, the proposed project would not result in a new or greater impacts related to recreation than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as the Approved Project**. The proposed project would generate new residents that would utilize nearby parks, however, the project, by itself, would not physically deteriorate or require the construction or expansion of park facilities. The Park Dedication Ordinance and Park Impact Ordinance require residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for the increase in demand for neighborhood parks.

b) **Same Impact as the Approved Project**. The City's Parkland Dedication Ordinance and Park Impact Ordinance require residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for the increase in demand for neighborhood parks. The amount of proposed development represents a small fraction of the total growth identified in the General Plan. However, the project would be required to make a payment of in-lieu fees, by generating increase population that would utilize park services.

Recreation Chapter Conclusion

The Downtown Strategy 2040 EIR found no significant impacts to public services, which included recreational facilities. The project would not result in new or more significant impacts to recreational facilities than those in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project did not identify any potentially significant impacts related to recreation. As a result, the proposed project would not result in new significant impacts to recreation, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact on recreation and would not result in new or more severe recreation impacts than identified in the SEIS/SEIR for the BART Extension Project.

Q. TRANSPORTATION

Regulatory Framework

State

Regional Transportation Plan

The Metropolitan Transportation Commission (MTC) is the transportation planning, coordinating, and financing agency for the nine-county San Francisco Bay Area, including Santa Clara County. MTC is charged with regularly updating the Regional Transportation Plan, a comprehensive blueprint for the development of mass transit, highway, airport, seaport, railroad, bicycle, and pedestrian facilities in the region. MTC and ABAG adopted Plan Bay Area 2040 in July 2017, which includes a Regional Transportation Plan to guide regional transportation investment for revenues from federal, state, regional and local sources through 2040.

Senate Bill 743

SB 743 establishes criteria for determining the significance of transportation impacts using a vehicle miles traveled metric intended to promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses. Specifically, SB 743 requires the replacement of automobile delay—described solely by level of service or similar measures of vehicular capacity or traffic congestion—with VMT as the recommended metric for determining the significance of transportation impacts. The Governor's Office of Planning and Research (OPR) approved the CEQA Guidelines implementing SB 743 on December 28, 2018. Local jurisdictions were required to implement a VMT policy by July 1, 2020. SB 743 did not authorize OPR to set specific VMT impact thresholds, but it did direct OPR to develop guidelines for jurisdictions to utilize. CEQA Guidelines Section 15064.3(b)(1) describes factors that might indicate whether a development project's VMT may be significant. Projects located within one-half (0.5) mile of transit are generally be considered to have a less than significant transportation impact based on OPR guidance.

Regional and Local

Final Plan Bay Area 2040

The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) adopted the Final Plan Bay Area 2040 in July 2017. The Final Plan Bay Area 2040 is an updated long-range Regional Transportation Plan and Sustainable Communities Strategy for the nine-county San Francisco Bay Area. This plan focuses on the following strategies:

- Forecasting transportation needs through the year 2040.
- Preserving the character of our diverse communities.
- Adapting to the challenges of future population growth.

This effort grew out of the California Sustainable Communities and Climate Protection Act of 2008 (California Senate Bill 375, Steinberg), which requires each of the state's 18 metropolitan areas – including the Bay Area – to reduce greenhouse gas emissions from cars and light trucks. Plan Bay Area

2040 is a limited and focused update of the region's previous integrated transportation and land use plan, Plan Bay Area, adopted in 2013.

Santa Clara County Congestion Management Program

In accordance with California Statute (Government Code 65088), Santa Clara County has established a Congestion Management Program (CMP). The intent of the CMP legislation is to develop a comprehensive transportation improvement program among local jurisdictions to reduce traffic congestion and improve land use decision-making and air quality. VTA serves as the Congestion Management Agency (CMA) for Santa Clara County and maintains the County's CMP.

Council Policy 5-1 Transportation Analysis

In alignment with SB 743 and the City's goals in the Envision San José 2040 General Plan, the City has adopted a new "Transportation Analysis Policy" (Council Policy 5-1) to replace the former Transportation Level of Service Policy (Council Policy 5-3). The new policy establishes the thresholds for transportation impacts under CEQA based on VMT rather than intersection level of service (LOS). VMT is the total miles of travel by personal motorized vehicles from a project in a day. The intent of this change in policy is to shift the focus of transportation analysis under CEQA from vehicle delay and roadway capacity to a reduction in vehicle emissions and the creation of multimodal networks that support integrated land uses.[48] According to the policy, an employment facility (e.g., office, R & D) or a residential project's transportation impact would be less than significant if the project VMT is 15 percent or more below the existing average regional VMT per employee, or the existing average citywide or regional per capita VMT respectively. For industrial projects (e.g., warehouse, manufacturing, distribution), the impact would be less than significant if the project VMT is equal to or less than existing average regional per capita VMT per employee. The threshold for a retail project is whether it generates net new regional VMT, as new retail typically redistributes existing trips and miles traveled as opposed to inducing new travel. If a project's VMT does not meet the established thresholds, mitigation measures would be required, where feasible.

The policy also requires preparation of a Local Transportation Analysis (LTA) to analyze non-CEQA transportation issues, including local transportation operations, intersection level of service, and site access and circulation. The LTA also addresses CEQA issues related to pedestrian, bicycle access, and transit.

Screening criteria have been established to determine which projects require a detailed VMT analysis. If a project meets the relevant screening criteria, it is considered to a have a less than significant VMT impact. Under Policy 5-1, the screening criteria are as follows:

- Small Infill Projects,
- Local-Serving Retail,
- Local-Serving Public Facilities,
- Transit Supportive Projects in Planned Growth Areas with Low VMT and High-Quality Transit,
- Restricted Affordable, Transit Supportive Residential Projects in Planned Growth Areas with High Quality Transit, and

[48] The new policy took effect on March 29, 2018.

- Transportation Projects that reduce or do not increase VMT.

General Plan

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating transportation impacts from development projects. Policies applicable to the proposed project are presented below.

Envision San José 2040 Relevant Transportation Policies	
Policy IE-1.5	Promote the intensification of employment activities on sites in close proximity to transit facilities and other existing infrastructure, in particular within the Downtown, North San José, the Berryessa International Business Park and Edenvale.
Policy TR-1.1	Accommodate and encourage use of non-automobile transportation modes to achieve San José's mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).
Policy TR-1.2	Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.
Policy TR-1.4	Through the entitlement process for new development, projects shall be required to fund or construct needed transportation improvements for all transportation modes giving first consideration to improvement of bicycling, walking and transit facilities and services that encourage reduced vehicle travel demand. • Development proposals shall be reviewed for their impacts on all transportation modes through the study of Vehicle Miles Traveled (VMT), Envision San José 2040 General Plan policies, and other measures enumerated in the City Council Transportation Analysis Policy and its Local Transportation Analysis. Projects shall fund or construct proportional fair share mitigations and improvements to address their impacts on the transportation systems. • The City Council may consider adoption of a statement of overriding considerations, as part of an EIR, for projects unable to mitigate their VMT impacts to a less than significant level. At the discretion of the City Council, based on CEQA Guidelines Section 15021, projects that include overriding benefits, in accordance with Public Resources Code Section 21081 and are consistent with the General Plan and the Transportation Analysis Policy 5-1 may be considered for approval. The City Council will only consider a statement of overriding considerations for (i) market-rate housing located within General Plan Urban Villages; (ii) commercial or industrial projects; and (iii) 100% deed-restricted affordable housing as defined in General Plan Policy IP-5.12. Such projects shall fund or construct multimodal improvements, which may include improvements to transit, bicycle, or pedestrian facilities, consistent with the City Council Transportation Analysis Policy 5-1. • Area Development Policy. An "area development policy" may be adopted by the City Council to establish special transportation standards that identifies development impacts and mitigation measures for a specific geographic area. These policies may take other names or forms to accomplish the same purpose.
Policy TR-1.5	Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences.

Envision San José 2040 Relevant Transportation Policies	
Policy TR-1.6	Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.
Policy TR-2.8	Require new development where feasible to provide on-site facilities such as bicycle storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.
Policy TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute towards transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.
Policy TR-5.3	Development projects' effects on the transportation network will be evaluated during the entitlement process and will be required to fund or construct improvements in proportion to their impacts on the transportation system. Improvements will prioritize multimodal improvements that reduce VMT over automobile network improvements. • Downtown. Downtown San José exemplifies low-VMT with integrated land use and transportation development. In recognition of the unique position of the Downtown as the transit hub of Santa Clara County, and as the center for financial, business, institutional and cultural activities, Downtown projects shall support the long-term development of a world class urban transportation network.
Policy TR-8.4	Discourage, as part of the entitlement process, the provision of parking spaces significantly above the number of spaces required by code for a given use.
Policy TR-9.1	Enhance, expand and maintain facilities for walking and bicycling, particularly to connect with and ensure access to transit and to provide a safe and complete alternative transportation network that facilitates non-automobile trips.
Policy CD-1.3	Further the Major Strategies of this Plan to focus growth in appropriate locations; design complete streets for people; promote Grand Boulevards, Main Streets, and Downtown; support transit; and foster a healthful community.
Policy CD-1.9	Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas such as Downtown, Urban Villages, or along Main Streets, place commercial and mixed-use building frontages at or near the street-facing property line with entrances directly to the public sidewalk, provide high-quality pedestrian facilities that promote pedestrian activity, including adequate sidewalk dimensions for both circulation and outdoor activities related to adjacent land uses, a continuous tree canopy, and other pedestrian amenities. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street facade and pedestrian access to buildings.
Policy CD-2.3	Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate. • Include attractive and interesting pedestrian-oriented streetscape features such as street furniture, pedestrian scale lighting, pedestrian oriented way-finding signage, clocks, fountains, landscaping, and street trees that provide shade, with improvements to sidewalks and other pedestrian ways.

Envision San José 2040 Relevant Transportation Policies	
	• Strongly discourage drive-through services and other commercial uses oriented to occupants of vehicles in pedestrian-oriented areas. Uses that serve the vehicle, such as car washes and service stations, may be considered appropriate in these areas when they do not disrupt pedestrian flow, are not concentrated in one area, do not break up the building mass of the streetscape, are consistent with other policies in this Plan, and are compatible with the planned uses of the area. • Provide pedestrian connections as outlined in the Community Design Connections Goal and Policies. • Locate retail and other active uses at the street level. • Create easily identifiable and accessible building entrances located on street frontages or paseos. • Accommodate the physical needs of elderly populations and persons with disabilities. • Integrate existing or proposed transit stops into project designs.
Policy CD-2.11	Within the Downtown and Urban Village Area Boundaries, consistent with the minimum density requirements of the applicable Land Use / Transportation Diagram designation, avoid the construction of surface parking lots except as an interim use, so that long-term development of the site will result in a cohesive urban form. In these areas, whenever possible, use structured parking, rather than surface parking, to fulfill parking requirements. Encourage the incorporation of alternative uses, such as parks above parking structures.
Policy CD-3.3	Within new development, create a pedestrian friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.
Policy CD-6.9	Recognize Downtown as the hub of the County's transportation system and design buildings and public spaces to connect and maximize use of all types of transit. Design Downtown pedestrian and transit facilities to the highest quality standards to enhance the aesthetic environment and to promote walking, bicycling, and transit use. Design buildings to enhance the pedestrian environment by creating visual interest, fostering active uses, and avoiding prominence of vehicular parking at the street level.
Policy LU-2.2	Include within the Envision General Plan Land Use / Transportation Diagram significant job and housing growth capacity within the following identified Growth Areas: • Downtown – The City's Downtown Strategy plans for ambitious job and housing growth capacity in the Downtown area to reinforce its role as San Jose's civic, cultural and symbolic center and to support key infrastructure investments, including the planned BART and High-Speed Rail systems.
Policy LU-3.5	Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.
Policy IP-2.8	Allow development of residential units at the density and in the form approved in land use entitlements in place upon adoption of the Envision San José 2040 General Plan, including capacity specified in the adopted Downtown Strategy, North San José Area Development Policy, Evergreen-East Hills Development

Envision San José 2040 Relevant Transportation Policies	
	Policy, Specific Plans, and potential dwelling unit yield from residential properties identified on the City's Vacant Land Inventory. When the City Council commences the second Horizon of the Envision General Plan, new or revised proposals for development on sites with previously approved residential entitlements should conform to the Land Use / Transportation Diagram.

Existing Setting

The project site is located within the Downtown Core Area Boundary. The Downtown Strategy 2040 FEIR exempts development within the Downtown Core Area Boundary from the City's Transportation Impact Policy and related traffic mitigation requirements. The City's Department of Public Works concluded that the project would not require a local transportation analysis because no onsite parking and/or off-site parking arrangements with neighboring parking lot owners are proposed for the project.[49]

Transportation Facilities

The project site is located along East Santa Clara Street between North First Street and North Second Street. In the project vicinity, East Santa Clara Street consists of a four-lane, two-directional roadway. North First Street and North Second Street are two-lane, one-directional roadways.

Sidewalks extend along both sides of East Santa Clara Street as well as other streets in the immediate project area. Pedestrian crosswalks with signal heads and accessible ramps are located on each leg of the nearby signalized intersections.

Striped bicycle routes are provided along East St. John Street and portions of North Second Street. The City is proposing to install a bike path along North Second Street. The San José Better Bike Plan 2025 identifies Class II bike lanes along North Second Street in the project vicinity.

The project lies within close proximity to major transit services. Existing transit service to the study area is provided by the Santa Clara Valley Transportation Authority (VTA), Caltrain, Altamont Commuter Express (ACE), and Amtrak. The downtown San José area is served directly by many local bus routes. The nearest bus stops to the project site are located at the intersections of North Second Street/East Santa Clara Street (Local Routes 72 & 73), East Santa Clara Street/First Street (Local Routes 22, 23, 64A, and 64 B, as well as Rapid Routes 500, 522, and 523), and North First Street/East Santa Clara Street (Local Routes 72 & 73).

The St. James Light Rail Train (LRT) Station is located approximately 885 feet north of the project site on North First Street at St. James Park. The San Antonio LRT station is located approximately 1,300 feet south of the project site on South Second Street. The LRT and Caltrain services provide access to the Diridon Transit Center, located approximately 0.81 miles west of the project site at Cahill Street. Connections between local and regional bus routes, light rail lines, and commuter rail lines are provided within the Diridon Transit Center. Proximity to transit would encourage the use of alternative methods of transportation to and from the site reducing transportation-related energy use. Proximity to public transit would encourage the use of this alternative mode of transportation to and from the site.

[49] Department of Public Works email to Hexagon Transportation Consultants (Christy Cheung, 12/22/20).

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
17. TRANSPORTATION. Would the project:						
a) Conflict with program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?				X		1, 2, 3
b) Would the project conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?				X		1, 2, 3
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				X		1, 2
d) Result in inadequate emergency access?				X		1, 2,

Explanation

As discussed below, the proposed project would not result in a new or greater impact on transportation than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. As described previously, the project site is located near major transit services, including LRT, bus routes, and Diridon Station.

Existing sidewalks along East Santa Clara Street, First Street, and Second Street as well as crosswalks at the nearby signalized intersections provide pedestrian access to and from the project site. The network of sidewalks and crosswalks in the project area has generally good connectivity and provide safe routes to transit stops and other points of interest in the downtown area.

The proposed project would provide 50 long-term bicycle parking spaces, consistent with the requirements of the City of San José Municipal Code. The inclusion of bicycle parking and proximity to transit would offer future residents alternative methods of transportation to and from the site. As described above, the project site is located near major transit services, including LRT, bus routes, and the Diridon Station.

Based on the discussion above, the project would not conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities.

b) **Same Impact as Approved Project**. City Council Policy 5-1 uses vehicle miles traveled (VMT) as the metric to assess transportation impacts from new development under CEQA. CEQA Guidelines Section 15064.3(b) indicates that "generally, [land use] projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact." The St.

James Light Rail Train (LRT) Station is located approximately 885 feet (0.17-miles) north of the project site on North First Street at St. James Park. The San Antonio LRT station is located approximately 1,300 feet (0.25-miles) south of the project site on South Second Street. The LRT and Caltrain services provide access to the Diridon Transit Center, located approximately one mile west of the project site at Cahill Street. In addition, streets within one block of the project site are served by bus routes.

The project is located within the downtown area, which does not exceed commercial VMT per job or residential VMT per capita as described in the Downtown Strategy FEIR. The project, therefore, will be consistent with CEQA Guidelines Section 15064.3(b).

c) **Same Impact as Approved Project**. The project includes construction of a single building on a developed site, and would not substantially increase hazards due to a design feature (for example, sharp curves or dangerous intersections) or incompatible uses. The City will coordinate with the project applicant's design team to address any site circulation/access items.

d) **Same Impact as Approved Project**. The applicant will work with the Planning, Building and Code Enforcement Department and SJFD to ensure that emergency vehicle and firefighter access are adequately addressed in the final design. The impacts to emergency access would, therefore, result in the same impact as the approved project with respect to emergency access.

Transportation Chapter Conclusion

Increased vehicular traffic associated with the downtown redevelopment, including residential development, was anticipated as part of the Downtown Strategy 2040. The transportation analysis for the Downtown Strategy 2040 FEIR applied the City Council's new Transportation Policy 5-1 that applies VMT as the metric to assess transportation impacts from new development under CEQA. This policy replaces the City's Transportation Impact Policy (Council Policy 5-3), which was based on the use of intersection LOS as the primary measure of development impacts. The Downtown Strategy 2040 EIR found that plan buildout would have a less than significant traffic impact based on VMT.

Based on the above analysis, the project would not result in new or more significant impacts to transportation facilities than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project identified potential construction transportation impacts and mitigation related to the conflicting with a transportation plan, ordinance or policy (TRA-CNST-A through TRA-CNST-C) and resulting in adequate emergency access (TRA-CNST-C: Prepare and Implement an Emergency Services Coordination Plan). In addition, an operational impact and mitigation was identified related to conflicting with a transportation plan, ordinance or policy (TRA-A through TRA-C). Some of the impacts to transportation identified in the SEIS/SEIR remained significant and unavoidable even with mitigation.

The proposed project would result in less than significant impacts through implementation of standard permit conditions identified above. No automobile parking is included in the proposed project. As a result, the proposed project would not result in new significant impacts to transportation, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant on transportation and would not result in new or more severe transportation impacts than identified in the SEIS/SEIR for the BART Extension Project.

R. TRIBAL CULTURAL RESOURCES

Regulatory Framework

State

Assembly Bill 52

Assembly Bill (AB) 52, effective July of 2015, established a new category of resources for consideration by public agencies when approving discretionary projects under CEQA, called Tribal Cultural Resources (TCRs). AB 52 requires lead agencies to provide notice of projects to tribes that are traditionally and culturally affiliated with the geographic area if they have requested to be notified. Where a project may have a significant impact on a tribal cultural resource, consultation is required until the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource or when it is concluded that mutual agreement cannot be reached. Under AB 52, TCRs are defined as follows:

- Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are also either:
    - Included or determined to be eligible for inclusion in the California Register of Historic Resources,[50] or
    - Included in a local register of historical resources as defined in Public Resources Code Section 5020.1(k).
- Resources determined by the lead agency to be TCRs.

AB 52 notification and consultation applies to projects for which a Notice of Intent or Notice of Availability is issued after the effective date of AB 52 in 2015. Notification and consultation are not required for projects covered by a prior EIR or Mitigated Negative Declaration (MND) that either predates AB 52 or that has already complied with AB 52.

The Native American Heritage Commission

The Native American Heritage Commission (NAHC) was created by statute in 1976, and is a nine-member body appointed by the Governor to identify and catalog cultural resources (i.e., places of special religious or social significance to Native Americans and known graves and cemeteries of Native Americans on private lands) in California. The Commission is responsible for preserving and ensuring accessibility of sacred sites and burials, the disposition of Native American human remains and burial items, maintaining an inventory of Native American sacred sites located on public lands, and reviewing current administrative and statutory protections related to these sacred sites.

[50] See Public Resources Code section 5024.1. The State Historical Resources Commission oversees the administration of the CRHR and is a nine-member state review board that is appointed by the Governor, with responsibilities for the identification, registration, and preservation of California's cultural heritage. The CRHR "shall include historical resources determined by the commission, according adopted procedures, to be significant and to meet the criteria in subdivision (c) (Public Resources Code, Section 5024.1 (a)(b)).

Senate Bill 18

The intent of SB 18 is to aid in the protection of traditional tribal cultural places through local land use planning by requiring city governments to consult with California Native American tribes on projects which include adoption or amendment of general plans (defined in Government Code Section 65300 et seq.) and specific plans (defined in Government Code Section 65450 et seq.). SB 18 requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process.

General Plan

The Envision San José 2040 General Plan includes the following tribal cultural resource policies applicable to the Proposed Project:

Envision San José 2040 Relevant Tribal Cultural Resources Policies	
Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
Policy ER-10.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced
Policy ER-10.3	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.

Environmental Setting

Assembly Bill (AB) 52, effective July of 2015, established a new category of resources for consideration by public agencies when approving discretionary projects under CEQA, called Tribal Cultural Resources (TCRs). AB 52 requires lead agencies to provide notice of projects to tribes that are traditionally and culturally affiliated with the geographic area if they have requested to be notified. See additional discussion under “Regulatory Framework” below.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
18. TRIBAL CULTURAL RESOURCES. Would the project:						
a) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and, and that is: i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.				X		1, 2, 10

Explanation

As discussed below, the proposed project would not result in a new or greater impact related to tribal cultural resources than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) i, ii **Same Impact as Approved Project**. Tribal cultural resources consider the value of a resource to tribal cultural tradition, heritage, and identity, in order to establish potential mitigation and to recognize that California Native American tribes have expertise concerning their tribal history and practices. No tribal cultural resources have been listed or determined eligible for listing in the California Register or a local register of historical resources.

AB 52 requires lead agencies to conduct formal consultations with California Native American tribes during the CEQA process to identify tribal cultural resources that may be subject to significant impacts by a project. Where a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document must discuss the impact and whether feasible alternatives or mitigation measures could avoid or substantially lessen the impact. This consultation requirement applies only if the tribes have sent written requests for notification of projects to the lead agency. In 2017, the City had sent a letter to tribal representatives in the area to welcome participation in the consultation process for all ongoing, proposed, or future projects within the City's Sphere of Influence or specific areas of the City. The Ohlone Tribe submitted a request in July of 2018 for notification of projects in Coyote

Valley (approximately 14 miles south of the site) and downtown San José requiring a Negative Declaration, a Mitigated Negative Declaration, or an Environmental Impact Report that would involve ground-disturbing activities.

In addition, at the time of preparation of this document, two additional tribes have either sent written requests for notification of projects to the City of San José or provided a verbal request.

On June 17, 2021, Chairwoman Geary of the Tamien Nation verbally requested AB 52 notification and the written notice received June 28, 2021, requesting notification of projects in accordance with Public Resources Code Section 21080.3.1 subd (b), for all proposed projects that require a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report.

- On June 30, 2021, Kanyon Sayers-Roods of the Band of Costanoan Ohlone people verbally requested AB 52 notification for all proposed projects that require a Negative Declaration, Mitigated Negative Declaration, or an Environmental Impact Report. Accordingly, the project's AB 52 notification was sent electronically on July 16, 2021. To date, no response has been provided.

The project Initial Study/Addendum is outside of the parameters of the requests and therefore, no consultations took place. Nonetheless, mitigation included for cultural resources, in some instances, also covers the inadvertent discovery of tribal cultural resources.

Tribal Cultural Resources Chapter Conclusion

The Downtown Strategy 2040 EIR identified potential impacts on tribal cultural resources from sites, features, places, cultural landscapes that are geographically defined in terms of the size and scope of the landscape, sacred places, or objects with cultural value to a California Native American tribe. The Downtown Strategy 2040 EIR identified mitigation for these impacts that requires evaluation of development sites by a qualified cultural resources consultant and adherence to specific recommendations of the consultant based on site-specific review. Other mitigation included standard measures for avoiding impacts to subsurface archaeological resources and/or human remains if discovered during construction activities. The impacts of the proposed project on historic resources and mitigation are identified consistent with the Downtown Strategy 2040 EIR. Based on the above analysis, the project would not result in new or more significant impacts to tribal resources than those identified in the Downtown Strategy 2040 EIR. Additional discussion of archeological resources and mitigation is provided in *Section E. Cultural Resources.*

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project was prepared in 2016, prior to the addition of the Tribal Cultural Resources section of the Appendix G CEQA checklist. As a result, tribal cultural resources were not evaluated in the SEIS/SEIR for the BART Extension Project.

S. UTILITIES AND SERVICE SYSTEMS

Regulatory Framework

State

Assembly Bill 939

California AB 939 established the California Integrated Waste Management Board (CalRecycle), which required all California counties to prepare Integrated Waste Management Plans. In addition, AB 939 required all municipalities to divert 50 percent of their waste stream by the year 2000.

Assembly Bill 341 (2011)

AB 341 sets forth the requirements of the statewide mandatory commercial recycling program for businesses that generate four or more cubic yards of commercial solid waste per week and multi-family dwellings with five or more units in California. AB 341 sets a statewide goal for 75 percent disposal reduction by the year 2020.

Assembly Bill 1826 (2014)

AB 1826 sets forth the requirements of the statewide mandatory commercial organics recycling program for businesses and multi-family dwellings with five or more units that generate two or more cubic yards of commercial solid waste per week. AB 1826 sets a statewide goal for 50 percent reduction in organic waste disposal by the year 2020.

Senate Bill 1383 (2016)

SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The bill grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that at least 20 percent of currently disposed edible food is recovered for human consumption by 2025.

California Green Building Standards Code Compliance for Construction, Waste Reduction, Disposal and Recycling

In January 2017, the State of California adopted the California Green Building Standards Code (CALGreen), establishing mandatory green building standards for all buildings in California. The code covers five categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resources efficiency, and indoor environmental quality. These standards include the following mandatory set of measures, as well as more rigorous voluntary guidelines, for new construction projects to achieve specific green building performance levels:

- Reducing indoor water use by 20 percent;
- Reducing wastewater by 20 percent;

- Recycling and/or salvaging 65 percent of nonhazardous construction and demolition (C&D) debris, or meeting the local construction and demolition waste management ordinance, whichever is more stringent (see San José-specific CALGreen building code requirements in the local regulatory framework section below); and
- Providing readily accessible areas for recycling by occupant.

Local

San José Zero Waste Strategic Plan/Climate Smart San José

Climate Smart San José provides a comprehensive approach to achieving sustainability through new technology and innovation. The Zero Waste Strategic Plan outlines policies to help the City of San José foster a healthier community and achieve its Climate Smart San Jose goals, including 75 percent diversion of waste from the landfill by 2013 and zero waste by 2022. Climate Smart San José also includes ambitious goals for economic growth, environmental sustainability, and enhanced quality of life for San José residents and businesses.

Green Vision

The City's Green Vision provides a comprehensive approach to achieving sustainability through technology and innovation. As discussed above, the Zero Waste Strategic Plan outlines policies to help the City of San José facilitate a healthier community and achieve its Green Vision goals, including 75 percent waste diversion by 2013, which has been achieved, and zero waste by 2022.

Construction and Demolition Diversion Deposit Program

The Construction and Demolition Diversion Deposit Program (CDDD) requires projects to divert at least 50% of total projected project waste to be refunded the deposit. Permit holders pay this fully refundable deposit upon application for the construction permit with the City if the project is a demolition, alteration, renovation, or a certain type of tenant improvement. The minimum project valuation for a deposit is $2,000 for an alteration-renovation residential project and $5,000 for a non-residential project. There is no minimum valuation for a demolition project and no square footage limit for the deposit applicability. The deposit is fully refundable if C&D materials were reused, donated, or recycled at a City-certified processing facility. Reuse and donation require acceptable documentation, such as photos, estimated weight quantities, and receipts from donations centers stating materials and quantities.

Though not a requirement, the permit holder may want to consider conducting an inventory of the existing building(s), determining the material types and quantities to recover, and salvaging materials during deconstruction.

California Green Building Standards Code Compliance for Construction, Waste Reduction, Disposal and Recycling

The City of San José requires 75 percent diversion of nonhazardous construction and demolition debris for projects that quality under CALGreen, which is more stringent than the state requirement of 65 percent (San José Municipal Code Section 9.10.2480).

Council Policy 8-13 Green Building Policy

Council Policy 8-13 "Green Building Policy" for private sector new construction encourages building owners, architects, developers, and contractors to incorporate sustainable building goals early in the building design process. This policy establishes baseline green building standards for new private construction projects and provides a framework for the implementation of these standards. The Policy is also intended to enhance the public health, safety, and welfare of the City's residents, workers, and visitors by encouraging design, construction, and maintenance practices that minimize the use and waste of energy, water, and other resources in the City.

General Plan

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating utilities and service system impacts from development projects. Policies applicable to the proposed project are presented below.

Envision San José 2040 Relevant Utilities and Service System Policies	
Policy MS-1.4	Foster awareness in San José's business and residential communities of the economic and environmental benefits of green building practices. Encourage design and construction of environmentally responsible commercial and residential buildings that are also operated and maintained to reduce waste, conserve water, and meet other environmental objectives.
Policy MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
Policy MS-3.2	Promote use of green building technology or techniques that can help to reduce the depletion of the City's potable water supply as building codes permit.
Policy MS-3.3	Promote the use of drought tolerant plants and landscaping materials for nonresidential and residential uses.
Policy MS-19.3	Expand the use of recycled water to benefit the community and the environment.
Policy MS-19.4	Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.
Action EC-5.16	Implement the Post-Construction Urban Runoff Management requirements of the City's Municipal NPDES Permit to reduce urban runoff from project sites.
Policy IN-3.3	Meet the water supply, sanitary sewer and storm drainage level of service objectives through an orderly process of ensuring that, before development occurs, there is adequate capacity. Coordinate with water and sewer providers to prioritize service needs for approved affordable housing projects.
Policy IN-3.5	Require development which will have the potential to reduce downstream LOS to lower than "D", or development which would be served by downstream lines already operating at a LOS lower than "D", to provide mitigation measures to improve the LOS to "D" or better, either acting independently or jointly with other developments in the same area or in coordination with the City's Sanitary Sewer Capital Improvement Program.
Policy IN-3.7	Design new projects to minimize potential damage due to stormwaters and flooding to the site and other properties.
Policy IN-3.9	Require developers to prepare drainage plans that define needed drainage improvements for proposed developments per City standards.

Envision San José 2040 Relevant Utilities and Service System Policies	
Policy IN-3.10	Incorporate appropriate stormwater treatment measures in development projects to achieve stormwater quality and quantity standards and objectives in compliance with the City's National Pollutant Discharge Elimination System (NPDES) permit.

Existing Setting

Utilities and services are furnished to the project site by the following providers:

- Wastewater Treatment: treatment and disposal provided by the San José/Santa Clara Water Regional Wastewater Facility (RWF); sanitary sewer lines maintained by the City of San José
- Water Service: San Jose Water Company (SJWC)
- Storm Drainage: City of San José
- Solid Waste: Garden City Sanitation (solid waste), California Waste Solutions (recycling), GreenWaste Recovery (yard waste)
- Natural Gas & Electricity: PG&E

Per City regulations, mixed-use developments may commingle the residential solid waste and commercial solid waste generated at the mixed-use development. The commingled waste shall be collected by the city's authorized multi-family dwelling solid waste collector if the total square footage of commercial building space in the mixed-use development is less than fifteen percent of the total building space (SJMC Sec 9.10.1810 combined waste streams). The commingled waste shall be collected by Republic Services if the total square footage of commercial building space in the mixed-use development is fifteen percent or more of the total building space.

Existing Water Supply System

Water service to the project site is provided by San José Water Company (SJWC). The project applicant would be required to acquire a "will serve" letter from SJWC to assure adequate water is available to serve the proposed residential uses.

Groundwater

SJWC draws water from the Santa Clara Valley Subbasin in the north part of Santa Clara County. The basin is 22 miles long and 15 miles wide with an operational storage capacity estimated to be 350,000 acre-feet. Groundwater is a substantial source of water for SJWC. In 2014, groundwater accounted for about 57 percent of SJW's total potable supply.

Surface Water

SJWC has "pre-1914 surface water rights" to raw water in Los Gatos Creek and local watersheds in the Santa Cruz Mountains. Prior to 1872, appropriative water rights could be acquired by simply taking and beneficially using water. In 1914, the Water Code was adopted, grandfathering in all existing water entitlements to license holders. SJWC filed for a license in 1947, and in 1976 was granted a license allowing it to draw 6,240 acre-feet per year (AFY) from Los Gatos Creek. SJWC has since upgraded the collection and treatment system that draws water from this watershed, which has increased the capacity of this entitlement to approximately 11,200 AFY for an average rain year.

Recycled Water

South Bay Water Recycling (SBWR) has been serving Silicon Valley communities since 1993. In 1997, SJWC entered into a Wholesaler-Retailer Agreement with the City of San José to provide recycled water to SJWC's existing and new customers near SBWR recycling water distribution facilities. In accordance with the terms of this agreement, SJWC allowed SBWR to construct recycled water pipelines in its service area; SJWC would only own the recycled water meters while SBWR would own, operate, and maintain the recycled water distribution system. In 2010, the Wholesaler-Retailer Agreement was amended to allow SJWC to construct recycled water infrastructure that would be owned, operated, and maintained by SJWC. In 2012, the agreement was again amended to allow SJWC to construct additional recycled water infrastructure.

Wastewater/Sanitary Sewer System

The City's sanitary sewer/wastewater treatment system has two distinct components: 1) a network of sewer mains/pipes that conveys effluent from its source to the treatment plant; and 2) the water pollution control plant that treats the effluent, including a system of mains/pipes that transports a portion of the treated wastewater for non-potable uses (e.g., irrigation of landscaping, agricultural irrigation, dust suppression during construction, etc.).

Sanitary sewer lines in the project area are owned and maintained by the City of San José. Wastewater generated on the project site is discharged to the existing 10-inch vitrified clay pipe (VCP) sanitary sewer line located in North Second Street.

Wastewater treatment service for the project area is provided by the City of San José through the San José-Santa Clara Regional Wastewater Facility (RWF). The RWF is located in Alviso and serves over 1,500,000 people in San José, Santa Clara, Milpitas, Campbell, Cupertino, Los Gatos, Saratoga, and Monte Sereno. The RWF treats approximately 110 million gallons per day (mgd) of sewage during dry weather flow, and has a capacity of 167 mgd.[51] The City of San José generates approximately 69.8 mgd of dry weather average flow.[52] Fresh water flow from the RWF is discharged to the South San Francisco Bay or delivered to the South Bay Water Recycling Project for distribution.

Existing Solid Waste Disposal System

Santa Clara County's Integrated Waste Management Plan (IWMP) was approved by the California Integrated Waste Management Board (CIWMB) in 1996 and was reviewed in 2004, 2007, 2011, and 2016. Each jurisdiction in the county has a diversion requirement of 50 percent for 2000 and each year thereafter. Each jurisdiction in the County has a landfill diversion requirement of 50 percent per year. According to the IWMP, the County has adequate disposal capacity beyond 2030.[53] Solid waste generated within the County is landfilled at Guadalupe Mines, Kirby Canyon, Newby Island, and Zanker Road landfills.

[51] City of San José. "San José/Santa Clara Regional Wastewater Facility." Accessed April 29, 2020. https://www.sanjoseca.gov/your-government/environment/water-utilities/regional-wastewater-facility.
[52] City of San José. *Envision San José 2040 General Plan FEIR.* September 2011. Page 648.
[53] Santa Clara County. *Five-Year CIWMP/RAIWMP Review Report.* June 2016.

Existing Storm Drainage System

The project site is served by an underground storm drainage line maintained by the City of San José. Runoff from project area is directed to the existing 12-inch reinforced concrete pipe (RCP) storm drainage line located in North Second Street.

Electricity and Natural Gas

SJCE is the electricity provider for residents and businesses in the City of San José. SJCE sources electricity, and PG&E delivers it to customers using existing PG&E utility lines. SJCE buys its power from a number of suppliers. Sources of renewable and carbon-free power include California wind, solar, and geothermal; Colorado wind; and hydroelectric power from the Pacific Northwest. SJCE customers are automatically enrolled in the GreenSource program, which provides 80 percent GHG emission-free electricity. Customers can enroll in the TotalGreen program through SJCE and receive 100 percent GHG-free electricity from entirely renewable resources. It is assumed that, once operational, the project would utilize SJCE.

PG&E also furnishes natural gas for residential, commercial, industrial, and municipal uses. In 2018, natural gas facilities provided 15 percent of PG&E's electricity delivered to retail customers; nuclear plants provided 34 percent; hydroelectric operations provided 13 percent; renewable energy facilities including solar, geothermal, and biomass provided 39 percent, and two percent was unspecified.[54]

Total energy usage in California was approximately 7,881 trillion Btu in the year 2017, the most recent year for which this data was available. In 2017, California was ranked second in total energy consumption in the nation, and 48th in energy consumption per capita. The breakdown by sector was approximately 18 percent (1,416 trillion Btu) for residential uses, 19 percent (1,473 trillion Btu) for commercial uses, 23 percent (1,818 trillion Btu) for industrial uses, and 40 percent (3,175 trillion Btu) for transportation. This energy is mainly supplied by natural gas, petroleum, nuclear electric power, and hydroelectric power.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
19. UTILITIES AND SERVICE SYSTEMS. Would the project:						
a) Require or result in the relocation or construction of new or expanded water, or wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?				X		1, 2

[54] PG&E, Delivering low-emission energy. Accessed September 19, 2018. Available at: https://www.pge.com/en_US/about-pge/environment/what-we-are-doing/clean-energy-solutions/clean-energy-solutions.page

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?				X		1, 2
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				X		1, 2
d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?				X		1, 2
e) Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?				X		1, 2

Explanation

As discussed below, the proposed project would not result in a new or greater impact on utilities and service systems than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The project would incrementally increase demands on utility services. Given the small scale of the project (192 residential units and 2,500 square feet of commercial), the increase in utility demand is expected to be minor since it represents a small fraction of the total growth identified in the City's General Plan (the project does not propose any changes to the land use designations on the site).

Water service to the site would be supplied by SJWC, a private entity that obtains water from a variety of groundwater and surface water sources. The project proposes to construct a water conveyance lateral that would tie into SJWC's water distribution system. The project has been designed to minimize the use and waste of water in accordance with the State and local regulations (identified in the setting above). Additionally, because the project is consistent with the City's General Plan, the growth proposed by the project and its associated water use was addressed in the General Plan EIR. The project applicant would be required to acquire a "will serve" letter from SJWC to assure adequate water is available to serve the proposed residential uses. Therefore, the project would not result in the relocation or construction of new or expanded water facilities.

The City of San José owns and maintains the sanitary sewer drain system in the project area. An existing 12-inch polyvinyl (PVC) chloride sanitary sewer main extends along East Santa Clara Street and would serve the project. The project proposes to construct a new sanitary sewer lateral that would tie into the sanitary sewer main in East Santa Clara Street. The RWF treats approximately 110 mgd of sewage during dry weather flow, and has a capacity of 167 mgd. Development allowed under the General Plan (which includes the project) would not

exceed the City's allocated capacity at the RWF. Therefore, the project would not result in the relocation or construction of new or expanded wastewater facilities.

As described in *Section F. Energy*, the project would have a less than significant impact related to electricity use that would result primarily for building heating and cooling, lighting, cooking, and water heating. The City of San José passed an ordinance in December 2020 that prohibits the use of natural gas infrastructure in new buildings. This ordinance applies to any new construction (with the exception of hospitals, restaurants, etc.) starting August 1, 2021. In addition, the project would incorporate a number of efficiency measures to minimize the consumption of energy, such as the project would be built to the 2019 California Building Code standards and Title 24 energy efficiency standards (or subsequently adopted standards during the one-year construction term), and CALGreen code. In addition, as described previously the project would be required to submit a LEED, GreenPoint, or Build-It-Green checklist as part of their development permit applications in accordance with Council Policy 6-32, which promotes practices to minimize the use and waste of energy, water, and other resources in the City of San José. Therefore, the project would not result in the relocation or construction of new or expanded energy facilities.

The provision/relocation of telecommunication facilities would be coordinated between the project applicant and telecommunication provider and no significant environmental effects are anticipated as a result of the project as the project is not anticipated to result in the relocation or construction of new or expanded telecommunication facilities.

As described in *Section J. Hydrology and Water Quality*, the project would not significantly impact storm drainage facilities. The project proposes to tie into the City's existing storm line within East Santa Clara Street. Storm water runoff from the site would be managed and treated in accordance with City policies, which includes implementation of a stormwater control plan. Therefore, the project would not result in the relocation or construction of new or expanded storm water facilities.

For the reasons presented above, the project is not expected to require or result in the relocation or construction of new or expanded water, wastewater treatment, storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects.

b) **Same Impact as Approved Project**. The project would incrementally increase demands on utility services. Water service to the site would be supplied by SJWC, a private entity that obtains water from a variety of groundwater and surface water sources. The amount of water demand for the project has not been made available. However, the project applicant would be required to acquire a "will serve" letter from SJWC to assure adequate water is available to serve the proposed commercial uses during normal, dry, and multiple dry year conditions. Additionally, because the project is consistent with the City's General Plan, the growth proposed by the project and its associated water use was addressed in the General Plan EIR.

c) **Same Impact as Approved Project**. Wastewater from the City of San José is treated at the RWF. The RWF has the capacity to provide tertiary treatment of up to 167 mgd of wastewater but is limited to a 120 mgd dry weather effluent flow by the State and Regional Water Quality

Control Boards.[55] Based on the General Plan EIR, the City's average dry weather flow is approximately 69.8 million gallons per day and the City's capacity allocation is approximately 108.6 mgd, leaving the City with approximately 38.8 mgd of excess treatment capacity. Development allowed under the General Plan (which includes the project) would not exceed the City's allocated capacity at the RWF; therefore, development of the project would have a less than significant impact on wastewater treatment capacity.

d) **Same Impact as Approved Project**. The project would result in an incremental increase in solid waste generation. According to Santa Clara County's IWMP, Santa Clara County has adequate disposal capacity beyond 2022. In October 2007, the San José City Council adopted a Zero Waste Resolution that set a goal of 75 percent waste diversion by 2013 and zero waste (at least 90% waste diversion) by 2022. In 2019, there were approximately 614,000 tons of material generated in San Jose that was disposed in various landfills throughout the State. Newby Island Landfill received approximately 290,000 of that tonnage.

The project would generate approximately 140 tons per year of solid waste.[56] The 2040 General Plan EIR concluded that the increase in waste at buildout of the General Plan would not exceed existing landfill capacity. The proposed project is consistent with the development assumptions in the General Plan and represents a less than significant impact.

e) **Same Impact as Approved Project**. Final project design would be required to comply with all federal, State, and local statutes and regulations related to solid waste disposal.

Utilities and Services Chapter Conclusion

The Downtown Strategy 2040 EIR found less than significant impacts utilities and service system. The project would not result in new or more significant impacts to the utilities and service system than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project did not identify any potentially significant impacts related to utilities and services. As a result, the proposed project would not result in new significant impacts to utilities and services, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact on utilities and services and would not result in new or more severe utility and service impacts than identified in the SEIS/SEIR for the BART Extension Project.

[55] City of San José, *San José/Santa Clara Regional Wastewater Facility*, 2016.
[56] Based on a rate of 4 pounds/dwelling/day for "multi-family residential" for 192 residential units and 12.5 pounds/day for 2,500 s.f. of commercial uses (5 lbs/1,000 s.f./day), from CalRecycle's Estimated Solid Waste Generation Rates, accessed online at www2.calrecycle.ca.gov/WasteCharacterization/General/Rates

T. WILDFIRE

Regulatory Framework

State

Public Resources Code Section 4201 – 4204

Sections 4201 through 4204 of the California Public Resources Code direct Cal Fire to map Fire Hazard Severity Zones (FHSZ) within State Responsibility Areas (SRA), based on relevant factors such as fuels, terrain, and weather. Mitigation strategies and building code requirements to reduce wildland fire risks to buildings within SRAs are based on these zone designations.

Government Code Section 51175 – 51189

Sections 51175 through 51189 of the California Government Code directs Cal Fire to recommend FHSZs within Local Responsibility Areas (LRA). Local agencies are required to designate VHFHSZs in their jurisdiction within 120 days of receiving recommendations from Cal Fire, and may include additional areas not identified by Cal Fire as VHFHSZs.

California Fire Code

The 2016 California Fire Code Chapter 49 establishes the requirements for development within wildland-urban interface areas, including regulations for wildfire protection building construction, hazardous vegetation and fuel management, and defensible space maintained around buildings and structures.

Local

General Plan

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating wildfire impacts from development projects. Relevant policies applicable to the project are presented below.

Envision San José 2040 Relevant Wildfire Policies	
Policy EC-8.1	Minimize development in very high fire hazard zone areas. Plan and construct permitted development so as to reduce exposure to fire hazards and to facilitate fire suppression efforts in the event of a wildfire.
Policy EC-8.2	Avoid actions which increase fire risk, such as increasing public access roads in very high fire hazard areas, because of the great environmental damage and economic loss associated with a large wildfire.
Policy EC-8.3	For development proposed on parcels located within a very high fire hazard severity zone or wildland-urban interface area, implement requirements for building materials and assemblies to provide a reasonable level of exterior wildfire exposure protection in accordance with City-adopted requirements in the California Building Code.
Policy EC-8.4	Require use of defensible space vegetation management best practices to protect structures at and near the urban/wildland interface.

Impacts and Mitigation

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
20. WILDFIRE. If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:						
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?				X		1, 2, 3
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?				X		1, 2, 3, 15
c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?				X		1, 2, 3, 15
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?				X		1, 2, 3, 15

Existing Setting

The project site, located in an urbanized part of the City, is surrounded by residential and commercial development and is not located within a Very-High Fire Hazard Severity Zone (VHFHSZ) for wildland fires, as designated by the California Department of Forestry and Fire Protection (Cal Fire, Fire Hazard Severity Maps, 2007, 2008).

Explanation

As discussed below, the proposed project would not result in a new or greater impact related to wildfire than was previously disclosed in the Downtown Strategy 2040 FEIR.

a) **Same Impact as Approved Project**. The project would not substantially impair an adopted emergency response plan or emergency evacuation plan. As stated above in *Section J. Hazards and Hazardous Materials*, the project would not create any barriers to emergency or other vehicle movement in the area and final design would incorporate all Fire Code requirements.

b) **Same Impact as Approved Project**. The project would not exacerbate wildfire risks due to slope, prevailing winds, and other factors due to the project's urbanized location away from natural areas susceptible to wildfire. The project site is not located within an area of moderate, high, or very high Fire Hazard Severity for the Local Responsibility Area nor does it contain

any areas of moderate, high, or very high Fire Hazard Severity for the State Responsibility Area.

c) **Same Impact as Approved Project**. Due to the project's urbanized location and lack of interface with any natural areas susceptible to wildfire, the project would not require the installation or maintenance of associated fire suppression or related infrastructure.

d) **Same Impact as Approved Project**. See above discussion. The project would not expose people or structures to significant wildfire risks given its highly urban location away from natural areas susceptible to wildfire.

Wildfire Chapter Conclusion

The project would result in a less than significant impact related to wildfire. The Downtown Strategy 2040 FEIR found that with implementation of General Plan policies, future development would not create a significant impact associated with emergency response or wildland fires. The project would not result in new or more significant impacts related to wildfire than those identified in the Downtown Strategy 2040 EIR.

The project is located within the approved, single-bore, west option of the BART Extension Project. The SEIS/SEIR for the BART Extension Project was prepared in 2016, prior to the addition of the Wildfire section of the Appendix G CEQA checklist. However, wildfire risk was evaluated in the hazardous materials section of the SEIS/SEIR. The SEIS/SEIR did not identify any potentially significant impacts related to wildfire risk. As a result, the proposed project would not result in new significant impacts to wildfire, compared to what was analyzed in the SEIS/SEIR. The project would have a less than significant impact on wildfire and would not result in new or more severe wildfire impacts than identified in the SEIS/SEIR for the BART Extension Project.

U. MANDATORY FINDINGS OF SIGNIFICANCE

ENVIRONMENTAL IMPACTS	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project	Checklist Source(s)
21. MANDATORY FINDINGS OF SIGNIFICANCE.						
a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				X		1-15
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?				X		1-15
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X		1-15

Explanation

a) **Same Impact as Approved Project**. Based on the analysis provided in this Initial Study, the proposed project would not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. Mitigation measures and standard permit conditions are identified for potential impacts of the project on special status species and potential disturbance to historic and archaeologic resources to reduce these effects to a less than significant level, consistent with the findings of the Downtown Strategy 2040 EIR.

b) **Same Impact as Approved Project**. A list of the cumulative development in the project area used for this analysis is presented in Table 15 (taken in part from the City's website[57] for planned or approved projects are located within 1,000 feet of the project site.

[57] City of San Jose, Private / Key Economic Development Projects Map, Web: https://gis.sanjoseca.gov/maps/devprojects/

Table 15 Cumulative Projects List			
Project Name	**Location**	**Description**	**Status**
Fountain Alley Mixed Use	35 South Second Street	This project is located at 35 South Second Street, approximately 330 feet south of the project site. The project would include a 21-story mixed-use building with 194 residential units and 405,000 square feet of office space and 31,959 square feet of ground-level retail.	Pending
Fountain Alley Office	26 South First Street	This project is located at 26 South First Street and is approximately 340 feet southwest of the project site. This project is. This project includes a six-story building with 91,992-sf of commercial office and retail space. While the construction schedule is unknown at this time, construction could occur simultaneously or concurrently.	Approved but not yet constructed
27 West	27 South First Street	This project is located at 27 South First Street, which is about 415 feet southwest of the project site. This project has been approved and consists of a 22-story mixed-use building with 374 residential units and 35,712-sf of retail space.	Partially Completed
Miro (SJSC Towers)	39 North Fifth Street	This project is located at 39 North 5th Street, which is located 765 feet east of the project site.	Partially Completed
Hotel Clariana	27 South Fourth Street	This project is located at 27 South Fourth Street, which is about 510 feet southeast of the project site. This project is currently under review and would consist of a five-story hotel and seven-story condominium building.	Pending
BDG Mixed-Use	148 to 150 East Santa Clara Street, 17 South Fourth Street, and 130 to 134 East Santa Clara Street	This project is more than 465 feet southeast of the project site. This project would consist of a six-story mixed-use building with ground-level retail/restaurant uses and office space on the upper floors. While the construction schedule is unknown at this time, construction could occur simultaneously.	Pending
Icon-Echo	147 East Santa Clara Street	This project is located about 650 feet east of the project site, and would include the construction of two towers: a residential tower with 415 units and an office tower with 525,000-sf of office space.	Pending
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.	Approved but not Constructed
NSP3 Tower	201 West Julian Street	Construction of an 18-story residential tower with up to 314 residential units and retail space.	Approved but not Constructed

Table 15 Cumulative Projects List			
Project Name	**Location**	**Description**	**Status**
Starcity	199 Bassett Street	Construction of 803 co-living units with 3,800 square feet of retail space.	Approved but not Constructed
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.	Approved but not Constructed
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.	Approved but not Constructed
Museum Place[58]	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.	Approved but not Constructed
Tribute Hotel	211 South First Street	Construction of a 24-story, 279 room hotel integrated into a historic building.	Approved but not Constructed
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.	Approved, under construction
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.	Approved but not Constructed
Almaden Corner Hotel	8 North Almaden Boulevard	Construction of a 19-story hotel with up to 272 rooms and a restaurant and bar.	Approved but not Constructed

The project represents mixed-use infill on a downtown site surrounded by existing urban development. Based on the analysis in this Initial Study/Addendum, the proposed project would result in less than significant impacts to aesthetics, agricultural/forestry resources, biological resources, geology and soils, hydrology and water quality, land use, mineral resources, population and housing, public services, recreation, transportation, utilities, and wildfire with implementation of standard permit conditions. As a result, the project's contribution to a cumulatively significant impact in any of these resource areas would not be considerable.

Cumulative impacts were addressed in the Downtown Strategy 2040 FEIR, which included development proposed by the project. The Downtown Strategy 2040 FEIR identified significant, unavoidable cumulative impacts from buildout of the Strategy from an increase in criteria air pollutants and global GHG emissions. The City Council adopted statements of overriding considerations for these cumulative impacts.

[58] There is an entitlement for construction of Museum Place that could move forward at any time. Modifications to the original project are currently under review.

The project would result in potentially significant impacts related to air quality, cultural resources, hazards and hazardous materials, and vibration. As discussed below, these impacts would be minimized by implementation of mitigation and standard permit conditions identified in this document, and would not significantly contribute to cumulative impacts in these resource areas.

Cumulative Air Quality Impacts

Increased community risk can occur by either by introducing a new sensitive receptor, such as a residential use, in proximity to an existing source of TACs, by introducing a new source of TACs with the potential to adversely affect existing sensitive receptors in the project vicinity, or by or by significantly exacerbating existing cumulative TAC impacts. The nearest sensitive receptors to the project site are the adjacent and nearby residences. BAAQMD recommends a 1,000 foot-radius for assessing community risks and hazards from TAC mobile and stationary sources. There are also several sources of existing TACs and localized air pollutants in the vicinity of the project. As discussed in *Section C. Air Quality*, emissions from construction of the proposed project, when combined with emissions from nearby stationary and mobile sources of TACs, would exceed BAAQMD single-source thresholds for maximum infant cancer risk, which is considered a significant air quality impact of the proposed project. Mitigation Measure AQ-1 would reduce the emissions generated during construction of the project to below the single-source health risk threshold for infant cancer risk. Because criteria air pollutant emissions would contribute to regional and global emissions of such pollutants, the identified thresholds developed by BAAQMD and used by the City of San José were designed such that a project impact would also be a cumulatively considerable impact. Air quality modeling determined that the proposed project would not exceed criteria air pollutant thresholds during construction (see Table 5). For these reasons, the proposed project would not result in a cumulatively considerable air quality impact.

Cumulative Cultural Resources Impacts

Earthmoving activities associated with the proposed project may result in the loss of unknown subsurface prehistoric and historic resources on-site. The project would implement the required Downtown Strategy 2040 FEIR measures as a condition of approval, in addition to standard permit conditions, as identified in *Section E. Cultural Resources*. As a result, the proposed project would not have a cumulatively considerable impact on cultural resources in the project area.

Cumulative Hazards and Hazardous Materials Impacts

Demolition and construction activities associated with the proposed project may result in the release of asbestos containing materials or contaminated soil vapors located on-site. The proposed project would implement the required Downtown Strategy 2040 FEIR measures as a condition of approval, in addition to mitigation measure MM HAZ-1 and standard permit conditions, as identified in Section I. Hazards and Hazardous Materials. As a result, the proposed project would not have a cumulatively considerable impact on cultural resources in the project area.

Cumulative Noise & Vibration Impacts

The proposed project would not result in any significant permanent noise impacts. However, the project would result in increased temporary construction-generated noise. However, these impacts would be sufficiently mitigated to less than significant with implementation of standard permit conditions. In addition, the proposed project has the potential to result in impacts related to vibration at nearby historic structures. These impacts would be reduced to less than significant with incorporation of mitigation measure MM NSE-1 as discussed in Section M. Noise and Vibration. Operationally, the proposed project would not result in a significant increase in noise. Therefore, the project would not contribute to a cumulatively considerable impact related to noise and vibration.

c) **Same Impact as Approved Project**. Based on the analysis provided in this Initial Study/Addendum, the proposed project would not result in environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly, with implementation of identified mitigation measures and standard permit conditions.

Mandatory Findings of Significance Chapter Conclusion

The project would have a less than significant impact related to the CEQA mandatory findings of significance with the incorporation of mitigation measures, standard permit conditions, and General Plan policies identified in this document. This is consistent with the findings of the Downtown Strategy 2040 and General Plan EIRs. Overall, the project would not result in new or more significant environmental impacts than those identified in the Downtown Strategy 2040 EIR.

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Chapter 4. References

LEAD AGENCY

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MITIGATION MONITORING AND REPORTING PROGRAM

Addendum to the Downtown Strategy 2040 Final Environmental Impact Report

Eterna Tower Mixed-Use Development File No. H20-026 August 2022

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (EIR Addendum) prepared for the Eterna Tower Mixed-Use Development Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the EIR Addendum concluded that the impacts from implementation of the project would be less than significant.

I, Loida Kirkley, the applicant, on the behalf of Roygbiv Real Estate Dev't LLC, hereby agree to implement the mitigation measures described below which have been developed in conjunction with the preparation of an IS/Addendum for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level.

Project Applicant's Signature _____

Date 08/07/22

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
Air Quality					
Impact AQ-1: Project construction would result in an infant cancer risk of 17.9 in one million at the maximally exposed individual (MEI), which exceeds the BAAQMD's cancer risk significance threshold of 10 in one million.					
MM AQ-1: Prior to the issuance of any grading or demolition permits, the project shall develop a Construction Operations Plan to reduce DPM and particulate matter emissions such that increased cancer risk and annual $PM_{2.5}$ concentrations from construction would be reduced below the significance level of 10 in one million as follows: • 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 Tier 4 emission standards for particulate matter (PM_{10} and $PM_{2.5}$), if feasible; or o If use of Tier 4 equipment is not available, alternatively use equipment that meets 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 minimum of 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; or o Encourage the use of alternatively fueled or electric equipment.	Prepare a construction operations plan with equipment verified by an air quality specialist that demonstrates off-road equipment used on-site to construct the project would achieve a fleet-wide average of a 50 percent reduction or more in diesel particulate matter exhaust emissions. Submit the construction operations plan to the Director of Planning, Building, and Code Enforcement or the Director's designee.	Prior to the issuance of any grading or demolition permits (whichever occurs first).	Director of Planning, Building, and Code Enforcement or the Director's designee.	Review and approve the construction operations plan.	Prior to issuance of any demolition or grading permits (whichever occurs first).

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• As an alternative measure, prior to the issuance of any demolition, grading, and/or building permits (whichever occurs first), The project applicant shall submit the construction operations plan accompanied by a letter signed by a qualified air quality specialist that confirms that the plan would reduce the on- and near-site construction diesel particulate matter emissions by a minimum of 50 percent or greater to the Director of Planning, Building, and Code Enforcement or Director's designee. The plan shall include, but not be limited to the following: o List of activities and estimated timing. o Equipment that would be used for each activity. o Manufacturer's specifications for each equipment that provides the emissions level; or the manufacturer's specifications for devices that would be added to each piece of equipment to ensure the emissions level meet the thresholds in the mitigation measure. o How the construction contractor will ensure that the measures listed are monitored. o How the construction contractor will remedy any exceedance of the thresholds.					

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○ How often and the method the construction contractor will use to report compliance with the mitigation measure.					
Biological Resources					
Impact BIO-1: Construction activities associated with the project could result in the loss of fertile eggs of nesting raptors or other migratory birds, or nest abandonment in adjacent street trees.					
MM BIO-1: Tree removal and construction activities 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 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 ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active	Avoid starting construction activities during nesting seasons. If construction activities cannot be scheduled to start outside of nesting season, conduct a pre-construction nesting bird survey by a qualified ornithologist and, in consultation with the California Department of Fish and Wildlife, designate a construction-free buffer zone around any discovered nests. Submit a report indicating the results of the survey and any designated buffer zones to the Director of Planning, Building and Code Enforcement or Director's designee.	Prior to issuance of any grading or building permits (whichever occurs first).	Director of Planning, Building and Code Enforcement or Director's designee. California Department of Fish and Wildlife.	Confirm that demolition and construction activities are scheduled to start outside of the nesting season; or Review report indicating the results of the survey and any designated buffer zones.	Prior to issuance of any grading or building permits (whichever occurs first).

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nest is found in an area that will be disturbed by construction, the ornithologist, will designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife. The buffer would ensure that raptor or migratory bird nests shall not be disturbed during project construction. The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, prior to the issuance of any grading or building permit.					
Cultural Resources					
Impact CR-1: Demolition and construction activities for the project could physically damage adjacent historic resources due to potential noise vibration thresholds of 1.233 PPV which is above the City's threshold of 0.08 PPV for historic buildings.					
MM CR-1a: Prior to the issuance of any grading, building, or demolition permits, the project applicant shall survey the adjacent historic resources to determine the existing condition. The survey shall be conducted by a historical architect meeting the Secretary of the Interior's Professional Qualifications Standards for Historic Architecture and a structural engineer with a minimum of five years of demonstrated experience with historic buildings. The purpose of the study is to establish the baseline condition of the historic buildings prior to construction, including the location and extent of any visible cracks or spalls. The documentation shall take the form of written descriptions and photographs and shall include those	Retain qualified historical architect to perform a survey of adjacent historic resources. Provide written descriptions and visualizations and/or photographs of the physical characteristics of the resources.	Prior to issuance of any grading, building or demolition permits.	City of San José's Historic Preservation Officer and Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve documentation.	Prior to issuance of any grading, building or demolition permits.

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physical characteristics of the resources that conveys their historic significance and that justifies their inclusion on the national, state, or local inventories. The documentation shall be reviewed and approved by the City of San José's Historic Preservation Officer (HPO) and Director of Planning, Building and Code Enforcement or Director's designee.					
MM CR-1b: A qualified geologist, or other professional with expertise in ground vibration and its effect on existing structures, shall prepare a study of the potential of vibrations caused by excavation and construction activities associated with the proposed project. Based on the results of the study, specifications regarding the restrictions shall be incorporated into all construction plans and specifications and implemented during all construction activities. The specifications shall also be included on project construction contracts with the applicant. Initial pile-driving shall be monitored and if vibrations are above threshold levels, modifications shall be made to reduce vibrations to below established levels. For sensitive historic structures, a vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A copy of the study, contract specifications, and monitoring reports shall be provided to the City of San José's HPO and Director of Planning, Building and Code Enforcement or Director's designee.	Retain qualified geologist, or other professional with expertise in ground vibration and its effect on existing structures, to conduct a study of the potential of vibrations caused by excavation and construction activities and provide specifications regarding the restriction and monitoring of construction activities.	Prior to issuance of any grading, building or demolition permits.	City of San José's Historic Preservation Officer and Director of Planning Building and Code Enforcement or Director's designee.	Review and approve construction vibration study.	Prior to issuance of any grading, building or demolition permits.

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MM CR-1c: Prior to issuance of any demolition, grading or building permits, and in combination with measures CR-1a, and CR-1b, the project applicant shall prepare a Historical Resources Protection Plan (HRPP) to protect offsite historic building fabric of the adjacent 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 project applicant shall include appropriate contract language to ensure the contractor follows this plan while working near the historic resources. The plan shall be prepared by a qualified historical architect and is subject to review by the City's HPO. At a minimum, the plan shall include: • Guidelines for operation of construction equipment adjacent to the historic resources, • Means and methods to reduce vibrations from excavation and construction, • Requirements for monitoring and documenting compliance with the plan, and, • Education/training of construction workers about the significance of the adjacent historic resources.	Prepare a HRPP plan establishing procedures to protect the surrounding historic building fabric of the adjacent 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 project applicant shall include appropriate contract language to ensure the contractor follows this plan while working near the historic resources.	Prior to issuance of any demolition, grading, or building permits, or any ground-disturbing work (whichever comes first). Prior to demolition, grading or any ground-disturbing work near historic resources.	Director of Planning Building and Code Enforcement or Director's designee. Supervising environmental planner.	Review and approve HRRP and recommendations. Confirm contract language, monitor contractor.	Prior to issuance of demolition permit, grading permit, or any ground-disturbing work (whichever is earlier) Following issuance of permits and during demolition, grading or any ground-disturbing work near historic resources.
MM CR-1d: A team of at least one qualified historical architect and one qualified structural engineer shall make periodic site visits to monitor the condition of the identified historic resources. Any changes to existing conditions shall be reported, including, but not limited to, expansion of existing cracks, new spalls, or other	Retain qualified team of at least one qualified historical architect and one qualified structural engineer to make periodic site visits to monitor the condition of the	During and after construction.	City of San José's Historic Preservation Officer, Director of Planning Building and Code Enforcement or Director's designee	Detailed monitoring reports.	During and after construction

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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exterior deterioration in detailed reports to the Director of Planning Building and Code Enforcement or Director's designee, noting any concerns as well as recommended corrective actions. Monitoring shall include the use of any instruments deemed necessary by the historic architect or structural engineer. For historic structures, the structural engineer shall consult with the historical architect, especially if any problems with character defining features of the historic resource are discovered. If, in the opinion of the historical architect, substantial adverse impacts related to construction activities are found during construction, the historical architect shall inform the project applicant and the project applicant shall respond accordingly to the historical architect's recommendations for corrective measures, including halting construction in situations where construction activities would exceed the 0.08 PPV threshold for historic structures established by the City and imminently endanger historic resources. In the event of damage to historic resources during construction the project applicant shall ensure that repair work complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties and shall appropriately restore the structure. The team shall prepare a report documenting the site visits and the corrective actions taken and provide to	identified historic resources and provide detailed reports, including final monitoring results.				

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the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of monitoring or completion of corrective actions.					
Impact CR-2: Historic-era buried and pre-contact archaeological deposits may be encountered during excavation activities at the project site.					
MM CR-2a: Appropriate Prior Review. Cultural Sensitivity Training. Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), the project applicant shall contract with a qualified archaeologist and a qualified Native American representative registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally affiliated with the geographic area prior to the start of any-ground disturbing activities for at least one cultural sensitivity training for construction personnel, which includes review of the cultural resource management protocols and coordinating the on-site monitoring effort.	Project applicant shall contract with a qualified archaeologist and a qualified Native American representative to conduct at least one cultural sensitivity training.	Prior to the issuance of any grading, building, or demolition permits.	Director of Planning, Building, and Code Enforcement or the Director's designee.	Review and approve evidence of cultural sensitivity training.	Prior to the issuance of any grading, building, or demolition permits.
MM CR-2b: On-site Monitoring. In areas where ground disturbing activities are expected to occur, archaeological monitoring shall be conducted by a qualified archaeologist in in consultation with a Native American representative registered with the Native American Heritage Commission and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Monitoring is intended to ensure that appropriate cultural protective measures are effective prior to initiation of construction activities and to	Coordinate archaeological monitoring by a qualified archaeologist in in consultation with a Native American representative. Prepare a monitoring report documenting results of on-site monitoring activity.	During ground-disturbing activities. Within 14 days of completion of monitoring activities.	Director of Planning, Building, and Code Enforcement or the Director's designee.	Review and approve monitoring report.	Following completion of monitoring report.

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	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
document and protect cultural resources from inadvertent damage. During ground-disturbing activities that may impact cultural resources, at least one archaeological monitor and one Native American monitor shall be on-site. Archaeological monitors have the authority to halt construction with the finding of an archaeological discovery and to authorize construction to resume. Construction that requires monitoring includes but is not limited to demolition activities that could disturb native soil, any earthmoving, (e.g., grading or excavation for foundations, footings, and trenching for underground utilities). Monitoring shall continue until the monitor has determined that excavation has reached the maximum depth at which archaeological remains could be expected to occur. To facilitate project planning the following must be furnished by the applicant: 1) plans, blueprints, conceptual drawings, etc., detailing proposed impacts to the project site (grading or excavation prints will normally be sufficient); and 2) the proposed construction schedule or activity to be monitored, with types of excavation and/or earth-moving identified. The results of the monitoring shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of monitoring activities.					
MM CR-2c: Encountering Prehistoric or Historic Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the	Cease work within a 50-foot radius in the event of the	If prehistoric or historic resources are encountered	Director of PBCE or the Director's designee and the	Review and approve report of findings.	Ongoing, in the event resources are discovered.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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site, all activity within a 50-foot radius of the find shall be stopped, and the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified. The on-site archaeologist and Native American representative 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 reinterment of artifacts and materials, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move away any cultural materials.	discovery of prehistoric or historic resources. The on-site archaeologist and Native American representative 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. The on-site archaeologist shall prepare a report of findings documenting any data recovery.	during excavation or grading. Following stoppage of all work within 50 feet of the find. Following assessment of the find.	City's Historic Preservation Officer and the Northwest Information Center (if applicable).		
Hazards and Hazardous Materials					
Impact HAZ-1: Development of the proposed project could potentially expose construction workers and the public to soil, soil vapor and groundwater contaminants from HVOCs during the excavation/construction phase of the project, and future users to soil and soil vapor contamination from HVOCs after construction.					
MM HAZ-1: The project applicant shall retain a qualified consultant to conduct a Phase II analysis consisting of focused sampling and analysis for contamination of soil, soil vapor, and/or groundwater	Retain qualified environmental professional to evaluate environmental issues in Phase I report and	Prior to issuance of any grading, building, or demolition permits.	Santa Clara County Department of Environmental Health (or equivalent	Identify scope of required remediation and review and approve	Prior to issuance of any grading, building, or

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on-site prior to issuance of any grading, building, or demolition permits. Sampling on the site shall be under the regulatory oversight from the Santa Clara County Department of Environmental Health's (SCCDEHs) Voluntary Cleanup Program, or an equivalent program by another oversight agency, to address soil and groundwater contamination discovered on the property. Removal and off-site disposal of the soil at appropriate landfills during construction of the basement level will likely constitute the mitigation required; however, the oversight agency will approve the proposed mitigation, or determine if additional groundwater sampling and mitigation is necessary. Based on the results of the contamination levels at the site, the project applicant shall prepare, under the guidance of the oversight agency, a Site and Groundwater Management Plan (SGMP) or equivalent report. The SGMP or equivalent report must establish and implement remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors. The results of Phase II investigation and evidence of regulatory oversight, if required, and the appropriate plan such as an SGMP or equivalent document shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee.	perform appropriate Phase II testing. If results of Phase II testing indicate contamination above screening levels, applicant shall work with the Santa Clara County Department of Environmental Health (or Department of Toxic Substances Control) to implement an SGMP or equivalent document. Phase II investigation, as well as SGMP and evidence of regulatory oversight (if required) shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee.		oversight agency such as the Department of Toxic Substances Control) Director of Planning, Building and Code Enforcement or the Director's designee.	of SGMP or equivalent document (if required). Review Phase II Investigation, as well as any SGMP or equivalent document (if prepared).	demolition permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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Noise and Vibration					
Impact NSE-1: Construction noise would exceed ambient levels by five dBA for a period of more than one year, which exceeds City thresholds defined in General Plan Policy EC-1.7, within 500 feet of residential uses or 200 feet of commercial or office uses.					
MM NSE-1: Prior to the issuance of any grading, building 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 to the Director of Planning, Building and Code Enforcement or Director's Designee. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and the construction noise logistics plan implemented during construction to reduce noise impacts on neighboring residents and other uses below the threshold of 5 dBA within 500 feet of residential uses or 200 feet of commercial or office uses. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site. The notice sent to neighbors regarding the construction schedule shall be included in the posted sign. Consistent with the Downtown Strategy 2040 FEIR, the noise logistic plan shall include, but is not limited to, the following measures:	Submit 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 to the Director of Environmental Planner of Planning, Building, and Code Enforcement or the Director's designee. Implement construction noise logistics plan. The noise disturbance coordinator to respond to neighborhood complaints	Prior to the issuance of any grading or demolition permits (whichever occurs first). During construction. The noise disturbance coordinator in place prior to the start of construction.	Director of Planning, Building, and Code Enforcement or the Director's designee.	Review and approve construction noise logistics plan.	Prior to the issuance of any grading or demolition permits (whichever occurs first).

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• The project 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. • The project 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. • The project contractor shall locate staging areas and construction material areas as far away as possible from adjacent land uses.					
Impact NSE-2: Construction of the project would generate vibration levels exceeding the General Plan threshold of 0.08 in/sec PPV or more at historic buildings within 60 feet of the project site and of 0.2 in/sec PPV or more at buildings of normal conventional construction located within 25 feet of the project site.					
MM NSE-2: Prior to the issuance of any grading, building or demolition permits (whichever occurs first), the project applicant shall implement a construction vibration monitoring plan to document	Submit a construction vibration monitoring plan to document conditions of existing conventional	Prior to the issuance of any grading or demolition permits	Director of Planning, Building, and Code Enforcement or the Director's designee.	Review and approve the construction	Prior to the issuance of any grading or demolition

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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 construction vibration monitoring plan shall include, but not be limited to, the following measures: • The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. • A list of all heavy construction equipment to be used for this project and anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building, and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Phase demolition, earth-moving,	buildings within 30 feet of the project site and historic buildings within 60 feet of the project site. Implement the construction vibration monitoring plan. Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made.	(whichever occurs first). Implementation to occur prior to, during, and after vibration generating construction activities. Within 14 days of completion of construction.		monitoring vibration plan. Receive associated monitoring and post-construction reports.	permits (whichever occurs first). Ongoing throughout construction.

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and ground impacting operations so as not to occur during the same time period. • Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent historical building and within 30 feet of any adjacent conventional building. • Document conditions at all historic structures located within 60 feet of construction and at all conventional structures within 30 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 and for each conventional structure within 30 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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during construction, and after project completion, and shall include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures. • Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits. • At a minimum, vibration monitoring shall be conducted during demolition and excavation activities. • Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site. • Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints					

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of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. The survey shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of repairs.					

Source: Addendum to the Downtown Strategy 2040 Final Environmental Impact Report for Eterna Tower Mixed-Use Development (H20-026), City of San José, August 2022.

Exhibit E

Eterna Tower Mixed-Use Development

File No. H20-026

Addendum to the Downtown Strategy 2040 Final Environmental Impact Report

RESPONSE TO APPEAL

November 2022

CEQA Lead Agency:

City of San José
Department of Planning Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113

In Consultation with:

Denise Duffy & Associates, Inc.
947 Cass Street
Suite 5
Monterey, CA 93940

Denise Duffy & Associates, Inc.
PLANNING AND ENVIRONMENTAL CONSULTING

Memorandum

To: Maira Blanco, Planner
City of San José

From: Leianne Humble, Senior Project Manager
Denise Duffy & Associates, Inc.

Date: November 30, 2022

Subject: **Eterna Tower – Responses to Appeal of Environmental Determination**

The City of San José approved a Site Development Permit, File No. H20-026, for the Eterna Tower Mixed Use Development Project at the August 24, 2022 Director's Hearing and considered and adopted the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report (EIR Addendum) prepared for the project, in accordance with CEQA.

After the Director's Hearing, the City received one timely environmental appeal on the Director's decision from the following appellants:

- Silicon Valley Residents for Responsible Development c/o Kelilah Federman, Adams Broadwell Joseph & Cardozo

As described in further detail below, the environmental appeals do not raise any new issues about the project's environmental impacts, provide no substantial evidence in support of a fair argument that the project, after mitigation, would result in a significant, unavoidable impact, or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the EIR Addendum.

The following pages contain list the organization that submitted an appeal on the City's decision to approve the EIR Addendum and the City's formal response to the appeal. The specific comments have been excerpted from the appeal and are presented as "Comment" with a response directly following ("Response"). A copy of the appeal submitted to the City of San José is attached to this document in Attachment A.

SECTION 1.0 APPELLANT

Appeal Received From	Date of Appeal	Attachment	Total Number of Pages
A. Adams Broadwell Joseph & Cardozo	8/26/2022	Yes	70

A. Adams Broadwell Joseph & Cardozo (dated August 26, 2022)

Comment A.1: We are writing on behalf of Silicon Valley Residents for Responsible Development ("Silicon Valley Residents") to appeal the San Jose Planning Director's August 24, 2022 environmental clearance determination for and approval of the Eterna Tower Mixed-Use Development Project (File No. H20-026) ("Project"),[1] based on the Addendum ("Addendum") to the Downtown Strategy 2040 Final Environmental Impact Report ("Downtown Strategy 2040 FEIR") for the Project prepared by the City of San Jose ("City") pursuant to the California Environmental Quality Act ("CEQA").[2]

This Appeal is accompanied by payment of the required appeal fee of $250 in accordance with the City of San Jose's Planning Application Filing Fee Schedule.[3]

The Project, proposed by ROYGBIV Real Estate Development LLC ("Applicant") includes construction of a 26-story, 184,667-gross square foot mixed-use building on the approximately 0.18-acre site at 17 and 29 East Santa Clara Street in downtown San José.[4] The Project would include 192 residential units and approximately 5,217 square feet of office space on the second floor. The Project site is currently occupied by a pair of two-story buildings, one of which (17 East Santa Clara Street) is an identified Structure of Merit on the City's Historic Resources Inventory[5]; both are proposed for demolition.

The Project is within the DC Downtown Primary Commercial Zoning District, and the Downtown General Plan Designation.[6] The Project is also located within the Downtown Employment Priority Area, which requires a minimum 4.0 FAR of commercial use within residential / commercial mixed-use projects.[7] Construction of the Project would occur over a period of 29 months.[8] The Project would include a diesel-powered backup generator.[9]

> **Response A.1**: The above description is a general description of the proposed project and does not raise any issue related to adequacy of the environmental documents. Therefore, no further response is required.

Comment A.2: This Appeal letter, and Silicon Valley Residents' attached August 23, 2022 comments to the Planning Director,[10] demonstrate that the Planning Director's decision to approve the Project violated CEQA, land use laws and the City's municipal codes, and was not supported by substantial evidence in the record. Specifically, our prior comments, and the comments of our expert consultant James Clark of Clark & Associates identified several flaws in the City's environmental

[1] City of San Jose, Planning, Building and Code Enforcement, Planning Director Hearing (August 24, 2022) Action Minutes. Available at: https://www.sanjoseca.gov/home/showpublisheddocument/88897
[2] Pub. Resources Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR" or "CEQA Guidelines") §§15000 et seq.
[3] City of San Jose, Planning Application Filing Fee Schedule, Effective August 15, 2022. Available at: https://www.sanjoseca.gov/home/showdocument?id=24803.
[4] City of San Jose, Addendum to the Downtown Strategy 2040 Final Environmental Impact Report for Eterna Tower Mixed-Use Development, File No. H20-026 (August 5, 2022) (hereinafter "Addendum")
[5] Addendum, Appendix B, Historical Evaluation, p. 1; City of San Jose, Planning, Building & Code Enforcement, Historic Resources Inventory.
[6] San Jose Zoning Code § 20.70.100.
[7] City of San Jose, Site Development Permit (H20-026) p. 10 of 28.
[8] Addendum p. 6.
[9] *Id.* at 1.
[10] Silicon Valley Residents for Responsible Development's August 23, 22 written comments to the Planning Director are attached hereto as Exhibit A and incorporated by reference.

analysis, and provided new information and substantial evidence demonstrating that the Addendum fails as an informational document under CEQA and is inappropriate under CEQA because it identifies significant environmental impacts not discussed in the Downtown Strategy 2040 FEIR, fails to comply with the requirements for tiering from a program-level environmental impact report, fails to evaluate the project-level impacts in the areas of public health, air quality, contaminant hazards and historical resources, and lacks substantial evidence to support the City's environmental conclusions.

> **Response A.2**: The above contains general allegations related to adequacy of the environmental documents. Therefore, no further response is required. Specific responses to the other parts of the letter are addressed below.

Comment A.3: This Appeal is "based upon issues that were raised previously either orally or in writing" to the Planning Director prior to approval of the Project, as specified by Section 21.04.140 subdivision (E)(3) of the San Jose Municipal Code and as allowed pursuant to CEQA and State land use laws.[11] This Appeal is based on the issues raised in Silicon Valley Residents' August 23, 2022 comments, and in oral comments at the August 24, 2022 Planning Director Hearing.[12]

Silicon Valley Residents urges the City Council to grant this Appeal and remand the Project to City Staff to prepare a Subsequent EIR for the Project. Silicon Valley Residents reserves the right to submit supplemental comments and evidence at any later hearings and proceedings related to the Project, in accordance with State law.[13]

> **Response A.3**: The comment does not raise any issue related to adequacy of the environmental documents. Therefore, no further response is required.

I. STATEMENT OF INTEREST

Comment A.4: Silicon Valley Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. Residents includes International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, along with their members, their families, and other individuals who live and work in the City of San José.

Individual members of Silicon Valley Residents live, work, recreate, and raise their families in the City and in the surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

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[11] San Jose Muni. Code § 21.04.140 subd. (E)(3) (providing that "[n]o appeal shall be considered unless it is based upon issues that were raised previously either orally or in writing to a recommending body or a decision-making body at or prior to a public hearing whenever the underlying project is considered at a public hearing.")

[12] Exhibit A

[13] Gov. Code § 65009(b); PRC § 21177(a); Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield") (2004) 124 Cal. App. 4th 1184, 1199-1203; see Galante Vineyards v. Monterey Water Dist. (1997) 60 Cal. App. 4th 1109, 1121.

In addition, Silicon Valley Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

> **Response A.4**: The above contains general allegations related to adequacy of the environmental documents. Therefore, no further response is required. Specific responses to the other parts of the letter are addressed below.

II. LEGAL BACKGROUND

Comment A.5: CEQA has two basic purposes, neither of which is satisfied by the Addendum. CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.[14] The EIR is the "heart" of this requirement.[15] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[16]

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and reflect a good faith effort at full disclosure."[17] An adequate EIR must contain facts and analysis, not just an agency's conclusions.[18] CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.[19]

Further, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.[20] If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.[21] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[22] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.[23] A CEQA lead agency is precluded from making the required

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[14] 14 Cal. Code Regs. ("CCR") § 15002(a)(1); Berkeley Keep Jets Over the Bay v. Bd. Of Port Comm'rs. (2001) 91 Cal.App.4th 1344, 1354 ("Berkeley Jets"); County of Inyo v. Yorty (1973) 32 Cal.App.3d 795, 810.
[15] No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 84.
[16] County of Inyo v. Yorty (1973) 32 Cal.App.3d 795, 810.
[17] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[18] See Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 568.
[19] PRC § 21100(b)(1); 14 CCR § 15126.2(a).
[20] 14 CCR § 15002(a)(2) and (3); Berkeley Jets, 91 Cal.App.4th at 1354; Laurel Heights Improvement Ass'n v. Regents of the University of Cal. (1998) 47 Cal.3d 376, 400.
[21] PRC §§ 21002.1(a), 21100(b)(3).
[22] Id., §§ 21002-21002.1
[23] 14 CCR § 15126.4(a)(2).

CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.[24] This approach helps "ensure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."[25]

When an EIR has previously been prepared that could apply to the Project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

> (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
>
> (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
>
> **(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.[26]**

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

> (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
>
> (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
>
> (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
>
> > **(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;**
> >
> > **(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;**
> >
> > **(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or**

[24] *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).
[25] Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn. (1986) 42 Cal.3d 929, 935.
[26] PRC, § 21166 (emphasis added).

> **(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[27]**

Only where ***none*** of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum or no further documentation.[28] For addenda specifically, CEQA allows an addendum to a previously certified EIR if "some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred."[29] The City's decision not to prepare a Subsequent EIR and to instead rely on an addendum must be supported by substantial evidence.[30]

Here, the City lacks substantial evidence for its decision not to prepare a Subsequent EIR because at least one of the triggering conditions in Section 15162 has occurred. As explained below, substantial evidence shows that the Project may have one or more significant effects not discussed in the Downtown Strategy 2040 EIR. Specifically, the Project may have significant impacts associated with air quality and public health, as described by Dr. Clark. Moreover, the Addendum specifically recognizes potentially significant impacts (and proposes mitigation measures) with respect to air quality, soil and groundwater hazards, and noise and vibration—impacts and mitigation that were not addressed in the 2040 Downtown Strategy EIR. This fact alone makes an addendum inappropriate under CEQA and requires preparation of an EIR or mitigated negative declaration ("MND") to be circulated for public review and comment.

Accordingly, Dr. Clark's substantial evidence, and the City's own recognition of potentially significant impacts not previously addressed, require that the City prepare and circulate for public comment a Subsequent EIR or MND that adequately addresses all of the Project's potentially significant impacts and proposes appropriate mitigation measures.[31]

> **Response A.5**: This comment indicates that the EIR Addendum is inadequate and suggests that a Subsequent EIR is required. As presented in the responses to this letter below, the assumptions and conclusions made in the EIR Addendum are accurate, adequate, and supported by substantial evidence. Accordingly, pursuant to Section 15164 of the CEQA Guidelines, the City of San José prepared an Addendum to the San José Downtown Strategy 2040 Final Environmental Impact Report and addenda thereto because minor changes made to the project, as analyzed in the Addendum, did not raise any of the conditions or circumstances described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR.

III. THE CITY IMPROPERLY RELIED ON AN ADDENDUM

[27] 14 CCR, § 15162(a)(1)-(3) (emphasis added).
[28] 14 CCR, § 15162(b).
[29] 14 CCR, § 15164
[30] Id. §§ 15162 (a), 15164(e), and 15168(c)(4).
[31] 14 CCR, § 15162 ("no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one of more of the following [triggering actions has occurred]"); § 15164 ("The [agency's] explanation [to not prepare a subsequent EIR pursuant to Section 15162] must be supported by substantial evidence.").

Comment A.6: An addendum to an EIR is only appropriate if some changes or additions to the prior EIR are necessary, but none of the conditions described in Guidelines section 15162 have occurred. Where, as here, the project will have one or more significant impacts not discussed in the previous EIR, an addendum is inappropriate. The Addendum specifically identifies several potentially significant impacts not discussed in the Downtown Strategy 2040 FEIR, including Impact AQ-1 (infant cancer risk from exposure to diesel particulate matter during project construction), Impact HAZ-1 (exposure of construction workers and the public to soil and groundwater contaminants), Impact NSE-1 (construction noise in excess of the City's General Plan thresholds) and Impact NSE-2 (vibrations from construction exceeding the City's General Plan thresholds).

As to each of these impacts, the Addendum also purports to adopt mitigation measures to address these impacts. None of these Project-specific impacts or mitigation measures were disclosed, analyzed or considered in the Downtown Strategy 2040 EIR. CEQA requires that these impacts and proposed mitigation measures be included in an EIR and circulated for public review and comment. Because the City has identified potentially significant impacts (and proposed mitigation measures) not discussed in the previous EIR, the Addendum is not appropriate and the City must prepare and circulate a subsequent EIR pursuant to Guidelines section 15162.

In addition, the City seeks to rely on CEQA Guidelines Section 15152 to tier from the Downtown Strategy 2040 EIR. Tiering refers to "using the analysis of general matters contained in a broader EIR…with later EIRs or negative declarations" and is appropriate when the sequence of analysis is from a program EIR to a site-specific EIR or negative declaration.[32] The CEQA Guidelines only recognize the use of an EIR or a negative declaration, not an addendum, to tier from a program EIR. The Addendum is not an appropriate environmental review document to tier from the Downtown Strategy 2040 EIR.

Moreover, the Downtown Strategy 2040 EIR does not contemplate the use of density bonuses to inflate the size and impacts of Projects tiering from it. The City's reliance on anticipated density bonus approvals to claim that the Project is currently "consistent" with existing zoning and land use plans so as to rely on an addendum to the Downtown Strategy 2040 EIR is entirely unsupported and contrary to CEQA.

CEQA requires that the lead agency determine the appropriate form of CEQA review at the time the project application is submitted, not based on speculative future approvals.[33] CEQA requires lead agency to analyze the 'whole' of the project – this includes all foreseeable discretionary approvals.[34] For example, in *Laurel Heights Improvement Association v. Regents of University of California* [35]the California Supreme Court rejected an EIR where the agency failed to consider the whole of the project. The agency defined the project as involving "only the acquisition and operation of an

[32] 14 CCR, § 15152(a) and (b).
[33] CEQA Guidelines, § 15063 (timing and process of initial study); Pub. Resources Code, §§ 21003.1 (early identification of environmental effects), 21006 (CEQA is integral to agency decision making).
[34] Pub. Resources Code, § 21082.2(a) ("The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record"); CEQA Guidelines, § 15003(h) ("The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect" and citing *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 401 ("*Laurel Heights I")*
[35] *Laurel Heights I, supra,* 47 Cal.3d 376.

existing facility and negligible or no expansion of use of existing use at that facility."[36] However, the Court found that future expansion of the project was a reasonably foreseeable consequence of the project and would likely change the scope or nature of the initial project or its environmental effects.[37] Here, approval of the Project's requested density bonus is a reasonably foreseeable consequence of the Project. The City therefore has a duty to analyze the impacts of the increase in density (and other associated impacts) that would result from approval of the density bonus.

When viewed as a whole, there is no dispute that the Project exceeds applicable zoning, density and height requirements, and does not qualify for approval under the City's Design Review and Historic Preservation requirements. Rather, the Project requires a conditional use permit ("CUP)", and must undergo applicable CUP permitting requirements.

By ignoring the Project's facial inconsistency with City land use requirements, the potentially significant impacts associated with those inconsistencies escape environmental review. As a result, the City has failed to comply with its CEQA obligations to disclose the nature and severity of the Project's impacts, and the City lacks substantial evidence to support its density bonus findings that the Project's proposed floor area ratio ("FAR") waiver and additional density bonus units would not have a specific adverse impact upon public health or safety, the environment, or harm historical property.[38] The Project's FAR waiver and density bonus may exacerbate the Project's impacts from air quality, public health, greenhouse gas emissions, and harm to historical property.

> **Response A.6**: This comment indicates that the EIR Addendum is inadequate because it identifies potentially significant impacts not discussed or disclosed in the Downtown Strategy 2040 FEIR. The analysis in the EIR Addendum is consistent with the Downtown Strategy 2040 FEIR as presented in the conclusions at the end of each chapter of the EIR Addendum. As presented in the responses to this letter below, the assumptions and conclusions made in the EIR Addendum are accurate, adequate, and supported by substantial evidence. The City has determined that preparation of a Subsequent EIR is not warranted.
>
> The subject site is designated Downtown on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan, which allows residential density up to 800 dwelling units per acre (du/ac), intended for buildings between three and thirty stories in height. The Downtown designation is the primary designation for new high-intensity office, retail, service, residential, and entertainment uses in the Downtown area. All development within this designation should enhance the "complete community" in downtown, support pedestrian and bicycle circulation, and increase transit ridership.
>
> The project site is also located within the Downtown Employment Priority Area, which requires a minimum 4.0 FAR of commercial use within residential / commercial mixed-use projects. This designation is applied to Downtown sites planned for intensive job growth because of the area's proximity and good access to the future Downtown BART station.
>
> The subject site is located in the DC Downtown Primary Commercial Zoning District, which allows for range of uses including residential, commercial, entertainment,

[36] *Laurel Heights I, supra,* 47 Cal.3d at p. 388.
[37] *Laurel Heights I, supra,* 47 Cal.3d at p. 396.
[38] Gov. Code, § 65589.5(d)(2).

education, and retail with a Site Development Permit.

The project proposes 20 percent of the total number of units as restricted affordable to low-income residents (28 units). Per the State Density Bonus Law (Government Code Section 65915), the project is allowed a 35 percent Density Bonus. With the density bonus applied, the maximum density is 1,080 dwelling units per acre. The project includes 192 units on 0.18-gross acres, or 1,066 dwelling units per acre. The project density is therefore consistent with the General Plan Land Use Designation with the allowed density bonus.

Additionally, the project applicant has requested a waiver to reduce the required 4.0 FAR of commercial square footage to 1.56 FAR. Because the project has been deemed eligible for the Density Bonus under State Law, the request for reduced commercial square footage is allowed as a waiver.

In addition, per the State's Density Bonus Law, if any development standard would physically prevent the project from being built at the permitted density, the developer may propose to have those standards waived or reduced. The city or county is not permitted to apply any development standard which physically precludes the construction of the project at its permitted density unless strict findings are made for denial. The City, however, is not required to waive or reduce development standards that would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law. There is no limit on the number of development standard waivers that may be requested or granted. In other words, the project qualifies for unlimited waivers to development standards, unless a waiver would cause a public health or safety problem, would cause harm to the environment or historical property, or would be contrary to law. The following five waivers were granted consistent with the State's Density Bonus Law:

- *Reduce parking requirement to zero*
- *Reduce off-street loading requirement to zero*
- *Reduce commercial requirement from 4.0 FAR to 1.56 FAR*
- *Eliminate Downtown Design Guidelines Section 4.2.2, Standard 'a' Height Transition*
- *Eliminate Downtown Design Guidelines Section 4.2.2, Standard 'c' Rear Transition*

The Eterna Tower Mixed-Use Development Project Addendum accounts for the density enumerated bonus and waivers in the analysis. The allowed density bonus is still within the residential pool assumptions in the Downtown Strategy 2040 FEIR. Therefore, the potential impacts of the increased density and waivers were analyzed in the EIR Addendum, and no further response is required.

As stated in the record at the August 24, 2022 Director's Hearing and as discussed in the EIR Addendum (Project Description and Section E. Cultural Resources), the existing buildings at 17 and 29 East Santa Clara Street are not historical resources as they are not designated City Landmarks or eligible for the local or state registers. The structure at 17 East Santa Clara

Street is a Structure of Merit which - although valuable to the City's downtown fabric - does not rise to the level of a historical resource in accordance with CEQA. Therefore, the project does not require a Historic Preservation Permit and is not subject to Title 13 (Chapter 13.48 – Historic Preservation) as suggested by the appellant.

IV. THE PROJECT RESULTS IN SIGNIFICANT AIR QUALITY IMPACTS NOT ANALYZED IN THE DOWNTOWN STRATEGY 2040 EIR

Comment A.7: **A. The Air Quality Impacts of the Project Would Result in Unacceptable Negative Effects on Adjacent Properties**

Project construction may result in significant emissions of diesel particulate matter and dust which will cause unacceptable negative effects on adjacent sensitive receptors, including the future 19 North Second Street Affordable Senior Housing project to the northeast of the Project site.[39] The City should not have approved the Site Development Permit for the Project, because the City could not support a finding that:

> The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

The dust and diesel particulate matter emissions from the Project are significant under CEQA and result in an unacceptable negative effect on adjacent properties.[40] Additionally, absent the use of Tier 4 Final engines, the project will result in unacceptable negative effects associated with diesel particulate matter. These impacts will adversely impact sensitive receptors at adjacent properties. The maximum excess residential cancer risks at these locations would be 17.19 per million for infant risk, which is greater than the Bay Area Air Quality Management District (BAAQMD) significance threshold of 10 in one million for cancer risk.[41] The dust from construction may negatively affect the sensitive receptors within adjacent properties, but the Addendum fails to adequately analyze and mitigate such impacts. As such, the City did not have substantial evidence to make the necessary findings to approve the Site Development Permit. The City must adequately analyze and mitigate the Project's significant air, dust, and health risk impacts in a Subsequent EIR to comply with CEQA.

> **Response A.7**: The project's air quality analysis (Section C of the EIR Addendum) was based on an Air Quality Assessment prepared by Illingworth and Rodkin, Inc. The project's air quality assessment did analyze the unmitigated and mitigated health risk impacts of the project on adjacent sensitive receptors. The unmitigated maximum cancer risk impact (from both construction and operation of the project) would result in a risk of 17.19 per million, assuming infant exposure during construction when emissions are greatest. The mitigated maximum cancer risk impact, with mitigation including the Downtown Strategy 2040 FEIR best management practices to control dust and exhaust during construction and the use of

[39] Clark Comments, p. 2; Addendum p. 54.
[40] Clark Comments, p. 5.
[41] *Id.*

construction equipment with Tier 4 Interim emissions standard engines, would result in a risk of 4.24 per million for infant risk. The mitigated cancer risk impact is below the BAAQMD significance threshold of 10 in one million for cancer risk, and therefore, results in a less-than-significant impact with mitigation. The 19 North Second Street Project (File Nos. HP21-007, SP21-044) is included in the background analysis. As detailed in the Air Quality section of the EIR Addendum, the PM 2.5 concentration Maximally Exposed Individual would be located at the future 19 North Second Street development (second floor, southwest corner); however, as stated above, with the implementation of best management practices to control dust and exhaust during construction and Mitigation Measure AQ-1, the project's cancer risk would be reduced to below the single-source BAAQMD thresholds. The cancer risk, annual PM 2.5 concentration, and Hazard Index, unmitigated and mitigated, do not exceed the cumulative BAAQMD thresholds of 100, 0.8 micrograms per cubic meter (μg/m3), and 10, respectively. Tier 4 Interim equipment is still considered "Best Available Control Technology" and the construction equipment with Tier 4 Interim engines are more readily available in fleet mixes. The main difference from Tier 4 Final equipment is that Tier 4 Final has a greater Nitrogen Oxides (NOx) emissions reduction, which the air quality assessment concluded had less-than-significant construction period NOx emissions. The comment does not present new information that has not been previously analyzed or provided substantial evidence supporting a fair argument that the project would result in significant unavoidable impacts requiring preparation of a subsequent EIR. Therefore, no further analysis is required.

Comment A.8: **B. The Project Fails to Implement Feasible Mitigation to Reduce Construction Air Emissions**

The Downtown Strategy 2040 EIR includes measures that may reduce air quality impacts, but the Addendum fails to implement them. The Downtown Strategy 2040 EIR provides that additional measures that would reduce emissions include to "equip all construction equipment, diesel trucks, and generators with Best Available Control Technology for emission reductions of NO_x and PM."[42]

New information which was not known and could not have been known at the time of preparation of the Downtown Strategy 2040 EIR shows that the Best Available Control Technology for emission reductions of NO_x and PM is through the use of Tier 4 Final Emission standard engines.[43] The Downtown Strategy 2040 EIR does not require the use of Tier 4 final engines. The Addendum likewise does not require Tier 4 Final engines. Mitigation Measure ("MM") AQ-1 provides:

1. 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 Tier 4 emission standards for particulate matter (PM_{10} and $PM_{2.5}$), if feasible, otherwise,
    a. If use of Tier 4 equipment is not available, alternatively use equipment that meets 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 minimum of 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.
    b. Use of alternatively fueled or electric equipment.[44]

[42] City of San Jose, Downtown Strategy 2040 Integrated Final EIR, p. 64.
[43] Clark Comments, p. 5.
[44] Addendum p. 59.

Dr. Clark concluded that not only is MM AQ-1 not the Best Available Control Technology, but that Tier 4 Interim emissions and Tier 3 emissions standards would not adequately reduce the Project's construction emissions to safe levels.[45] Dr. Clark explains that Tier 3 equipment would put out substantially more particulate matter (PM_{10} and $PM_{2.5}$) than Tier 4 Interim and Tier 4 Final equipment.[46] Tier 3 equipment puts out 80% to 89% more PM10 than Tier 4 Interim equipment and 85% to 91% more PM_{10} than Tier 4 Final equipment. Tier 3 equipment puts out 81% to 89% more PM2.5 than Tier 4 Interim equipment and 85% to 92% more $PM_{2.5}$ than Tier 4 Final equipment.[47] Substantial evidence presented herein, and in Dr. Clark's comments, that the Project's air quality impacts may be reduced through the use of Tier 4 Final Mitigation, but such measures were not implemented in the Addendum nor the Downtown Strategy 2040 EIR.

A subsequent EIR must be prepared, as here, when mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[48] Here, the Addendum fails to incorporate the Best Available Control Technology in the form of Tier 4 Final engines. A subsequent EIR must be prepared because Tier 4 Final mitigation measures are considerably different from those analyzed in the previous EIR and would substantially reduce one or more significant effects on the environment, but the project proponents declined to adopt the mitigation measure. The City should grant this Appeal and require the preparation of a subsequent EIR to be circulated for public review in compliance with CEQA.

> **Response A.8**: As noted in the above response, the air quality assessment analyzed the project's construction risk assessment with the Downtown Strategy 2040 FEIR best management practices to control dust and exhaust during construction and the use of construction equipment with Tier 4 Interim emissions standard engines, which reduced the cancer risk impact to below the BAAQMD significance threshold. Tier 4 Interim equipment is still considered "Best Available Control Technology" and the construction equipment with Tier 4 Interim engines are more readily available in fleet mixes. The main difference between Tier 4 Final equipment and Tier 4 Interim equipment is that Tier 4 Final has a greater NOx emissions reduction as stated by the appellant; however, the Tier 4 Interim equipment assumed in the air quality assessment still concluded less-than-significant construction period NOx emissions. In the event that special equipment is needed and cannot be procured with engines that meet Tier 4 standards, Mitigation Measure AQ-1 states that engines meeting Tier 3 standards could be used; however, this equipment would have to be equipped with particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a minimum of 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment. Therefore, the use of Tier 4 Interim equipment, or some equipment that meets Tier 3 standards with CARB Level 3 verifiable diesel emission control devices (in the event that Tier 4 equipment is not available), sufficiently mitigates the project's health risk impacts to below BAAQMD significance

[45] Clark Comments, p. 5.
[46] Clark Comments, p. 6.
[47] *Id.*
[48] 14 CCR, § 15162(a)(1)-(3) (emphasis added)

thresholds as a Best Available Control Technology while meeting the measures included in the Downtown Strategy 2040 FEIR.

Comment A.9: C. The Addendum Relies on Inaccurate Air Quality Modeling

The Addendum is inadequate under CEQA for failing to accurately analyze the Project's Air Quality impacts. Dr. Clark concluded that the Addendum relies on modeling which assumes the use of Tier 4 Final emission standards, but Tier 4 Final engines are not required by the Addendum or the EIR.[49] This results in the artificial reduction of the Project's construction air emissions. Inaccurate modeling may not be relied on for determining the significance of air quality impacts. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.[50] An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[51]

The failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[52] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[53] In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[54] Here, the City's failure to provide accurate air modeling associated with the Tier 4 Final mitigation is a failure to disclose information about the Project's environmental effects and results in a failure to proceed in the manner required by CEQA. A subsequent EIR must be prepared which accurately analyzes and mitigates the Project's air emissions and includes a requirement to utilize Tier 4 Final Emission standards for Project Construction before the Project can be approved.

Response A.9: The commenter is incorrect in their assertion that the air quality modeling relied upon modeling that assumed the use of Tier 4 Final equipment. As noted in the above response, the use of Tier 4 Interim equipment was assumed in the modeling for mitigated impacts and would sufficiently mitigate the project's health risk impacts to below BAAQMD significance thresholds as a Best Available Control Technology while meeting the measures included in the Downtown Strategy 2040 FEIR. The comment does not present new information that has not been previously analyzed or provided substantial evidence for the preparation of a subsequent EIR pursuant to CEQA Guidelines Section 15162; therefore, no further analysis is required.

Comment A.10: **D. The Project Fails to Mitigate Air Quality Impacts Associated with Project Operation and the Backup Generator**

The Project will utilize a stand-by diesel engine backup generator, which will be located on the basement level.[55] The Addendum states that the Generator would be operated for testing and

[49] *Id.* at 5.
[50] 14 CCR § 15064(b).
[51] Kings Cty. Farm Bur. v. Hanford (1990) 221 Cal.App.3d 692, 732.
[52] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[53] Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 435.
[54] Id., Madera Oversight Coal., Inc. v. County of Madera (2011) 199 Cal. App. 4th 48, 102.
[55] Addendum, p. 1; 54.

maintenance purposes, with a maximum of 50 hours per year of nonemergency operation under normal conditions.[56] The Addendum and the Downtown Strategy 2040 FEIR failed to analyze the Project's potential use of the backup generator for 200 hours per year or more, as described in Dr. Clark's comments.

As such, the Addendum fails to analyze the full extent of the Project's operational air emissions by failing to accurately model the backup generators' air emissions. According to SCAQMD Rules 1110.2, 1470, back-up generators are allowed to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year.[57] The Addendum must be revised to quantify and analyze the full extent of the necessary maintenance and testing period for the generators onsite.

Second, the Addendum fails to analyze the Project's use of backup generator during a power outage. According to Dr. Clark, it is more likely that the Backup Generators would need to be used more than 150 hours per year, due to increasing Public Safety Power Shutoff ("PSPS") events and extreme heat events.[58]

During a PSPS event, the use of stationary generators is permitted as an emergency use.[59] For every PSPS or extreme heat event, significant GHG emissions i.e., carbon dioxide equivalents and diesel particulate matter ("DPM") will be released.[60] DPM has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including forty known cancer-causing organic substances.[61] Dr. Clark notes that the California Air Resources Board found that the 1,810 additional stationary generators during a PSPS in October 2019 generated 126 tons of NO_x, 8.3 tons of particulate matter, and 8.3 tons of DPM.[62] Therefore, the GHG, air quality, and DPM emission impacts associated with the use of the Backup Generator are significant, but the Addendum fails to adequately analyze or mitigate such impacts.[63] The failure to analyze is a failure to proceed in a manner required by law.[64] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[65] In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[66] Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"[67]

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[56] *Id.* at 55.
[57] Clark Comments, p. 9.
[58] Clark Comments, p. 9.
[59] 17 CCR 93115.4(a)(30)(A)(2).
[60] Clark Comments, p. 9.
[61] *Id.*
[62] California Air Resources Board, Potential Emissions Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020). Available at: https://ww2.arb.ca.gov/sites/default/files/2020-01/Emissions_Inventory_Generator_Demand%20Usage_During_Power_Outage_01_30_20.pdf.
[63] Clark Comments, p. 9.
[64] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[65] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[66] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
[67] *Berkeley Jets*, 91 Cal.App.4th at 1355.

The Addendum must be withdrawn, and the City must remand the Project to Staff to circulate a subsequent EIR for public review which adequately analyzes impacts associated with emissions from the Backup Generators.

Response A.10: Per direction by the BAAQMD, only emissions from routine testing and maintenance were considered in the analysis. The procedure is in accordance with BAAQMD Regulation 2, Rule 5 and the number of non-emergency operation hours per year is limited to 50 hours per the Airborne Toxic Control Measure for Stationary Toxic Compression Ignition Engines (Section 93115, Title 17 CCR). The District's procedure for permitting emergency generators is to consider operation of the generators for up to 50 hours per year. There is no way to reliably predict the number of hours that a power outage would occur and therefore, 50 hours is the standard. Furthermore, the reference the commenter uses for the power shutoff operational hours for a generator is from South Coast Air Quality Management District (SCAQMD), not BAAQMD where the Project is located. For cancer risk calculations to support issuance of permits under Regulation 2, Rule 5, BAAQMD uses 50 hours operation per year averaged over 30 years. The air quality assessment used the same assumptions, except the generator would operate 28 years and there would be construction for two years (30-year total averaging period).

The project site is in San José, a highly urbanized area that has not been subject to Public Power Safety Shutoff (PSPS) events, so applying outage estimates from 2019 during these events is inappropriate. There are extreme heat events that in some cases cause rolling power outages. For any particular site, these are rare events that would not result in power loss for long periods of time (requiring the use of the back-up generator).

The EIR Addendum provides a reasonable worst-case assessment of emissions because actual generator use would likely be less than 50 hours per year. Testing schedules are typically 30 minutes or less biweekly (or 12 hours per year) per generator under no load when emissions are much lower. The generators were modeled to operate 50 hours per year at 73 percent of full load. The commenter does not provide any credible evidence that generators would operate on average more than 50 hours per year over the life of the project.

Lastly, the commenter provides no evidence that the use of the back-up emergency generator would cause significant impacts even if it were to run for 150 to 200 hours per year. The operational emissions of air pollutants affected by diesel engine operation (i.e., NOx and particulate matter) are well below the significant thresholds and cancer risk associated with mitigated construction emissions and generator operation are also well below thresholds. No further analysis is required.

V. THE PROJECT RESULTS IN SIGNIFICANT HAZARDS AND HAZARDOUS MATERIALS IMPACTS NOT ANALYZED IN THE DOWNTOWN STRATEGY 2040 EIR

Comment A. 11: **A. The Addendum Fails to Adequately Analyze the Impacts of Hazardous Contamination**

CEQA requires EIRs to analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected.[68] Both CEQA and the CEQA Guidelines require an analysis of a project's effects on the environment and human health. CEQA also provides that the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions, including both short-term and long-term conditions.[69]

The Project risks exacerbating hazardous contamination in soil and groundwater by bringing development and people to the area affected. According to the Office of Environmental Health Hazard Assessment (OEHHA), on behalf of the California Environmental Protection Agency (CalEPA), the Project site is within the 91st percentile in terms of groundwater threats.[70] The Project is also within the 41st percentile for toxic releases from facilities.[71] The Project site is adjoined on its northeastern corner by a site listed as an open Spills, Leaks, Investigations, and Cleanup (SLIC) release case in the regulatory database.[72] The site is contaminated with halogenated volatile organic compounds (HVOCs), including PCE, in soil, soilgas, indoor air, and shallow groundwater at concentrations above their respective regulatory screening criteria at this site.[73] In addition, elevated HVOC levels have been detected in soil, soil-gas, groundwater, and indoor air samples collected from the properties located north/northeast of the Project site.[74]

The Addendum fails to analyze the Project's risk of exacerbating existing environmental conditions and bringing people to the area affected, in violation of CEQA. The Addendum must be withdrawn, and a Subsequent EIR pursuant to CEQA Guidelines Section 15162 must be prepared and circulated for public review.

> **Response A.11**: Hazards and Hazardous Materials are discussed under Section I of the Eterna Tower Mixed-Use Development Project Addendum. As described in the EIR Addendum, a Phase I Environmental Site Assessment prepared by AEI Consultants, Inc., was performed for the project that identified hazardous materials contamination at the adjoining site located at 35 and 43 East Santa Clara Street from high volatility organic compounds. Based on the analytical results obtained from this project site and other nearby properties, the adjoining open release case was identified as a potential impact.
>
> Mitigation Measure HAZ-1 requires that the project applicant retain a qualified consultant to conduct a Phase II analysis consisting of focused sampling and analysis for contamination of soil, soil vapor, and/or groundwater on-site prior to issuance of any grading, building, or demolition permits. Sampling on the site would be under the regulatory oversight from the Santa Clara County Department of Environmental Health's (SCCDEHs) Voluntary Cleanup Program, or an equivalent program by another oversight agency, to address soil and groundwater contamination discovered on the property. Based on the results, the project applicant must prepare, under the guidance of the oversight agency, a Site and Groundwater Management Plan (SGMP) or equivalent report. The SGMP or equivalent report must establish and implement remedial measures and/or soil management practices to ensure

[68] 14 CCR 15126.2(a); *Cal. Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 388.
[69] 14 CCR 15126.2(a).
[70] CalEnviroScreen 3.0 Results (June 2018 Update) Available at: https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30.
[71] *Id.*
[72] Addendum p. 124.
[73] *Id.*
[74] Addendum p. 124.

construction worker safety and the health of future workers and visitors. The comment does not present new information that has not been previously analyzed or provided substantial evidence supporting a fair argument that the project would result in significant unavoidable impacts requiring preparation of a subsequent EIR; therefore, no further analysis is required.

Comment A.12: **B. The Addendum Fails to Mitigate the Impacts of Hazardous Contamination**

"An EIR is inadequate if '[t]he success or failure of mitigation efforts ... may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.' "[75] Here, MM HAZ-1 would require additional analysis and provide mitigation measures that should have been included in an EIR. The Addendum fails as an informational document for impermissibly deferred analysis and mitigation.

Mitigation Measure HAZ-1 is inadequate because it constitutes impermissibly deferred analysis. The formulation of mitigation measures in the proposed Site and Groundwater Management Plan is deferred until some future time in violation of CEQA.[76] "Impermissible deferral of mitigation measures occur when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR."[77] Here, the Addendum states that a Phase II Environmental Site Assessment will be conducted after Project approval, at which time additional groundwater sampling and mitigation may be proposed.[78]

> MM HAZ-1 provides:
> The project applicant shall retain a qualified consultant to conduct a Phase II analysis consisting of focused sampling and analysis for contamination of soil, soil vapor, and/or groundwater on-site prior to issuance of any grading, building, or demolition permits. Sampling on the site shall be under the regulatory oversight from the Santa Clara County Department of Environmental Health's (SCCDEHs) Voluntary Cleanup Program, or an equivalent program by another oversight agency, to address soil and groundwater contamination discovered on the property. *Removal and off-site disposal of the soil at appropriate landfills during construction of the basement level will likely constitute the mitigation required; however, the oversight agency will approve the proposed mitigation, or determine if additional groundwater sampling and mitigation is necessary*. Based on the results of the contamination levels at the site, the project applicant shall prepare, under the guidance of the oversight agency, a Site and Groundwater Management Plan (SGMP) or equivalent report. The *SGMP or equivalent report must establish and implement remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors*. The results of Phase II investigation and evidence of regulatory oversight, if required, and the appropriate plan such as an SGMP or equivalent document shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee.

The CEQA Guidelines provide that "[t]he specific details of a mitigation measure…may be developed after project approval when it is impractical or infeasible to include those details during

[75] *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, quoting *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92, quoting *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 670.
[76] 14 CCR 15126.4(a)(1)(B).
[77] *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 915-916.
[78] Addendum p. 126-127.

the project's environmental review…"[79] The Addendum does not state why conducting a Phase II site assessment or preparing a SGMP or identifying necessary mitigation measures were impractical or infeasible at the time the Addendum was drafted.

In *Preserve Wild Santee v. City of Santee*, the city impermissibly deferred mitigation where the EIR did not state why specifying performance standards for mitigation measures "was impractical or infeasible at the time the EIR was certified."[80] The court determined that although the City must ultimately approve the mitigation standards, this does not cure these informational defects in the EIR.[81] Further, the court in *Endangered Habitats League, Inc. v. County of Orange*, held that mitigation that does no more than require a report to be prepared and followed, or allow approval by a county department without setting any standards is inadequate.[82] Here, the fact that the Site and Groundwater Management Plan will be approved later by the Director of Planning, Building and Code Enforcement or the Director's designee does not cure the informational defects in this Addendum.[83] The City should grant this Appeal and remand the Project to City Planning Staff to prepare a legally adequate subsequent EIR which fully analyzes and mitigates the Project's hazards and hazardous contamination impacts to satisfy CEQA.

> **Response A.12**: Conducting a Phase II assessment and testing was not feasible on the project site due to the presence of existing mid-rise development on the site. Mitigation Measure HAZ-1 identifies a course of action with performance standards based on the results on the Phase II work subject to regulatory overview. Therefore, this mitigation does not represent deferred mitigation and is sufficient to avoid impacts related to the potential presence of hazardous materials. This mitigation is enforceable, since it requires implementation of the SGMP or equivalent report and must meet applicable environmental screening levels. Compliance with regulations is appropriate mitigation when those regulations identify specific standards and criteria for minimizing environmental risk. In addition, MM HAZ-1 will be incorporated in the Mitigation Monitoring and Reporting Program for the Initial Study/Mitigated Negative Declaration EIR Addendum and project conditions of approval. Therefore, preparation of a subsequent EIR is not required.

Comment A.13: **VI. THE HOUSING ACCOUNTABILITY ACT WOULD NOT PRECLUDE ADDITIONAL CEQA REVIEW**

At the August 23, 2022 Planning Director's Hearing, a representative of YIMBY (Yes In My Backyard) Law stated that the Project is subject to the Housing Accountability Act ("HAA"), and that YIMBY Law would legally challenge any action by the City to disapprove the Project.

Upholding Silicon Valley Residents' Appeal and remanding the Project to City Staff to draft a Subsequent EIR would not be "disapproving" the Project within the meaning of the HAA.[84] Conducting additional and proper CEQA review prior to a final decision on the Project is a

[79] 14 CCR § 15126.4(a)(1)(B).
[80] *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.
[81] *Id.*
[82] *Endangered Habitats League, Inc. v. County of Orange*, (2005) 131 Cal.App.4th 777, 794.
[83] *See Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 194.
[84] Gov. Code, § 65589.5, subd. (h)(6) ("Disapprove the housing development project" includes any instance in which a local agency does either of the following: (A) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit. (B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

reasonable, and good-faith exercise of the City's discretion. As detailed below, the City would not be subject to liability under the HAA for directing Staff to prepare a Subsequent EIR.

The HAA does not relieve the City of its obligations to comply with CEQA. HAA Subdivision (e) provides that nothing "in this section be construed to relieve the local agency from making one or more of the findings required pursuant to [CEQA]."[85] The legislative report on SB 2011 states that "[t]he bill provides an exception for…CEQA." The legislature specifically carved out the CEQA to ensure that the HAA is not used to circumvent it.[86]

> As the court of appeal explained:
> "[T]he Housing Accountability Act has no provision automatically approving EIRs if local action is not completed within a specific period. It [ ] was enacted after CEQA, but there is no indication that the legislature meant to modify or accelerate CEQA's procedures. Again, the indication is to the contrary. The Housing Accountability Act expressly states that "Nothing in this section shall be construed… to relieve the local agency from making one or more of the findings required pursuant to Section 210118… or otherwise complying with the California Environmental Quality Act…" But it specifically pegs its applicability to the approval, denial or conditional approval of a "housing development project" which, as previously noted, can occur only after the EIR is certified."[87]

The HAA and subsequent caselaw upheld local agencies' duty to comply with CEQA, even if the Project is subject to the HAA. Here, the City's action to remand the Project to Staff to prepare a Subsequent EIR is required by CEQA and would not violate the HAA.

Response A.13:

The subject project was not streamlined under the Housing Accountability Act and therefore, a full CEQA analysis was prepared.

While it is true that upholding Silicon Valley Residents' appeal would not prevent the preparation of a subsequent environmental document, as discussed above, the project would not require a subsequent environmental document because the EIR Addendum is the appropriate CEQA clearance.

Comment A.14: **VII. CONCLUSION**

For the reasons stated herein, we urge the City Council to vacate the Planning Director's environmental clearance determination and approval of the Project, and to remand the Project to Staff

[85] Gov. Code, § 65589.5, subd. (e).
[86] California Renters Legal Advocacy and Education Fund et. al. v. City of Sonoma, Case No. SCV-262716, Order After Hearing, https://carlaef.org/legal-case/149-fourth-st-sonoma/documents/orderafter-hearing/ (Superior Court of California, County of Sonoma).
[87] *Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal.App.4th 1245, 1262.

to prepare a revised environmental analysis in a Subsequent EIR as required by CEQA. The new analysis must identify and implement all feasible mitigation measures available to reduce the Project's potentially significant site-specific impacts to less than significant levels before the City reconsiders approving the Project.

Thank you for your attention to these comments. Please include them in the City's record of proceedings for the Project.

> **Response A.14**: This comment indicates that the EIR Addendum is inadequate and suggests that a Subsequent EIR is required. As presented in the responses to this letter, the assumptions and conclusions made in the EIR Addendum are accurate, adequate, and supported by substantial evidence. None of the claims presented in this comment letter provide additional substantial evidence that the project would result a new significant environmental impact or a substantial increase in the severity of an environmental impact than determined in the Addendum Therefore, the City has determined that preparation of a Subsequent EIR is not warranted. This appeal letter and responses will be included in the City's record of proceedings.

RESPONSES TO LETTER A ATTACHMENT BY CLARK & ASSOCIATED ENVIRONMENTAL CONSULTING, INC.

Comment A.1-1: The City's Air Quality Analysis Fails To Consider The Impact Of Adding Additional Diesel Particulate Matter (DPM) On The Already Impacted Census Tract.

> **Response A.1-1**: The air quality assessment evaluated air quality impacts associated with the Project, including an extensive analysis of diesel particulate emissions and addressed the influence of cumulative sources of toxic air contaminants that include roadways, stationary sources, and other construction projects within 1,000 feet of the Project site. No further analysis is warranted.
>
> Note that BAAQMD uses CalEnviroScreen 4.0 to identify overburdened communities, which are those that have an overall pollution burden that exceeds the 70th percentile. This Project site has an overall pollution burden that is at the 64th percentile and is not considered by BAAQMD as an overburdened community. The description of "this already burdened community" is incorrect.

Comment A.1-2: Air Quality Mitigation Measure (MM) 1 Fails to Require the Use of Tier 4 Final Technology for Off-Road Sources of Diesel Exhaust On-Site.

> **Response A.1-2**: See Responses to A.11, A.12, and A.13 above. The use of Tier 4 equipment, either Tier 4 Final or Tier 4 Interim, is likely the easiest method to meet mitigation measure requirements. The air quality analysis reflects reality, in crafting the mitigation language, that there may be a rare circumstance that Tier 4 equipment is not available. In that case, Tier 3 equipment that are equipped with CARB Level 3 verifiable diesel emission control devices could be used. When the commenter describes the effectiveness of Tier 3 equipment, they neglect to recognize that the engines would have to be equipped with CARB Level 3 verifiable diesel emission control devices. According to the CalEEMod model, these devices reduce diesel particulate matter emissions by 85 percent. Diesel particulate matter emissions from Tier 3 engines equipped with CARB Level 3

verifiable diesel emission control devices would be similar to those associated with Tier 4 engines. Note the main difference between Tier 4 interim and Tier 4 final standards is that Tier 4 final includes the requirements for particulate matter (including diesel particulate matter) and includes controls to further reduce NOx. Mitigated emissions, based on Tier 4 interim emissions, result in cancer risk well below the threshold. Modeling based on use of Tier 4 Final or Tier 3 engines with CARB Level 3 verifiable diesel emission control devices would not substantially change this conclusion nor the significance finding. The commenter does not provide any evidence to the contrary. Therefore, no further analysis is necessary.

Comment A.1-3: The City's CalEEMod Analysis of Emissions from The Back Up Generator (BUG) On-Site Must Include the Testing and Non-Testing (Operational) Impacts of the BUG.

Response A.1-3: See Response A.14 above. Note that the commenter claims that there will be substantially more hours of generator operation than 50 hours per year, averaged over 28 years, based on the selection of certain events that occurred outside of this air basin back in 2019 when rural and suburban portions of the State were subject to PSPS events and then a separate extreme heat event that occurred in a different year of 2021. In the extreme heat event of 2021, operators were only allowed to operate their equipment, but most did not as long as there was electricity available. The backup generator's purpose is to provide electrical power in the event of a power outage and not serve as an alternative power source. Left out of the commenters discussion is the high cost of diesel fuel to operate this equipment, resulting in a much greater expense for electrical power to the site. There is no specific evidence provided that the assumptions of 50 hours per year of operation is an underestimate. Furthermore, there is no evidence provided that if the hours were greater than 50 hours that emissions would exceed thresholds as the results of emissions modeling show that total project criteria pollutant emissions are well below thresholds and the mitigated cancer risk that includes generator operation over 28 years is well below thresholds. No further analysis is necessary.