

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING THE BO TOWN MIXED-USE PROJECT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES AND ALTERNATIVES, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, the City of San José (“City”), acting as lead agency under the California Environmental Quality Act (“CEQA”), prepared and circulated an Environmental Impact Report for the Downtown Strategy 2040 (“Downtown Strategy 2040 EIR”) to update and replace the Downtown Strategy 2000 Environmental Impact Report and analyze the environmental impacts of increased downtown development capacity under the Downtown Strategy Plan 2040 and Envision San José 2040 General Plan; and

**WHEREAS**, on December 18, 2018, in connection with the adoption of the Downtown Strategy 2040 Plan (Planning File No. PP15-102), the City Council certified the Downtown Strategy 2040 EIR and adopted a mitigation monitoring and reporting program pursuant to CEQA; and

**WHEREAS**, the City has now prepared and circulated a Supplemental Environmental Impact Report (“SEIR”) to analyze the environmental impacts of the Bo Town Mixed-Use Project, a Site Development Permit (H19-038), under the Downtown Strategy 2040 EIR, which proposes the demolition of an existing surface parking lot, two story storage building, and 5,283 square foot restaurant structure, and proposes construction of a 30-story mixed use building with up to 540 residential units and a 5,491 square foot ground floor retail space on an approximately 0.75-acre site located at the southern corner of

East San Salvador Street and South Second Street (APN: 467-47-097, 467-47-020, and 467-47-019) (the “Project”); and

**WHEREAS**, a First Amendment to the Draft SEIR was prepared to include responses to comments received during the public comment period and to make any technical or text changes to the Draft SEIR; and

**WHEREAS**, the First Amendment and the Draft SEIR together comprise the Final SEIR for the Project (collectively, “Final SEIR”); and

**WHEREAS**, the Final SEIR concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce some but not all of those significant impacts to a less-than-significant level; and

**WHEREAS**, on October 26, 2022, the Planning Commission of the City of San José reviewed the Final SEIR and recommended the City Council find the Final SEIR was completed in accordance with the requirements of CEQA and further recommended the City Council adopt a resolution certifying the Final SEIR; and

**WHEREAS**, as required under CEQA, a program to monitor and report on the implementation of measures to mitigate or avoid significant effects on the environment has been prepared for the Project (the “Mitigation Monitoring and Reporting Program”); and

**WHEREAS**, in connection with the approval of a project for which an environmental impact report has been prepared, which identifies one or more significant environmental effects of the project, the decision-making body of a public agency is required under CEQA to make certain findings regarding those effects and adopt a mitigation or

monitoring program and overriding statement of consideration for any impact that may not be reduced to a less than significant level;

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

1. That the foregoing recitals, the Downtown Strategy 2040 EIR, and the Final SEIR are incorporated herein as if set forth in the body of this Resolution.
2. The City Council finds and certifies the Final SEIR has been prepared and completed in compliance with CEQA.
3. The Final SEIR was presented to the City Council, the City Council reviewed and considered the information contained therein prior to approving the Project, and, as lead agency for the Project, the City Council finds the Final SEIR reflects the independent judgment and analysis of the City of San José and designates the Director of Planning, Building and Code Enforcement at 200 East Santa Clara Street, 3rd Floor Tower, San José, California 95113 as the custodian of records on which the decision of the City is based.
4. The City Council recognizes the Final SEIR contains additions, clarifications, modifications, and other information in response to comments on the Draft SEIR or obtained after the Draft SEIR was issued and circulated for public review and hereby finds such changes and additional information would not result in: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft SEIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project, or (iii) any feasible alternative considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project.
5. The City Council finds and determines that recirculation of this Final SEIR for further public review and comment is not warranted or required under CEQA.
6. The City Council makes the following findings with respect to potentially significant environmental impacts, as identified in the Final SEIR, with the understanding that all the information in this Resolution is intended as a summary of the full administrative record supporting the Final SEIR.

## **BO TOWN MIXED USE PROJECT ENVIRONMENTAL EFFECTS FOUND NOT TO BE SIGNIFICANT**

Through project scoping and the environmental analysis contained within the Final SEIR, it was determined that the Project would not result in a potential significant effect on the environment with respect to aesthetics, agricultural and forestry resources, energy, geology and soils, greenhouse gas emissions, hydrology and water quality, land use and planning, minerals, population and housing, public services, recreation, transportation, tribal cultural resources, utilities and service systems, and wildfire. A summary of the reasons for this determination can be found in Chapters 4.1, 4.2, 4.6, 4.7, 4.8, 4.10, 4.11, 4.12, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, and 4.20 of the Draft SEIR. No further findings are required for these subject areas.

### **FINDINGS FOR SIGNIFICANT BUT MITIGATED IMPACTS**

#### **Air Quality**

**Impact:** **Impact AIR-2:** The proposed project could result in odors leading to odor complaints due to the presence of the wastewater treatment facility on-site.

**Mitigation:** **MM AIR-2.1:** Prior to issuance of any building permits, the project applicant shall develop an odor control plan that addresses plant design issues to control odors, operating, and maintenance procedures to prevent odors, and an action plan to respond to upset conditions that could cause odors and measures to respond to odor complaints. The odor control plan shall describe the design elements and best management practices built into the facility that include:

- Ventilation of the system using carbon absorption, biofiltration, ammonia scrubbers, or other effective means to treat exhausted air from the enclosed facility;
- Odor proofing of refuse containers used to store and transport grit and screenings or biosolids; and
- Injection of chemicals to control hydrogen sulfide.

The plan shall describe procedures to address upset conditions caused by equipment failures, power outages, flow control, or treatment issues. The plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's Designee and the Bay Area Air

Quality Management District (BAAQMD) prior to issuance of any building permits.

**MM AIR-2.2:** A publicly visible sign with the telephone number and applicant designated person to contact regarding odor complaints shall be posted at the project site, outside in public view and in the lobby. This person shall respond and take corrective action within 48 hours of a complaint. BAAQMD's phone number shall also be posted on the sign to ensure compliance with applicable regulations. A log of odor complaints and procedures implemented to respond to complaints shall be maintained in perpetuity and provided to the City upon request.

**Finding:** With implementation of MM AIR-2.1 – AIR-2.2 and compliance with BAAQMD regulations, the proposed project would limit the discharge of odorous substances and respond to odor complaints with an odor control plan. Therefore, the proposed project would result in a less than significant impact with mitigation incorporated. **New Less than Significant Impact with Mitigation Incorporated (Less Than Significant Impact).**

**Facts in Support of Finding:** As described in Section 3.1 Air Quality in the Draft SEIR, the project proposes to have some of its wastewater treated at an independent wastewater treatment facility located in the first below-grade level of the proposed project. The wastewater treatment facility could generate odors from many phases of the treatment process. The anaerobic biological activity in the treatment system of the wastewater and solids produces most of the hydrogen sulfide and ammonia type odors. Mitigation requires the project applicant to prepare and implement an odor control plan that addresses plant design issues to control odors, operating, and maintenance procedures to prevent odors, and an action plan to respond to upset conditions that could cause odors and measures to respond to odor complaints. The plan must be approved by the Director of Planning, Building and Code Enforcement and the BAAQMD. In addition, the project applicant must post a publicly visible sign with the telephone number and applicant designated person to contact regarding odor complaints at the project site, outside in public view and in the lobby. The designated contact person must respond and take corrective action within 48 hours of a complaint. Including BAAQMD's phone number on the sign will ensure compliance with applicable regulations. These measures would ensure that any significant release of odorous materials would be reduced, and any complaints received about odors will be promptly addressed. Therefore, the proposed project would result in less than significant impacts from odors present on-site during operations.

## **Biological Resources**

**Impact:** **Impact BIO-1:** Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.

**Mitigation:** **MM BIO-1.1:** Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.

If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/ construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the qualified ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.

Prior to any tree removal, or approval of any grading or demolition permits, the project applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.

**Finding:** With implementation of Mitigation Measure BIO-1.1, the project's impact to nesting birds and raptors would be less than significant. **Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated).**

**Facts in Support of Finding:** Removal of vegetation on-site would result in impacts to nesting birds if they are present on-site and construction activities cannot be scheduled outside of the breeding season (construction to occur

between September 1<sup>st</sup> through January 31<sup>st</sup>, inclusive). To reduce the impacts on these species, where construction occurs between February 1<sup>st</sup> and August 31<sup>st</sup>, inclusive, the proposed project would implement bird surveys and buffer areas per Mitigation Measures BIO-1.1. This would protect birds from disturbance and reduce the abandonment of nests and/or loss of eggs during construction. With implementation of Mitigation Measure BIO-1.1, the project's impact to nesting birds and raptors would be less than significant.

### **Cultural Resources**

**Impact:** **Impact CUL-2:** The project would result in significant construction-vibration related impacts to nearby historic resources.

**Mitigation:** See mitigation measure **MM NOI-2**.

With implementation of mitigation measure MM NOI-2.1, which is consistent with measures identified and required of development in the Downtown Strategy 2040 EIR, project-related construction-vibration impacts on adjacent historic structures would be reduced to a less than significant level.

**Finding:** Implementation of Mitigation Measures NOI-2.1 would reduce vibration associated with construction activities to levels below 0.08 in/sec PPV. **Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated).**

**Facts in Support of Finding:** The construction of the proposed project would require the use of heavy equipment adjacent to buildings on sites around the project site. The vibratory effects of this equipment could be enough to result in damage to historic structures located near the project site. Vibration levels at the nearby historic structures within 60 feet of the construction activity could reach up to 1.23 in/sec PPV, which would exceed the threshold of 0.08 in/sec PPV for vibration levels to historic structures. Through compliance with MM NOI-2.1, the proposed project would implement construction measures to reduce vibration by keeping equipment away from the resources and using less impactful equipment. Construction vibration levels would be dependent on the location of individual pieces of equipment. Therefore, in order to achieve vibration levels below 0.08 in/sec PPV at the adjacent historic structures MM NOI-2.1 necessitates the adherence to a vibration monitoring plan that prohibits heavy vibration-generating equipment within 60 feet of adjacent buildings, establishes a vibration monitoring schedule, and contains contingency measures and stop construction requirements if vibration levels approach thresholds. Based on

technical assessments performed as a part of the proposed project, the mitigation measures would reduce the level of vibration below 0.08 in/sec PPV, which is the level associated with damage to historic structures.

**Impact:** **Impact CUL-3:** Project ground disturbing activities could result in a substantial adverse change in the significance of potential archaeological resources.

**Mitigation:** **MM CUL-3.1: Cultural Sensitivity Training.** Prior to issuance of any grading permit, the project applicant shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

**MM CUL-3.2: Preliminary Investigation.** Prior to the issuance of any demolition, grading, or building permits, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall complete a subsurface exploration at the site, to determine if there are any indications of discrete historic-era subsurface archaeological features. Exploring for historic-era features shall consist of at least one trench mechanically excavated below existing stratigraphic layers to evaluate the potential for Native American and historic era resources. If any archeological resources are exposed, these should be briefly documented, tarped for protection, and left in place. The results of the presence/absence exploration, including any treatment recommendations, shall be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval prior to issuance of any grading permit. If deemed necessary, based on the findings of the subsurface testing, an archaeological resources treatment plan (as described in MM CUL-3.4) shall be prepared by a qualified archaeologist, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally



affiliated with the geographic area as described in Public Resources Code Section 21080.3. If no evidence of historic era resources is found during the preliminary investigation, then monitoring of all construction-related ground disturbing activities will be required as described in MM CUL-3.3.

**MM CUL-3.3: Sub-Surface Monitoring.** If no evidence of historic era resources are found during the preliminary investigation, a qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping. Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities, if evidence of historic era resources are found during monitoring, then an archaeological resources treatment plan (as described in MM CUL-3.4) shall be prepared by a qualified archeologist, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.

**MM CUL-3.4: Treatment Plan.** If required pursuant to MM CUL-3.2 or CUL-3.3, a qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building, and Code Enforcement or Director's designee prior to the issuance of any grading permits. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
- Monitoring schedules and individuals

- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information)
- Detailed field strategy to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Security approaches or protocols for finds.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc.

The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. Once implementation of the Treatment Plan is complete, no further mitigation is required on the project site.

**MM CUL-3.5: Evaluation.** The project applicant shall notify the Director of Planning, Building, and Code Enforcement or Director's designee of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. All documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission (NAHC) Sacred Land Files, and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee.

**Finding:** With implementation of the Standard Permit Condition and Mitigation Measures MM CUL-3.1 through 3.5 listed above, impacts to unrecorded subsurface cultural resources would be less than significant. **Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)**

**Facts in Support of Finding:** Construction of the proposed project would disturb the subsurface soils on-site particularly during site preparation. The project site is within a defined area of archeological significance and this disturbance would have the potential to impact archaeological resources. These resources include tribal cultural resources. The mitigation incorporated as part MM CUL-3.1- MM CUL-3.5 would require work to stop on-site if these resources were encountered and would provide training and evaluation of resources if encountered. This would ensure that the resources are properly identified and preserved during construction on the project site.

### **Hazards and Hazardous Materials**

**Impact:** **Impact HAZ-1:** Development of the proposed project could potentially expose construction workers and the public to soil, soil vapor and groundwater contamination from previous auto-repair uses at adjacent sites during the excavation/construction phase of the project, and future users of the site to soil and soil vapor contamination after construction. Hazardous substances and petroleum products were likely associated with the former auto repair operations and oil station. The sites are not listed for any spills or releases in connection with the use or handling of these materials, however, the following measure is required as a precaution.

**Mitigation:** **MM HAZ-1.1:** Prior to issuance of any demolition or grading permits, the project applicant shall retain a qualified environmental professional to evaluate potential contamination issues identified in the Phase I Environmental Site Assessment by performing a Phase II soil, soil gas and groundwater contamination investigation. The results shall be compared to established construction worker safety and residential regulatory environmental screening levels. If the Phase II results indicate soil, soil gas, and/or groundwater contamination above the appropriate regulatory environmental screening levels for the proposed project the applicant shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health, Department of Toxic Substances Control or Regional Water quality Control Board under their Site Cleanup Program. A Site Management Plan (“SMP”), Removal Action Plan (“RAP”), or equivalent document must be prepared by a qualified hazardous materials consultant. The Plan must establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors.

The results of Phase II investigation and evidence of regulatory oversight, if required, and the appropriate plan such as an SMP, RAP or equivalent document shall be provided to the Director of Planning, Building and Code

Enforcement or the Director's designee, and the City's Municipal Environmental Compliance Officer.

**Finding:** Implementation of Mitigation Measure HAZ-1.1 would reduce potential hazards to the public or environment to a less than significant level. **Same Impact as Approved Project (Less than Significant Impact with Mitigation).**

**Facts in Support of Finding:** The northeastern adjoining site at 402-404 S 2nd Street was previously developed with an auto repair shop and oil station in 1950, with the auto repair shop remaining on-site through at least 1969. Additionally, the southwestern adjoining site was occupied by an auto repair shop in 1915 and 1950. Hazardous substances and petroleum products were likely associated with the former auto repair operations and oil station. These operations may have resulted in releases to the subsurface and UST(s) may remain in place. Based on available information, if contaminants from these sites impacted the groundwater and caused contaminants to migrate onto the project site, these historical uses would represent an REC. These sites were not listed as hazardous waste spill sites, however, based on the uses described there may have been hazardous materials handled during operations. With the implementation of Mitigation Measure HAZ-1.1, the project would identify and remediate any hazardous conditions on-site. The measure would require entrance into the SMP with the SCCDEH to evaluate past uses of the site. Based upon this review, the SCCDEH may require a Phase II Environmental Site Assessment, a Soil and Groundwater Management Plan, and/or other studies to ensure the proposed development is safe for construction workers and future site occupants.

### Noise

**Impact:** **Impact NOI-1:** Construction noise would exceed ambient levels by five dBA or more for a period of more than one year in the vicinity of residential and commercial uses, which would be considered a significant construction noise impact under General Plan Policy EC-1.7. The proposed project would be constructed in 33 months, which exceeds the 12-month construction noise threshold.

**Mitigation:** **MM NOI-1.1:** Prior to the issuance of any grading or demolition permits, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The logistics

plan shall be prepared by a qualified acoustics professional. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and during construction to respond to noise complaints from neighbors. The noise logistic plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval prior to the issuance of any grading or demolition permits.

As part of the noise logistics plan, construction activities for the proposed project shall include, but are not limited to, the following best management practices:

- Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists.
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices.
- Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Prohibit all unnecessary idling of internal combustion engines.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences, two weeks prior to the start of each construction phase.

- If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- A “noise disturbance coordinator” shall be designated to respond to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., beginning work too early, bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

**Finding:** With implementation of Mitigation Measure NOI-1.1, the project would have a less than significant impact from the increase in ambient noise levels in the project area due to construction. **Same Impact as Approved Project (Less than Significant Impact with Mitigation)**

**Facts in Support of Finding:** The proposed project would be constructed in 33 months, which exceeds the 12-month construction noise threshold. In addition to the City’s allowable hours of construction, the project proposes extended construction hours to include Saturday work from 7:00 AM to 10:00 PM over the course of the entire project construction period. MM NOI-1.1 requires the applicant to submit and implement a construction noise logistics plan which would include specific hours of construction, noise minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise logistic plan shall be submitted to the Director or Director’s designee of the Department of Planning, Building and Code Enforcement prior to the issuance of any grading or demolition permits. This mitigation measure is a requirement of the Downtown Strategy 2040 EIR. Adherence to MM NOI-1.1 would minimize impacts to neighboring properties from temporary increases in ambient noise levels resulting from future construction activities. Implementation of Mitigation Measure NOI-1.1 would reduce construction noise impacts to a less than significant level.

**Impact:** **Impact NOI-2:** Construction vibration activity associated with the proposed project may exceed General Plan Policy EC-2.3’s vibration limits of 0.20 in/sec PPV for buildings of normal conventional construction and 0.08 in/sec PPV for historical structures. Vibration levels for historic structures within 60 feet of the project site could reach up to 1.23 in/sec PPV, whereas vibration

levels for buildings of normal conventional construction within 25 feet of the project site could reach up to 1.0 in/sec PPV.

**Mitigation: MM NOI-2.1:** Prior to issuance of any demolition, grading, or building permits, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be conducted under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earliest. The Plan shall include, but not be limited to, the following measures:

- The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.
- A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.
- Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent building.
- Document conditions at all historic structures located within 60 feet of construction and at all other buildings located within 25 feet of construction prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically:
  - Vibration limits shall be applied to vibration-sensitive structures located within 60 feet of any construction activities identified as sources of high vibration levels.

- Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 60 feet of construction activities and all other buildings within 25 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, and shall include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures.
- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.
- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.
- If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.
- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. The survey shall be submitted to the Director of Planning, Building, and Code Enforcement or the Director's designee.

**Finding:** With the implementation of MM NOI-2.1, impacts from ground-borne vibration to the surrounding commercial and historic structures would be less than significant. **(Less Than Significant Impact with Mitigation Incorporated)**

**Facts in Support of Finding:** Implementation of Mitigation Measure NOI-2.1 would require the proposed project to implement a vibration monitoring plan, which would control high vibratory activities near sensitive structures. Construction vibration levels would be dependent on the location of individual pieces of equipment relative to the adjacent structures. Further,



construction vibration impacts are assessed based on damage to adjacent structures, not receptors at the nearest property lines. Therefore, MM NOI-2.1 would reduce vibratory impacts to adjacent historic and normal conventional construction buildings by prohibiting the use of heavy vibration-generating equipment within 60 feet of adjacent buildings, establishing a vibration monitoring schedule, and including contingency measures and construction stop requirements if vibration levels approach indicated thresholds. The noise report prepared for the proposed project determined that these measures would reduce vibratory impacts to below 0.08 in/sec PPV for historic structures and 0.2 in/sec PPV for buildings of normal conventional construction and would not result in damage to nearby sensitive structures. Therefore, with the implementation of Mitigation Measure NOI-2.1, the proposed project would result in a less than significant vibratory impact.

## **SIGNIFICANT ENVIRONMENTAL IMPACTS**

### **Air Quality**

**Impact:** **Impact AIR-1:** Construction activities associated with the proposed project would expose sensitive receptors to toxic air contaminant emissions (169.31 cancer cases and 0.55 µg/m<sup>3</sup> pf PM<sub>2.5</sub>) in excess of BAAQMD thresholds (cancer risk [greater than 10 cancer cases] and PM<sub>2.5</sub> concentration [greater than 0.3 µg/m<sup>3</sup>]).

**Mitigation:** **MM AIR-1.1:** Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan to the Director of Planning, Building and Code Enforcement or Director's designee that includes specifications of the equipment to be used during construction. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.

- All construction equipment larger than 25 horsepower operating at the site for more than two continuous days or 20 hours total shall meet U.S. Environmental Protection Agency (EPA) Tier 4 final emission standards for particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>).
- If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower operating at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 2 or 3 engines and include particulate matter emissions control

equivalent to CARB Level 3 verifiable diesel emission control devices that together achieve an 85 percent or greater reduction in particulate matter exhaust in comparison to uncontrolled equipment.

- Use of alternatively fueled or electric equipment.
- Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment.
- Stationary cranes, personnel/material hoist, and welders shall be powered by electricity.

Alternatively, the project applicant could develop a plan that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 85 percent or greater. The construction operations plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

**Finding:** With the implementation of mitigation MM AIR-1.1, the Standard Permit Conditions, and Conditions of Approval, the project's construction cancer risk levels would be reduced to 11.55 at the MEI and 2.30 at the childcare center. The project's annual PM2.5 concentrations would be reduced to 0.08 µg/m<sup>3</sup> at the MEI and would not exceed the BAAQMD single-source significance threshold (cancer risk [greater than 10 cancer cases] and PM2.5 concentration [greater than 0.3 µg/m<sup>3</sup>]). The proposed project would result in a significant and unavoidable construction TAC impact on sensitive receptors. **(New Significant Unavoidable Impact)**

**Facts in Support of Finding:** As required by Mitigation Measure AIR-1.1, the project applicant shall prepare and submit a construction operations plan to the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest). The construction operations plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards listed in Mitigation Measure AIR-1.1. CalEEMod was used to compute emissions associated with this mitigation measure, assuming that all equipment met U.S. EPA Tier 4 Final engines standards and electric stationary cranes, personnel/material hoist, and welders were used along with enhanced BAAQMD best management practices for construction. Mitigation Measure AIR-1.1 represents the best available measures to reduce project construction period emissions. With implementation of Mitigation Measure AIR-1.1 and the required standard permit conditions, the residential cancer risk would be reduced to 11.55 cases per one million for infants and the

maximum PM2.5 concentration would be reduced to 0.08 µg/m<sup>3</sup>, and the Hazard Index would be 0.01. Even with mitigation, the cancer risk levels would still exceed BAAQMD's significance threshold of 10 cancer cases, resulting in a significant unavoidable impact to off-site receptors.

### **Cultural Resources**

**Impact:** **Impact CUL-1:** Implementation of the proposed project would result in the demolition of an eligible Candidate City Landmark at 409 South 2nd Street.

**Mitigation:** **MM CUL-1.1:** Prior to issuance of any grading, demolition, or building permits the project applicant shall prepare and submit, for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee in coordination with the City's Historic Preservation Officer, a Historic Resources Mitigation Action Plan (Action Plan) demonstrating that the following steps, actions, and documents have been satisfied for the historic structure in accordance with the Action Plan timeline. The Action Plan shall include roles and responsibilities between the project applicant, City staff, and outside individuals, groups, firms, and consultants.

Documentation (HABS): The structure and associated features on the project site shall be documented in accordance with the guidelines established for the Level III Historic American Building Survey (HABS) consistent with the Secretary of the Interior's Standards for Architectural and Engineering Documentation and shall consist of the following components:

- Drawings – Prepare sketch floor plans of the buildings and site plan.
- Photographs – 35 mm digital photographs meeting the digital photography specifications.
- Written Data – a historical report with the history of the property, property description and historical significance.

A qualified architectural historian meeting the Secretary of the Interior's Professional Qualification Standards shall oversee the preparation of the sketch plans, photographs, research and written data.

The documentation shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval. After approval, the required documentation shall be filed with the San José Library's California Room

and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System.

**MM CUL-1.2: Documentation (Digital Scans):** Prior to issuance of any certificates of occupancy, the structure and associated features on the project site shall be documented by a qualified architectural historian through a series of digital scans and video production. The architectural historian shall meet the Secretary of the Interior's Professional Qualification Standards. A plan of the proposed procedures for the digital scans shall be submitted to the City's Historic Preservation Officer or equivalent prior to commencement of preparing the digital scans for review and approval.

**MM CUL-1.3: Relocation by the project applicant and/or a Third Party:** Prior to issuance of any demolition permits, the project applicant, or an interested third party, shall be required to advertise the availability of the structures for relocation for a period of no less than 60 days. The advertisements must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The project applicant shall provide evidence (i.e., receipts, date and time stamped photographs, etc.) to the City's Historic Preservation Officer that this condition has been met prior to the issuance of demolition permits.

If the project applicant or third party agrees to relocate the structure, the following measures must be followed:

- The Director of Planning, Building and Code Enforcement or Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is feasible for the building.
- Prior to relocation, the project applicant or third party shall hire a historic preservation architect and a structural engineer to undertake an existing condition study that establishes the baseline condition of the restaurant structure prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to the structure being moved.
- To protect the building during relocation, the project applicant shall engage a building mover who has experience moving similar historic structures. A structural engineer shall also be engaged to determine how the building needs to be reinforced/stabilized before the move.
- Once moved, the building shall be repaired and rehabilitated, as needed, by the project applicant or third party in conformance with the Secretary

of the Interior's Standards for the Treatment of Historic Properties. In particular, the character-defining features shall be retained in a manner that preserves the integrity of the building for the long-term preservation and reuse.

Upon completion of the repairs, a qualified architectural historian shall document and confirm that work to the structure were completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and character-defining features were preserved. The project applicant shall submit a memo report supplement to the Action Plan to the City's Historic Preservation Officer documenting the relocation, repair, and reuse prior to issuance of any occupancy permits for the proposed project.

**MM CUL-1.4: Salvage:** If the project applicant and/or a third party cannot agree to relocate the structure within the specified time, the structure shall be made available for salvage to companies facilitating the reuse of historic building materials prior to the issuance of any demolition permits. The time frame available for salvage shall be established by the City's Historic Preservation Officer in accordance with the Action Plan. The project applicant must provide evidence to the City's Historic Preservation Officer and Director of Planning, Building, and Code Enforcement, or Director's designee, that this condition has been met prior to the issuance of any demolition permits.

**MM CUL-1.5: Deconstruction/Reverse Construction:** Prior to and during demolition activities, all structures and associated features being salvaged and demolished shall be documented, photographed, and videoed by a qualified architectural historian showing in reverse the original methods of construction and use of materials. The project applicant must provide evidence to the City's Historic Preservation Officer and Director of Planning, Building, and Code Enforcement, or Director's designee, that this documentation has been completed prior to the issuance of occupancy permits.

**Finding:** Because the proposed project would result in the demolition of the eligible Candidate City Landmark on-site, the proposed project would result in a significant unavoidable impact to historical resources. Same impact as Approved Project (**Significant Unavoidable Impact**)

**Facts in Support of Finding:** The Mitigation Measures MM CUI-1.1 – 1.5 would require the documentation of the historic structure located on-site and provide options for preservation of the character-defining features of the structure.

If the proposed project is constructed as proposed the site would be cleared and all structures would be demolished which would result in a significant impact to the historic resource. Therefore, even with the mitigation incorporated, the proposed project would result in significant unavoidable impacts.

## FINDINGS CONCERNING ALTERNATIVES

To comply with CEQA, it is important to identify alternatives that reduce any anticipated significant impacts from the project and try to meet as many of the project's objectives as possible. The CEQA Guidelines emphasize a common-sense approach, meaning the alternatives should be reasonable, "foster informed decision making and public participation," and focus on alternatives that avoid or substantially lessen significant impacts.

The alternatives analyzed in the Draft EIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects.

The objectives for the project as are follows:

1. Provide a project that meets the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 Plan of locating high density development on infill sites to strengthen the downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José. Specifically, provide high density, high-rise housing and ground floor retail in the downtown area that is accessible to downtown jobs, retail and entertainment and various modes of public transit.
2. Support the growth strategies by increasing the housing base in the downtown in order to reduce the overall amount of vehicle miles traveled by placing housing in proximity to jobs.
3. Create and raise the quality of downtown housing with a high quality, well designed, high-density, high-rise residential development project in the downtown focus area to further the Envision San José 2040 General Plan goal of creating a central identity for San José as well as adding a sense of permanency and stature to the downtown skyline.
4. Construct a high density residential and ground floor retail development that is marketable and produces a reasonable return on investment for the project sponsor and its investors.

5. Provide biking amenities on-site including bicycle parking, bicycle club, and bicycle repair and lounges for residents and neighbors to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community along one of the major bicycle streets within the downtown.
6. Provide a project which draws upon the past heritage of the region's orchards, and the reconstruction of a restaurant frequented in its history in the downtown by the local community and provides an example of integrating these elements into the project and the architectural design.
7. Provide a project which is an example of sustainable design, incorporating environments with enhanced air quality and energy conservation including active solar and higher efficiency systems that save energy and improve the living conditions for its residents and guests.

The following alternatives were considered and rejected:

- Location Alternative
- Preservation Alternative 1 – Relocation of the Historic Resource Off-Site

The following are evaluated as alternatives to the Proposed Project:

1. No Project – No Development Alternative
2. Reduced Development Alternative
3. Preservation Alternative 2
4. Reduced Density/Preservation

### **1. No Project – No Development Alternative**

- A. **Description of Alternative:** The No Project – No Development Alternative would retain the existing restaurant and storage structure. If the project site were to remain as is with no new development, there would be no new impacts.
- B. **Comparison of Environmental Impacts:** The No Project Alternative would avoid all of the project's environmental impacts.
- C. **Finding:** The No Project – No Development Alternative would avoid the project's significant unavoidable impacts from construction and operational activities associated with the project. Additionally, the project's cumulative significant unavoidable impacts to Air Quality and Cultural Resources would be avoided. The No Project – No Development Alternative would not meet any of the proposed project's specific objectives because it would not meet any of the City's strategies

and goals of the Downtown Strategy 2040 by redeveloping the site with a high-density mixed-use development.

## **2. Reduced Development Alternative**

- A. **Description of Alternative:** The purpose of the Reduced Development Alternative is to avoid the project's significant unavoidable air quality impact (during construction) by reducing the size and intensity of the project. Under the Reduced Development Alternative, the building would retain its height; however, the underground parking would be relocated into a five-floor podium and the number of units and amenities would be reduced. This alternative would result in 154 parking spaces in podium parking, 481 dwelling units, no restaurant space, and removal of the first-floor cycling club and amenity space. This is a loss of 59 dwelling units, 5,530 square feet of restaurant space, and approximately 14,000 square feet of amenities.
- B. **Comparison of Environmental Impacts:** The Reduced Development Alternative would result in reduced construction air quality impacts compared with the proposed project by eliminating the amount of excavation required for the underground parking garage. This would reduce the Significant Unavoidable Impacts associated with air quality during construction to a less than significant level with the implementation of MM AIR-1.1. The Reduced Development Alternative would still significantly impact the eligible Candidate City Landmark on-site because the building would need to be demolished in order to expand the ground floor of the building which would instead contain above-grade parking. The significant unavoidable impact to the historical structures would remain.
- C. **Finding:** The Reduced Development Alternative would result in a reduction in air quality emissions during the initial phases of construction by substantially reducing the excavation and grading required. By reducing these construction phases, and with the proposed mitigation measures, the proposed project would be able to reduce the impacts on air quality to a less than significant level by reducing the use of heavy equipment on-site. The Reduced Development Alternative would still significantly impact the eligible Candidate City Landmark on-site because the building would need to be demolished in order to expand the ground floor of the building which would instead contain above-grade parking. This alternative would still be required to implement all other mitigation measures, Standard Permit Conditions, and Conditions of Approval identified for the proposed project. As a result, the impacts to noise, hazardous waste, and biological resources would be reduced to a less than significant level.



With these features implemented the Reduced Development alternative would reduce the significant unavoidable construction TAC impact and meet all objectives of the proposed project with the exception of Objectives 3 and 4.

### **3. Preservation Alternative 2 - Preservation of the Historic Resource On-site**

- A. **Description of Alternative:** The purpose of Preservation Alternative 2 is to avoid impacts to the Candidate City Landmark identified on-site. Under this alternative, the Candidate City Landmark would be retained on-site, all other structures on-site would be demolished, and a new mixed-use building would be constructed on the remaining portion of the site. The mixed-use building would be the same height and massing as the proposed project. No underground parking can be built on a portion of the site with this alternative because the eligible Candidate City Landmark would be retained on-site. This would reduce the parking by approximately 70 parking spaces and residential component of the project by 195 dwelling units. The existing restaurant building is approximately 5,283 square feet in area. The project, as proposed, includes a 5,530 square foot restaurant on the first floor of the building located in approximately the same location as the existing restaurant on-site. Therefore, with retention of the existing restaurant building, Preservation Alternative 2 would result in 5,283 square feet of restaurant area, 345 dwelling units, and 105 parking stalls, and would retain all amenities proposed by the project.
- B. **Comparison of Environmental Impacts:** The timeframe and magnitude of demolition and construction activities would be slightly less than the proposed project, but it would have the same impact on nesting birds on or in the vicinity of the site. The significant unavoidable impacts to historic resources would be avoided under Preservation Alternative 2. This alternative would still be required to implement all other mitigation measures, Standard Permit Conditions, and Conditions of Approval identified for the proposed project. As a result, the impacts to noise, hazardous waste, and biological resources would be reduced to a less than significant level consistent with the proposed project. Construction of this alternative would still require substantial excavation and construction that would contribute to cancer risk for nearby sensitive receptors which would result in a significant unavoidable air quality impact.
- C. **Finding:** The Preservation Alternative 2 would meet all of the project objectives. The Preservation Alternative 2 would avoid the project's significant unavoidable impact on the Candidate City Landmark. All other impacts disclosed in the Draft SEIR would remain the same, including the Significant and Unavoidable impact to Air Quality.

#### **4. Reduced Density and Preservation Alternative**

- A. **Description of Alternative:** The purpose of the Reduced Density and Preservation Alternative would be to create a hybrid of the other alternatives which would retain the eligible Candidate City Landmark and construct the proposed residential tower. The tower would be the same height and massing as the proposed project, but there would be no below-grade parking. All parking would be located above-grade within the tower.

The proposed project would be parked at a ratio of 0.36 space per residential unit and would have 21 units per residential floor. This alternative would maintain the same unit count per floor and meet the same minimum parking ratio requirements. This alternative would provide approximately 42 spaces per floor which is above the minimum required. By keeping all aspects of the project within the footprint of the proposed tower, this alternative would result in 4.5 levels of above grade parking, 24 floors of residential units, and would not contain any of the proposed amenity space. Specifically, parking would be provided on the first four floors of the building and half of the fifth floor for approximately 161 parking spaces. The other half of the fifth floor would be amenity space. The upper 24 floors would have up to 504 residential units.

The residential unit count and parking count under the alternative are estimates, but this alternative would result in a reduction of approximately 36 units and approximately 9,000 square feet of amenity space. The total available units and parking spaces under this alternative could be less because of the need for non-occupiable space within the building for utilities, elevators, mechanical, bicycle parking, etc. Therefore, the Reduced Density and Preservation Alternative would consist of 504 dwelling units and retain the current restaurant space

- B. **Comparison of Environmental Impacts:** This alternative would retain the eligible Candidate City Landmark on-site and reuse the building as a restaurant controlled by the applicant with no exterior modifications allowed, thereby avoiding the significant unavoidable historic resources impact. In addition, by limiting grading and excavation, the significant unavoidable TAC air quality impact would be reduced to less than significant with the inclusion of the identified mitigation. All other impacts would be comparable to the proposed project and this alternative would be required to implement all identified mitigation measures, Standard Permit Conditions, and Conditions of Approval.
- C. **Finding:** With this alternative, the significant unavoidable historic resources impact and the significant unavoidable TAC air quality impact would be reduced to less than significant with the inclusion of the identified mitigation. All other impacts would be comparable to the proposed project and this alternative would be

required to implement all identified mitigation measures, Standard Permit Conditions, and Conditions of Approval. This alternative would achieve all objectives of the project with the exception of Objective 4 because the bicycle amenities would not be included in the project.

### **Environmentally Superior Alternative**

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative is the No Project – No Development Alternative. The No Project – No Development Alternative would retain the site in its current condition with the eligible Candidate City Landmark. Retaining the status quo on the site would avoid all construction and operational impacts associated with the project, including the significant and unavoidable loss of the historic resource and air quality impacts from construction. Therefore, the No Project – No Development Alternative is the environmentally superior alternative; however, it would not achieve any of the project objectives.

CEQA Guidelines Section 15126.6 (e)(2) states that “if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. Beyond the No Project – No Development Alternative, the Reduced Density and Preservation Alternative would be the environmentally superior alternative.

The Reduced Density and Preservation Alternative would result in reduced noise impacts compared to the proposed project and avoid all of the significant and unavoidable impacts on air quality and historic resources. This alternative would achieve all objectives of the project with the exception of Objective 4 because the bicycle amenities would not be included in the project.

### **MITIGATION MONITORING AND REPORTING PROGRAM**

Pursuant to CEQA, the City Council of the City of San José hereby adopts and makes the following statement of overriding considerations regarding the remaining significant and unavoidable impact[s] of the Project as outlined above and the anticipated economic, social, and other benefits of the Project.

### **STATEMENT OF OVERRIDING CONSIDERATIONS**

- A. **Significant Unavoidable Impact.** With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined

that the project will result in significant unmitigated or unavoidable impacts, as set forth above, associated with air quality and historic resources.

- B. **Overriding Considerations.** The City Council specifically adopts and makes this Statement of Overriding Considerations that this project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the project are acceptable in light of economic, legal, environmental, social, technological or other considerations noted below, because the benefits of the project outweigh its significant adverse environmental impact of the project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent basis for finding that the benefits of the project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan, the Downtown Strategy 2040, and the Downtown Urban Design Guidelines.
- C. **Benefits of the Project.** The City Council has considered the public record of proceedings on the proposed project and other written materials presented to the City as well as oral and written testimony at all public hearings related to the project, and does hereby determine that implementation of the project as specifically provided in the project documents would result in the following substantial public benefits:

**1. Envision San José 2040 General Plan Strategies, Goals, and Policies.**

- **Major Strategy #3 Focused Growth:** The Project site is located within an identified Growth Area, as specified in the Envision San José 2040 General Plan. The project proposes to significantly intensify the site with a mixed-use development composed of residential and commercial in a pedestrian-friendly design and located in proximity to a variety of services, employment centers, educational institutes, and transit. Planning such sites for higher density mixed-use development enables the City to provide economic, employment, and residential benefits consistent with the community objectives of the Envision San José 2040 General Plan.
- **Major Strategy #9 Destination Downtown and #11 Design for a Healthful Community:** The Project will support the continued growth of the Downtown as a vibrant urban center for living and working by adding up to 540 residential units with ground floor retail. The Project's location in the Downtown core will allow residents and retail employees the opportunity to take advantage of a wide variety of commute options including walking, bicycling, bus and light rail. Focusing residential and commercial growth

within the Downtown will support the Plan's economic, fiscal, environmental, and urban design/placemaking goals.

- General Plan Land Use Goals LU-1.2, LU-2, LU-3.1, LU-3.4, LU-5.7, LU-10.1, and LU-10.4: The Project will provide a mixed-use environment with up to 540 residential units and over 5,000 square feet of ground floor retail which will aid in maximizing social interaction and furthering the vision of the *Envision General Plan*. Ground floor retail amenities will not only serve the residents of the development, but also employees and other residents of the Downtown area. The Project's location in the Downtown will encourage walking for the residents and employees, which will minimize vehicular miles traveled. The Project is located approximately 1,500 feet from the nearest Light Rail stop and the closest bus service operates directly adjacent to the Project on South 2nd Street. The Project will focus new residential growth in an identified Growth Area to maximize use of existing transit infrastructure, provide for more efficient delivery of City services, and foster the development of a more vibrant, walkable urban core.

## **2. Downtown Strategy 2040 Guiding Principles and Priorities**

- Make Downtown a memorable and creative metropolitan center, where people live, work, learn, play, shop, dine, and engage in public life; Create an accessible, walkable, bike-friendly, transit-rich Downtown; and Develop commercial uses in the Downtown, particularly active ground-floor retail uses, and those that generate sales tax revenue. The Project will contribute to the enhancement of the Downtown core by providing retail and high-density housing uses. Future residents of the Project would enjoy access to existing and planned jobs, restaurants, cultural centers, public parks, and shopping opportunities that are in the Downtown area. Ground-floor retail is proposed and would provide shopping and dining services that are easily accessible to pedestrians, residents, and visitors. The Project would provide on-site shared use bicycle options and is situated on a roadway with existing Class II bike facilities. Additionally, the Project is within walking distance of bus stops and a light rail stop, which would incentivize alternative modes of transit.

## **3. Downtown Urban Design Guidelines and Policies**

- Downtown Urban Design Policy CD-6.1, CD-6.2, CD-6.6, CD-6.8: The proposed project has a floor-area ratio (FAR) of 15.3 and 719 dwelling units/acre, maximizing the development potential and overall density of the parcel. This amount of density will contribute to the Downtown's growth as a vibrant urban area, and help the City actualize its vision for the Downtown

core. The project has undergone extensive design review so that its scale, quality, and character strengthen Downtown's status as an urban center. The proposed project consists of a 30-story tower with retail uses on the ground floor and residential uses on the remaining floors. The ground floor retail/commercial space will incorporate roofline elements, materials and signage that alludes to the Googie style architecture of the existing restaurant. The proposed development will be a recognizable development from the sky and will have a strong design presence and connectivity at street level.

The City Council has weighed each of the above benefits of the Project against its unavoidable environmental risks and adverse environmental effects identified in the Final EIR, and hereby determines that those benefits outweigh the risks and adverse environmental effects of the Project and, therefore, further determines that these risks and adverse environmental effects are acceptable and overridden.

### **MITIGATION MONITORING AND REPORTING PROGRAM**

Attached to this Resolution as Exhibit "A" and incorporated and adopted as part of this Resolution herein is the Mitigation Monitoring and Reporting Program ("MMRP") for the Project required under California Public Resources Code Section 21081.6 and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation for responsibility for mitigation implementation and the agency responsible for the monitoring action.

### **LOCATION AND CUSTODIAN OF RECORDS**

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, 3rd Floor Tower, San José, CA 95113.

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

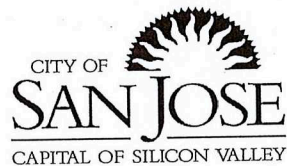
EXHIBIT "A"

**MITIGATION MONITORING AND REPORTING PROGRAM**

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**Bo-Town Mixed Use Project  
File No. H20-038  
July 2022**

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## PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Supplemental Environmental Impact Report (SEIR) prepared for the Bo Town Mixed Use Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the SEIR concluded that the impacts from implementation of the project would be less than significant.

I, andrew jacobson, the applicant, on the behalf of Project Bo Town LLC, hereby agree to implement the mitigation measures described below which have been developed in conjunction with the preparation of an SEIR for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level.

Project Applicant's Signature  andrew jacobson (Oct 17, 2022 17:32 PDF)

Date Oct 17, 2022



MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<b>AIR QUALITY</b>					
<p><b>Impact AIR-1:</b> Construction activities associated with the proposed project would expose sensitive receptors to toxic air contaminant emissions (203.41 cancer cases and 0.61 <math>\mu\text{g}/\text{m}^3</math> of PM2.5) in excess of BAAQMD thresholds (cancer risk [greater than 10 cancer cases] and PM2.5 concentration [greater than 0.3 <math>\mu\text{g}/\text{m}^3</math>]).</p>					
<p><b>MM AIR-1.1:</b> Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan to the Director of Planning, Building and Code Enforcement or Director's designee that includes specifications of the equipment to be used during construction. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.</p> <ul style="list-style-type: none"> <li>All construction equipment larger than 25 horsepower operating at the site for more than two continuous days or 20 hours total shall meet U.S. Environmental Protection Agency (EPA) Tier 4 final emission standards for particulate matter (PM10 and PM2.5).</li> <li>If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower operating at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 2 or 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that together achieve an 85 percent or greater</li> </ul>	<p>Submit a construction operations plan to the Director of Planning, Building and Code Enforcement or Director's designee.</p>	<p>Prior to issuance of any demolition, grading, or building permits (whichever occurs earliest)</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee</p>	<p>Review construction operations plan and letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards.</p>	<p>Prior to issuance of any demolition, grading, or building permits (whichever occurs earliest)</p> <p>During Construction</p>

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>reduction in particulate matter exhaust in comparison to uncontrolled equipment.</p> <ul style="list-style-type: none"> <li>• Use of alternatively fueled or electric equipment.</li> <li>• Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment.</li> <li>• Stationary cranes, personnel/material hoist, and welders shall be powered by electricity.</li> </ul> <p>Alternatively, the project applicant could develop a plan that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 85 percent or greater. The construction operations plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).</p>					
<b>Impact AIR-2:</b> The proposed project could result in odors leading to odor complaints due to the presence of the wastewater treatment facility on-site.					
<p><b>MM AIR-2.1:</b> Prior to issuance of any building permits, the project applicant shall develop an odor control plan that addresses plant design issues to control odors, operating, and maintenance procedures to prevent odors, and an action plan to respond to upset conditions that could cause odors and measures to respond to odor complaints. The odor control plan shall describe the design elements and best management practices built into the facility that include:</p>	Develop an odor control plan	Prior to issuance of any building permits	Director of Planning, Building and Code Enforcement or Director's designee  BAAQMD	Review odor control plan	Prior to issuance of any building permits



MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<ul style="list-style-type: none"> <li>Ventilation of the system using carbon absorption, biofiltration, ammonia scrubbers, or other effective means to treat exhausted air from the enclosed facility;</li> <li>Odor proofing of refuse containers used to store and transport grit and screenings or biosolids; and</li> <li>Injection of chemicals to control hydrogen sulfide.</li> </ul> <p>The plan shall describe procedures to address upset conditions caused by equipment failures, power outages, flow control, or treatment issues. The plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's Designee and the Bay Area Air Quality Management District (BAAQMD) prior to issuance of any building permits.</p>					
<p><b>MM AIR-2.2:</b> Prior to and during project operations, a publicly visible sign with the telephone number and project applicant designated person to contact regarding odor complaints shall be posted at the project site, in the lobby. This person shall respond and take corrective action within 48 hours of a complaint, if feasible. BAAQMD's phone number shall also be posted on the sign to ensure compliance with applicable regulations. A log of odor complaints and procedures implemented to respond to complaints shall be maintained in perpetuity and provided to the City upon request.</p>	<p>Post a publicly visible sign with the telephone number and applicant designated person to contact regarding odor complaints shall be posted at the project site, in the lobby</p>	<p>Prior to and during project operations</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee</p>	<p>Review odor complaint logs</p>	<p>Prior to and during project operations</p>

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
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**BIOLOGICAL RESOURCES**

**Impact BIO-1:** Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.

<p><b>MM BIO-1.1:</b> Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.</p> <p>If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the qualified ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established</p>	<p>Avoid construction during nesting season</p> <p>Or</p> <p>A qualified ornithologist shall complete bird surveys and submit a report indicating the results of the survey and any designated buffer zones</p>	<p>Prior to any tree removal, or approval of any grading or demolition permits; during Construction</p> <p>Or</p> <p>Prior to any tree removal, or approval of any grading or demolition permits. Surveys shall be no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee CDFW</p>	<p>Review report indicating the results of the survey and any designated buffer zones</p>	<p>Prior to any tree removal, or approval of any grading or demolition permits.</p>
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*Planning, Building and Code Enforcement*  
CHRIS BURTON, DIRECTOR

Bo Town Mixed Use Project  
File Nos. H20-038

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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<p>around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.</p> <p>Prior to any tree removal, or approval of any grading or demolition permits, the project applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.</p>		<p>no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive)</p>			
<b>CULTURAL RESOURCES</b>					
<b>Impact CUL-1:</b> Implementation of the proposed project would result in the demolition of an eligible Candidate City Landmark at 409 South 2nd Street.					
<p><b>MM CUL-1.1:</b> Prior to issuance of any grading, demolition, or building permits the project applicant shall prepare and submit, for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee in coordination with the City's Historic Preservation Officer, a Historic Resources Mitigation Action Plan (Action Plan) demonstrating that the following steps, actions, and documents have been satisfied for the historic structure in accordance with the Action Plan timeline. The Action Plan shall include roles and responsibilities between the project applicant, City staff, and outside individuals, groups, firms, and consultants.</p> <p>Documentation (HABS): The structure and associated features on the project site shall be documented in accordance with the guidelines established for the</p>	<p>Submit a Historic Resources Mitigation Action Plan with oversight by a qualified architectural historian</p>	<p>Prior to issuance of any grading, demolition, or building permits</p>	<p>Director of Planning, Building and Code Enforcement or the Director's designee in coordination with the City's Historic Preservation Officer</p>	<p>Review and approve the Action Plan</p>	<p>Prior to issuance of any grading, demolition, or building permits</p>

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<p>Level III Historic American Building Survey (HABS) consistent with the Secretary of the Interior's Standards for Architectural and Engineering Documentation and shall consist of the following components:</p> <ul style="list-style-type: none"> <li>• Drawings – Prepare sketch floor plans of the buildings and site plan.</li> <li>• Photographs – 35 mm digital photographs meeting the digital photography specifications.</li> <li>• Written Data – a historical report with the history of the property, property description and historical significance.</li> </ul> <p>A qualified architectural historian meeting the Secretary of the Interior's Professional Qualification Standards shall oversee the preparation of the sketch plans, photographs, research and written data.</p> <p>The documentation shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval. After approval, the required documentation shall be filed with the San José Library's California Room and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System.</p>					

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<p><b>MM CUL-1.2:</b> Documentation (Digital Scans): Prior to issuance of any certificates of occupancy, the structure and associated features on the project site shall be documented by a qualified architectural historian through a series of digital scans and video production. The architectural historian shall meet the Secretary of the Interior's Professional Qualification Standards. A plan of the proposed procedures for the digital scans shall be submitted to the City's Historic Preservation Officer or equivalent prior to commencement of preparing the digital scans for review and approval.</p>	<p>Documentation of the structure and associated features on the project site by a qualified architectural historian meeting the Secretary of the Interior's Professional Qualification Standards</p>	<p>Prior to issuance of any certificates of occupancy</p>	<p>City's Historic Preservation Officer or equivalent</p>	<p>Review and approve plan of the proposed procedures for the digital scans</p>	<p>Prior to issuance of any certificates of occupancy</p>
<p><b>MM CUL-1.3:</b> Relocation by the Project applicant and/or a Third Party: Prior to issuance of any demolition permits, the project applicant, or an interested third party, shall be required to advertise the availability of the structures for relocation for a period of no less than 60 days. The advertisements must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The project applicant shall provide evidence (i.e., receipts, date and time stamped photographs, etc.) to the City's Historic Preservation Officer that this condition has been met prior to the issuance of demolition permits.</p> <p>If the project applicant or third party agrees to relocate the structure, the following measures must be followed:</p>	<p>Advertise the availability of the structures for relocation for a period of no less than 60 days</p> <p>A qualified historic preservation architect and a structural engineer shall</p>	<p>Prior to issuance of any demolition permits</p>	<p>City's Historic Preservation Officer</p>	<p>Review evidence of advertisement</p>	<p>Prior to issuance of demolition permits</p>



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<ul style="list-style-type: none"> <li>The Director of Planning, Building and Code Enforcement or Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is feasible for the building.</li> <li>Prior to relocation, the project applicant or third party shall hire a historic preservation architect and a structural engineer to undertake an existing condition study that establishes the baseline condition of the restaurant structure prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to the structure being moved.</li> <li>To protect the building during relocation, the project applicant shall engage a building mover who has experience moving similar historic structures. A structural engineer shall also be engaged to determine how the building needs to be reinforced/stabilized before the move.</li> <li>Once moved, the building shall be repaired and rehabilitated, as needed, by the project applicant or third party in conformance with the Secretary of the Interior's Standards for</li> </ul>	prepare an existing condition study.	Prior to relocation of the building	Director of Planning, Building and Code Enforcement or Director's designee  City's Historic Preservation Officer	Review and approve documentation	Prior to relocation of the building

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<p>the Treatment of Historic Properties. In particular, the character-defining features shall be retained in a manner that preserves the integrity of the building for the long-term preservation and reuse.</p> <p>Upon completion of the repairs, a qualified architectural historian shall document and confirm that work to the structure were completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and character-defining features were preserved. The project applicant shall submit a memo report supplement to the Action Plan to the City's Historic Preservation Officer documenting the relocation, repair, and reuse prior to issuance of any occupancy permits for the proposed project.</p>	<p>A qualified architectural historian shall document and confirm that work to the structure were completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties</p>	<p>Upon completion of the repairs</p>	<p>City's Historic Preservation Officer</p>	<p>Review memo report supplement to the Action Plan</p>	<p>Prior to issuance of any occupancy permits</p>
<p><b>MM CUL-1.4:</b> Salvage: If the project applicant and/or a third party cannot agree to relocate the structure within the specified time, the structure shall be made available for salvage to companies facilitating the reuse of historic building materials prior to the issuance of any demolition permits. The time frame available for salvage shall be established by the City's Historic Preservation Officer in accordance with the Action Plan, but shall be no longer than 30 days. The project applicant must provide evidence to the City's Historic Preservation Officer and Director of Planning, Building, and Code Enforcement, or Director's designee, that this condition has been met prior to the issuance of any demolition permits.</p>	<p>Make structure available for salvage to companies facilitating the reuse of historic building materials</p>	<p>Prior to the issuance of any demolition permits</p>	<p>City's Historic Preservation Officer and Director of Planning, Building, and Code Enforcement, or Director's designee,</p>	<p>Review evidence that the building was made available for salvage</p>	<p>Prior to the issuance of any demolition permits</p>

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<b>MM CUL-1.5:</b> Deconstruction/Reverse Construction: Prior to and during demolition activities, all structures and associated features being salvaged and demolished shall be documented, photographed, and videoed by a qualified architectural historian showing in reverse the original methods of construction and use of materials.	Document all structures and associated features being salvaged and demolished	Prior to and during demolition activities	Qualified architectural historian  City's Historic Preservation Officer and Director of Planning, Building, and Code Enforcement, or Director's designee,	Conduct documentation  Review documentation	Prior to and during demolition activities  Prior to issuance of Occupancy permits
<b>Impact CUL-2:</b> The project would result in significant construction-vibration related impacts to nearby historic resources.					
See mitigation measure MM NOI-2.					
<b>Impact CUL-3:</b> Project ground disturbing activities could result in a substantial adverse change in the significance of an archaeological resource.					
<b>MM CUL-3.1: Cultural Sensitivity Training.</b> Prior to issuance of any grading permit, the project applicant shall be required to submit evidence that a Cultural Awareness Training has been provided to construction personnel. The training shall be facilitated by the project archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.	A qualified archaeologist in collaboration with a Native American representative shall facilitate a Cultural Awareness Training for construction personnel.	Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities.	Director of Planning, Building and Code Enforcement or Director's designee	Review and approve evidence that a Cultural Awareness Training has been provided to construction personnel	Prior to any ground disturbing activities or issuance of any grading, or building permits.
<b>MM CUL-3.2: Preliminary Investigation.</b> Prior to excavation activities, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology, in	A qualified archaeologist who is trained in both local prehistoric and historical archaeology, in consultation	Prior to issuance of any grading permits	Director of Planning, Building, and Code Enforcement or Director's designee	Review and approve results of the presence/absence	Prior to issuance of any grading permits



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consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall complete a subsurface exploration at the site, to determine if there are any indications of discrete historic-era subsurface archaeological features. Exploring for historic-era features shall consist of at least one trench mechanically excavated below existing stratigraphic layers to evaluate the potential for Native American and historic era resources. If any archeological resources are exposed, these should be briefly documented, tarped for protection, and left in place. The results of the presence/absence exploration, including any treatment recommendations if any, shall be submitted to the Director or Director's designee of the City of San José Department of Planning, Building, and Code Enforcement for review and approval prior to issuance of any grading permit. Based on the findings of the subsurface testing, an archaeological resources treatment plan as described in MM CUL-3.4 shall be prepared by a qualified archaeologist, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, if there are any indications of discrete historic-era subsurface	with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall complete a subsurface exploration at the site			exploration, including any treatment recommendations	

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archaeological features discovered during the Preliminary Investigation.					
<b>MM CUL-3.3: Sub-Surface Monitoring.</b> A qualified archeologist, in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall also be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping. Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities, the applicant shall notify the Director of Planning, Building, and Code Enforcement, or Director's designee, of grading and construction dates and activities that a qualified archeologist and Native American monitor would be present on the project site during.	Notify the Director of Planning, Building, and Code Enforcement, or Director's designee, of grading and construction dates and activities that a qualified archeologist and Native American monitor would be present on the project site during.	Prior to the issuance of any tree removal, grading, demolition, and/or building permit or activities.	Director or Director's designee of the City of San José Department of Planning, Building, and Code Enforcement	Review dates and activities that qualified archeologist and Native American monitor would be present on the project during	Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities.
<b>MM CUL-3.4: Treatment Plan.</b> If required pursuant to MM CUL-3.2, a qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan	A qualified archeologist in consultation with a Native American representative shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities.	Prior to issuance of any grading permits.	Director or Director's designee of the City of San José Department of Planning, Building, and Code Enforcement	Review and approve the archaeological treatment plan	Prior to issuance of any grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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<p>shall be prepared and submitted to the Director of Planning, Building, and Code Enforcement or Director's designee prior to the issuance of any grading permits. The treatment plan shall contain, at a minimum:</p> <ul style="list-style-type: none"> <li>• Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.</li> <li>• Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).</li> <li>• Monitoring schedules and individuals</li> <li>• Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information)</li> <li>• Detailed field strategy to record, recover, or avoid the finds and address research goals.</li> <li>• Analytical methods.</li> <li>• Report structure and outline of document contents.</li> <li>• Disposition of the artifacts.</li> <li>• Security approaches or protocols for finds.</li> <li>• Appendices: all site records, correspondence, and consultation with Native Americans, etc.</li> </ul> <p>The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.</p>					

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<p><b>MM CUL-3.5:</b> Evaluation. The project applicant shall notify the Director of Planning, Building, and Code Enforcement or the Director's designee of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Information Center, and the Director of Planning, Building, and Code Enforcement or the Director's designee..</p>	<p>Notify the oversight officer of any finds of cultural resources</p>	<p>During the preliminary field investigation, grading, or other construction activities</p>	<p>Director of Planning, Building, and Code Enforcement or Director's designee</p>	<p>Evaluate materials for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation</p>	<p>During the preliminary field investigation, grading, or other construction activities</p>
<p><b>HAZARDOUS MATERIALS</b></p>					
<p><b>Impact HAZ-1:</b> Development of the proposed project could potential expose construction workers and the public to soil, soil vapor and groundwater contamination from an off-site source during the excavation/constructions phase of the project, and future users to soil and soil vapor contamination after construction.</p>					
<p><b>MM HAZ-1.1:</b> Prior to issuance of any demolition or grading permits, the project applicant shall retain a qualified environmental professional to evaluate potential contamination issues identified in the Phase I Environmental Site Assessment by performing a Phase II soil, soil gas and groundwater contamination</p>	<p>A qualified environmental professional shall complete a Phase II soil, soil gas and groundwater contamination investigation.</p>	<p>Prior to issuance of any demolition or grading permits.</p>	<p>Environmental Compliance Officer in the City of San José's Environmental Services Department</p>	<p>Receive and review the report of findings.</p>	<p>Prior to the issuance of any demolition or grading permits.</p>

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<p>investigation. The results shall be compared to established construction worker safety and residential regulatory environmental screening levels. If the Phase II results indicate soil, soil gas, and/or groundwater contamination above the appropriate regulatory environmental screening levels for the proposed project the applicant shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health, Department of Toxic Substances Control or Regional Water quality Control Board under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document must be prepared by a qualified hazardous materials consultant. The Plan must establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors.</p> <p>The results of Phase II investigation and evidence of regulatory oversight, if required, and the appropriate plan such as an SMP, RAP or equivalent document shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, and the City's Municipal Environmental Compliance Officer.</p>	<p>If results indicate levels of soil, soil gas, and/or groundwater contamination above the appropriate regulatory environmental screening levels, obtain regulatory oversight from the Santa Clara County Department of Environmental Health under their Site Cleanup Program. Prepare SMP, RAP or equivalent document.</p>		<p>Director of Planning, Building and Code Enforcement or the Director's designee,</p> <p>The City's Environmental Compliance Officer</p>	<p>Receive copy of SMP, RAP or equivalent document.</p>	<p>If levels are found to be above the appropriate established regulatory threshold, implementation and completion pursuant to Site Clean-up Program.</p>
<b>NOISE</b>					
<b>Impact NOI-1:</b> Construction noise would exceed ambient levels by five dBA or more for a period of more than one year in the vicinity of residential and commercial uses.					
<b>MM NOI-1.1:</b> Prior to the issuance of any grading or demolition permits, the project applicant shall submit and implement a construction noise logistics	Submit and implement a construction noise logistics plan	Prior to the issuance of any grading or demolition permits	Director of Planning, Building and Code	Review and approve noise logistics plan	Prior to the issuance of any grading or





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<p>plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The logistics plan shall be prepared by a qualified acoustics professional. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and during construction to respond to noise complaints from neighbors. The noise logistic plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval prior to the issuance of any grading or demolition permits.</p> <p>As part of the noise logistics plan, construction activities for the proposed project shall include, but are not limited to, the following best management practices:</p> <ul style="list-style-type: none"> <li>• Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists.</li> <li>• Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.</li> <li>• The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices.</li> <li>• Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as</li> </ul>			Enforcement or Director's designee		demolition permits

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<p>possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.</p> <ul style="list-style-type: none"> <li>Prohibit all unnecessary idling of internal combustion engines.</li> <li>Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.</li> <li>Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences, two weeks prior to the start of each construction phase.</li> <li>If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.</li> <li>A "noise disturbance coordinator" shall be designated to respond to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., beginning work too early, bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site</li> </ul>					

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and include it in the notice sent to neighbors regarding the construction schedule					
<b>Impact NOI-2:</b> Construction vibration activity associated with the proposed project may impact adjacent commercial, residential, and historic structures within five feet of the project site.					
<p><b>MM NOI-2.1:</b> Prior to issuance of any demolition, grading, or building permits, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be conducted under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earliest. The Plan shall include, but not be limited to, the following measures:</p> <ul style="list-style-type: none"> <li>The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.</li> <li>A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams,</li> </ul>	<p>Prepare and a implement a Construction Vibration Monitoring Plan under the direction of a licensed Professional Structural Engineer in the State of California.</p> <p>Submit a copy of the plan to the Director of Planning, Building and Code Enforcement or the Director's designee</p>	<p>Prior to, during, and after vibration generating construction activities</p> <p>Prior to issuance of any demolition, grading, or building permits.</p>	<p>Director of Planning, Building and Code Enforcement or the Director's designee</p>	<p>Review and approve Construction Vibration Monitoring Plan</p>	<p>Prior to issuance of any demolition, grading, or building permits.</p>

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	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.</p> <ul style="list-style-type: none"> <li>• Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 60 feet of any adjacent building.</li> <li>• Document conditions at all historic structures located within 60 feet of construction and at all other buildings located within 25 feet of construction prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically: <ul style="list-style-type: none"> <li>○ Vibration limits shall be applied to vibration-sensitive structures located within 60 feet of any construction</li> </ul> </li> </ul>					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
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<p>activities identified as sources of high vibration levels.</p> <ul style="list-style-type: none"> <li>o Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 60 feet of construction activities and all other buildings within 25 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, and shall include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures.</li> <li>• Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.</li> </ul>					

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<ul style="list-style-type: none"> <li>At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.</li> <li>If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.</li> <li>Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.</li> <li>Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. The survey shall be submitted to the Director of Planning, Building, and Code Enforcement or the Director's designee.</li> </ul>					

Source: City of San José. SEIR. Bo Town Mixed Use Project. April 2022.