



Memorandum

TO: COMMUNITY AND
ECONOMIC DEVELOPMENT
COMMITTEE

FROM: Chris Burton

SUBJECT: See Below

DATE: February 10, 2025

Approved

Date:

2/14/25

SUBJECT: California Environmental Quality Act Streamlining for Downtown Projects Status Report

RECOMMENDATION

Accept a presentation to the Community and Economic Development Committee that includes:

- 1) Direction from the Mayor's March 2024 Budget Message and included in the 2024-2025 Adopted Operating Budget, "Streamlining for Downtown Projects;" and
- 2) Direction from the August 14, 2024, Rules and Open Government Committee, "Development Process and CEQA Improvements."

BACKGROUND

CEQA requires public agencies to disclose the environmental impacts of projects and identify mitigation measures to reduce impacts. All discretionary projects, including private development projects that require a public hearing, are subject to CEQA. Most private development projects qualify for an exemption and don't require extensive analysis. However, some types of development projects may require technical studies to determine if a project is exempt or to identify impacts and mitigation. These studies can take multiple months to prepare and create lengthy project review times.

Over the past nine years, Planning, Building, and Code Enforcement (PBCE) implemented measures to streamline CEQA for all development projects with the goal of reducing review times for private development projects. Many of these measures stemmed from two efforts starting in 2016: a report prepared by Management Partners with recommendations to improve development services in the City and the Ad-Hoc

Council Committee for Housing Construction and Development Services.¹ The Ad-Hoc Committee focused on addressing key development process improvements, including performance metrics, creating development services dashboards, implementing management changes, cost of service study adjustments, CEQA, and municipal code reforms, updates on development services staffing, and status reports on major projects. The Ad-Hoc Committee met monthly over a four-year period between 2016-2020. CEQA was a major topic discussed at these meetings. CEQA streamlining efforts resulting from these efforts include:

- City review and approval of CEQA scope of work at the start of a project.
- Publishing a list of city-approved environmental consultants based on a review of consultant qualifications.
- Performance metrics focusing on the number of rounds of review for environmental documents.
- A change in City policy to allow greater communications between the City, environmental consultant, and applicant. The revised process allows for greater collaboration with applicants and environmental consultants, including the ability to weigh in on the feasibility of mitigation measures early in the environmental review process while maintaining the integrity of the analysis.

In 2022, the City Auditor's Office published a report focusing on the City's environmental review process. Implemented measures include:

- Project kick-off meetings with the applicant, environmental consultant, and City staff to discuss the scope of the environmental review and preliminary project schedule.
- Recurring project check-in meetings with the applicant, environmental consultant, and City staff at key project milestones.
- A requirement that private applicants use a consultant from the list of City approved environmental consultants.
- Standard operating procedures to ensure consistency in staff review and improve training for new planners.
- Developing performance standards for environmental review into PBCE's Customer Service Charter.

In addition to these streamlining measures, PBCE also pursued Program Level EIRs to facilitate development in some areas designated for significant growth in the General Plan, particularly Downtown. The Downtown Strategy 2040 and supporting Downtown Strategy 2040 Final Environmental Impact Report (DTS 2040 FEIR) adopted by City Council in 2018 provides significant CEQA streamlining benefits. Downtown projects typically have shorter review times than comparable projects outside Downtown

¹ <https://www.sanjoseca.gov/your-government/appointees/city-clerk/council-committees/inactive-council-committees/ad-hoc-committee-for-housing-construction-and-development-services>

because most projects qualify for an Addendum to the DTS 2040 FEIR rather than preparing a stand-alone CEQA document such as a Mitigated Negative Declaration.

Even with the implementation of these measures, the CEQA process continues to be one of the primary drivers of overall project review timelines. Applicants for private development continue to express dissatisfaction with the CEQA process. In various forums and stakeholder outreach, such as the PBCE Developer's and Construction Roundtable, applicants have requested further streamlining, including expanding the number of projects that are exempt and reducing the need for lengthy and costly technical analysis.

In his March 2024 Budget Message, Mayor Mahan stated the need to streamline the CEQA process for development projects Downtown. The March 12, 2024, memorandum directed the City Manager to pursue the best strategy to eliminate the need for non-site-specific technical reports for every individual project and analyze the staff process for efficiencies with the goal of reducing review times. This action was included in the adopted 2024-2025 Adopted Operating Budget.

Furthermore, on August 14, 2024, the Rules and Open Government Committee directed staff to present the following additional information on CEQA to the Community and Economic Development Committee:

- a) A summary of findings from any previously collected stakeholder input regarding the CEQA environmental review process, along with peer city metrics for timing for key review elements and other relevant benchmarks.
- b) Overview and explanation of the CEQA process, including:
 - i) The procedures used for determining whether a project is exempt from CEQA, and whether San José's process differs in a meaningful way from our municipal peers.
 - ii) A progress report regarding the implementation of the recommendations from the 2022 audit of Environmental Review for New Development.
 - iii) Options or recommendations that could allow for more projects to be determined eligible for CEQA exemptions.
- c) PBCE will engage the City Attorney's Office to further streamline the CEQA process for projects, including reducing thresholds for impacts and standardizing mitigations for projects in our Downtown and urban villages. Explore using the Saratoga Urban Village Planning Process as a test case.

Currently, the CEQA Team within PBCE is comprised of a Principal Planner, two Supervising Planners, and six Planners, funded through a mix of the City's General Fund (1 FTE), permit processing fees (5 FTE), and funding provided by other City Departments (3 FTE). In the coming year, staff is proposing to shift funding from partner departments (Housing, Environmental Services Department, Capital Improvement

Projects/Public Works) into the hourly rate model to ensure that the team is recovering its costs and to provide more flexibility and appropriate coverage for required projects as demand shifts. Through the preparation of the Fiscal Year 2025-2026 budget, PBCE staff will be assessing workload and service delivery impacts resulting from General Fund reductions and continuing declines in development activity.

ANALYSIS

This memorandum responds to the two separate City Council actions. First, it responds to the 2024 Mayor's March Budget Message on CEQA streamlining options for Downtown projects. Second, it responds to the August 14, 2024, Rules and Open Government Committee direction on the development process and CEQA improvements.

Section 1: Streamlining for Downtown Projects (Mayor's March 2024 Budget Message)

The Mayor's 2024 March Budget Message requested the following: Provide a status report on approaches and estimated costs to update the Downtown Strategy 2040 Environmental Impact Report to provide streamlining opportunities for future development projects downtown.

This section provides an overview of the Downtown Strategy 2040 with a focus on existing CEQA streamlining benefits, challenges for projects under the existing Downtown Strategy 2040, and strategies for further CEQA streamlining for Downtown projects.

Downtown Strategy 2040

Downtown Strategy 2040 is a vision for development within Downtown until 2040. The Downtown Strategy covers development in the area generally bounded by Taylor Street to the north, San José State University and City Hall to the east, Interstate 280 to the south, and Stockton Avenue/Diridon Station Area to the west. It includes most of the Diridon Station Plan Area.

The Downtown Strategy 2040 was an update to the Downtown Strategy 2000 and aligned with the Envision San José 2040 General Plan adopted in 2011. The updated strategy accommodated an increased demand for office space and residences in response to market conditions and accounted for anticipated new transportation improvements such as BART and Caltrain Electrification. It also included a small geographic expansion of the Downtown growth area and eliminated development phasing from the Downtown Strategy 2000. The Downtown Strategy 2040 originally

planned for 14.2 million square feet (sq. ft.) office, 14,360 residential units, 1.4 million sq. ft. retail, and 3,600 hotel rooms.

The Downtown Strategy 2040 Final Environmental Impact Report (DTS 2040 FEIR) is a Program Level Environmental Impact Report (Program Level EIR). A Program Level EIR evaluates a series of actions that can be characterized as one large project and are related, such as development consistent with a plan for a defined geographic area (CEQA Guidelines Section 15168). Program Level EIRs differ from Project Level EIRs because they evaluate impacts at a conceptual level where details of individual projects are unknown, and mitigation measures take the form of performance standards that guide future projects to avoid significant environmental impacts. Project Level EIRs can utilize Program Level EIRs to standardize mitigation for common impacts and focus on project-specific impacts, such as impacts to historic resources, minimizing redundant analysis (CEQA Guidelines Section 15385).

The DTS 2040 FEIR evaluated the development proposed in the Downtown Strategy 2040 to provide clearance under CEQA. The DTS 2040 FEIR included an updated transportation analysis based on vehicle miles traveled and a greenhouse gas emissions analysis in response to new State laws. City Council adopted the Downtown Strategy 2040 and certified the DTS 2040 FEIR on December 18, 2018.

Updates to the Downtown Strategy 2040

On May 25, 2021, City Council approved both the Downtown West project and the Diridon Station Area Plan Amendment, substantially increasing planned development Downtown and dividing Downtown into three district areas: the Diridon Station Area Plan (DSAP), Downtown West, and Downtown (encompassing areas east of Hwy 87 except for the Lakehouse neighborhood and the area around West San Carlos Street south of the DSAP). With these approvals, the Downtown planned development capacity increased, as shown in Table 1 below.

Table 1: Downtown Development Capacity Including DSAP and Downtown West

	Downtown West	Amended DSAP	Downtown (Remainder)	Total Downtown
Office (sq. ft.)	6,306,000	7,838,000	14,200,000	28,344,154
Residential (units)	5,575	7,044	14,360	26,979
Retail (sq. ft.)	469,000	931,000		1,400,000
Hotel Rooms	1,100	2,500		3,600

Note: Downtown West and the DSAP Amendment added office and residential capacity to Downtown but used the Downtown Strategy 2040 capacity for retail and hotel rooms.

Since the certification of the DTS 2040 FEIR, the City has approved 42 projects that rely on the DTS 2040 FEIR for CEQA clearance. This includes 16 projects that required Supplemental EIRs and 26 projects that used an Addendum to the DTS 2040 FEIR.

Attachment A includes a table with these projects organized by the type of CEQA document prepared.

As of December 2024, excluding Downtown West, the City approved approximately 13.8 million sq. ft. of office, 10,540 residential units, 385,000 sq. ft. of retail, and 1,408 hotel rooms in Downtown, including the DSAP. Current development capacity in Downtown and DSAP is shown in Table 2 below.

Table 2: Entitled and Remaining Development Capacity in Downtown, including DSAP

	Amended DSAP		Downtown (Excluding DSAP)	
	Entitled/Built	Remaining	Entitled/Built	Remaining
Office (sq. ft.)	3,551,970	4,286,030	13,393,226	806,774
Residential (units)	1,741	5,303	8,676	5,684
Development Capacity for all Downtown Including DSAP				
	Entitled/Built		Remaining	
Retail (sq. ft.)	455,315		944,685	
Hotel Rooms	1,023		2,577	

Note: Expired entitlements are added back to the remaining capacity.

CEQA Streamlining Benefits of the Downtown Strategy 2040 FEIR

The DTS 2040 FEIR, as updated to account for the DSAP Amendment, evaluates future development at the plan level and includes mitigation measures in the form of performance standards to guide future development. The DTS 2040 FEIR provides significant streamlining under CEQA because individual projects do not have to perform the following analyses:

- Transportation (vehicle miles traveled),
- Greenhouse gas emissions,
- Traffic-related air quality, and
- Traffic noise

Downtown projects with no new significant impacts or a substantial increase in the severity of impacts in the DTS 2040 FEIR qualify for an Addendum to the DTS 2040 FEIR. An Addendum streamlines review because no public circulation period is required, the City does not prepare formal responses to public comments, and analysis is focused on a few key areas such as construction air quality and noise. This saves approximately two to three months of review time.

If a project would result in a new significant impact or a substantial increase in the severity of an impact identified in the DTS 2040 FEIR, then a Supplemental EIR is required. In Downtown, a Supplemental EIR is triggered because a project results in impacts to historic resources (15 out of 16 Supplemental EIRs in Downtown since 2018

were triggered by impacts to historic resources). A Supplemental EIR focuses analysis on new impacts and relies on the original EIR for most topic areas.

The DTS 2040 FEIR is an effective tool for CEQA streamlining. Over the past four fiscal years, projects requiring a Supplemental EIR average a total review time (application submittal to approval) of 24.9 months, which is about seven months less than EIRs approved elsewhere in the City during the same time period. This time saving primarily comes from reduced analysis compared with standalone EIRs. In the same time period, Downtown projects that qualified for an Addendum averaged 17 months, which is about four months less than comparable projects outside of Downtown that required a Mitigated Negative Declaration (see Table 3).

Table 3: Comparison of Average Review Times by Environmental Clearance for Downtown, All City Projects, and Non-Downtown Projects (months)

	Downtown Projects under DTS 2040 FEIR FY 20-21 through FY 23-24	All City Projects FY 20-21 through FY 23-24	Non-Downtown Projects FY 20-21 through FY 23-24
Total Review Time in Months (Application Submittal to Approval)			
Environmental Impact Report	24.9	29.6	31.8
Addendum	17	12.7	8.8
Mitigated Negative Declaration/ Negative Declaration	N/A	22.3	21.1
Class 32 In-Fill Exemption	N/A	13.9	12.2
Review Time in Months from 1st Administrative Draft to Approval			
Environmental Impact Report	13.2	14	13.6
Addendum	8	7.3	6.1
Mitigated Negative Declaration/Negative Declaration	N/A	12.1	12.1
Class 32 In-Fill Exemption	N/A	7.2	7.2

Note: In the last four fiscal years, no Mitigated Negative Declarations/Negative Declarations or Class 32 In-Fill Exemptions were issued for Downtown projects. Those projects were either an Addendum to the DTS 2040 FEIR or a Supplemental EIR to the DTS 2040 FEIR.

Total review time is measured from the date the development application is submitted to the project approval date. In addition to the environmental review, the total review time includes planning entitlement reviews and reviews by other city departments such as the Department of Public Works and the Housing Department. It also includes time waiting for documents prepared by the applicant or environmental consultant, including revisions in response to staff comments. The majority of City environmental review work occurs after a consultant submits the first administrative draft of a CEQA document to the City for review. As shown in Table 3, on average, just over half of the total project review time occurs after the consultant submits the first administrative draft. For Downtown projects, the review time from consultant submittal of the first administrative

draft to project approval consists of 53% of total review time for EIRs and 47% of total review time for Addendums.

The General Plan land use designations and zoning within Downtown allow a wide range of uses and the highest density development in the City, including high rises. Due to the flexibility built into the General Plan and Zoning code, most projects only require a Site Development Permit or Special Use Permit that is approved at the Director's Hearing level. The exception is if a project requires a Historic Preservation Permit and/or results in a significant and unavoidable impact requiring a Supplemental EIR to the DTS 2040 FEIR with the adoption of a statement of overriding considerations by City Council. Typically, a Supplemental EIR is triggered by impacts to historic resources.

Most Downtown projects qualify for an Addendum to the DTS 2040 FEIR. Without the DTS 2040 FEIR, most Downtown projects would either require a standalone Mitigated Negative Declaration/Negative Declaration or a Class 32 In-Fill Exemption. Over the last four fiscal years, the average review time for a project with a Mitigated Negative Declaration or Negative Declaration was 21.1 months, compared to 17 months for Downtown Addendums.

Environmental review is one of the many factors that determine total project review time. The most active period of City involvement in the environmental review process is after the consultant submits the first administrative draft, starting City reviews leading up to public circulation and a public hearing. The time between the consultant submittal of the first administrative draft and project approval is typically half of the total review time. A significant portion of this time is driven by consultants' work, such as preparation of draft documents, editing documents in response to City comments, and preparing responses to public comments. City review time, the time consultants are waiting for City staff to provide comments on an administrative draft, is about 15% - 25% of total project review time. Other factors such as applicant responsiveness, timing of submittals, requirements from other City departments, applicant-initiated project changes, and project redesigns to comply with City codes and policies also contribute to total review time.

A Supplemental EIR is required when a project results in a new significant impact not identified in the DTS 2040 FEIR and/or results in an increase in the severity of a previously identified impact in the DTS 2040 FEIR. A Supplemental EIR is typically triggered by impacts on historic resources because the greatest concentration of historic resources is within Downtown. Since the adoption of the DTS 2040 FEIR in 2018, 15 out of 16 Supplemental EIRs were due to impacts on historic resources.

CEQA Challenges for Downtown Projects

The General Plan and Zoning Code permit a wide range of land uses and allow the densest development in the City within Downtown. The maximum density permitted Downtown is at least 2.5 times greater than the maximum density elsewhere in the city. The typical Downtown project requires intense construction activity next to existing structures, including occupied residences. Downtown also has the highest concentration of historic resources in the City, so projects there are more likely to have direct and indirect impacts on historic resources, such as demolition/modification, construction vibration impacts, and changes to a historic setting.

The DTS 2040 FEIR evaluated Downtown development at a program level. However, since the details of each prospective individual project are unknown and the type of project varies significantly, specific analysis is required to determine if a project complies with the measures in the DTS 2040 FEIR to reduce significant impacts. Downtown projects, like most urban in-fill projects in San José, are required to evaluate the following:

- Construction air quality,
- Noise from construction and operational noise,
- Construction vibration,
- An assessment of potential hazardous contamination on site; and
- A geotechnical and/or soil report.

In addition, depending on project characteristics and location, many Downtown projects frequently require the following analysis:

- If the site contains a structure over 45 years old, a historic evaluation to determine if the structure is a historic resource,
- If the site contains a historic resource, is adjacent to a historic resource, or is within a historic district, a historic report is required to determine if the project would impact those resources,
- An archeological report,
- A shade and shadow study if the project would cast shade on Downtown public open spaces; and
- A biological resources report if the project is adjacent to the Guadalupe River or Los Gatos Creek.

The technical analysis supports the City's CEQA findings and determines whether the project complies with the mitigation measures in the DTS 2040 FEIR. The analysis accounts for the characteristics of the project, such as building height, type of use, and levels of underground parking. It also considers the project in relation to its surroundings, such as the presence of nearby residences or historic buildings. Failure to

provide analysis to support CEQA findings increases vulnerability to legal challenges from project opponents.

Finally, although not required for CEQA clearance, the City typically requires the following reports for Downtown projects:

- Local Transportation Analysis evaluating project trip generation, on and off-site circulation, and parking.
- A tree survey with species and size of on-site trees.

These reports support findings for conformance with City policies and regulations, such as the Zoning Code and City standards for parking and circulation. The findings of these reports inform permit conditions, such as the number and size of replacement trees.

Strategies for Further Environmental Review Streamlining for Downtown Projects

PBCE explored strategies to further streamline the CEQA review process for Downtown projects. A challenge to further streamlining is evaluating future development at a sufficient level of analysis when the characteristics of individual projects are unknown, and there is a wide range in the allowed density and type of development allowed in Downtown. Staff has narrowed options to two strategies that are more realistic from a budget and staff capacity perspective.

Strategy 1 leverages work already in process for the Environmental Review Guidelines to draft standard permit conditions and mitigation measures, clarify thresholds of significance, and prepare updated templates for environmental review documents. This strategy would also support a limited ministerial review process for some Downtown locations. **Strategy 2** includes a Downtown-wide historic survey to identify historic resources that are not on the City's Historic Resources Inventory, updates to outdated guidelines for Downtown historic districts, and standards for development adjacent to historic resources. This strategy would support an expanded ministerial review process for more Downtown locations, potentially including sites adjacent to historic resources. These strategies are summarized in Table 4 and highlighted below:

Table 4: Comparison of Downtown Streamlining Options

	Strategy 1: Enhanced Environmental Review Guidelines for Downtown	Strategy 2: Downtown Historic Survey and Guidelines
Scope of consultant services	Builds on existing work underway for Environmental Guidelines with some additional analysis for Downtown thresholds.	Requires comprehensive historic survey and other technical reports to update Downtown Design Guidelines and historic district guidelines.

Likely type of CEQA clearance (depends on outcome of analysis)	Addendum to DTS 2040 FEIR	Supplemental EIR
Streamlining benefits	Consistent approach, standard templates, and standard condition/mitigation language will shorten consultant preparation time and staff review time.	Historic survey will inform developers of project sites that contain historic resources (no surprises). Update guidelines to more objective standards reduces ambiguity and rounds of review.
Contribution to future ministerial approval process	Could support future ministerial ordinance for projects on sites that do not contain or are not adjacent to historic resources or are within a historic district (about 40% of Downtown parcels).	Could support future ministerial ordinance that includes projects adjacent to historic resources that meet new objective standards (about 75% of Downtown parcels).
Estimated consultant cost	\$240,000 to \$280,000	\$525,000 to \$640,000
Estimated City staff time	80 - 120 hours	300 - 500 hours across multiple teams, with most in Environmental Review and Historic sections.
Estimated Timeline	9 – 14 months	24 – 30 months

Strategy 1: Enhanced Environmental Review Guidelines for Downtown

This strategy would leverage work underway on the Environmental Review Guidelines in response to the 2022 Audit. This work includes updates the following:

- Codify a list of standard permit conditions.
- Development of standard mitigation measures for typical Downtown projects with performance to reduce impacts to a less than significant level for the following resource areas:
 - Construction air quality (including cumulative)
 - Construction noise (including cumulative)
 - Construction vibration
 - Archeological resources and Tribal Cultural Resources
- Clarify ambiguous thresholds of significance in the DTS 2040 FEIR, such as those for shade and shadow impacts on parks, public spaces, and riparian areas.
- Update standard templates for environmental review documents, including documents for Downtown projects.

Implementation of this strategy would reduce consultant time due to less coordination with staff, reduce document preparation time with updated templates, and reduce

review cycles. It will also improve PBCE staff reviews by focusing review on key impacts unique to the project.

This strategy will also contribute to developing standards for a ministerial approval process for Downtown sites consistent with Council direction in December 2024. Assuming the City applies the same criteria as the City Streamlined Review Process for In-fill Housing Projects adopted in December 2024, the ministerial process would exclude sites with historic resources, sites located within 100 feet of a historic resource, and sites within 300 feet of a creek or river. Under these criteria, approximately 40% of Downtown parcels could be candidates for ministerial approval. Projects that qualify for a ministerial permit are not subject to CEQA and are not approved at a public hearing, reducing review by about six to 12 months.

Based on input from two qualified environmental consultants, preparation of CEQA documentation and supporting materials for this option would take approximately nine to 14 months (including City staff time) and cost about \$240,000 to \$280,000. Planning staff time, including Citywide and the Environmental Review Team, would range from 80 to 120 hours, depending on the amount of additional work required beyond that already underway for the Environmental Review Guidelines.

Strategy 2: Downtown Historic Resource Survey and Updated Historic Guidelines

This strategy would expand the work included in the first strategy, including a comprehensive historic resources survey of downtown buildings on existing data and updates to historic guidelines. The survey would identify properties that are historic resources under CEQA and add them to the Historic Resources Inventory. The results of the survey would reduce uncertainty for developers by providing information about a site's historic status since many potential historic resources are not listed on the Historic Resources Inventory. Since impacts on historic resources are the primary trigger for Supplemental EIRs, this survey would also inform the developer of the likely environmental review path before a project starts.

This strategy also includes updates to design guidelines and standards for historic districts in Downtown, such as the Saint James Square Historic District Design Guidelines and the Downtown San José Historic District Design Guidelines. These updates would reflect current conditions and implement the current Secretary of Interior Standards. The updated guidelines would also include performance standards for projects located adjacent to historical resources to avoid impacts on those resources.

Under this strategy, applicants would not need to prepare a historic report to determine if structures on or adjacent to a project site are historic resources. Projects on or adjacent to sites with historic resources will benefit from the guidelines and standards to avoid unmitigable impacts on historic resources and the need to prepare a

Supplemental EIR. Projects that cannot reduce historic impacts to less than significant will still be required to prepare a Supplemental EIR.

This strategy could also support an expanded ministerial approval process for Downtown projects to include sites adjacent to historic resources. Given the concentration of historic resources Downtown, this would significantly expand properties eligible for a ministerial permit process compared with the first strategy, with the potential for approximately 75% of Downtown parcels being eligible for ministerial approval, up for 40% of Downtown parcels under Strategy 1.

Based on input from two qualified environmental consultants, preparation of CEQA documentation and supporting materials for this option would take approximately 24 - 30 months (including both consultant, City review time, and public circulation) and cost about \$525,000 to \$640,000. This assumes the historic survey would build upon existing data from past projects. Planning staff time, including the Citywide, Environmental Review and the Historic Preservation Officer, would be about 300 – 500 hours. The bulk of this time would be spent supporting the historic resources survey of the Downtown and updating the Historic Resources Inventory, updating the historic design standards, and managing the CEQA analysis to support the work (likely a Supplemental EIR to DTS 2040 FEIR). Additional staff support in PBCE, particularly in support of the Historic Preservation Officer, will be required to reduce delays for other Planning projects, such as reviews of private development applications and historic surveys elsewhere in the City.

PBCE recommends pursuing Strategy 1 because it expands upon work already underway for the Environmental Review Guidelines. This assumes sufficient budget to cover the additional work and staff time. Strategy 2 offers the greatest benefit to future Downtown development, particularly for projects on sites with unidentified historic resources and sites adjacent to historic resources. However, in the current budget environment, funding such an effort will be challenging. Furthermore, PBCE staff are focused on other priorities, such as the Five Wounds Urban Village and the upcoming General Plan Four-Year Review. Work-related to this strategy could start as the budget environment improves.

Section 2: Development Process and CEQA Improvements

This section responds to the Rules and Open Government Committee on August 14, 2024, where PBCE was requested to provide the following:

- a) A summary of findings from any previously collected stakeholder input regarding the CEQA environmental review process, along with peer city metrics for timing for key review elements and other relevant benchmarks.
- b) Overview and explanation of the CEQA process, including:

- i) The procedures used for determining whether a project is exempt from CEQA, and whether San José's process differs in a meaningful way from our municipal peers.
 - ii) A progress report regarding implementation of the recommendations from the 2022 audit of Environmental Review for New Development.
 - iii) Options or recommendations that could allow for more projects to be determined eligible for CEQA exemptions.
- c) Opportunities for PBCE to engage the City Attorney's Office to further streamline the CEQA process for projects, including reducing thresholds for impacts and standardizing mitigations for projects in our Downtown and urban villages. Explore using the Saratoga Urban Village Planning Process as a test case.

A. Summary of Previously Collected Stakeholder Input and Peer City Metrics

Stakeholder input on the City's environmental review process occurred through multiple forums, ranging from the surveys conducted for the 2016 Management Partners report, the 2022 Audit, and feedback from the Developer's Roundtable. The most comprehensive input on the environmental review process occurred during stakeholder outreach for the 2022 Audit. The results of this feedback are summarized below:

- 62% of respondents felt the City's environmental review process took somewhat or significantly longer than anticipated.
- Regarding staff communication on overall environmental review timelines, 46% of respondents felt staff communication on the overall timeline was good to excellent, while 33% felt communication was fair, and 19% felt there was poor communication.
- 65% of respondents felt staff's communication regarding required technical analysis was good to excellent.
- 71% of respondents felt staff's communication about the type of environmental review required was good to excellent.
- 58% of respondents strongly or somewhat agreed with the statement that staff comments were provided in a timely manner.
- 49% of respondents strongly or somewhat agreed with the statement that staff comments are in line with the types of comments received in other jurisdictions.
- 45% of respondents strongly or somewhat agreed that the overall environmental review process in San José generally takes a reasonable amount of time, while 46% somewhat or strongly disagreed with this statement.

The full summary of the results of the Auditor's customer service survey can be found in Appendix D of the 2022 Audit Report, found [here](#).

In addition to stakeholder surveys, the 2022 Audit benchmarked the City's environmental review process with seven peer jurisdictions: Oakland, San Francisco, Long Beach, Los Angeles, San Diego, Milpitas, and Santa Clara (City). The report did not compare San José's review times with all peer jurisdictions. However, the report highlighted that the City's overall review times were similar to Los Angeles. The Auditor's Office outreach also found that the City of Long Beach claims the ability to complete an EIR in less than one year through focused project management and frequent coordination with consultants. These interviews with peer jurisdictions contributed to the Auditor's Office's 12 recommendations in their 2022 report.

The City Auditor's Office also obtained an Executive Directive issued by San Francisco in November 2020 to limit CEQA timelines for housing projects. This directive sought to limit review times to nine months for a Categorical Exemption, 12 months for a Negative Declaration/Mitigated Negative Declaration, and 18 to 22 months for an EIR, depending on complexity. These timelines are less than the City's average total review times in Table 3. However, San Francisco exerts greater authority over the performance of environmental consultants. Unlike San José, where the applicant contracts directly with the environmental consultant, San Francisco maintains contracts with environmental consultants in-house. San Francisco also maintains strict standards for the timeliness and quality of submittals with penalties for non-performance.

B. Overview of City's CEQA Process

For non-ministerial private development applications, PBCE staff take the following steps to determine the likely type of CEQA document to cover the project:

- 1) After an applicant submits a Planning Application to PBCE, Environmental Review Team supervisors and Principal Planner review the application to determine the likely CEQA document for the project and determine if additional information or analysis is required. This determination is based on several factors, including but not limited to:
 - Type of project (industrial, residential, commercial).
 - Project size, including change from existing conditions.
 - Characteristics of the project site and surrounding area.
 - Prior EIR or Negative Declaration/Mitigated Negative Declaration which may allow for a Determination of Consistency or Addendum.
 - Presence of the site on a list of sites with hazardous materials pursuant to California Government Code Section 69562.5 (the Cortese List).
 - Age of existing buildings on site (buildings 45 years old and older need to be evaluated to determine if they qualify as a historic resource).
- 2) Staff review the project and factors to determine if the project qualifies for an exemption. If it is clear the project does not qualify for an exemption or more information is needed to decide the likely CEQA document, staff prepares a

CEQA memorandum for the Planning Project Manager to include with the 30-day Letter. This memorandum outlines the information or analysis required and the likely CEQA document for the project. The potential types of CEQA documents include:

- Exemption with no technical analysis (typically for smaller projects).
- Exemption with technical analysis (typically if the site may contain a historic resource or to make findings for a Class 32 In-Fill Exemption).
- Determination of Consistency with a previously adopted CEQA document (i.e., an Environmental Impact Report or Mitigated Negative Declaration).
- An Addendum to a previously adopted CEQA document (for minor changes to the original project).
- A Negative Declaration or a Mitigated Negative Declaration.
- An Environmental Impact Report (EIR) or Supplemental Environmental Impact Report.

A brief description of the CEQA review process, types of CEQA documents, and typical level of technical analysis is provided in **Attachment B**.

If it is known that a project will have an impact that cannot be mitigated to a less than significant level even with mitigation measures, then frequently the Initial Study stage is skipped and the environmental consultant proceeds with preparing an EIR.

- 3) Technical analysis or information requested in the CEQA memorandum may change the CEQA path for a project. For example, if a historic analysis finds that a building on-site qualifies as a historic resource, then a project that would typically be exempt may be required to prepare a higher level of CEQA review such as an MND or EIR.

Common Types of CEQA Exemptions

CEQA requires findings to determine if a project qualifies for an exemption. Categorical Exemptions in Article 19 of the CEQA Guidelines are the most common type of exemption for private development projects in San José. The most common Categorical Exemptions used in San José for private development projects are listed in **Attachment C**.

The majority of private development projects in San José qualify for an Exemption or are already covered by a previously approved CEQA document (i.e., a Determination of Consistency). For example, in Fiscal Year 2023 – 2024, 72.5% of approved Planning entitlements qualified for an exemption or Determination of Consistency. The other 27.5% of approved Planning entitlements required a higher level of CEQA, such as an Addendum to a previously approved CEQA clearance, a Mitigated Negative Declaration/Negative Declaration, or an EIR because they did not meet the criteria to qualify for an Exemption.

Reasons Projects are Disqualified from an Exemption

PBCE seeks to find qualifying exemptions for private development applications. Still, some projects either do not fit within the criteria for an Exemption or are disqualified because they do not meet the Categorical Exemption exception findings in Section 15300.2 of the CEQA Guidelines. In San José, the most common reasons a project disqualifies for an Exemption is because the project site is listed as a hazardous waste site or the project proposes to demolish a historic resource. A full list of exceptions precluding Exemptions for projects where one or more of the following applies includes:

- The project is located in a sensitive environment (applies to some classes of Exemption).
- The cumulative impact of successive projects of the same type in the same place over time is significant.
- The project would result in a significant effect due to unusual circumstances related to the site (i.e., project site is located in a landslide area).
- The project is visible from a state scenic highway.
- The project site is on a list of hazardous waste sites compiled pursuant to Section 65962.5 of the Government Code (commonly referred to as the “Cortese List”).
- The project would impact a historic resource.

To determine if a project qualifies for an Exemption, technical analysis may be required to support a finding that a project meets the criteria for an exemption and that none of the exceptions listed above apply to the project. Furthermore, in addition to these exceptions, larger urban in-fill projects may not meet the criteria for a Class 32 In-Fill Development Projects Exemption because the project requires a rezoning or General Plan Amendment, the project site exceeds five acres, or the project will result in a significant transportation impact (vehicle miles traveled).

Comparison with Peer Cities

As a law that applies statewide, the CEQA review process for Exemptions is consistent across jurisdictions. However, implementation differs based on factors such as the project size, location, and level of community interest. As the third-largest City in California, San José attracts greater scrutiny than most smaller jurisdictions. Therefore, San José tends to be more conservative in requesting technical analysis to support findings for an Exemption compared to smaller jurisdictions.

An area where San José lags larger peer cities is in issuing Exemptions pursuant to Section 15183, Streamlining for In-fill Projects (also referred to as the “Community Plan Exemption”). This exemption allows streamlined review for eligible in-fill projects that are covered by an EIR for a plan encompassing the project tie (such as a general plan or community plan), are located within an urban area, meet specified performance

standards in Appendix M of the CEQA Guidelines, and are consistent with the general or community plan. This Exemption requires uniformly applicable development policies or standards that apply to in-fill projects that substantially mitigate any significant impacts. San Francisco and Oakland use the Community Plan Exemption for a wide range of projects in areas covered by Program Level EIRs, like how San José utilizes Addendums to the DTS 2040 FEIR for most Downtown projects.

Technical analysis is required for Community Plan Exemptions to compare project-level impacts with the Program Level EIR and demonstrate how the projects conforms to adopted uniformly applicable development policies and standards. However, for qualifying projects, the Community Plan Exemption negates the need for Mitigated Negative Declaration or Negative Declaration, which requires a public circulation period and is more legally vulnerable. It could also apply to projects that do not qualify for a Class 32 In-Fill Exemption, such as projects on sites larger than five acres.

Status of 2022 Audit Recommendations

The City Auditor's Office published a report on the City's environmental review process (linked [here](#)) in March 2022. This report included 12 recommendations to improve the environmental review process and reduce review times. Since 2022, the City implemented four recommendations and partly implemented five recommendations. Measures implemented in response to the 2022 Audit include:

- Holding kick-off meetings for all projects to confirm the scope of work and set a preliminary schedule.
- Creating standard operating procedures for CEQA review and including these in PBCE's online policy library (P2 Hub).
- Setting performance metrics for environmental review timelines and tracking these metrics in PBCE's Customer Service Charter.
- Requiring applicants to use an environmental consultant from the City List of Approved Environmental Consultants.

PBCE continues to make progress in implementing the 2022 Audit recommendations to streamline CEQA review. Staff is working with a consultant to develop comprehensive Environmental Review Guidelines, templates for environmental review documents, amend and clarify thresholds of significance, and standard language for common permit conditions and mitigation measures. The guidelines and templates will standardize the environmental review process and clarify the city's approach to common issues. The goal is to reduce staff review times and the number of rounds of review, leading to reduced overall review times. The Environmental Review Process Improvements Work Plan (**Attachment D**) includes target dates for completing the 2022 Audit recommendations.

C. Options and Recommendations for Further CEQA Streamlining

The following City-led strategies would expand the number of projects in San José that could qualify for an Exemption:

- Increased flexibility in Zoning development standards to reduce the need for re-zonings which disqualify projects from utilizing the Class 32 In-Fill Exemption.
- Expanding areas of the City covered by a Program Level EIR and/or updating the General Plan 2040 EIR to include uniformly applicable development policies or standards so in-fill development projects can qualify for Community Plan Exemptions.
- Expanding the residential ministerial approval process to apply to more sites throughout the City, as ministerial projects are not subject to CEQA. This may require updates to the City's Transportation Analysis Policy (Council Policy 5-1) to develop objective performance standards for ministerial projects in areas of the City in mitigatable vehicle miles traveled areas.

Environmental Review Process Improvements Work Plan

In addition to strategies to increase the eligibility for Exemptions, the City is also pursuing a process improvements work plan to improve the City's environmental review process and implement the recommendations of the 2022 Audit (Attachment D). This work plan includes the preparation of Environmental Review Guidelines and standard templates, expansion of Program Level EIRs to allow CEQA streamlining, and expanding a ministerial approval process to include some Downtown sites.

The Environmental Review Guidelines will include updates and clarification to the City's thresholds of significance, including those in the General Plan and DTS 2040 FEIR. The Guidelines will also include the adoption of standard permit conditions and standard language for the most common mitigation measures associated with urban in-fill development in San José, including development in urban villages and Downtown. These guidelines will include standard mitigation language for impacts related to construction air quality, nesting migratory birds, historic resources, archeological resources, hazardous materials, construction noise, and transportation. The standard language will lead to faster consultant preparation time and City staff review because most impacts and mitigation measures for most projects will be consistent with the standards. This would allow staff to focus efforts on the impacts and mitigation measures that are unique to the project.

Another recommendation of the 2022 Audit is the expansion of Program Level EIRs beyond the DTS 2040 EIR to cover urban villages and other priority growth areas. These Program Level EIRs will support the use of Class 32 Exemptions, Community Plan Exemptions, and Addendums for individual projects, reducing the need for stand-alone CEQA analysis for development projects within these plan areas.

Individual Program Level EIRs will provide standard mitigation measures for impacts unique to the plan area, such as those related to transportation, historic resources, or sensitive habitat including riparian corridors.

PBCE is currently preparing a Program Level EIR for the Five Wounds Urban Village which includes a historic resources survey. PBCE also plans to prepare Program Level EIRs for the Saratoga Urban Village and Monterey Corridor. Future development projects covered by these EIRs will be able to utilize a Community Plan Exemption or Addendum if they comply with mitigation measures identified in these EIRs. However, preparation of a Program EIR is costly, time-consuming, and requires significant staff resources. For example, the DTS 2040 FEIR took more than three years to complete. In addition, Program Level EIRs need to be prepared in coordination with a policy or plan (such as an urban village plan) This work requires a commitment of staff time in the Citywide division in addition to environmental review. Absent sources of funds such as grants, funding new plans and policies with Program EIRs is difficult in the current budget environment.

Another opportunity to develop a Program Level EIR is the General Plan Four-Year Review. The City is required to start this process to comply with new State laws and start the process for the next Housing Element update cycle. The scale of the next General Plan Four-Year Review will likely require a Supplemental EIR to the General Plan EIR. This EIR is an opportunity to update and revise CEQA thresholds of significance and standard mitigation measures. This would expand the eligibility for Community Plan Exemptions to sites throughout the City for projects that comply with the General Plan. Utilizing the General Plan Four-Year Review process to update the General Plan EIR will be more cost effective to achieve Program-Level CEQA streamlining than preparing multiple Program-Level EIRs for plans and policies.

Finally, PBCE is starting work on expanding the ministerial approval process approved in December 2024 to include eligible Downtown sites. Projects that meet the criteria in the ministerial ordinance are not subject to CEQA because the approval is not a discretionary action. Implementation of the strategies to improve CEQA streamlining in Downtown discussed in the first section of this memorandum would support the expansion of a ministerial approval process to include eligible Downtown sites.

COORDINATION

This memorandum with coordinated with the City Attorney's Office, the City Auditor's Office, and the Department of Public Works.

February 10, 2025

Subject: California Environmental Quality Act Streamlining for Downtown Projects

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/s/

CHRIS BURTON

Director

Planning Building & Code Enforcement

For questions, please contact David Keyon, Principal Planner, Planning, Building, and Code Enforcement, at david.keyon@sanjoseca.gov or (408) 535-7898.

ATTACHMENTS

Attachment A: Downtown Development Projects Approved Since Adoption of the
Downtown Strategy 2040 FEIR

Attachment B: CEQA Review Process and Types of CEQA Documents

Attachment C: Common Types of CEQA Exemptions for Private Development in San
José

Attachment D: Environmental Review Process Improvements Work Plan