



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 28, 2022

COUNCIL DISTRICT: 3

SUBJECT: FILE NO. H20-037 - SITE DEVELOPMENT PERMIT FOR CERTAIN REAL PROPERTY LOCATED AT 35 SOUTH 2ND STREET.

RECOMMENDATION

The Planning Commission voted 6-3-1 (Barocio, Cantrell, and Ornelas-Wise opposed; Ahluwalia absent) to recommend that the City Council take the following actions:

1. Adopt a Resolution certifying the Fountain Alley Mixed Use Project Supplemental Environmental Impact Report (SCH No. 2003042127) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942), making certain findings concerning significant impacts, mitigation measures, alternatives, and adopting a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Plan, all in accordance with the California Environmental Quality Act (CEQA).
2. Adopt a Resolution approving, subject to conditions, a Site Development Permit to allow the removal of two ordinance-size trees and 10 non-ordinance-size trees, the construction of a 21-story mixed residential and commercial building with a total of approximately 721,286 square feet, including 30,790 gross square feet of commercial/retail space on the ground floor and second floor, 194 residential units, 368,093 square feet of office space, one level of below-grade loading area, and three levels of below-grade parking, and extended construction hours from 7 AM to 10 PM, Monday to Friday, and 7 AM to 7 PM on Saturdays over a period of approximately 34 months on an approximately 1.25-gross acre site.

OUTCOME

If the City Council approves all the actions listed above as recommended by the Planning Commission, the applicant will be able to remove two ordinance-size trees and 10 non-ordinance-size trees, construct a 21-story mixed residential and commercial building with a total of approximately 721,286 square feet, including 30,790 gross square feet of commercial/retail space on the ground floor and second floor, 194 residential units, 368,093 square feet of office space, one level of below-grade loading area, and three levels of below-grade parking, and have

extended construction hours from 7 AM to 10 PM, Monday to Friday, and 7 AM to 7 PM on Saturdays over a period of approximately 34 months on an approximately 1.25-gross acre site.

BACKGROUND

On November 16, 2022, the Planning Commission held a Public Hearing to consider the Final Supplemental Environmental Impact Report (SEIR) and the Site Development Permit. The Planning Commission recommended that the City Council adopt the resolution certifying the Fountain Alley Mixed Use Project Final SEIR with related Mitigation Monitoring and Reporting Plan and Statement of Overriding Considerations and approve the subject Site Development Permit.

Staff Presentation

Planning staff provided a brief presentation of the project, including an overview of the project's conformance with the General Plan, City Council Development Policies, Zoning Code, Design Guidelines, and key project design concepts. The environmental project manager briefly discussed the environmental review process and project compliance with the California Environmental Quality Act (CEQA), including the need for a Statement of Overriding Considerations for the Significant and Unavoidable Impacts to Cultural Resources and Air Quality during construction. The environmental project manager also summarized a comment letter that was received at noon on the hearing date from Adams Broadwell Joseph & Cardozo on behalf of Silicon Valley Residents for Responsible Development. The comment letter repeated the comments received during the environmental document circulation period. The comments have been addressed in the SEIR and posted on the City's website.

Applicant Presentation

The applicant's representatives, Andrew Jacobson and Jacqueline Che of Westbank provided a few examples of projects adjacent to historic buildings that they developed in Toronto and Vancouver, then introduced Thomas Christoffersen, the project architect from Bjarke Ingels Group (BIG). He briefly talked about the site setting, pedestrian level design, and how the building responds to the Bank of Italy.

After the staff presentation, Commissioner Rosario asked staff whether the allegations made in the Adams Broadwell letter had any credence and whether a Phase II Environmental Site Assessment (ESA) report should be ready at the Planning entitlement stage. Staff responded it is typical for Phase I ESA to be required prior to entitlement to provide background on the potential contaminants located on-site, whereas Phase II ESA, if required, is commonly done as a mitigation measure prior to demolition/grading permits being issued. This is because Phase II ESA requires on-site excavations and drilling to test for groundwater/soil contaminants, which may not be possible prior to entitlement because of existing active uses. The project's mitigation

of requiring a Phase II ESA prior to the issuance of grading permits is consistent with the City's mitigation approach for other projects, especially in Downtown.

Commissioner Barocio asked the applicant to show the renderings of the entire building and asked about the height compared with the Bank of Italy. The applicant stated the proposed building height would match the spire height of the Bank of Italy. Commissioner Barocio then asked why one of the project alternatives, two separate four-story buildings, was not pursued. The applicant responded that two separate buildings would result in smaller office floor plates which would not be economically feasible and required breaking up the office floor plates, those smaller floor plates are not desired in the area. The applicant also cited the nearby future BART station site as a primary driver for the mix of use and most suitable for high-intensity developments.

Public Hearing

Chair Oliverio opened the public comment portion of the agenda.

Four members of the public spoke on the project, as summarized below:

- Paul Soto, a local resident, stated he suspected that the Planning Commissioners are working on behalf of the developer and that they should be planning for the residents already here and not future residents.
- Aidan Marshall on behalf of the labor union commented that the environmental analysis and mitigation measures for the project are insufficient and requested the recirculation of the SEIR.
- Mike Sodergren, Vice President of the Preservation Action Council of San José (PAC* SJ), stated PAC* SJ supported infill development, however, the project's height and massing are incompatible with the historic buildings within the Downtown Commercial National Register Historic District. Hence the project would impact the overall integrity of the Historic District.
- Kathryn Hedges, a former tenant of the Bank of Italy building, expressed concerns about gentrification due to building improvements Downtown and stated the vegetation is the only visually appealing element of the proposed building, but that vegetation on the balconies would be a code violation.

After the public comment, the architect presented additional project design details.

Commissioner Discussion

The Planning Commission's discussion mainly focused on affordable housing and building design.

Affordable Housing:

Three Commissioners (Ornelas-Wise, Cantrell, and Lardinois) asked whether the project would include affordable units on-site or pay the affordable housing in-lieu fee. The applicant responded this is not finalized at the Planning stage and that they would meet the requirements of the Inclusionary Housing Ordinance to provide affordable units on-site or pay the in-lieu fee prior to the issuance of the Building Permit, as well as pay the Commercial Linkage Fee. The applicant also stated they are under contract to acquire a nearby site to develop a combined market rate, affordable, and supportive housing development. Commissioner Cantrell asked if the City could require the specific method of compliance with the Inclusionary Housing Ordinance to be identified at the Planning entitlement stage. Staff responded that unless the City Council votes to modify the ordinance, staff cannot require this information at the Planning stage, and the Inclusionary Housing Ordinance was adopted with the consideration of allowing developers to determine the specific method of compliance after the Planning entitlement and prior to the project construction when the specific project financing requirements and constraints are more known. Commissioner Cantrell commented that with the proposed unit mix (104 one-bedroom units, 74 two-bedroom units, and 16 three-bedroom units), the project would most likely not include affordable units for families on-site due to the very low percentage of three-bedroom units. Commissioner Cantrell commented that the project design is beautiful, however, he could not support the project without knowing whether the developer would include affordable housing on-site at the Planning entitlement stage.

Building Design:

Commissioner Ornelas-Wise commented the pedestrian level is well designed, however, she was mainly concerned about the height and massing and its incompatibility with the Downtown Commercial National Register Historic District. She said she would like to see the historic compatibility elements of the ground floor be extended to the full height of the building, and not just on the ground level.

Commissioner Lardinois asked how compliance or noncompliance with the design guidelines and standards weighed on the staff's recommendation to approve or deny a project. Staff responded that the San Jose Historic District Design Guidelines are more informative and suggestive of the design review process, as compared with the 2019 Downtown Design Guidelines and Standards which includes prescriptive standards. Although the project does not fully comply with the Historic District Design Guidelines, the project substantially complies with the Downtown Design Guidelines and Standards with three proposed exception requests. The project's ground-level design is compatible with the existing storefront pattern along South 2nd Street and Fountain Alley, and the exterior materials relate to the Historic District. The project is overall compatible with the evolving Downtown character as defined by a growing number of high-intensity developments. Staff also reviewed the project for consistency with the General Plan, Council Policies, and Zoning Code. For this project, staff determined consistency with those major General Plan land use policies outweighs the concerns about the impact to the Historic District. Therefore, staff recommends approval of this project while acknowledging the

inconsistencies with certain historic preservation policies and some Historic District Design Guidelines, and Downtown Design Guidelines and Standards. Commissioner Lardinois commented the retail, residential, and office components were well-integrated.

Commissioner Young stated he supported the project because the project is designed in response to the Bank of Italy Building with a curvilinear form, and the inverse program (office on top of residential) to open up the ground floor to pedestrians is innovative. In addition, the project meets the density goal near the future BART station. He stated in his travels he sees many interesting modern buildings that are adjacent to historic buildings.

Chair Oliverio also supported the project because it meets the density requirement Downtown, the project is unique and exceptional with its curvilinear form and strong pedestrian-oriented design. He believed the project would be a drastic improvement to the area and the approval of the project would help attract other investors to Downtown.

Other Comments:

Commissioner Ornelas-Wise asked if the project would include public art, and the applicant confirmed public art would be incorporated as part of the subsequent detailed design process. Commissioner Ornelas-Wise asked whether the project would include a playground for children or any recreation rooms or areas. The applicant responded the project would include recreation spaces on the second floor and the 11th floor and some recreation activities could also take place on the ground floor plaza. Commissioner Ornelas-Wise also asked if the project would be LEED-certified. The applicant confirmed that the building would be LEED Platinum-certified.

Vote:

Commissioner Lardinois made a motion to recommend approval of the project and Commissioner Casey seconded the motion. The motion was approved with a vote of 6-3-1 (Barocio, Cantrell, and Ornelas-Wise opposed; Ahluwalia absent).

ANALYSIS

Analysis of the proposed CEQA clearance, Site Development Permit, including conformance with the General Plan, City Council Policies, Zoning Ordinance, and Downtown Design Guidelines and Standards, is contained in the attached staff report.

EVALUATION AND FOLLOW-UP

Should the City Council adopt the resolution certifying the Final SEIR, and approve the Site Development Permit, the applicant would be allowed to remove two ordinance-size trees and 10 non-ordinance-size trees, and construct a 21-story mixed residential and commercial building with a total of approximately 721,286 square feet, including 30,790 gross square feet of commercial/retail space on the ground floor and second floor, 194 residential units, 368,093

square feet of office space, and one level of below-grade loading area and three levels of below grade parking, with extended construction hours from 7 AM to 10 PM, Monday to Friday, and 7 AM to 7 PM on Saturdays over a period of approximately 34 months on an approximately 1.25-gross acre site. The applicant could proceed with an application for Building Permits.

PUBLIC OUTREACH

Following City Council Policy 6-30, the required on-site signs describing the project have been posted on the project site since July 2021. A joint community and environmental scoping meeting was held on June 14, 2021, via Zoom webinar, to inform the surrounding community of the proposed project. Eight members of the public attended the meeting and three members of the public spoke, representing PAC*SJ. The commenters mainly expressed concerns about the project's compatibility with the small-scale historic buildings within this National Register Historic District and the overall impact to the district and stated that the SEIR must address this. 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. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

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

CLIMATE SMART SAN JOSÉ

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The project would increase the population density of the site and Downtown and provide job opportunities and would include energy-efficient design features. The project would facilitate mobility choices beyond single-occupancy, gas-powered vehicles given its adjacency to existing and future transit options.

CEQA

The City of San José, as the lead agency for the project, prepared a Draft SEIR to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation was circulated from May 24, 2021, until June 24, 2021. The Draft SEIR itself was circulated for public review and comment from June 17, 2022, through August 2, 2022.

The City received four written comment letters during the public circulation period, including two letters from Valley Water, one letter from Adams Broadwell Joseph & Cardozo, and one letter from the Preservation Action Council of San Jose. All comments have been fully

responded to in the Final SEIR. A summary of the public comments received on the SEIR is provided in the Planning Commission staff report, as well as information on responses to the comments.

The Draft SEIR and Final SEIR are available for review on the project page on the City's Active EIR website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/fountain-alley-commercial-development-project>. A copy of the signed Mitigated Monitoring Reporting Program is attached to the proposed CEQA resolution.

CONCLUSION

In summary, the project was heard at the November 16, 2022, Planning Commission Meeting. The motion to recommend Council approval of the project was approved 6-3-1 (Barocio, Cantrell, and Ornelas-Wise opposed; Ahluwalia absent). As discussed in the attached staff report, the project is consistent with the Envision San José 2040 General Plan major strategies and major land use policies, City Council Policies, Zoning Ordinance, Downtown Design Guidelines and Standards with three exception requests, and the requirements of CEQA.

Should the City Council adopt the resolution certifying the Environmental Impact Report, and approve the Site Development Permit, the applicant would be allowed to remove two ordinance-size trees and 10 non-ordinance-size trees, and construct a 21-story mixed residential and commercial building with a total of approximately 721,286 square feet, including 30,790 gross square feet of commercial/retail space on the ground floor and second floor, 194 residential units, 368,093 square feet of office space, and one level of below-grade loading area and three levels of below grade parking, with extended construction hours from 7 AM to 10 PM, Monday to Friday, and 7 AM to 7 PM on Saturdays over a period of approximately 34 months on an approximately 1.25-gross acre site. The applicant could proceed with an application for Building Permits.

/s/
CHRISTOPHER BURTON, Secretary
Planning Commission

For questions, please contact Planning Official, Robert Manford, at (408) 535-7900.

Attachments: Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION

FROM: Christopher Burton, Director

SUBJECT: File No. H20-037

DATE: November 16, 2022

COUNCIL DISTRICT: 3

| | |
|------------------------------|---|
| Type of Permit | Site Development Permit |
| Proposed Land Use | Commercial and Residential |
| New Square Footage | 721,286 |
| New Residential Units | 194 |
| Demolition | N/A |
| Tree Removals | Two ordinance-size trees and 10 non-ordinance-size trees |
| Project Planners | Angela Wang |
| CEQA Clearance | Fountain Alley Mixed Use Project Supplemental Environmental Impact Report (State Clearinghouse No. 2003042127) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942) |
| CEQA Planner | Kara Hawkins |

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council take all of the following actions:

1. Adopt a Resolution certifying the Fountain Alley Mixed Use Project Supplemental Environmental Impact Report (SCH No. 2003042127) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942), and making certain findings concerning significant impacts, mitigation measures, alternatives, Statement of Overriding Considerations, and adopting a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act (CEQA).
2. Adopt a Resolution approving, subject to conditions, a Site Development Permit, to allow the removal of two ordinance-size trees and 10 non-ordinance-size trees, and the construction of a 21-story mixed residential and commercial building with a total of approximately 721,286 square feet, including 30,790 gross square feet of commercial/retail space on the ground floor and second floor, 194 residential units, 368,093 square feet of office space, and one level of below-grade loading area and three levels of below grade parking, with extended construction hours from 7 AM to 10 PM, Monday to Friday, and 7 AM to 7 PM on Saturdays over a period of approximately 34 months on an approximately 1.25-gross acre site.

PROPERTY INFORMATION

| | |
|----------------------------|---|
| Location | South corner of Fountain Alley and South 2 nd Street (35 South 2 nd Street) |
| Assessor Parcel No. | 467-22-121 |
| General Plan | Downtown |
| Growth Area | Downtown |
| Zoning | DC Downtown Primary Commercial |
| Historic Resource | The site is within the San José Downtown Commercial National Register Historic District. |
| Annexation Date | March 27, 1850 (Original City) |
| Council District | 3 |
| Acreage | 1.25 |
| Proposed Density | 155.2 DU/AC and 12.3 FAR |

PROJECT SETTING AND BACKGROUND

As shown on the attached [Vicinity Map \(Exhibit A\)](#), the Fountain Alley Project site is located at the south corner of Fountain Alley and South 2nd Street and is currently developed as a surface parking lot. Fountain Alley is a Public Right-of-Way with brick paving only allowing pedestrian and bicycle circulation between South 1st Street and South 2nd Street. The project site is situated in the San José Downtown Commercial National Register Historic District and is within 100 feet of nine designated City Landmarks.

The site is located in a commercial area, surrounded by retail, personal service, and restaurant uses to the north across Fountain Alley, restaurants, bars and night clubs to the west and south of the site, restaurants, bars, offices, and a theatre to the east across South 2nd Street. The Bank of Italy, a City Landmark, is located approximately 75 feet westerly from the west corner of the site.

| SURROUNDING USES | | | |
|-------------------------|---------------------|---|---|
| | General Plan | Zoning District | Existing Use |
| North | Downtown | DC Downtown Primary Commercial | Retail, personal service, and restaurant uses across Fountain Alley |
| South | Downtown | DC Downtown Primary Commercial | Restaurant |
| East | Downtown | DC Downtown Primary Commercial & A(PD) Planned Development Zoning District, File No. 96-082 | Offices, bars, restaurants, and a theater across South 2 nd Street |
| West | Downtown | DC Downtown Primary Commercial | Restaurants, bars and night club |

On November 18, 2020, Project Fountain Alley LLC filed a Site Development Permit to construct a 21-story mixed-use tower with a total of approximately 721,286 square feet, including 30,790 gross square feet of commercial/retail space on the ground floor and second floor, 194 residential units, 368,093 square feet of office space, one level of below-grade loading area and three levels of below grade parking on the subject site.

As shown in [Exhibit F](#), the project plans, the proposed building would have a maximum height of 289 feet in a curvilinear form. The ground floor consists of commercial retail spaces, office and residential lobbies and back of house spaces. The 194 residential units would be located on floors 2 to 11. The remaining floors (floors 12 to 21) would consist of office space. The 2nd floor would also include approximately 17,716 square feet of gym space for both the occupants in this building and for the general public. The project features a minimum 55.4-foot-wide outdoor plaza (“urban room”) framed by the two opposite building towers, which join into a single tower over the plaza at the 11th story. The urban room provides pedestrian connectivity from South Second Street to the Fountain Alley. The building incorporates a louvered façade around all floors, terraces (“green rooms”) at the office floors and extensive roof terrace at the top of the building. Vehicular access to the site is proposed via one driveway along South 2nd Street.

The project includes extended construction hours from 7 AM to 10 PM, Monday to Friday, and 7 AM to 7 PM on Saturdays over a period of approximately 34 months. The project would also remove two ordinance-size trees and 10 non-ordinance-size trees on site.

As stated above, a Supplemental Environmental Impact Report (SEIR) to the Downtown Strategy 2040 Environmental Impact Report has been prepared for the project. The SEIR was prepared in accordance with Title 21 of the San José Municipal Code and the California Environmental Quality Act of 1970, as amended (CEQA). The SEIR identified significant and unavoidable project impacts related to:

- **Air Quality:** Even with implementation of Mitigation Measure AIR-1.1 and the identified Standard Permit Conditions, the cumulative PM_{2.5} concentration would continue to exceed the BAAQMD significance threshold 0.8 µg/m³ during construction.
- **Cultural Resources:** The proposed project would impact the overall integrity of the San Jose Downtown Commercial Historic District as it does not fully comply with the 2003 Historic District Design Guidelines (e.g., building height, corner element, massing, façades, and rear façades) and the 2019 Downtown Design Guidelines and Standards.

As analyzed in the SEIR, there are no other alternatives to reduce the impacts to cultural resources or air quality during construction that would also meet the project objectives to construct the mixed-use tower. A statement of overriding consideration is required for significant unavoidable environmental impacts to both the air quality and cultural resources. Pursuant to Section [21.07.020](#) of the San José Municipal Code, the Planning Commission is required to recommend action to the City Council on permits for projects requiring a statement of overriding consideration. Therefore, this SEIR and Site Development Permit require a recommendation by the Planning Commission to the City Council.

ANALYSIS

The proposed General Plan Amendment and Site Development Permit are analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. San José Municipal Code
3. Downtown Design Guidelines and Standards
4. Downtown Historic District Design Guidelines
5. California Environmental Quality Act (CEQA)

Envision San José 2040 General Plan Conformance

As shown in the attached General Plan map ([Exhibit B](#)), the subject site has an Envision San Jose 2040 General Plan designation of Downtown. This designation supports uses such as office, retail, service, residential, and entertainment uses. All development within this designation is intended to enhance the “complete community” in Downtown, support pedestrian and bicycle circulation, and increase transit ridership. The Downtown land use designation allows a density of up to 800 dwelling units per acre (DU/AC) and a floor-area ratio (FAR) of up to 30.0.

Analysis: The proposed 21-story mixed use building with ground floor commercial fosters a complete community in Downtown by increasing jobs and providing active ground floor commercial use along street frontages. The project also includes a Transportation Demand Management plan that promotes transit ridership and other alternative modes of transportation. Additionally, the project would have a density of 155.2 DU/AC and a FAR of 12.3, making it consistent with the General Plan land use designation of Downtown.

The project site has a Downtown Employment Priority Area (EPA) Overlay because it is adjacent to the future BART station at East Santa Clara Street. The overlay applies to Downtown sites planned for intensive job growth located within approximately one block of the planned Downtown BART station on East Santa Clara Street.

The EPA Overlay requires a minimum Floor Area Ratio (FAR) of 4.0 for commercial (job generating) uses, including office, retail, service, hotel or entertainment uses, prior to allowing residential uses, as supported by the “Downtown” General Plan Land Use/ Transportation Diagram designation.

The EPA Overlay supports development at very high intensities, where such high intensity is not incompatible with other policies within the General Plan, such as Historic Preservation policies.

Analysis: The project includes approximately 30,790 gross square feet of commercial/retail space, and approximately 368,093 square feet of office space, which would result in a FAR of 7.34 for commercial uses, consistent with the EPA Overlay density requirements.

The proposed project is also consistent with the following General Plan policies:

1. Major Strategy #3 – Focus 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.

2. Major Strategy #9 – Destination Downtown: 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 the Downtown will support the Plan’s economic, fiscal, environmental, and urban design/placemaking goals.
Analysis: As discussed above, the development of the site is consistent with the General Plan Downtown Designation and EPA Overlay, as the project would provide a high intensity mix of office, housing, and retail space to support employment and housing in the Downtown core.
3. Land Use Policy LU-1.2: Encourage Walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.
Analysis: The project’s ground floor would include commercial retail spaces and residential lobbies along the South 2nd Street frontage and commercial retail spaces along Fountain Alley. The Urban Room, which is lined by commercial retail spaces and the office lobby, provides pedestrian connectivity from South 2nd Street through the site to Fountain Alley. This Urban Room would accommodate outdoor seating, planters, decorative paving, and water features to encourage and attract pedestrian activities. The setback area to the southern property line is also lined by commercial retail spaces with outdoor seating along the front to encourage pedestrian activities.
4. Land Use Policy LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.
Analysis: The ground floor would provide commercial retail spaces, residential and office lobbies along the street frontages and the Urban Room. The ground floor facades along these active frontages are designed with high transparency to enhance safety and visibility between the public realm and private development.
5. Transportation Policy TR-4.1: Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA, BART, Caltrain, ACE and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.
Analysis: The project site is served by three frequent bus routes (Routes 23, 66, and 68) and two rapid bus routes (Routes 523 and 568). Two light rail transit (LRT) lines (Blue and Green Lines) are also provided along South 2nd Street with the Santa Clara and 2nd Street Light Rail Station locating at the project’s South 2nd Street frontage. Future BART’s Santa Clara Street Station is planned in close proximity to the project site.
The project includes a Transportation Demand Management (TDM) Plan that promotes transit ridership by incorporating at least three TDM measures. The proximity of the proposed intensive mixed-use development to a variety of public transportation options encourages transit use and provides options for residents and employees to have a car-free commute. Furthermore, it is envisioned that residents and employees in the development would be able to walk, bicycle, or use public transportation to access many dining and entertainment amenities close to or on the project site.
6. Downtown Urban Design Policy CD-6.2: Design new development with a scale, quality, and character to strengthen Downtown’s status as a major urban center.
7. Downtown Design 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.

8. Downtown Urban Design 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.

Analysis: The proposed project has a density of 155.3 DU/AC and a FAR of 12.3 with a maximum height of approximately 289 feet, making this a dense mixed-use project. The significant proposed density and size of the project, including its distinctive design would contribute to strengthening Downtown's urban character. The proposed tower has a unique curvilinear form that would contribute toward an interesting and dramatic skyline within the downtown.

The project is not fully consistent with the following Historic Preservation policies and historic preservation related Urban Design policies:

9. Land Use Policy LU-13.1: Preserve the integrity and fabric of candidate or designated Historic Districts.
10. Land Use Policy LU-13.7: Design new development, alterations, and rehabilitation/remodels within a designated or candidate Historic District to be compatible with the character of the Historic District and conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties, appropriate State of California requirements regarding historic buildings and/or structures (including the California Historic Building Code) and to applicable historic design guidelines adopted by the City Council.
11. Community Design Policy CD-1.26: Apply the Historic Preservation Goals and policies of the General Plan to proposals that modify historic resources or include development near historic resources.
12. Downtown Urban Design Policy CD-6.7: 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.

Analysis: The project site is situated in the middle of the San José Downtown Commercial National Register Historic District and within 100 feet of nine designated City Landmarks (Figure 1). This historic district contains architecturally and historically significant buildings dating from the 1870s to the early 1940s. The buildings in this district are typically in rectilinear forms and are one- to four-story high except for the Bank of Italy (268-foot high at the highest point), which is approximately 75 feet westerly to the west corner of the site, and the approved 6-story commercial building at 30 South 1st Street (File No. H19-041) to the west of the project site.

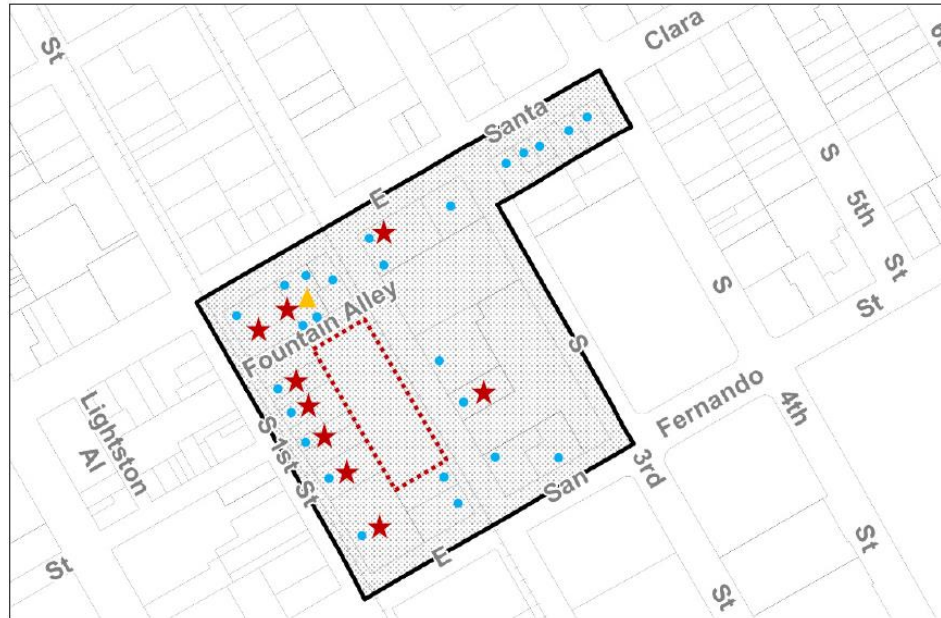


Figure 1: San José Downtown Commercial National Register Historic District.

Notes: The dashed line area is the project site. The City Landmarks are shown with red stars.

The proposed 289-foot-high building does not fully comply with the 2003 Historic District Design Guidelines in terms of building height, corner element, massing, rear facades, and facades as discussed in the Downtown Historic District Design Guidelines section. Due to the curvilinear form, the project design also does not meet the 2019 Downtown Design Guidelines and Standards-Historic Adjacency Standard 4.2.1.b, which requires to design buildings with rectilinear rather than curved and diagonal forms where rectilinear forms are typical of the Historic Context buildings, and two other design standards as discussed in the Downtown Design Guidelines and Standards section. Hence the SEIR concludes that the project would impact the overall integrity of this historic district. The project is therefore not fully consistent with the above policies.

As analyzed in the SEIR, there are no other alternatives that can reduce or avoid the impact to the historic district while meeting the project objectives. Therefore, a Statement of Overriding Consideration (SOOC) is required to approve the proposed project.

Although the SEIR concludes that the project would result in significant and unavoidable impact to the overall integrity of the historic district, the project responds to the character of the historic district by providing strong connections with streets/alleys and respecting to the landmark Bank of Italy with the curvilinear-shape design and the proposed “urban room” to avoid blocking views to Bank of Italy, as discussed in the Downtown Design Guidelines and Standards section.

Zoning Ordinance Conformance

Use

The site is zoned DC Downtown Primary Commercial ([Exhibit C](#)). Commercial and residential mixed uses are permitted under this zoning district. [Section 20.100.610](#) of the Municipal Code requires a Site Development Permit for the construction of a building or structure on any site.

Setbacks and Height:

[Section 20.70.210](#) does not establish a minimum setback for developments in the DC Downtown Primary Commercial Zoning District. The Zoning District only limits heights to that necessary to maintain the safe operation of the San José International Airport and Federal Aviation Regulations Part 77. The building would be 289 feet in height. This permit includes conditions to secure appropriate Federal Aviation Administration (FAA) and aviation clearances for the development's height.

Parking

Per Table 20-140 of Zoning Code Section [20.70.020](#), multiple dwelling residential requires one vehicle space per unit and one bicycle space per four living units. Office requires one vehicle space per 400 net square feet of floor area, and one bicycle space per 4,000 net square feet office area. No parking is required for Commercial retail uses. Three bicycle parking spaces including two short-term spaces and one long-term spaces are required per Zoning Code Section [20.70.485](#).

Based on the proposed 194 dwelling units and 368,093 gross square feet of office area (312,879 net square feet), the project requires 977 vehicle parking spaces and 131 bicycle parking spaces (49 for residential, 79 for office, and three for commercial). The project meets the bicycle parking requirement by providing a total of 478 bicycle parking spaces.

Per Zoning Code Section [20.90.220.A.1.a](#), a 20% reduction in automobile parking is allowed if the project site is within 2,000 feet of an existing light rail station. The Santa Clara/2nd Street Light Rail Station is immediately adjacent to the project's South 2nd Street frontage. A parking reduction of up to 50% may be authorized if the project implements at least three transportation demand management (TDM) measures as specified in Section [20.90.220.A.1](#). Additionally, per Section [20.70.330.A](#), for projects within the Downtown Zoning District, a further 15% parking reduction and an additional 50% reduction may be granted for mixed use projects if 1) it is determined a TDM plan program would reduce parking demand and identifies the percentage of parking demand that would be reduced through the program; and 2) the TDM would be maintained for the life of the project and it is reasonably certain the parking provided would be maintained to meet the required parking during the life of the building or use.

If applying the maximum parking reduction, the project would require 208 parking spaces. The proposed project provides 294 vehicle parking spaces. A 70% parking reduction is requested. The project would be implementing a TDM plan. The proposed TDM plan dated November 2022 prepared by Fehr & Peers conforms with Section [20.90.220](#) and Section [20.70.330](#). This TDM plan provides evidence that the TDM program would reduce parking demand and identifies the percentage of parking demand that would be reduced through the TDM plan. The proposed TDM measures include providing transit subsidies and/or transit passes to all residents and employees who desire to commute by transit, establishing a telecommute or flexible work schedule to encourage alternative transportation, designating an on-site TDM manager and providing TDM information and program management, and providing a guaranteed ride home program. In addition, the draft permit contains a condition (Condition No. 6) that requires the TDM plan to be implemented for the life and use of the building. Project Condition No. 7 also requires Planning review if

any future parking reduction is proposed. Therefore, with these project conditions, the project meets the parking requirement.

Off-Street Loading:

Per Zoning Code [Section 20.70.435](#), a total of 6 loading spaces (one for residential, two for retail, and three for office) are required. The project would provide seven loading spaces. The project meets the off-street loading requirement.

Extended Construction Hours:

Per Zoning Code [Section 20.100.450](#), hours of construction within 500 feet of a residential unit is limited to Monday through Friday between 7:00 a.m. and 7:00 p.m., unless otherwise allowed in a development permit. The project site is within 500 feet of residential use. This development permit would allow extended construction hours from 7 a.m. to 10 p.m., Monday to Friday, and 7 a.m. to 7 p.m. on Saturdays through the entire construction period of approximately 34 months. The construction-related standard conditions included in the draft Resolution (Exhibit E) and mitigation measures included in the MMRP (Exhibit H) would apply to the project to limit noise and dust to reduce the construction impact to the nearby residential use, and the extended construction hours would have the beneficial effect of shortening the overall construction period, thereby reducing the duration of construction impacts. The mitigation measures include submitting a construction operations plan providing specifications of the equipment to be used during construction, having a qualified air quality specialist verify that the equipment included in the plan meets the standards specified in the MMRP, developing an odor control plan that addresses operating and maintenance procedures to minimize construction equipment emissions. The contact information of the construction disturbance coordinator is required to be posted at the construction site (Condition No. 13). Details are included in the MMRP and the draft Resolution.

Development Adjacent to Historic Landmarks.

[Section 20.70.110](#) of the San José Municipal Code requires new structures, exceeding 150 feet in height, with a Floor Area Ratio of 6:1 or greater, and within 100 feet of a City Landmark to be reviewed by the Historic Landmarks Commission (HLC) prior to consideration of approval of a development permit for new construction.

The proposed project has a FAR of 12.3 with a height of 289 feet and the site is located within 100 feet of nine City Landmarks. Therefore, Section 20.70.110 applies to the project. The project was discussed at the Design Review Committee (DRC) of the HLC on December 16, 2020 and at HLC on February 3rd, 2021.

Both the DRC and HLC commented that the street level and the storefront design were successful, the articulation of the retail spaces was well considered, and the exterior materials of the building related to the historic district. However, they were mainly concerned about the massing and scale of the building, the distinctive building form and its impact to the historic district. Specifically, they commented that the project was different from the historic context due to the curvilinear form, the louvres on the building, and the vegetated façades. They suggested stepping back some of the upper levels to provide relief from the massing at the top of the building and the building massing and scale should relate more to the historic context.

Downtown Design Guidelines and Standards

[Section 20.70.500](#) of the San José Municipal Code requires any project in the DC Downtown Primary Commercial Zoning District be subject to the design guidelines adopted by the City Council; therefore, this project has been reviewed and found consistent with the [Downtown Design Guidelines and Standards](#), with the exception of three standards for which exceptions have been requested as allowed, and, therefore, analyzed below:

The project site is directly adjacent to and behind the landmark Bank of Italy, which is identified as one of the City's civic icons in the design guidelines and is within an historic district characterized by small scale historic buildings. The project design was considered in relation to the Bank of Italy. To avoid blocking views of the Bank of Italy, the project is designed in a curvilinear form, and an "urban room" will be created. The design of the building would enhance the view to Bank of Italy through the "urban room" (Figure 2) and by rounding the corners of the building to reveal the Bank of Italy building as one moves past the proposed project. However, the curvilinear-shape design does not meet Standard 4.2.4.b which requires buildings to be designed with rectilinear rather than curved and diagonal forms where rectilinear forms are typical of the historic context buildings. Therefore, an exception to this standard is requested.



Figure 2: View from "Urban Room"

Because the ground floor plan curves away from the South 2nd Street and Fountain Alley property lines, the project also does not meet Standard 3.2.2 which requires to place a ground-level building façade along 70% of each parcel's Public-Space-Facing property lines within 10 feet. Therefore, an exception to this standard is required.

The discussion of the exception request is included after the analysis of consistency with the design guidelines and standards.

Another key concept of the project design is to locate the office space on top of residential areas in a less conventional way. The purpose of the inverse program is to bring a more appropriate scale and details to the ground to reduce the massing impact to the pedestrian level.

The project is consistent with the following building design standards relating to historic context except Standards 4.2.2.a and 4.2.4.b:

1. **Chapter 4.2.2, Massing Relationship to Context.** This chapter's sections and standards require transitions between high-rises and lower scale development, and consideration of how development would respond to historic context buildings.
 - a) **Standard 4.2.2.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 street-facing façade 5 feet minimum from the front parcel or setback line at an elevation between 25 and 50 feet.

Analysis: The project site is surrounded by historic buildings which are less than 45 feet in height. Consistent with the adjacent buildings, the proposed ground floors are placed at the property line along South 2nd Street. The upper floor walls are setback approximately 4.5 feet from the South 2nd Street property line to accommodate balconies. Although the project meets the intent by stepping the upper floor walls from the ground floor plane, the project design does not technically meet this Standard which requires a 5-foot setback. Therefore, an exception is required.
 - b) **Standard 4.2.2.b, Width Transition:** The historic building to the south of the project site (83 South 2nd Street) is built to the property line. *Therefore, this Standard does not apply to this project.*
 - c) **Standard 4.2.2.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 45 feet tall or less, the rear portion of 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 has a rear setback of 20.5 feet; therefore, the project meets this standard.
2. **Chapter 4.2.4 History Adjacency.** This Standard requires incorporation of essential urban and architectural characteristics of historic context.

This historic district features two-to-three story historic buildings (except Bank of Italy which is 268 feet high at the highest point) with large openings (storefront) on the ground floor and repetitive rectangular or arched punched windows on the upper floors. And the essential urban characteristic of the historic district is the connection with streets, paseos, alleyways, passages, courtyards and plazas.

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 buildings.

Analysis: The proposed project has an 18.7-foot-high podium that relates to the scale of the historic context buildings on the South 2nd Street and Fountain Alley. The "urban room" breaks up the massing into two approximately 140- and 200-foot-wide segments (respectively 70- and 100-foot-wide at the property line), which are similar to masses of the wider historic context buildings such as Bank of Italy at the west corner of the historic district and Security Building (84 S 1st Street) at the south corner of the historic district. Therefore, the project complies with this standard.
- b) Design buildings with rectilinear rather than curved and diagonal forms where rectilinear forms are typical of the Historic Context buildings.

Analysis: The project has a curvilinear building form while the typical building form in this district is rectilinear. The project does not meet this Standard. An exception is requested.

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

Analysis: The project does not have a typical cornice articulation but provides a podium level with height of approximately 18.7 feet, which is comparable to the cornice heights of the Historic Context buildings along South 2nd Street. The upper floor horizontal louvers are also aligned with the adjacent building heights. Therefore, the project complies with this standard.

- 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 building on the same side of the project is located to the south of the project site and was built to the property line. The project is setback approximately 18 feet from the southern property line at the pedestrian level. This is to accommodate an emergency access easement to allow Fire truck to access the site and backout. The proposed building is placed at the property line and provides two streetwalls due to the "urban room". The project generally complies with this Standard.

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).
- f) Do not simulate historic architecture to achieve these guidelines and standards. Do not design new facades to create a false historic appearance or copy historic architectural features unless such features are integral to the design of the new construction.
- g) Place windows on facades visible from the windows of the adjacent Historic Context structure even if this requires that the facade be set back from the property line.

Analysis: The widths of the Historic Context buildings facing S. 2nd Street range from approximately 60 feet to 120 feet. At the first 10 levels, the S. 2nd Street (east) façade of the building is divided into two sections by the "urban room." The northern section is approximately 70 feet at the South 2nd Street property line and the southern section is approximately 100 feet at the South 2nd Street property line. This 70- and 100-foot divisions at the new building's east façade would be comparable to the overall widths of the Historic Context buildings. In addition, the project incorporates vertical elements to further break the facade such as vertical plasters with smaller segments at the pedestrian level, vertical spandrels at Levels 2 to 11, stacked planters to emphasize the vertical from Levels 2 to 6. Therefore, project complies with e).

The proposed building is contemporary in design and does not simulate historic architecture. Project complies with f). The proposed building includes storefronts and windows on all exterior walls which are visible from the windows of adjacent Historic Context buildings. Project complies with g).

Elements:

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

Analysis: The Historic Context buildings exhibit a diverse collection of building materials including stucco, masonry, metals and ironwork, glass, and wood. The proposed building primarily uses curtain wall glazing system with terracotta louvers, aluminum fascia panels, and brick. These new materials appear to be compatible with the historic materials in scale, proportion, design, finish, texture, and durability. The project is consistent with Standards h) and i).

Ground Floor:

- j) Space pedestrian entries at similar distances to Historic Context building entries.
- k) Create a ground floor with a similar floor to ceiling height as nearby Historic Context buildings, provided the ground floor finish ceiling is no lower than the minimum height identified in this document.

Analysis: The Historic Context buildings along S. 2nd Street, S. 1st Street, and Fountain Alley often have multiple pedestrian entries located with some of the closest within 20' to 30' of each other. The proposed building has multiple pedestrian entries spaced at similar distances as the Historic Context building entries on each façade. Project complies with j). The nearby Historic Context buildings have tall ground floors to accommodate commercial spaces. At 18'-8", the proposed podium level of the new building is similar in height to the Historic Context buildings. Project complies with k).

The Downtown Design Guidelines include an exception process for design standards which cannot be met. The process identifies specific findings in Section 1.4 of the San José Downtown Design Guidelines (as amended on October 4, 2022) that are required to be made by decision makers in order to grant the requested design standard exceptions. These findings include:

- a) There is a physical constraint or unique situation that:
 - 1) Is not created by the project applicant or property owner; and
 - 2) Is not caused by financial or economic constraints considerations.
- b) Approving the exception will not create a safety hazard or impair the integrity and character of the neighborhood in which the subject property is located.
- c) The proposed project meets the intent of the design standard to the extent physically feasible.

If any of above findings cannot be made, the decision-maker may still grant the exception if all the following findings are made:

- d) The project advances the Major Strategies of Chapter 1 of the General Plan;
- e) The project is consistent with the Values and Guiding Principles of Chapter 1.3 of the Design Guidelines;
- f) The project achieves the stated Rationale of the section of the Design Guidelines as set forth for each applicable Standard; and
- g) There are counterbalancing considerations that justify the inconsistency.

The exceptions from the following Design Standards have been requested:

1. Chapter 4.2.4 History Adjacency, Standard b: Design buildings with rectilinear rather than curved and diagonal forms where rectilinear forms are typical of the Historic Context buildings.

The typical forms of the buildings within this historic district are rectilinear. The proposed building is in curvilinear forms. The project does not meet this Standard.

2. Chapter 3.2.2. Building Placement: Place a ground level building facade along 70% of each parcel's Public-Space-facing property lines (within 10 feet) or setback lines (within 3 feet).

This Standard applies to the ground level facades along both South 2nd Street and Fountain Alley. The DC zoning district does not require setbacks. Due to the curved footprint, approximately 50% of the ground level façade facing Fountain Alley is within 10 feet from the property line. The project does not meet this standard along Fountain Alley.

The project also does not meet this Standard along South 2nd Street. Approximately 52% of the ground level façade facing South 2nd Street is within 10 feet from the property line due to the curved footprint, proposed urban room, the requirement to access the underground parking garage from South 2nd Street, and the required emergency access easement along the southern property line.

3. Standard 4.2.2.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 street-facing façade 5 feet minimum from the front parcel or setback line at an elevation between 25 and 50 feet.

As discussed above, the proposed upper floor facades stepback 4.5 feet from the ground floor plane. Therefore, the project design does not technically meet this Standard which requires a 5-foot stepback.

Analysis: *This curvilinear-form design, the proposed urban room, and the upper floor stepback distance are design choices made by the project applicant/architect and not due to a physical constraint or a unique situation. Therefore, finding a) listed above cannot be made. Because finding a) cannot be made, findings d) to g) must be made in order to grant the exception request.*

As analyzed in the General Plan conformance section, the project is consistent with the Major Strategies #3 and #9 of Chapter 1 of the General Plan in that the project is a high intensity mixed residential and commercial development in Downtown. Therefore, finding d) can be made.

The value and guiding principles of the [Downtown Design Guidelines and Standards](#) are to enhance the local, City and regional economy, promote human and environmental health, and accentuate area's unique character and culture.

The project is a mixed-use tower with 194 dwelling units, approximately 368,093 square feet of office space and 30,790 square feet of commercial retail space. The project includes an Urban Room to allow pedestrian connectivity, including outdoor seating areas and water features; and commercial retail space on the ground floor with brick paving on the entire site to encourage and attract pedestrian activities to the site. Therefore, the project would enhance the local and City economy.

The building design includes exterior materials that relate to the historic district. The project would promote multimodal connectivity by encouraging residents and employees to use bicycles and public transit through the TDM program (Condition No.6), and enhancing pedestrian circulation as described above. Therefore, the project would promote human and environmental health.

Downtown San Jose has a collection of many modern and historic architectural designs and areas. The proposed project, although located in a historic district, provides a unique jurisdiction in terms of shape, the vegetated facades, the Urban Room, and curvilinear curtain wall to help create a memorable destination in Downtown, strengthen Downtown as an urban core of the City, further the General Plan goals of elevating the diversity of design, and accentuate the area's unique character and culture.

Based on the above analysis, the project is consistent with the value and guiding principles of the design guidelines. Therefore, Finding e) can be made.

The Rationale of Chapter 4.2.4 is to incorporate essential urban and architectural characteristics of historic context. The district features two-to-three story historic buildings (except Bank of Italy and the approved 6-story building at 30 S 1st Street to the west of the project site) with large openings (storefront) on the ground floor and repetitive rectangular or arched punched windows on the upper floors. And the essential urban characteristic of the historic district is the connection with streets, paseos, alleyways, passages, courtyards and plazas. The project continues the storefront along South 2nd Street and Fountain Alley on the ground floor, creates a plaza (Urban Room) to enhance the pedestrian connectivity, and uses materials to relate to the historic district. The project generally achieves this stated Rationale of Chapter 4.2.4 of the Design Guidelines.

The Rationale for Chapter 3.2.2 is to line the edges of blocks with buildings to frame the surrounding public space. Given its unique shape, the building would enhance the public space providing it with an opportunity for the public to use for wayfinding and gathering. With active uses lining along the public space along both South 2nd Street and Fountain Alley, the project achieves this Rationale of Chapter 3.2.2 of the Design Guidelines.

The Rationale for Chapter 4.2.2 is to create massing transition between high-rises and low-rise developments. As discussed above, to reduce the massing impact to the low-rise developments in this historic district, the project incorporates an inverse program to place office space on top of residential area to bring more detail and smaller-scale elements to the podium and pedestrian levels. In addition, the upper floor walls stepback from the ground facades 4.5 feet, which is only six inches less than the 5-foot stepback standard. The project also meets the Rear Transition Standard 4.2.2.c as discussed above. The project achieves this Rationale for Chapter 4.2.2 of the Design Guidelines.

Therefore, Finding f) can be made.

Given the project's bold scale and design, the project is able to capitalize on location and provide a juxtaposition to the surrounding areas, presenting an innovative architectural design that would diversify the skyline in Downtown San Jose. The project also provides job and housing opportunities to strengthen Downtown as an urban center and enhance the economy, finding g) can be made.

Therefore, staff recommends the exceptions to Standards 4.2.4.b, 3.2.2 and 4.2.2.a be granted.

Downtown San Jose Historic District Design Guidelines

The project site is within the San José Downtown Commercial National Register Historic District; therefore, the project was also reviewed under the [San José Historic District Design Guidelines](#) (2003), which sets forth design goals, principles and guidelines that are instructive and suggestive rather than prescriptive and preemptive. These Guidelines are intended to offer guidance and direction to the development review process. The Guidelines speak to building height, setbacks, design of a corner element, massing, façades, exterior materials, openings and entries, storefront ground floor design, pedestrian passageways, vehicular access, and parking for infill construction.

The project does not fully comply with the design guidelines. Specifically, the project does not comply with the following guidelines:

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

The proposed building has frontage along Fountain Alley and is 289 feet in height.

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

The project does not provide such corner element at the south corner of South 2nd Street and Fountain Alley.

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

The surrounding buildings in this district are typically in rectangular shape. The proposed building mass is curvilinear in shape at the north and south ends. The building massing does not break to smaller segments that are compatible with the surrounding structures on the upper levels.

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

Many of the existing adjacent rear façades have secondary entrances on the ground floor and rhythmically placed rectangular or arched punched openings on the upper floors. Absent of ornament, the walls are exposed brick or stucco clad. Some have attached metal stairways. The rear (west) façade of the proposed building has glazed storefronts on the street level with multiple entries, and a wall glazing system on the upper floors. The building features a louvered façade wrapping around all sides forming a band of balconies at the residential floors and "green rooms" at the office floors. As proposed, the new building's rear façade is not compatible with the existing adjacent rear façades; therefore, the project does not comply with this guideline.

The project partially complies with the façades guidelines which recommend spacing, sizing and rhythm of openings and fenestration to be compatible with neighboring structure, no blank facades front onto streets, alleyways, courtyards, light courts or facades of neighboring structures with openings, and all facades to include a base or bulkhead element. The project design incorporates transparent ground floor façade with vertical pilasters and smaller segments, which is compatible with the storefront appearance of South 2nd Street and Fountain Alley. Therefore, the ground floor façade complies with this guideline. However, the upper floor facades are not compatible with the neighboring structures which have repetitive rectangular or arched punched windows on the upper floors.

The project complies with the rest of the guidelines. With the strong pedestrian-oriented design, the project is also consistent with the ground floors design guidelines. The project incorporates recessed entries, and the ground floor storefronts have brick bulkheads, which meet the openings and entries design guidelines. With the terracotta louvers, brick base and brick paving, the project also meets the exterior materials guidelines. The proposed building is placed at the property lines along South 2nd Street and Fountain Alley. Setbacks are proposed to the southern and western property lines due to the requirement

for emergency access along the southern property line and the existing pedestrian access easement and building separation requirements along the western property line. The project therefore generally meets the intent of the setback and setback guideline which suggests no setback and no setbacks. The project also meets the pedestrian passageway guideline by providing an Urban Room on the ground level to provide pedestrian connectivity. The project includes one driveway from South 2nd Street for vehicular access to the underground parking garage and no surface parking lot will be provided. The project therefore complies with the vehicular access and parking guidelines.

Site Development Permit Findings

To make the Site Development Permit findings pursuant to San José Municipal Code [Section 20.100.630](#), and recommend approval to the City Council, the Planning Commission must determine that:

1. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan, applicable specific plans and area development policies; and

Analysis: As discussed above, the proposed project is consistent with the proposed General Plan Land Use/Transportation Diagram designation of Downtown, as the Downtown land use designation supports a mix of commercial and residential uses at high densities. The project is in conformance with the allowable FAR and density for a project with a designation of Downtown Employment Priority Area. The combined, mixed use FAR would be approximately 12.3 (a maximum of 30 is allowed). The proposed residential density would be approximately 155.2 DU/AC within the allowed maximum of 800 DU/AC. The proposed commercial use FAR would be 7.34, which exceeds the 4.0 FAR requirement for EPA Overlay area. Although the project is not fully consistent with certain historic general plan policies and guidelines as discussed above, the project is consistent with General Plan Major Strategies and major land use goal and policies as it relates to the goals of the overall Downtown area, densifications, jobs and incorporating a structure that will provide a dramatic urban skyline.

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; and

Analysis: As discussed above, the proposed project is consistent with the height, setbacks, and parking requirements of the DC Downtown Primary Commercial Zoning District. The DC Zoning District does not require any minimum setbacks. The project is subject only to the height limit necessary for the safe operation of the San Jose International Airport; and conditions of approval are included requiring a No Hazard Determination to be obtained from the FAA prior to issuance of Building Permits. The project requires 131 bicycle parking spaces, and the project proposes 478 bicycle parking spaces. With maximum parking reduction by implementing a TDM plan, the project would require 208 parking spaces. The project would provide 294 parking spaces by implementing the TDM measures included in the TDM plan dated November 2022 prepared by Fehr & Peers. The project applicant is required to implement the TDM plan for the life and use of the building.

3. The Site Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: Staff followed [Council Policy 6-30: Public Outreach Policy](#) in order to inform the public of the proposed project. Signs describing the project have been posted on the project site since July 2021. A joint community and environmental scoping meeting was held on June 14, 2021 to inform the surrounding community of the proposed project. Both the community meeting notice and notice of the 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. Following the [City Council Policy on the Preservation of Historic Landmarks](#), the project was discussed at the HLC Design Review Committee in December 2020, and discussed at the HLC under “Early Referral” on February 3, 2021, due to the site being in a historic district and in close proximity to nine City Landmarks as discussed previously.

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.

Analysis: The proposed project does not contain multiple buildings or structures, but rather contains one single mixed-use tower with commercial retail uses and residential and office lobbies on the ground floor, gym space on Level 2, residential use from Levels two to 11, office use from Levels 12 to 21, and amenity space for office on the roof top. The loading area is located in the underground parking garage. These uses are compatible and well integrated with each other.

5. The orientation, location, and elevations 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 proposed ground floor would be strongly pedestrian-oriented. The project design incorporates transparent ground floor façade with vertical pilasters and smaller segments, which is compatible with the storefront appearance of South 2nd Street and Fountain Alley. The proposed terracotta louvers align with the cornice lines and building heights of the adjacent buildings. The brick cladding and paving are also compatible with the buildings/sites in this area.

Although the SEIR concludes that the project would have a significant and unavoidable impact to the historic district mainly due to its height and massing, the project is compatible with the overall downtown character as defined by a growing number of high intensity developments. In addition to the existing and newly constructed high-rise buildings, multiple high-rise developments with several different architectural elements, scales, materials and context are either under construction, being proposed or have been approved within the Downtown area. As more new modern buildings are constructed adjacent to older and historic structures, the overall urban character has evolved and shifted to reflect the juxtaposition of these dense, taller, pedestrian focused and urban structure with historic resources. This proposed project is further contributing to the overall unique skyline of Downtown San Jose.

6. 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 effect on adjacent property or properties.

Analysis: The project is located within an urbanized area. The project would be required to adhere to standard building and grading permit conditions as well as air and water quality conditions of approval and mitigation measures during the construction phase, which would minimize related impacts during this project phase. The operation of the project is primarily commercial and residential and therefore would not be a generating source for excessive noise or odor. The project has been evaluated for compliance with the City’s stormwater treatment requirements. The project would therefore not result in unacceptable negative effect on adjacent 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.

Analysis: The proposed building would conceal the plumbing, utility, and trash facilities within the proposed building as shown on the project plans (Exhibit F). The loading area would be located on the 1st Level of the underground parking garage. All mechanical equipment is screened on the roof and not visible from the street or surrounding buildings.

8. Traffic access, pedestrian access and parking are adequate.

Analysis: As described above, the project contains parking consistent with the Zoning Ordinance with TDM measures, and has adequate pedestrian, bicycle, and vehicular access into the site. Pedestrians can easily access the building from the lobbies or commercial retail spaces along street frontages, Urban Room, and the outdoor activity areas. The project was reviewed by the Department of Public Works, Department of Transportation and Fire Department and was found to be consistent with regulations and standards for vehicle, emergency vehicle, and pedestrian access.

Tree Removal Permit Findings

Chapter [13.32.100](#) of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees.

1. That the trees affected are of a size, type and condition, and is in such a location in such surroundings, that their removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
2. That the location of the trees with respect to proposed improvements unreasonably restricts the economic development of the parcel in question;
3. That the condition of the trees with respect to disease, danger of falling, proximity to an existing or proposed structures, and/or interference with utility services, is such that preservation of the public health or safety requires their removal.

Analysis: Two ordinance-size non-native trees (one Chinese Elm and one Bush Cherry), 10 non-ordinance-size Chinese Elm trees would be removed due to the requirement to fully excavate the site to construct the building foundation and below-grade parking and loading. These trees are in the middle of the project site. Preserving those trees would restrict the economic development of the site. Among the 10 non-ordinance-size trees, two trees are less than 19 inches in circumference and 8 trees have sizes ranging from 21 to 35 inches in circumference.

Per the tree replacement table below, 26 (4 x 2+ 2 x 8 + 1 x 2) 15-gallon replacement trees are required for the removal of these 12 trees. A 24-inch box tree can be used in lieu of two 15-gallon trees. The project would plant at least 14 24-inch box trees on site (equal to 32 15-gallon trees), which exceeds the tree replacement requirements.

| Tree Replacement Ratios | | | | |
|-------------------------------------|----------------------------|------------|---------|---------------------------------------|
| Circumference of Tree to be Removed | Type of Tree to be Removed | | | Minimum Size of Each Replacement Tree |
| | Native | Non-Native | Orchard | |
| 38 inches or more | 5:1 | 4:1 | 3:1 | 15-gallon |
| 19 up to 38 inches | 3:1 | 2:1 | none | 15-gallon |
| Less than 19 inches | 1:1 | 1:1 | none | 15-gallon |

X:X = tree replacement to tree loss ratio
A 38-inch circumference equals 12.1 inches in diameter
A 24-inch box tree can be used in lieu of two 15-gallon trees

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation (NOP) was circulated from May 24th, 2021 until June 24th, 2021. The Draft SEIR itself was circulated for public review and comment from June 17th, 2022 through August 2nd, 2022.

The City received four written comment letters during the public circulation period. The only agency to comment was the Santa Clara Valley Water District (Valley Water), who submitted two comment letters. Valley Water requested to review the Project’s Water Supply Assessment and recommended that a detailed dewatering analysis be conducted for the project to avoid the need for permanent dewatering. Valley Water also recommended that the City require the applicant to implement all available water and energy conservation measures. Two organizations also commented during the public circulation period, which were Adams Broadwell Joseph & Cardozo and the Preservation Action Council of San Jose (PAC SJ). Adams Broadwell Joseph & Cardozo discussed their concerns over the City’s findings regarding hazards and hazardous materials, air quality, and greenhouse gas emissions. PAC SJ voiced overall opposition to the project, primarily because of the project’s impact on the integrity of the historic district. PAC SJ also requested that the City include a more design oriented EIR alternative to address impacts to the historic district and recommended that the City require financial mitigation be paid from the applicant to go towards funding preservation projects within the historic district.

None of the comments received address an issue of sufficiency of the SEIR and no new mitigation measures are required. SEIR text revisions were included in the First Amendment to address edits to air quality mitigation measures and CAL Green requirements.

Additionally, the City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The First Amendment, taken together with the Draft SEIR, and the Mitigation Monitoring and Reporting Program (MMRP) constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR are available for review on the project page on the City’s Active EIR website at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/fountain-alley-commercial-development-project>. A copy of the signed MMRP is attached to the proposed CEQA resolution (Exhibit H).

Identified Significant and Unavoidable Impacts

The Draft SEIR found that the project would result in a significant and unavoidable impacts to Cultural Resources from impacts to the integrity of the San Jose Downtown Commercial Historic District. Due to the height, massing, and design of the proposed project, there are no suggested feasible mitigation measures to reduce the impacts. Therefore, a Statement of Overriding Considerations is required.

Project Alternatives

The Draft SEIR analyzed four project alternatives for the purpose of identifying an environmentally superior proposal. The four alternatives analyzed were a Location Alternative, No Project Alternative, Reduced Height (Four Stories) Alternative, and a Reduced Height (17 Stories and 20 Stories) Alternative.

Environmental Impacts and Mitigation Measures

The Draft SEIR identified potential environmental impacts to air quality, biological resources, cultural resources, hazardous materials, and noise. With implementation of the mitigation measures specified in the MMRP prepared for the project, these impacts are reduced to less than significant levels. The impact to the integrity of the historic district is the only impact unable to be mitigated to less than significant levels. As part of the certification of the Final SEIR, the City Council will need to approve a related MMRP for the project.

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft SEIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to a Draft EIR is not "significant" unless the Draft EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information has been added to the SEIR since publication of the Draft SEIR; therefore, the Draft SEIR does not need to be recirculated.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the proposed project. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Two development signs describing the project have been posted on site since July 2021. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

A formally noticed Community Meeting with the Environmental Scoping was held on June 14, 2021 to introduce the proposed project to the community. Eight members of the public attended the meeting and three members of the public spoke, representing PAC-SJ. The commenters mainly expressed the concerns of the project's compatibility with the small-scale historic buildings within this National Register District and the overall impact to this historic district and stated that the SEIR must address this.

The impacts to the historic buildings and the historic district have been analyzed in the SEIR. As discussed above, the SEIR concludes that the project would result in significant and unavoidable impact to the historic district.

Project Manager: Angela Wang

Approved by: /s/ , Robert Manford, Deputy Director for Christopher Burton, Planning Director

| ATTACHMENTS: | |
|---------------------|--|
| Exhibit A: | Vicinity Map, Aerial |
| Exhibit B: | Existing General Plan Land Use Designation |
| Exhibit C: | Zoning District |
| Exhibit D: | Draft EIR Resolution |
| Exhibit E: | Draft Site Development Permit Resolution |
| Exhibit F: | Site Development Permit Plan Set |
| Exhibit G: | TDM Plan |
| Exhibit H: | Signed MMRP |

| Applicant/Owner: |
|--|
| Project Fountain Alley LLC. 2107 Elliott Avenue, Suite 303 Seattle, Washington 98121 |

Exhibit A: Vicinity Map, Aerial

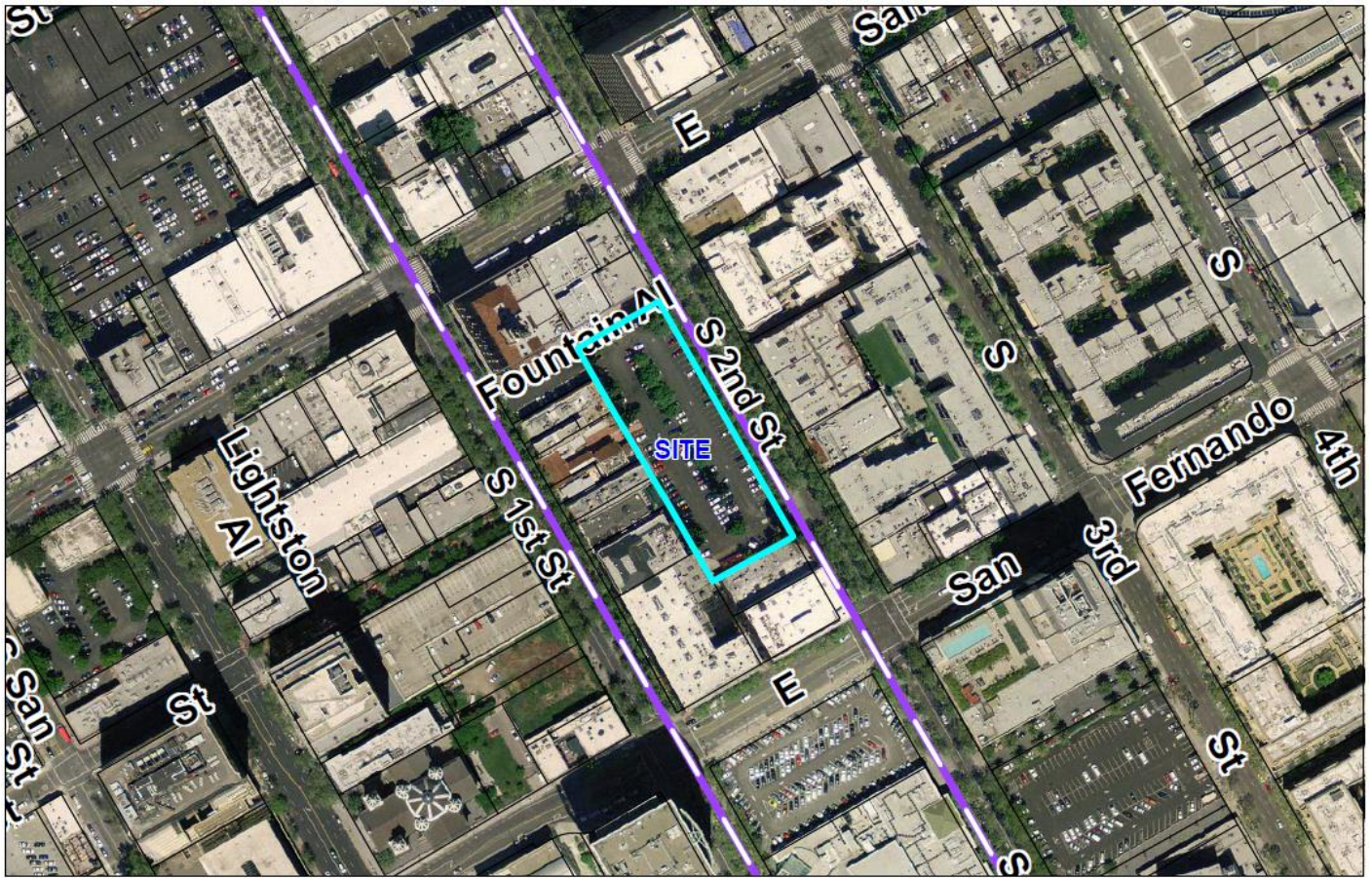


Exhibit B: General Plan Land Use Designation

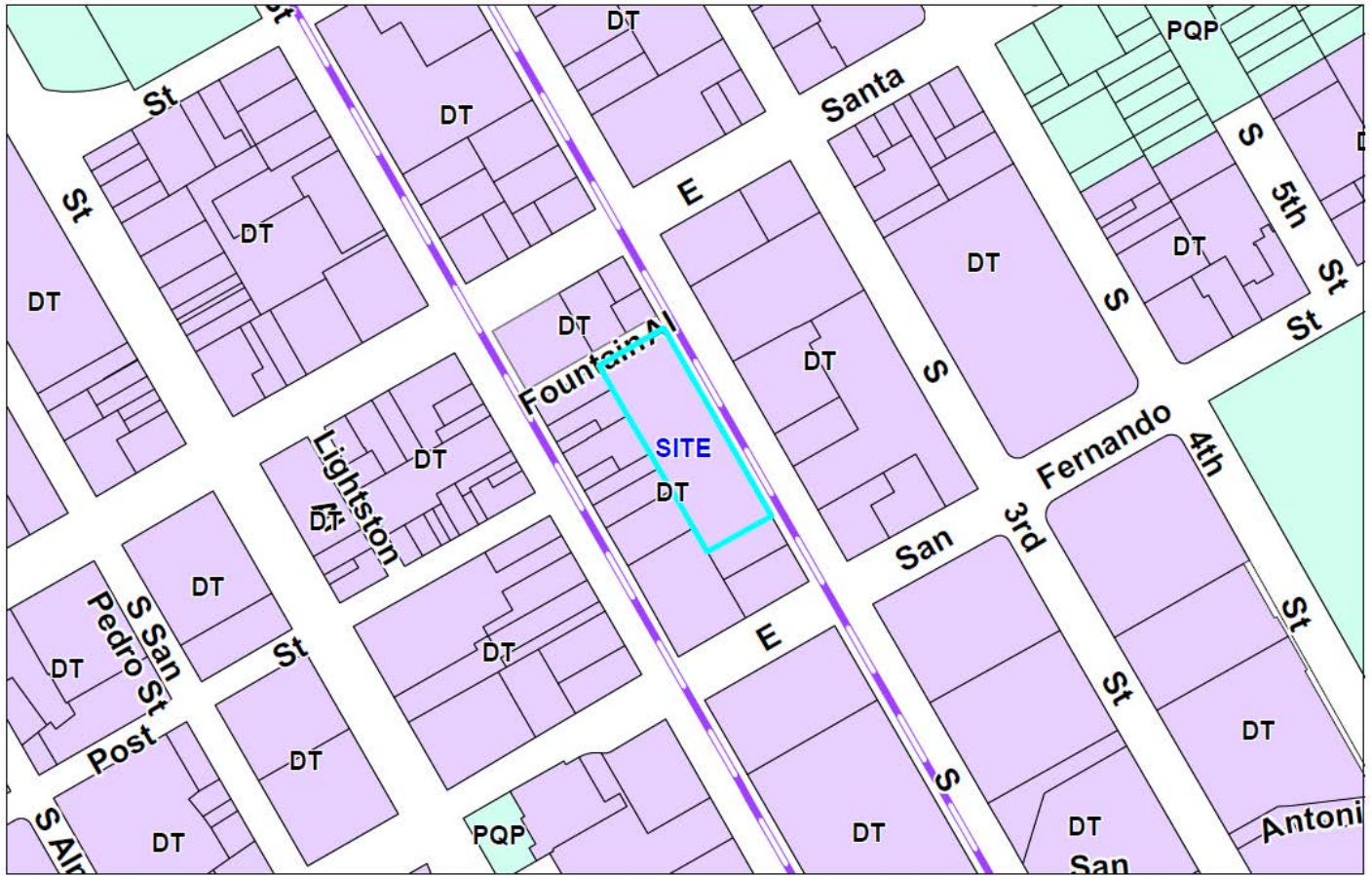
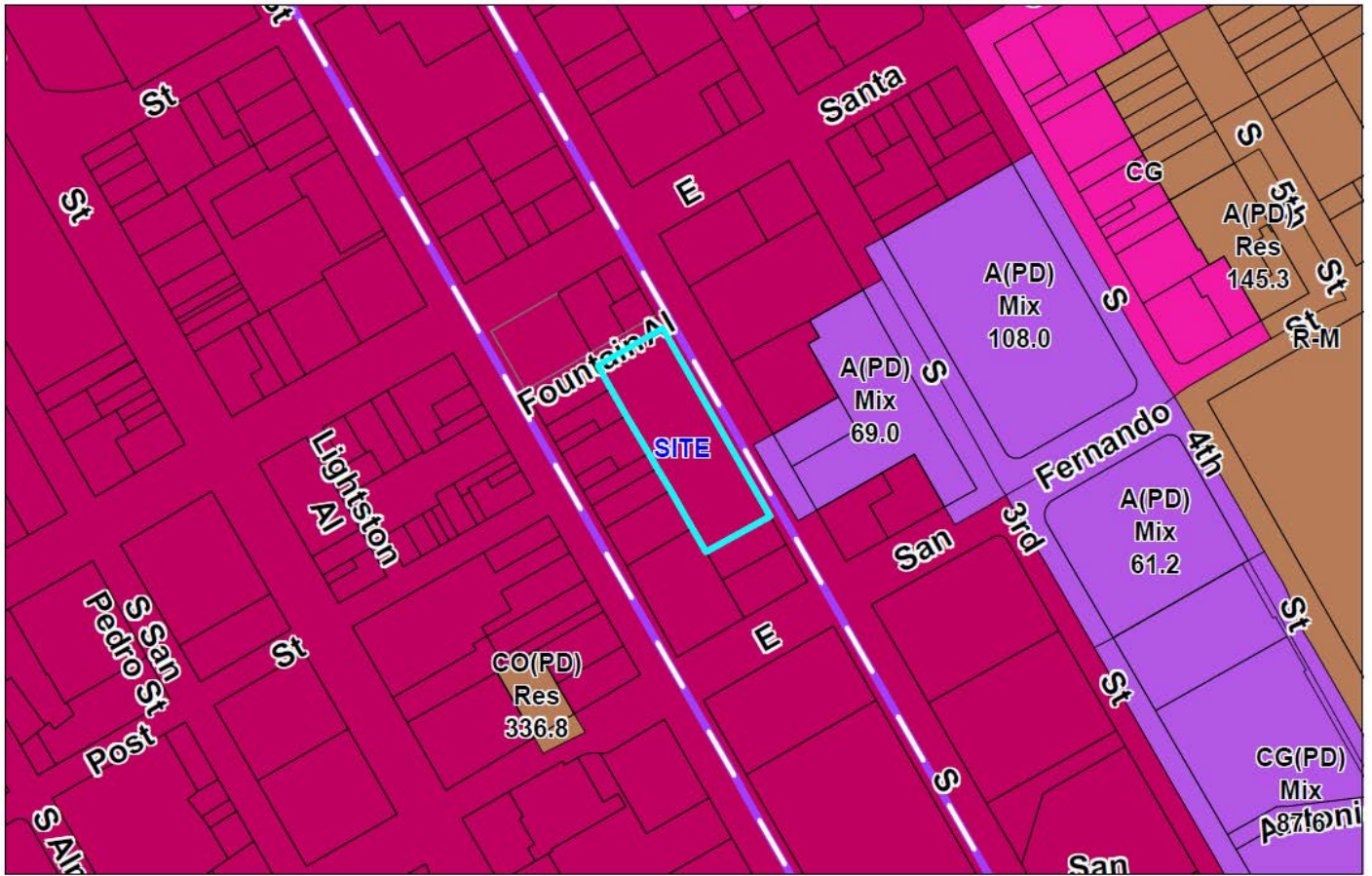


Exhibit C: Zoning Map



H20-037

Links to Attachments D-H

Click on the title to view document

| |
|---|
| Exhibit D: Draft EIR Resolution |
| Exhibit E: Draft Site Development Permit Resolution |
| Exhibit F: Site Development Permit Plan Set |
| Exhibit G: TDM Plan |
| Exhibit H: Signed MMRP |

Public Correspondence received after 11/9/22