



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Rosalynn Hughey

**SUBJECT:** SEE BELOW

**DATE:** May 2, 2019

Approved

*D. D. Syl*

Date

*5/2/19*

**COUNCIL DISTRICT: 3**

**SUBJECT: PUBLIC HEARING ON THE APPEAL OF THE PLANNING DIRECTOR'S RELIANCE ON AN ADDENDUM TO THE DOWNTOWN STRATEGY 2040 ENVIRONMENTAL IMPACT REPORT FOR THE 27 SOUTH FIRST STREET MIXED-USE PROJECT, SPECIAL USE PERMIT NO. SP18-016**

## RECOMMENDATION

- a) Conduct an Administrative Hearing to consider the Appeal of the Planning Director's reliance on the Addendum to the Downtown Strategy 2040 Environmental Impact Report (Addendum) in accordance with the California Environmental Quality Act (CEQA) for a Special Use Permit (File No. SP18-016) to allow the demolition of a one-story, 24,696 square-foot commercial building and development of a 22-story residential tower with up to 374 dwelling units and ground floor commercial uses on an approximately 0.6-acre site, in the Downtown Primary Commercial Zoning District located at 27 South First Street.
- b) Adopt a resolution denying the appeal and upholding the Planning Director's reliance on the Addendum, and finding that:
  - (1) The City Council has read and considered the Addendum for the 27 South First Street Mixed-Use Project and related administrative record related to Special Use Permit No. SP18-016;
  - (2) The Addendum for the 27 South First Street Mixed-Use Project was prepared and completed in full compliance with the California Environmental Quality Act of 1970, as amended, together with State and local implementation guidelines; and
  - (3) Reliance on the Addendum for the 27 South First Street Mixed-Use Project reflects the independent judgment and analysis of the City of San José; and
  - (4) Preparation of a new, subsequent, or supplemental environmental impact report is not required because none of following events occurred as outlined in Section 21166 of the Public Resources Code: (i) substantial changes are proposed in the project which

will require major revisions of the environmental report; (ii) substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or (iii) new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available. Further, a new, subsequent, or supplemental environmental impact report is not required because no impacts outside the scope of the Downtown Strategy 2040 EIR were identified as outlined in Section 15168 of the CEQA Guidelines.

## **OUTCOME**

Denial of the environmental appeal and upholding the Planning Director's reliance on the Addendum for the 27 South First Street Mixed-Use Project will allow the project applicant to move forward with the implementation of Special Use Permit No. SP18-016, to allow the demolition of a one-story 24,696 square-foot commercial building, and development of a 22-story residential tower with up to 374 dwelling units and ground floor commercial uses on an approximately 0.6-acre site.

Upholding the environmental appeal would void the approved Special Use Permit and require the preparation and adoption of a new environmental document prior to any actions to approve the proposed project.

## **EXECUTIVE SUMMARY**

On February 26, 2019, Laborers International Union of North America Local Union 270 (LIUNA), represented by Lozeau Drury LLP, submitted a letter commenting on the adequacy of the Initial Study and Addendum prepared for the project under CEQA. The nine-page letter included two exhibits with reports from Shawn Smallwood, Ph.D., an expert wildlife biologist and SWAPE, an environmental consulting firm. The comments centered on the adequacy of an Addendum to address the project impacts, impacts on wildlife, impacts of the project from diesel particulate matter, and impacts of the project on indoor air quality.

On February 27, 2019, Robert Manford, Deputy Director of Planning, Building and Code Enforcement, acting on behalf of the Planning Director (Planning Director) held a public hearing to consider the Addendum for the 27 South First Street Mixed-Use Project and the Special Use Permit No. SP18-016. There were three speakers. John Croll who owns an adjacent business commented that the proposed project would adversely impact his business during construction; the Preservation Action Council of San José (PACSJ) submitted a letter and commented on the adverse impacts to the adjacent historic district; Michael Lozeau representing LIUNA reiterated their comments regarding the adequacy of the CEQA document, and impacts on wildlife and air quality, that were included in the letter submitted on February 26, 2019. Staff responded verbally to the comments raised by LIUNA. The Planning Director considered all the information in the administrative record including information presented at the public hearing and determined that

the Addendum was the appropriate environmental clearance under CEQA for the proposed project and approved Special Use Permit No. SP18-016.

On February 28, 2019, LIUNA submitted a timely appeal of the Planning Director's reliance on the Addendum for the 27 South First Street Mixed-Use Project. However, on April 2, 2019, LIUNA withdrew its CEQA appeal. Therefore, the LIUNA appeal is not a part of the May 14, 2019, public hearing and this public hearing will only focus on the issues raised by PACSJ as further explained below. A copy of LIUNA's letter withdrawing its appeal is included as Attachment 1 to this Memorandum.

On March 4, 2019, PACSJ submitted a timely appeal (Attachment 2) of the Planning Director's reliance on the Addendum for the project. The appeal claimed the following:

- The height and massing of the proposed building do not comply with the current Downtown Guidelines and are incompatible with adjacent buildings;
- The analysis did not consider cumulative impacts;
- The Addendum is inadequate and failed to meet the criteria of CEQA and the CEQA Guidelines, and therefore, a supplemental environmental impact report should be prepared prior to consideration of the proposed project
- The City's findings approving the Addendum and the project are not supported by substantial evidence.

As explained in detail below, PACSJ failed to provide substantial evidence indicating that the proposed project required a new, subsequent, or supplemental environmental impact report as set forth in California Public Resources Code Section 21166, CEQA Guidelines Sections 15162-15164 and 15168, or any other provisions under CEQA. Therefore, PACSJ has not presented substantial evidence that the proposed project would result in significant, adverse, un-mitigatable impacts outside the scope of the Downtown Strategy 2040 EIR, which would require the preparation of a new, subsequent, or supplemental environmental impact report.

## **BACKGROUND**

The applicant, Mike Sarimsakci representing the owner Black Sea Gallery Development LLC, submitted the Special Use Permit, SP18-016, on March 29, 2018. The Special Use Permit would allow the demolition of an existing commercial building and the construction of a 22-story mixed-use building consisting of 374 residential units and approximately 35,712 square feet of retail space, with an alternative parking arrangement (parking stackers) and up to 50% parking reduction on an approximately 0.57-gross acre site in the DC Downtown Primary Commercial Zoning District.

### **Environmental Review**

Pursuant to CEQA, the City prepared an Initial Study for the proposed 27 South First Street Mixed-Use Project. The Initial Study concluded that an Addendum to the recent City Council-approved Downtown Strategy 2040 EIR was the appropriate environmental clearance for the

proposed project. The City Council certified the Downtown Strategy 2040 EIR on December 18, 2018. There was no legal challenge to the Downtown Strategy 2040 EIR.

The Initial Study and Addendum were posted on the City's Planning Division Environmental Review webpage on February 13, 2019, two weeks before the scheduled public hearing before the Planning Director for File No. SP18-016.

The Addendum, supporting Initial Study and technical studies, are available at the City's Planning Division offices located at 200 East Santa Clara Street, Tower 3rd Floor during normal business hours, and on the Planning Division webpage for Environmental Review at <http://www.sanjoseca.gov/index.aspx?NID=6309>.

### **Planning Director's Public Hearing**

On February 27, 2019, the Planning Director held a public hearing to consider the Addendum and Special Use Permit No. SP18-016. At the public hearing there were three speakers from the public:

1. John Croll, owner of Mac's Club, adjoining property owner
2. Bryan Grayson on behalf of PACSJ
3. Michael Lozeau, Lozeau-Drury LLP, representing LIUNA

John Croll commented that his business, Mac's Club, is adjacent to the proposed project site and his business would be adversely impacted during construction of the project.

Bryan Grayson of PACSJ commented that the proposed building would overpower the existing historic buildings in the adjacent historic district and is not compatible with the nearby Bank of Italy building, a City landmark. He added that the Initial Study in support of the Addendum did not consider the cumulative impacts of more 22- to 24-story buildings being constructed in the historic neighborhood. He submitted a letter at the public hearing which included his comments.

Michael Lozeau reiterated the comments in the LIUNA letter of February 26, 2019. Staff responded verbally to the comments from LIUNA at the request of the Planning Director.

Staff orally responded that the commenters have not provided substantial evidence that a new, subsequent, or supplemental EIR was required for the project. The project site and surrounding area is developed with no natural habitat that would support endangered, threatened, or special status species. A mitigation measure from the Downtown Strategy 2040 EIR has been identified to protect trees that may be used by migratory birds. The biological report prepared for the proposed project determined that the design of the building would be sufficient to deter birds from colliding with the building and that no additional mitigation measures would be required. Any increase in traffic associated with the proposed project is not expected to result in a significant impact on common wildlife species. Indoor building materials will not be known until the building permit stage, and these materials will be required to comply with California Air Resources Board, 2016 CalGreen Building Code, and LEED certification requirements. If materials containing formaldehyde were to be used, it would be speculative for the City to

estimate the type and volume of building materials that may contain formaldehyde. As outlined in Section 15145 of the CEQA Guidelines, speculative analysis is not acceptable.

The Planning Director considered the information presented and determined that the Addendum was the appropriate environmental clearance under CEQA and approved the Special Use Permit. The public can view the Planning Director's Hearing Agenda item 3a., including the draft Special Use Permit and all associated documents for the Planning Director's Hearing dated February 27, 2019, at <http://www.sanjoseca.gov/DocumentCenter/View/82854>. The audio recording of the meeting is available at <http://sanjoseca.gov/index.aspx?nid=3431>.

### **Environmental Appeals**

Pursuant to Section 21.04.140 of the San José Municipal Code, any interested person can submit a timely request to appeal to the City Council the determination made by the Planning Director, Planning Commission, or non-elected decision making body regarding the appropriate environmental clearance for a project. At the Appeal Hearing, the City Council may uphold the Planning Director's reliance on the Addendum to the Downtown Strategy 2040 EIR, or require the preparation of a new, subsequent, or supplemental, EIR, or any other environmental document in accordance with Title 21 of the Municipal Code.

#### ***Preservation Action Council of San José (PAC SJ)***

On March 4, 2019, PACSJ submitted a timely appeal of the Planning Director's reliance on the Addendum. The appeal is based on the letter submitted at the Planning Director's Hearing on February 27, 2019. The basis for the appeal as stated in the Notice of Environmental Appeal are as follows:

1. Height and massing do not comply with Downtown Guidelines
2. Project is not compatible with adjacent and close buildings
3. Initial Study did not consider cumulative impacts
4. The approval violates CEQA because the Addendum is inadequate and failed to meet the criteria of CEQA and the CEQA Guidelines
5. A Supplemental EIR should be prepared prior to consideration of the project approval
6. The City's findings approving the Addendum and the project are not supported by substantial evidence.

### **ANALYSIS**

The document in question is an Addendum to the Downtown Strategy 2040 EIR which was certified by the City Council on December 18, 2018. As a programmatic document with some project level analysis, the Downtown Strategy 2040 EIR evaluated the planned growth for the Downtown area to the year 2040. The proposed project was included in the planned growth for the Downtown and the Downtown Strategy 2040 EIR. This Addendum to the Downtown Strategy 2040 EIR was prepared to address the specific details of the proposed project and

whether there were any new significant impacts outside the scope of the Downtown Strategy 2040 EIR.

None of the comments by PACSJ raised any new issues about the project's environmental impacts, nor do they provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than analyzed in the Downtown Strategy 2040 EIR or disclosed in the supporting Initial Study for the Addendum. The analysis below responds to the alleged deficiencies with the Addendum asserted by PACSJ.  
**Responses to Preservation Action Council of San José Comment Letter dated February 27, 2019**

### **Height and Massing**

**PACSJ Comment:** *The Downtown Design Guidelines and Historic Design Guidelines require that new construction be respectful of existing historic buildings and not overpower existing historic buildings. We believe that height and massing of this proposal directly across the street from one of our most iconic buildings does not comply with the guidelines. While positive design changes have been implemented by the developer at the street level, we do not believe the monolithic nature of the proposed building is sufficiently reduced by use of balconies as corners, and other techniques. Responding to feedback from the Historic Landmarks Commission (HLC), the height was reduced only 22 feet. The revised plans reviewed by the HLC in December 2018 still did not address the commission's previous comments that stated: 1) "the building size is overpowering around buildings that are relatively shorter in height", and 2) The crown of the building is important to the historic context, so design should look at what is compatible to the area without overpowering the Bank of America. It will still be a 22-story building that is directly across the street from what is a 14-story City landmark."*

**City Response:** As discussed on page 65 of the Addendum and pursuant to the City's Historic Design Guidelines, new construction adjacent to historic resources in the Downtown Core does not have to replicate the existing building forms, features, materials, and details. Instead, new construction should consider the historic context of each block or sub-area to ensure that a project's height and bulk do not negatively impact the character-defining features of the area's historic structures. The City assessed the design of the structure based on the eight contextual elements for new construction and found the approved Special Use Permit to be consistent with the Historic Design Guidelines. Regarding the massing of the building, the Initial Study (on page 65) concluded:

*"The project site has ~~been identified by the City~~ a General Plan land use designation of Downtown, which the General Plan categorizes as an appropriate location for high density development consistent with the City's General Plan. Additionally, the project addresses its massing to the surrounding buildings by being broken down into three portions (base, middle, and top); the use of balconies at corners to lighten the massing; the fenestration design patterns; and the use of a variety of building materials.*

Specifically, the building design is compatible with the surrounding structures at the pedestrian level and would not significantly alter street level views of the surrounding

skyline. In addition, by its massing and use of high-quality materials, the building would add to the skyline with a distinctive top. Consistent with the guidelines, there are discernable treatments distinguishing the base, middle, and top of the building. The building's base, or podium, defines the massing at street level and maintains the existing pedestrian scale on South First Street. The width and height of the project building's base would be comparable in scale to the commercial buildings in the historic district on the opposite side of South First Street. Furthermore, the middle, or tower, portion of the new construction would be stepped back from the street level, making the base more prominent. The proportion of the building, as defined by the base, middle, and top, would be comparable to nearby historic structures and would avoid a monolithic appearance with the use of glazing and varying fenestration on the middle and top of the building.

The proposed design includes deep reveals (the sides of a door or window between the frames and the outer wall surface) at several points in the building to take advantage of the city's sun conditions and create shadow lines. The building design has several visual breaks achieved through setbacks, changes in materials, and varied fenestration patterns that divide the bulkiness of the mass and introduces architectural elements that create visual interest. The use of lighting and landscaping highlights building features, promotes safety, and encourages pedestrian activity."

The City also assessed the project for consistency with the Downtown Design Guidelines and compatibility with the adjacent Downtown Commercial Historic District. Regarding the Downtown Design Guidelines, the Initial Study (on page 67) concluded:

"The proposed project's scale and massing would be larger than the surrounding historic resources. The development would not, however, significantly alter street level pedestrian experience or street level views to surrounding skyline elements due to the proposed design. The massing of the proposed building and the use of high-quality materials, adds to the skyline and would help orient people as they walk downtown.

Based on the Downtown Design Guidelines, buildings that are over 150 feet tall should have a discernible treatment that distinguishes the base, middle, and top of each building on all façades. The proposed project would be 242 feet to the roofline and, based on the renderings provided, would employ a discernable treatment distinguishing the base, middle, and top of the building. The proposed buildings base would maintain the existing pedestrian scale and rhythm on South First Street. The project proposes balconies with glazed handrails at the corners to lighten the massing of the building and would maintain the existing pedestrian experience. The setbacks, changes in materials, and fenestration patterns of the proposed building design help create visual interest. The use of lighting and landscaping highlights the building features, promotes safety, and encourages pedestrian activity. For all these reasons, the historic report [*Historic Report and Proposed Project Analysis for 27 South First Street* dated February 5, 2019, included in Appendix B of the Initial Study] concluded that the proposed building would comply with the Downtown Design Guidelines."

South First Street is 80 feet wide as measured from the easternmost sidewalk edge to the westernmost sidewalk edge (adjacent to the buildings). Thus, the approved building would be a minimum of 80 feet from the nearest point of the Bank of Italy building. The project site is also outside the historic commercial district as explained in more detail in the City's response to *Adjacency and Proximity* below. The City's analysis, both in the Addendum and in the historic report (Appendix B of the Addendum), describes in detail why the approved project was found to be consistent with the City's applicable design standards.

**Conclusion:** Based on the above analysis, the comment submitted on height and massing does not constitute evidence of a new significant environmental impact of the project, and does not demonstrate that a subsequent or supplemental EIR is required pursuant to CEQA Guidelines Sections 15162-16164. The programmatic Downtown Strategy 2040 EIR found that "with implementation of 2040 General Plan policies and existing regulations, future development under the Downtown Strategy 2040 would not result in a significant impact to historic resources." (See page 112 of the Downtown Strategy 2040 EIR.) PACSJ comments also do not demonstrate that there is any impact outside the scope of the program EIR, pursuant to CEQA Guidelines 15168.

### **Adjacency and proximity**

**PACJSJ Comment:** *The project documents justify the height and say it is "compatible" by citing the KQED building at S. 1<sup>st</sup> and West San Fernando and One South Market. While the KQED building is also adjacent to the Downtown Historic Commercial District, it is a long city block away from Bank of Italy and does not cast a shadow on it. One South market also is not a good comparison as it is considerably farther away from the historic district.*

*The vast majority of buildings adjacent to the Bank of Italy building are of similar 14-story height.*

*We find fault with the findings in the EIR Addendum sections 4.1.2.1 and 4.1.2.2. This proposed project is not compatible or aesthetically harmonious with the historic character of the historic district. It will impact not only visual character but also scenic vistas of the Bank of Italy building that the community has cherished for generations.*

**City Response:** While the historic report (*Historic Report and Proposed Project Analysis for 27 South First Street* dated February 5, 2019, included in Appendix B of the Initial Study) does reference the height of other buildings in the project area that exceed 14 stories, the final determination of the consistency of the approved building's size is not justified by the existence of these buildings. The historic report provides a detailed analysis of why the approved project was found to be compatible with the Bank of Italy building and the historic district while using other tower structures in the area to provide overall context (page 15 of the historic report):

"The new building's scale, or how its elements and details proportionally relate to each other and to humans, is consistent with those of the buildings contributing to the historic district when viewed through the design employed at the new building's street-front. The



proposed building at 27 South First Street's first floor will have 18' ceilings, consistent with first floor heights of contributing buildings in the historic district that typically contain retail/commercial space at street level. The exterior of the proposed project's first three floors will be distinct from the middle and top of the building through the use of brick veneer to articulate the base. The base's width and height are comparable in scale to the commercial buildings in the historic district, on the opposite side of First Street. Furthermore, the middle or tower, portion of the new construction will be stepped back from the street level, helping the base to be appreciated and experienced similarly to the older and historic buildings within the historic district.

The building's upper floors will have 11-foot ceilings, consistent to the exterior appearance of upper floors in the high-rise building located within the district, the Bank of Italy Building at the opposite corner of First Street and East Santa Clara Street. The upper level window heights on the historic building extend near full-height, showcasing the interior ceiling heights. The new construction will similarly implement near full glazing at every floor but will avoid a looming glass wall facing First Street through the use of porcelain panels and balconies to interrupt the glazing. This mix of materials ensures the scale of upper levels are reflective of historic upper level window heights.

The proportionality (perception of relative visual weight) of the new building will be different than buildings in the historic district due to its markedly taller height, but its design is broken into a base, middle and top – an approach that is typical in early high-rise buildings including the Bank of Italy. Buildings in the historic district are largely built of cement, brick, and stone and feature large first floor windows and storefront entrances balanced with recessed entries, awning elements, and heavier upper stories. The new building's base, in addition to using materials compatible with the historic district will be divided in three horizontal sections through the use of pilasters. The first level will also be topped with a metal course that has two recessed entries, mimicking the street-level proportions of the historic buildings. Because there are more stories in the new construction, it cannot employ a heavier upper story in the same manner as the shorter historic buildings found within the neighboring historic district. To maintain proportions and avoid a monolithic design, the new project will use glazing. Regular fenestration in the middle portion, with a second set back and different fenestration at the top of the building achieves a top that avoids the feeling of fading into the skyline often seen in modern high-rise building that employ a glass curtain wall.

The proposed building's massing, or its general shape and volume, is larger than those in the historic district. Its general shape is larger as the proposed new building's footprint extends for a full block, whereas midblock buildings in the neighboring historic district are generally only a half-block deep. However, the new building's footprint is contained within the existing non-historic building's footprint, which extends for a full block unlike those in the historic district. The new building is also planned to be 22 stories, resulting in a tall, rectangular building of a larger volume. Buildings in the neighboring historic district are mostly two to four stories, with the exception of the Bank of Italy Building, which is 14 stories topped with a spire, reaching 255 feet. The building at 27 South First

Street will reach 262'6" [the height of the building was reduced to 242 feet subsequent to when this report was prepared]. This larger massing however is broken into a variety shapes, including a set back above the third floor and terrace level that provides a visual break at the height of the majority of the historic buildings found in the neighboring district.

In summary, the proposed building at 27 South First Street, across from the existing historic district's east-west side will not destroy historic materials or features, that characterize the district. The new building's design is unmistakably differentiated from the historic. It is compatible with the historic materials and features of the historic district as demonstrated, for example, through the use of brick veneer at the street level. Although the spatial relationships between the historic buildings in the district to those outside the district will be altered, some of these relationships have previously been altered through other modern high-rise construction in the vicinity. The proposed project will continue the prevailing pattern of height differentiation in the immediate areas outside the district.

The historic district's integrity will therefore also not be diminished by the construction of this project. 27 South First Street is outside the historic district. The historic district, as viewed from the public right-of-way will retain its historic defining features including its pedestrian character, highlighted though the existing paseos and alleyways. The proposed project's height, when seen from Fountain Valley within the bounds of the historic district is compatible with recent construction in the surrounding area. As such, the feeling and design of the historic district will remain intact. Because the project is outside the bounds of the historic district, it will have no effect on the integrity of materials, workmanship, and association of the district. The district will retain sufficient integrity to continue to convey its overall historic character."

The project site is located outside the historic district. Section 4.1.2.2 of the Initial Study acknowledges that construction of the approved project may represent a substantial visual change compared to the existing development on the site. The Initial Study further states that the project area is a mix of retail and commercial land uses of varying age and architectural style. As such, no specific aesthetic regarding use, height, massing, or building design is prominent. In the CEQA Guidelines, Appendix G, the Environmental Checklist Form, the question of visual character specifically refers to the "substantial degradation" of the existing visual character or quality of public views of a project site and its surroundings. Also, if the project is located within an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality. Regarding the visual character of the project site and surrounding area, the Initial Study concluded that development of the new tower was consistent with the City's Historic Design Guidelines, Downtown Design Guidelines, Downtown Streetscape Master Plan, the General Plan, and the Downtown Strategy 2040 Plan and would not result in a significant impact to the diverse visual character of the project area. Further, there are no designated scenic resources or views within the immediate project area. As a result, views of any particular building are not designated scenic views within the City of San José.

**Conclusion:** Based on the above analysis, the comment submitted on adjacency and proximity to historic structure does not constitute evidence of a new significant environmental impact of the project, and does not demonstrate that a subsequent or supplemental EIR is required pursuant to CEQA Guidelines Sections 15162-16164. Also, these comments do not demonstrate that there is any impact outside the scope of the program EIR, pursuant to CEQA Guidelines 15168.

### **Cumulative Impacts**

**PAC SJ Comment:** *We also take issue with the findings in the Initial Study that do not take into consideration the impact to the historic fabric the cumulative impacts of many more potential buildings of 22-24 stories being constructed. The IS/Addendum incorrectly concludes that the implementation of the project would not result in any significant effects to the environment.*

**City Response:** The CEQA Guidelines Section 15355 defines a cumulative impact as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. Cumulative impacts are based on a project's direct relationship to the past, present, and reasonably foreseeable projects.

This project together with other anticipated projects in the Downtown were included in the Downtown Strategy 2040 EIR, which is a programmatic document. The analysis included in a programmatic document is cumulative in nature. The Downtown Strategy 2040 EIR found that the impact to historic resources would be less than significant (page 112 of the Downtown Strategy 2040 EIR). The Addendum to the Downtown Strategy 2040 EIR prepared for this project determined the proposed project is within the cumulative analysis of the Downtown Strategy 2040 EIR and no mitigation is required.

The Downtown Strategy 2040 EIR required that new construction adjacent to a historic resource shall conform to the Secretary of the Interior's *Standards of the Treatment of Historic Properties* (page 111 of the Downtown Strategy 2040 EIR). The Historic Report prepared for the project evaluated the project based on the Secretary of the Interior's Standards and concluded that while the project would alter the setting of the surrounding historic resources, the character-defining features of the surrounding historic resources would be retained and would continue to convey their historic significance (page 22 of the *Historic Report and Proposed Project Analysis for 27 South First Street* dated February 5, 2019, included in Appendix B of the Initial Study).

**Conclusion:** Based on the above analysis, the comment submitted on cumulative impacts does not constitute evidence of a new significant environmental impact of the project, and does not demonstrate that a subsequent or supplemental EIR is required pursuant to CEQA Guidelines Sections 15162-16164. Also, these comments do not demonstrate that there is any impact outside the scope of the program EIR, pursuant to CEQA Guidelines 15168.

## **CONCLUSION**

Based on the above analysis, the comments submitted by PACSJ do not constitute evidence of a new significant environmental impact of the project, and do not demonstrate that a subsequent or supplemental EIR is required pursuant to CEQA Guidelines Sections 15162-16164. Also, these comments do not demonstrate that there is any impact outside the scope of the program EIR, pursuant to CEQA Guidelines 15168. Staff recommends the City Council deny the appeal and uphold the Planning Director's reliance on the Addendum and approval of the Special Use Permit.

## **EVALUATION AND FOLLOW-UP**

If the City Council denies the appeal and upholds the Director's reliance on the Addendum for the Special Use Permit, then the applicant may proceed with the acquisition of the necessary grading and building permits and implement the required mitigation measures to complete the development of the 27 South First Street Mixed-Use Project.

## **PUBLIC OUTREACH**

This Memorandum will be posted on the City's Council Agenda website for the May 14, 2019 Council Meeting. Staff followed Council Policy 6-30: Public Outreach Policy, in that notices for all the public hearings for this project were mailed to the owners and tenants of all properties located within 1,000 feet of the project site.

## **COORDINATION**

The preparation of this Memorandum was coordinated with the City Attorney's Office.

## **CEQA**

Addendum to the Downtown Strategy 2040 Final Environmental Impact Report, adopted by City Council Resolution No. 78942 on December 18, 2018.

/s/  
Rosalynn Hughey, Director  
Planning, Building and Code Enforcement

For questions, please contact Reema Mahamood, Planner III, at (408) 535-6872.

### Attachments:

Letter from LIUNA withdrawing their appeal, dated April 2, 2019.

Environmental Appeal from Preservation Action Council of San José, dated March 4, 2019.

# ATTACHMENT 1



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April 2, 2019

Via E-mail and First-Class Mail

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Robert Manford, Deputy Director  
Reema Mahomood, Environmental Project Manager  
Planning, Building and Code Enforcement  
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Re: 27 South First Street Mixed-Use Project (File No. SP18-016) – Withdrawal of Appeal by  
LIUNA Local 270 re: Addendum

Dear Director Hughey, Deputy Director Manford, and Ms. Mahomood:

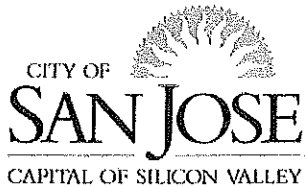
I am writing on behalf of the Laborers International Union of North America, Local Union 270 (“LIUNA”) regarding the appeal of the Planning Director’s approval of the addendum prepared for the 27 South First Street Mixed-Use Project (File No. SP18-016). LIUNA has had an opportunity to discuss its comments with the applicant. In light of further information provided by the applicant and commitments that would reduce formaldehyde emissions, LIUNA’s comments and appeal have been resolved. LIUNA hereby withdraws its appeal effective immediately and has no further objections to the City’s approval of the project.

If you could please confirm receipt of this request and the withdrawal of the appeal would be appreciated. Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Michael R. Lozeau".

Michael R. Lozeau  
Lozeau | Drury LLP




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

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF

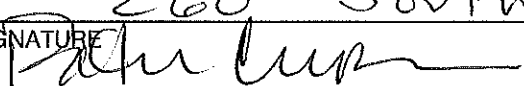
FILE NUMBER <b>SP18-016</b>	RECEIPT # <b>329731</b>
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX) <b>APPENDUM TO THE DOWNTOWN STRATEGY 2040 EIR, ENVISION SJ2040 GPER, SEIR &amp; ADDENDA THERETO.</b>	AMOUNT <b>\$250.00</b>
	DATE <b>3/4/2019</b>
	BY <b>R. Mahamood</b>

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.  
 THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:  


- REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):
- ① Height & massing do not comply with D.T. Guidelines
  - ② Project is not compatible with adjacent + close buildings
  - ③ Initial study didn't consider cumulative impacts

PERSON FILING APPEAL

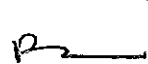
NAME <b>Patricia Curia</b>	DAYTIME TELEPHONE <b>1408294-3599</b>
ADDRESS <b>260 South 13th St</b> CITY <b>San Jose</b> STATE <b>CA</b> ZIP CODE <b>95112</b>	
SIGNATURE 	DATE <b>3/4/2019</b>

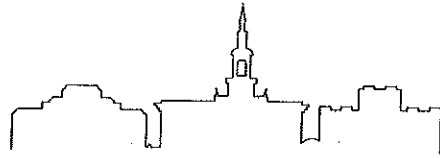
CONTACT PERSON  
 (IF DIFFERENT FROM PERSON FILING APPEAL)

NAME <b>Brian Grayson</b>	
ADDRESS <b>1650 Senter Road</b> CITY <b>San Jose</b> STATE <b>CA</b> ZIP CODE <b>95112</b>	
DAYTIME TELEPHONE <b>(408) 9988105</b>	FAX NUMBER <b>( )</b>
E-MAIL ADDRESS <b>brian@preservation.org</b>	

- The approval violates CEQA because the addendum is inadequate & fails to meet the criteria of CEQA and the CEQA Guidelines.  
 - A Supplemental EIR should be prepared prior to consideration of the project approval

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

- The City's findings approving the addendum & the project are not supported by substantial evidence 



## PRESERVATION ACTION COUNCIL OF SAN JOSE

*Dedicated to Preserving San Jose's Architectural Heritage*

February 27, 2019

Rosalynn Hughey, Director  
Planning, Building, and Code Enforcement  
200 E Santa Clara Street – 3rd Floor  
San Jose CA 95113

### Item 3c – SP18-016

Dear Rosalynn:

The Board of Preservation Action Council of San Jose (PAC\*SJ) first reviewed the 27 South First Street proposal in late 2017. The Board expressed their concerns at that time and has continued to have concerns since then.

While we appreciate the efforts the developer has made in refining the design and slightly lowering the building height, PAC\*SJ cannot support the project as proposed. We do not feel the current height is appropriate given its proximity to the landmark Bank of Italy / Bank of America building and the Downtown Commercial National Register Historic District.

Between when it was built in 1926 and 1970, the Bank of Italy building was the tallest building between San Francisco and Los Angeles and has been a visual downtown landmark for over 90 years.

We continue to oppose the project as designed for the following reasons:

#### **Height and massing:**

The Downtown Design Guidelines and Historic Design Guidelines require that new construction be respectful of existing historic buildings and not overpower existing historic buildings. We believe the height and massing of this proposal directly across the street from one of our most iconic buildings does not comply with the guidelines. While positive design changes have been implemented by the developer at the street level, we do not believe the monolithic nature of the proposed building is sufficiently reduced by use of balconies as corners, and other techniques. Responding to feedback from the Historic Landmarks Commission (HLC), the height was reduced only 22 feet. The revised plans reviewed by the HLC in December 2018 still did not address the commission's previous comments that stated; 1) "The building size is overpowering around buildings that are relatively shorter in height", and 2) "The crown of the building is important to the historic context, so design should look at what is compatible to the area without overpowering the Bank of America. It will still be a 22-story building that is directly across the street from what is a 14-story City Landmark."

#### **Adjacency and proximity:**

The project documents justify the height and say it is "compatible" by citing the KQED building at S. 1st and West San Fernando and One South Market. While the KQED building is also adjacent to the Downtown Historic Commercial District, it is a long city block away from Bank of Italy and does not cast a shadow on it. One South Market also is not a good comparison as it is considerably farther away from the historic district.

The vast majority of buildings adjacent to the Bank of Italy building are of similar 14-story height.

We find fault with the findings in the EIR Addendum sections 4.1.2.1 and 4.1.2.2. This proposed project is not compatible or aesthetically harmonious with the historic character of the historic district. It will impact not only visual character but also scenic vistas of the Bank of Italy building that the community has cherished for generations.

**Cumulative Impacts:**

We also take issue with the findings in the Initial Study that do not take into consideration the impact to the historic fabric the cumulative impacts of many more potential buildings of 22 - 24 stories being constructed. The IS/Addendum incorrectly concludes that the implementation of the project would not result in any significant effects to the environment.

Therefore, we assert that required findings to approve the Special Use Permit Section E cannot be made.

As such, the orientation, location and elevation of the proposed buildings and structures are in fact NOT compatible and aesthetically harmonious with adjacent development or the character of the neighborhood.

We are supportive of new development downtown if it is designed to be responsive to the historic context. We don't believe that this proposal is responsive to the historic context.

Thank you for the opportunity to comment on SP18-016.

Sincerely,

Brian K. Grayson  
Executive Director