

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** November 8, 2022

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**COUNCIL DISTRICT:** 3

**SUBJECT: FILE NO. H20-038 - SITE DEVELOPMENT PERMIT FOR CERTAIN REAL  
PROPERTY LOCATED AT 409 & 425 SOUTH 2ND STREET.**

## **RECOMMENDATION**

The Planning Commission voted 7-2-1 (Barocio and Cantrell opposed, Young absent) to recommend that the City Council take the following actions:

1. Adopt a resolution certifying the Bo Town Mixed Use Project Final Supplemental Environmental Impact Report (SCH No. 2003042127) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942), and making certain findings concerning significant impacts, mitigation measures, alternatives, Statement of Overriding Considerations, and adopting a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act (CEQA).
2. Adopt a resolution approving, subject to conditions, a Site Development Permit, to allow the demolition of the existing Bo Town Restaurant building, and three accessory buildings totaling approximately 5,283 square feet, and the removal of one ordinance-size tree and one non-ordinance-size tree for the construction of a 30-story mixed residential and commercial building with a total of approximately 606,526 square feet, including 7,430 gross square feet of ground floor commercial space, 540 residential units with 7,497 square feet of co-working space, 6,141 square feet of residential amenity space, and four levels of below-grade parking, with extended construction hours from 7 AM to 10 PM, Monday to Saturday over a period of approximately 33 months on an approximately 0.75-gross acre site.

## **OUTCOME**

If the City Council approves all the actions listed above as recommended by the Planning Commission, the applicant will be able to demolish all the existing buildings, remove one ordinance-size and one non-ordinance tree, and construct a 30-story mixed residential and commercial building with a total of approximately 606,526 square feet, including 7,430 gross square feet of ground floor commercial space, 540 residential units with 7,497 square feet of co-working space, 6,141 square feet of residential amenity space, and four levels of below-grade

parking, with extended construction hours from 7 AM to 10 PM, Monday to Saturday over a period of approximately 33 months on the approximately 0.75-gross acre Project Site.

## **BACKGROUND**

On October 26, 2022, the Planning Commission held a Public Hearing to consider the Final Supplemental Environmental Impact Report (SEIR) and the Site Development Permit. The Planning Commission recommended that the City Council adopt the resolution certifying the Bo Town Mixed Use Project Final SEIR and related Mitigation Monitoring and Reporting Plan and approve the subject Site Development Permit.

### *Staff Presentation*

Planning staff provided a brief presentation of the project, including an overview of the project's conformance with the General Plan, City Council Development Policies, Zoning Code, Design Guidelines, and key project design concepts. The environmental project manager briefly discussed the environmental review process and project compliance with the California Environmental Quality Act (CEQA), including the need for a Statement of Overriding Considerations for the Significant and Unavoidable Impacts to Air Quality during construction and Cultural Resources. Staff stated three comment letters were received during the circulation of the SEIR, including a letter from the Bay Area Air Quality Management District.

After the staff presentation, Chair Oliverio asked the staff if the Bay Area Air Quality Management District opposed the project. Staff clarified that the Bay Area Air Quality Management District supports housing construction.

Commissioner Cantrell recommended future staff presentations include city-required affordable housing percentages and in-lieu fees. Chair Oliverio asked staff whether the project complies with the City's affordable housing requirements. Staff responded that the project must provide a percentage of affordable housing units or pay the in-lieu fee, or a combination of these two, and the final combination is determined prior to the issuance of Building Permits, through the affordable Housing Compliance Plan. Commissioner Cantrell requested affordable housing details for projects at the Planning stage. Staff explained that compliance with the City's affordable housing requirements is a project condition and for project financing and other reasons, the specific method of compliance typically isn't known at the Planning stage, and developers work with the Housing Department to finalize and record the Housing Compliance Plan prior to the issuance of a Building Permit.

### *Applicant Presentation*

The owner and applicant, Andrew Jacobson, introduced the architect Ernest Yamane from Steinberg Hart. Mr. Yamane provided the details of the project, including the historical aspects of the existing project site, site layout, and project design.

### *Public Hearing*

Chair Oliverio opened the public comment portion of the agenda.

Four members of the public spoke on the project, two in favor, and two with comments, as summarized below:

- Paul Soto, a local resident, stated he is against projects providing parking spaces that would result in generating pollution. He also commented that developers make a profit from paying in-lieu fees instead of providing affordable units on-site.
- Michelle Mashburn, a Downtown resident, asked whether ADA-accessible units would be included and strongly urged the developer to provide ADA-accessible units not just to meet the code requirements but also to meet the community needs. Ms. Mashburn also questioned the equity of the composition of the Planning Commission because there is only one female Commissioner.
- Mike Sodergren, Vice President of the Preservation Action Council of San José (PAC\*SJ), stated that the Bo Town Restaurant building is an eligible Candidate City Landmark because it is the only extant example of the Googie building style in Downtown. Mr. Sodergren commented that the design is beautiful and the design concept of integrating a new restaurant and applying the original design elements to the proposed building is appropriate. He stated that although one of the project alternatives to preserve the existing restaurant with a smaller residential project with fewer units and parking did not seem catastrophic to the project, PAC\*SJ overall supports the proposed project.
- Ryan Lopez, a resident near Downtown, stated he supported the project because the project would help small businesses Downtown by bringing more people Downtown. Mr. Lopez said he hoped the Planning Commission would not require more ADA-accessible units than the code required.

After the public comment, the applicant stated they were excited about the project Downtown and hoped the project and others in the pipeline can bring value to Downtown economically and culturally and help create a great Downtown where people can live, work, and play.

### *Commissioner Discussion*

Commissioner Lardinois asked if rebuilding the restaurant is a legal requirement or a voluntary design decision. The applicant responded it is a voluntary decision for the building design to take design inspiration from the existing architectural resources on site. Commissioner Lardinois then asked about an EIR opposition letter sent in the afternoon of the hearing date. Staff and Chair Oliverio clarified the letter was for another project on the agenda, and not for this project.

Commissioner Lardinois commended that the project incorporates three-bedroom units that would help bring more families Downtown.

Commissioner Cantrell asked about the metric for affordable housing. The applicant responded they were still working with the Housing Department, and the details were still not determined, and the project would comply with the City's Housing requirements. Commissioner Cantrell said he would like to know how the applicant would comply with the housing requirements so he could make a decision based on this information. Chair Oliverio stated this information is not available at the Planning stage, and the project must ultimately comply with the City's Housing Policy prior to the issuance of Building Permits.

Commissioner Ahluwalia asked about the unit mix and whether the project includes amenity space for residents. The applicant responded the project includes a cycle club on the ground floor, lounge space and a workspace on the second floor, amenity spaces such as a fitness room, and an activity room on the rooftop. Staff responded there would be 27 studios, 405 one-bedroom units, 81 two-bedroom units, and 27 three-bedroom units.

Commissioner Garcia made a motion to approve the project because he believes the project meets all requirements and would benefit the area by transforming a site with vacant buildings and accessory structures into a well-designed building with 540 dwelling units regardless of affordability. Commissioner Casey seconded the motion.

Commissioner Barocio asked what qualifies as a mixed-use development and whether there is a minimum area requirement for commercial use. Staff responded that as long as the project includes these two components, the project would qualify as a mixed-use development. There is no minimum area requirement. Commissioner Barocio then asked about the public noticing for the project. Staff responded that staff followed the City's Public Outreach Policy to notify people and interested individuals, parties, and agencies.

Commissioner Ornelas-Wise asked if the project would include offsite improvements, such as improving the bus station. The architect responded the project would include substantial improvements along the project's South 2nd Street and East San Salvador Street frontages and the intersection of South 2nd Street and East San Salvador Street. A new bike lane and bus stop would be added along the project's South 2nd Street frontage. Commissioner Ornelas-Wise then asked how the landscaping on the building facades would be irrigated and maintained. The architect responded that the building owner would maintain the landscaping and that the irrigation system would use recycled water. Commissioner Ornelas-Wise also asked if the building would include a kids' play area. The architect responded that a kids' play area was not proposed because the occupants of the building would most likely be tech and office workers without children and that this is a tight urban site. Commissioner Ornelas-Wise highly recommended the project include affordable units on site given that the project is within walking distance to San José State, and students and teachers are among the groups needing affordable housing. Commissioner Ornelas-Wise also asked what caused the significant air quality impact and whether there are mitigation measures to reduce the impact and protect the construction

workers. Staff responded the impact mainly results from site excavation required for the underground parking and there are mitigation measures required to be implemented during construction to reduce the impact. Commissioner Ornelas-Wise lastly commented she is happy to see that the project incorporates the heritage of the site.

Commissioner Rosario asked if the project would include bicycle parking in each unit. The applicant responded that the project includes a cycle club on the ground floor where bicycles can be stored and repaired instead of storing bikes in each unit.

Chair Oliverio asked if there ever is a question of a high-density housing project not complying with ADA at the Planning stage. Staff responded there was not because ADA compliance is reviewed and enforced by the Building Division during the Building Permit application stage.

Commissioner Lardinois asked the applicant if they had a general idea of whether they would provide affordable housing on-site or pay in-lieu fees. The applicant responded they do support affordable housing; however, it is still undetermined for this project due to the overall business plan for their several projects Downtown.

Chair Oliverio asked if the project financing terms determine whether the project will include affordable units on-site or pay the in-lieu fee. The applicant responded that every lender is different and there is no general rule for this.

Commissioner Cantrell commented that the project design is beautiful and would add value to Downtown, however, he believed not knowing how the developer would address affordable housing is a big problem. He stated some types of housing projects result in raising overall housing costs and he is afraid this project may be that type of project. He stated that without knowing the applicant's plan for affordable housing, it is hard for him to make a decision.

Commissioner Ornelas-Wise suggested extra lighting on the ground floor and having security guards on-site to address safety concerns at night Downtown. She also expressed concerns about potential parking issues during construction, especially during events in nearby areas.

Commissioner Barocio asked when the developer must determine the affordable housing plan. Staff responded it is determined after the Planning entitlement and prior to the issuance of the Building Permit according to Ordinance 28689 adopted by the City Council. Commissioner Barocio asked whether the City Council would be the decision body to change the requirement to finalize the housing compliance plan prior to the Planning entitlement. Chair Oliverio confirmed that the City Council would be the review body and explained the City Council adopted Ordinance 28689 with the awareness that projects could be entitled but the financing could be determined years out.

Chair Oliverio stated he supported the project because it is in line with the City's vision for Downtown.

The motion to recommend Council approval of the project was approved with a vote of 7-2-1 (Barocio and Cantrell opposed, Young absent).

### **ANALYSIS**

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

### **EVALUATION AND FOLLOW-UP**

Should the City Council adopt the resolution certifying the Final SEIR, and approve the Site Development Permit, the applicant would be allowed to demolish the existing Bo Town Restaurant building and three accessory buildings totaling approximately 5,283 square feet, remove one ordinance-size tree and one non-ordinance-size tree, and construct a 30-story mixed residential and commercial building with a total of approximately 606,526 square feet, including 7,430 gross square feet of ground floor commercial space, 540 residential units with 7,497 square feet of co-working space, 6,141 square feet of residential amenity space, and four levels of below-grade parking, with extended construction hours from 7 AM to 10 PM, Monday to Saturday over a period of approximately 33 months on an approximately 0.75-gross acre site. The applicant could proceed with an application for Building Permits.

### **PUBLIC OUTREACH**

Following City Council Policy 6-30, the required on-site signs describing the project have been posted on the project site since July 2021. A joint community and environmental scoping meeting was held on September 9, 2021, via Zoom webinar, to inform the surrounding community of the proposed project. Nine members of the public attended the meeting and one member of the public spoke, representing PAC\*SJ. The commenter stated the project design is appropriate in respecting the Bo Town Restaurant and stated that the impacts to the nearby property, Studio Theater, which is not listed on the Historic Resources Inventory should also be evaluated in the SEIR. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

### **COORDINATION**

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

## **CLIMATE SMART SAN JOSÉ**

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The project would increase the population density of the site and Downtown and would include, high-performing, energy-efficient design features. The project would facilitate mobility choices beyond single-occupancy, gas-powered vehicles.

## **CEQA**

The City of San José, as the lead agency for the project, prepared a Draft SEIR to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation (NOP) was circulated from September 7th, 2021 until October 7th, 2021. The Draft SEIR itself was circulated for public review and comment from April 29, 2022, through June 14, 2022.

The City received three written comment letters during the public circulation period. Comments were submitted by three agencies, which were the Santa Clara Valley Transportation Authority, Valley Water, and the Bay Area Air Quality Management District. All comments have been fully responded to in the Final SEIR. A summary of the public comments received on the SEIR is provided in the Planning Commission staff report, as well as information on responses to the comments.

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

## **CONCLUSION**

In summary, the project was heard at the October 26, 2022, Planning Commission Meeting. The motion to recommend Council approval of the project was approved 7-2-1 (Barocio and Cantrell opposed, Young absent). As discussed in the attached staff report, the project is consistent with the Envision San José 2040 General Plan, City Council Policies, Zoning Ordinance, Downtown Design Guidelines and Standards, and the requirements of CEQA.

Should the City Council adopt the resolution certifying the Environmental Impact Report, and approve the Site Development Permit, the applicant would be allowed to demolish the existing Bo Town Restaurant building and three accessory buildings totaling approximately 5,283 square feet, remove one ordinance-size tree and one non-ordinance-size tree, and construct a 30-story mixed residential and commercial building with a total of approximately 606,526 square feet, including 7,430 gross square feet of ground floor commercial space, 540 residential units with 7,497 square feet of co-working space, 6,141 square feet of residential amenity space, and four

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levels of below-grade parking, with extended construction hours from 7 AM to 10 PM, Monday to Saturday over a period of approximately 33 months on an approximately 0.75-gross acre site. The applicant could proceed with an application for Building Permits.

/s/

CHRISTOPHER BURTON, Secretary  
Planning Commission

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

Attachments: Planning Commission Staff Report





# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Christopher Burton, Director

**SUBJECT:** File No. H20-038

**DATE:** October 26, 2022

**COUNCIL DISTRICT: 3**

<b>Type of Permit</b>	Site Development Permit
<b>Proposed Land Use</b>	Commercial and Residential
<b>New Square Footage</b>	606,526
<b>New Residential Units</b>	540
<b>Demolition</b>	A restaurant (Bo Town Restaurant), an accessory building, and two storage structures totaling 5,283 square feet
<b>Tree Removals</b>	One ordinance-size tree and one non-ordinance-size tree
<b>Project Planners</b>	Angela Wang
<b>CEQA Clearance</b>	Bo Town Mixed Use Project Supplemental Environmental Impact Report (State Clearinghouse No. 2003042127) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942)
<b>CEQA Planner</b>	Kara Hawkins

## RECOMMENDATION

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

1. Adopt a Resolution certifying the Supplemental Environmental Impact Report (SCH No. 2003042127) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942), and making certain findings concerning significant impacts, mitigation measures, alternatives, Statement of Overriding Considerations, and adopting a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act (CEQA).
2. Adopt a Resolution approving, subject to conditions, a Site Development Permit, to allow the demolition of the existing Bo Town Restaurant building which is eligible as a Candidate City Landmark, an accessory building, and two storage structures totaling approximately 5,283 square feet, and the removal of one ordinance-size tree and one non-ordinance-size tree for the construction of a 30-story mixed residential and commercial building with a total of approximately 606,526 square feet, including 7,430 gross square feet of ground floor commercial space, 540 residential units with 7,497 square feet of co-working space, 6,141 square feet of residential amenity space, and four levels of below-grade parking, with extended construction hours from 7 AM to 10 PM, Monday to Saturday over a period of approximately 33 months on an approximately 0.75-gross acre site.

## PROPERTY INFORMATION

<b>Location</b>	South corner of East San Salvador Street and South 2 <sup>nd</sup> Street (409 & 425 South 2 <sup>nd</sup> Street)
<b>Assessor Parcel Nos.</b>	264-47-019, 020 & 097
<b>General Plan</b>	Downtown
<b>Growth Area</b>	Downtown
<b>Zoning</b>	DC Downtown Primary Commercial
<b>Historic Resource</b>	The existing restaurant (Bo Town Restaurant) at 409 South 2 <sup>nd</sup> Street is currently listed on the Historic Resources Inventory as a “Structure of Merit” and is eligible as a Candidate City Landmark per the historic assessment.
<b>Annexation Date</b>	March 27, 1850 (Original City)
<b>Council District</b>	3
<b>Acreage</b>	0.75
<b>Proposed Density</b>	719 DU/AC and 15.3 FAR

## PROJECT SETTING AND BACKGROUND

As shown on the attached [Vicinity Map \(Exhibit A\)](#), the Project Site is located at the south corner of East San Salvador Street and South 2<sup>nd</sup> Street. The approximately 0.75-gross acre site is currently developed with a one-story restaurant (currently vacant Bo Town Restaurant) at the street corner, two storage structures, a surface parking lot and a two-story accessory building to the south of the restaurant. The Bo Town Restaurant building is listed in the Historic Resources Inventory as a Structure of Merit. Per the Historic Resources Assessment conducted by TreanorHL dated October 22, 2021, the restaurant building is eligible as a Candidate City Landmark because it is one of the only extant examples of a Google-style building in downtown San Jose.

The site is surrounded by restaurant, bar, and office uses to the west, a church and a motel to the south, a restaurant and a market on a lot planned for two mixed use towers (File No. SP21-019) and residential use to the east across South 2<sup>nd</sup> Street, and a surface parking lot planned for a high-rise commercial office development (Valley Title Commercial Office Project, File No. H21-012) to the north across East San Salvador Street.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
<b>North</b>	Downtown	DC Downtown Primary Commercial	Parking lot planned for commercial office development (Valley Title, File No. H21-012.) across East San Salvador Street
<b>South</b>	Downtown	DC Downtown Primary Commercial	Church and motel
<b>East</b>	Downtown	DC Downtown Primary Commercial	Restaurant, market, and parking lots with plans for two mixed use towers (File No. SP21-019), and residential use across South 2 <sup>nd</sup> Street
<b>West</b>	Downtown	DC Downtown Primary Commercial	Bar, restaurant and office

On November 18, 2020, the subject Site Development Permit application to construct a 30-story mixed-use tower on the subject site was filed by Project Bo Town LLC.

The project would demolish four existing buildings and structures, including the Bo Town Restaurant building. The project would also remove one ordinance-size tree and one non-ordinance-size tree on site.

As shown in [Exhibit F](#), the project plan details the proposed 30-story, approximately 606,526-square-foot mixed-use tower, which consists of approximately 7,430 gross square feet of ground floor commercial space, approximately 7,497 square feet of co-working space on Level 2 (designated for residents in this building), 540 residential units from Level 3 to Level 29, approximately 6,141 square feet of residential amenity space (such as gym, pool, party room, and outdoor activity area on Level 30), and four levels of below grade parking. The ground floor commercial area includes a 4,524-square foot restaurant designed to resemble the Bo Town building being demolished, and a 2,863-square foot cycle club. The site would be accessed from a two-way driveway from East San Salvador Street. The project would have a maximum height of 293 feet and a density of 719 dwelling units per acre. The project also includes extended construction hours from 7AM to 10PM, Monday to Saturday for the entire construction period (approximately 33 months).

As stated above, the project requires a Supplemental Environmental Impact Report (SEIR) to the Downtown Strategy 2040 Environmental Impact Report, certified by the City Council in December 2018. The SEIR for the project identified significant and unavoidable project impacts related to:

- **Air Quality:** Implementation of the proposed project would result in significant cancer risk to sensitive receptors near the project site during construction.
- **Cultural Resources:** Demolition of the existing structure on-site that is identified as a Candidate City Landmark would result in a significant and unavoidable impact to the historical resource and a significant and unavoidable impact to the cumulative historical resource.

As analyzed in the SEIR, there are no feasible mitigation measures to reduce the impact to the cultural resources that would also meet the project objectives to construct the mixed-use tower and the impact to air quality during construction. The SEIR was prepared in accordance with Title 21 of the San José Municipal Code and the California Environmental Quality Act of 1970, as amended (CEQA). A statement of overriding consideration is required for environmental impacts that cannot be reduced to a less than significant level. Pursuant to Section [21.07.020](#) of the San José Municipal Code, the Planning Commission is required to recommend action on the permit to the City Council for projects requiring an EIR and a statement of overriding consideration. Therefore, the SEIR and Site Development Permit are before the Planning Commission for a recommendation to the City Council.

## ANALYSIS

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

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

### Envision San José 2040 General Plan Conformance

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

The proposed 30-story mixed use building with ground floor commercial fosters a complete community in Downtown by increasing jobs and providing active ground floor commercial use along street frontages. The project also includes a Transportation Demand Management plan that promotes transit ridership and other alternative modes of transportation. Additionally, the project would have a density of 719 DU/AC and a FAR of 15.3, making it consistent with the General Plan land use designation of Downtown.

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

1. Land Use Policy LU-1.2: Encourage Walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.

*Analysis: The project’s ground floor would include a restaurant, an outdoor area for dining and activities, residential lobby and cycle club along the project’s street frontages to enliven the street. The project would also improve and enhance pedestrian and bicycle connection/circulation by constructing 18 to 21-foot-wide attached sidewalks with street trees along the East San Salvador Street and South 2<sup>nd</sup> Street.*

2. Land Use Policy LU-5.7: Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.

*Analysis: The ground floor would provide a restaurant, cycle club and residential lobby along its street frontages and outdoor activity area. The project frontage is designed with high transparency to enhance safety and visibility between the public realm and private development.*

3. Transportation Policy TR-4.1: Support the development of amenities and land use and development types and intensities that increase daily ridership on the VTA, BART, Caltrain, ACE and Amtrak California systems and provide positive fiscal, economic, and environmental benefits to the community.

*Analysis: The project site is served by three frequent bus routes (Routes 23, 66, and 68) and two rapid bus routes (Routes 523 and 568). Two light rail transit (LRT) lines (Blue and Green Lines) are also provided in the project vicinity with the San Antonio Light Rail Station.*

*The project includes a Transportation Demand Management Plan that promotes transit ridership by incorporating a transit use incentive program that provides VTA SmartPasses to residents.*

*The proximity of the proposed intensive mixed-use development to a variety of public transportation options encourages transit use and provides options for residents to have a car-free commute. Furthermore, it is envisioned that residents in the development would be able to walk, bicycle, or use public transportation to access many dining and entertainment amenities close to or on the project site.*

4. Downtown Urban Design Policy CD-6.2: Design new development with a scale, quality, and character to strengthen Downtown’s status as a major urban center.

5. Downtown Urban Design Policy CD-6.6: Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings taller than 75 feet, to create distinctive silhouettes for the Downtown Skyline.  
  
*Analysis: The proposed project has a density of 719 DU//AC, and a FAR of 15.3 with a maximum height of approximately 293 feet, making this a dense mixed-use project. The significant proposed density and size of the project, including its distinctive façade planting design theme would contribute to strengthening Downtown’s urban character. The proposed tower has a unique roof style reflecting that of the Bo Town Restaurant, that would contribute toward an interesting and dramatic skyline within the downtown.*
6. Land Use Policy LU-16.1: Integrate historic preservation practices into development decisions based upon fiscal, economic, and environmental sustainability.
7. Community Design Policy CD-1.26: Apply the Historic Preservation Goals and policies of the General Plan to proposals that modify historic resources or include development near historic resources.
8. Downtown Urban Design Policy CD-6.7: Recognize Downtown’s unique character as the oldest part, the heart of the City, and leverage historic resources to create a unique urban environment there. Respect and respond to on-site and surrounding historic character in proposals for development.

*Analysis: The existing Bo Town Restaurant on site is listed on the HRI as a Structure of Merit. Per the Historic Resources Assessment conducted by TreanorHL dated October 22, 2021, Bo Town Restaurant is eligible as a Candidate City Landmark because it is one of the only extant examples of a Googie style building in downtown San Jose. The project site is also within 200 feet of five properties listed in the Historic Resources Inventory including two adjacent to the west of the project site along South 1<sup>st</sup> Street.*

*The entire site would be excavated to accommodate the underground parking for the proposed mixed-use tower. Therefore, all existing buildings on site including the existing Bo Town Restaurant would be removed. Due to the demolition of this Candidate City Landmark, the project would result in a significant and unavoidable impact to cultural resources. As analyzed in the SEIR, there are no other alternatives that can preserve the historic building while keeping the project viable. Therefore, a Statement of Overriding Consideration (SOOC) is required to approve the proposed project. To reduce the impact to cultural resources, the project is required to implement the mitigation measures as described in the MMRP.*

*The design of the proposed project respects the existing Bo Town Restaurant by constructing a new restaurant at the same location as the exiting Bo Town Restaurant as part of the building and incorporating the similar design features to the new building. The proposed restaurant would follow the existing restaurant building footprint, using a very similar roof style, incorporating similar materials as the existing restaurant, and keeping the Bo Town signage at the street corner. The project also takes into consideration adjacent historic resources by including a minimum 20-foot separation from the resource buildings at the western property line, consistent with the rear transition standard of the Downtown Design Guidelines.*

*The project was referred to the Historic Landmarks Commission (HLC) on June 2, 2021, for early referral. The HLC commended the design incorporating the Bo Town Restaurant into the project and taking inspiration of the architectural resources on site for the project. The HLC suggested considering adding some wood elements into the design, applying variegated stone with more varied sizes, shapes, colors, textures for the restaurant, and retaining the existing signage at the street corner. The project design*

*has been modified to address the HLC comments. The wood elements would be used in the interiors, field stone replica matching the existing restaurant would be used at the wall along the new restaurant entry, and the signage would be retained.*

*While the Bo Town Restaurant cannot be preserved, the project is still consistent with the above historic preservation goals and policies to the extent feasible by constructing a new building closely resembling the Bo Town building, as discussed above.*

## **Zoning Ordinance Conformance**

### Use

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

### Setbacks and Height:

[Section 20.70.210](#) does not establish a minimum setback for developments in the DC Downtown Primary Commercial Zoning District. The Zoning District only limits heights to that necessary to maintain the safe operation of the San José International Airport and Federal Aviation Regulations Part 77. The building would be 293 feet in height. This permit includes conditions to secure appropriate Federal Aviation Administration (FAA) and aviation clearances for the development's height.

### Parking

Per Table 20-140 of Zoning Code Section [20.70.020](#), multiple dwelling residential uses require one vehicle space per unit and one bicycle space per four living units. Commercial retail uses have no minimum vehicle parking requirement but require three bicycle parking spaces, including two short-term spaces and one long-term spaces per Zoning Code Section [20.70.485](#).

Based on the proposed 540 units, the project requires 540 vehicle parking spaces and 138 bicycle parking spaces (135 for residential and three for commercial). The project meets the bicycle parking requirement by providing a total of 176 bicycle parking spaces on site.

Per Zoning Code Section [20.90.220.A.1.a](#), a 20% reduction in automobile parking is allowed if the project site is within 2,000 feet of an existing light rail station. The site is within 1,400 feet of the San Antonio Light Rail Station. A parking reduction of up to 50% may be authorized if the project implements at least three transportation demand management (TDM) measures as specified in Section [20.90.220.A.1](#). Additionally, per Section [20.70.330.A](#), for projects within the Downtown Zoning District, a further 15% parking reduction and an additional 50% reduction may be granted for mixed use projects if: 1) it is determined a TDM plan program would reduce parking demand and identifies the percentage of parking demand that would be reduced through the program; and 2) the TDM would be maintained for the life of the project, and it is reasonably certain the parking provided would be maintained to meet the required parking during the life of the building or use.

If applying the maximum parking reduction, the project would require 115 parking spaces. The proposed project provides 194 vehicle parking spaces. A 64% parking reduction is requested. The project would be implementing a TDM plan. The proposed TDM plan dated January 2022 prepared by Fehr & Peers (**Exhibit G**) conforms with Section [20.90.220](#) and Section [20.70.330](#). This TDM plan provides evidence that the TDM program would reduce parking demand and identifies the percentage of parking demand that would be reduced through the TDM plan. The proposed TDM measures include providing transit subsidies and/or

transit passes to all residents who desire to commute by transit, establishing a telecommute or flexible work schedule to encourage alternative transportation, designating an on-site TDM manager and providing TDM information and program management, and providing a guaranteed ride home program. In addition, the permit contains a condition (Condition No. 7) that requires the TDM plan to be implemented for the life and use of the building. Project Condition No. 8 also requires Planning review if any future parking reduction is proposed. Therefore, with these project conditions, the project meets the parking requirement.

Off-Street Loading:

Per Zoning Code [Section 20.70.435](#), multiple dwelling residential uses of five hundred units or more shall provide at least three off-street loading spaces. With 540 residential units, the project would require three loading spaces. No loading space is required for commercial area less than 10,000 gross square feet. The project would provide three loading spaces at the rear of the building. The project meets the off-street loading requirements.

Extended Construction Hours:

Per Zoning Code [Section 20.100.450](#), hours of construction within 500 feet of a residential unit is limited to Monday through Friday between 7:00 a.m. and 7:00 p.m., unless otherwise allowed in a development permit. The project site is within 500 feet of residential uses. This development permit would allow extended construction hours from 7 a.m. to 10 p.m., Monday to Saturday through the entire construction period of approximately 33 months. The construction-related standard conditions included in the draft Resolution (Exhibit E) and mitigation measures included in the MMRP (Exhibit H) would apply to the project to limit noise and dust to reduce the construction impact to the nearby residential use, and the extended construction hours would have the beneficial effect of shortening the overall construction period, thereby reducing the duration of construction impacts. The mitigation measures include submitting a construction operations plan providing specifications of the equipment to be used during construction, having a qualified air quality specialist verify that the equipment included in the plan meets the standards specified in the MMRP, developing an odor control plan that addresses operating and maintenance procedures to minimize construction equipment emissions. The contact information of the construction disturbance coordinator would be required to be posted at the construction site (Condition #15). Details are included in the MMRP and the draft Resolution.

**Downtown Design Guidelines and Standards**

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

The Downtown Design Guidelines include an exception process for design standards which cannot be met and establish findings in Section 1.4 of the San José Downtown Design Guidelines that are required to be made by decision makers in order to grant the requested design standard exceptions. These findings include:

1. there is physical constraint or unique situation not caused by the applicant or financial reasons;
2. approving the waiver will not impair the integrity and character of the neighborhood or create a safety hazard;



3. the project meets the design standard at issue to the extent physically feasible; and
4. the project meets all other guidelines and standards in the Design Guidelines.

*The following exceptions have been requested mainly due to the concept of rebuilding the Bo Town Restaurant in place and keeping the relationship of the restaurant to the surroundings.*

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

*The DC zoning district does not require setbacks. Approximately 49% of the ground level façade facing East San Salvador Street is within 10 feet from the property line. The project does not meet this standard.*

2. Chapter 4.3.3 Streetwall, Standard g: This Standard requires that at the corner of intersecting streets, streetwall should be maintained along both streets for at least 20 feet.

*The project does not provide a streetwall within 20 feet of the corner and does not meet this standard.*

Analysis: *The project respects the original footprint of the Bo Town restaurant by following the original building entry that steps back from the street corner. This recess is greater than the prescribed maximum 10 feet for streetwalls. If this building line at the entry were to be included in the calculation, the project would meet this Standard; however, this change would significantly modify the original footprint and design of the original structure. In addition, bringing these walls to within 10 feet would also change the relationship to the existing signage which would be kept as part of the project, and is referred to as one of the character defining elements in the TreanorHL historic report. Consistent with the comments from the Historic Landmarks Commission, the project is proposed to respect the entry as originally designed, incorporating materials and signate styles in that entry area. Redesign to strictly meet the design guidelines would compromise the original building design, signage relationships, and relationships to the street.*

*The existing Bo Town Restaurant location, building footprint, entry area design at the corner, and signage location are the unique situation not caused by the applicant or financial reasons. Approving the waiver would not impair the integrity and character of the neighborhood or create a safety hazard; rather, the reconstruction of the restaurant in place would contribute to retaining the integrity of the historic building that is an identifiable element of the character of the neighborhood. It would continue to be seen and recognized at its prominent location on the corner of South 2<sup>nd</sup> Street and East San Salvador Street. Except the four standards analyzed in this section, the project meets all other guidelines and standards in the Design Guidelines. Therefore, the findings to the above two exception requests can be made.*

3. Chapter 4.2.2 Massing Relationship to Context, Standard a-Height Transition: This Standard requires new buildings taller than 100 feet to step back its street-facing façade at least 5 feet from the front parcel line between the 25 to 50-foot elevations if the building is adjacent to an historic building 45 foot tall or less.

*The project is adjacent to an historic building on East San Salvador Street side (400 South 1<sup>st</sup> Street) that is less than 45 feet in height. The proposed building has no setback above the 20-foot height level to the top of the roof parapet, and therefore doesn't meet the five-foot recess standard.*

Analysis: *The concept of rebuilding the original restaurant, requirements for off street loading, and parking access determine the placement of the tower in relation to the historic building. In addition, the side-facing elevation of the historic building along East San Salvador Street is a solid wall without windows, doors, or architectural details that would typically express historic character. Approving the waiver would therefore not impair the integrity and character of the neighborhood or create a safety*



*hazard. Additionally, the original building location and adjacent historic building are the physical constraints that are not caused by the applicant and therefore not driven by financial considerations. The Bo Town restaurant parking lot already forms a physical break between the existing Bo Town restaurant and historic building; therefore, the project would not disrupt an existing continuous urban form. Moreover, proposed balconies project out 4 feet from the building façade starting at the 20-foot height level, which helps create a height reference line to the historic building. Therefore, the design generally conforms with the intent to provide a height transition to the adjoining historic property and also in balancing the relationship to the Bo Town Restaurant scale on the corner.*

*Except the four standards analyzed in this section, the project meets all other guidelines and standards in the Design Guidelines. Therefore, the findings to this exception request can be made.*

4. Chapter 4.2.4 Historic Adjacency, Standard d-Maintain Streetwall Continuity: This Standard requires maintaining streetwall continuity with Historic Context buildings that are on the same side of the same street by placing the street-side façade of a new building within 5 feet of the average Historic Context building streetwall distance from the front property line.

*400 S. 1st Street is adjacent to the proposed building and on the same side of East San Salvador Street. The existing building at 400 S 1st Street is constructed without setbacks and provides a continuous streetwall. The proposed building has an articulated streetwall along East San Salvador Street which is set back approximately 7 feet to 19.75 feet (except the stairway wall). As proposed, the proposed building does not meet this standard.*

Analysis: *As discussed in the exception request to Standard 3.2.2, the project would rebuild the restaurant in place to maintain the historic relationship to the surroundings. The exception request results from the existing restaurant location, building footprint, entry area design at the corner, and signage location that are the unique situations not caused by the applicant or and not driven by financial reasons. The façade of the building at 400 1<sup>st</sup> Street along East San Salvador Street presents a side facing façade without any transparent elements or breaks. Approving the exception would not impair the integrity and character of the neighborhood or create a safety hazard. The reconstruction of the restaurant in place would contribute to retaining the integrity of the historic building that is an identifiable element of the character of the neighborhood. Given the tall height and massing of the building the project design would still achieve the intent of defining the streetwall. In addition, there is a break between the building and the historic context building to allow for site access, making the difference in setback between the proposed building and historic context building less evident. Except the four standards analyzed in this section, the project meets all other guidelines and standards in the Design Guidelines. Therefore, the findings to this exception request can be made.*

### **Site Development Permit Findings**

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

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

*Analysis: As discussed above, the proposed project is consistent with the proposed General Plan Land Use/Transportation Diagram designation of Downtown, as the Downtown land use designation supports a mix of commercial and residential uses at high densities. The project is also consistent with the General Plan policies listed above.*

2. The Site Development Permit, as approved, conforms with the Zoning Code and all other Provisions of the San José Municipal Code applicable to the project; and

*Analysis: As discussed above, the proposed project is consistent with the height, setbacks, and parking requirements of the DC Downtown Primary Commercial Zoning District. The DC Zoning District does not require any minimum setbacks. The project is subject only to the height limit necessary for the safe operation of the San Jose International Airport; and conditions of approval are included requiring a No Hazard Determination to be obtained from the FAA prior to issuance of Building Permits. The project requires 138 bicycle parking spaces and the project proposes 176 bicycle parking spaces. With maximum parking reduction by implementing a TDM plan, the project would require 115 parking spaces. The project would provide 194 parking spaces by implementing the TDM measures included in the TDM plan dated January 2022 prepared by Fehr & Peers. The project applicant is required to implement the TDM plan for the life and use of the building.*

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

*Analysis: Staff followed [Council Policy 6-30: Public Outreach Policy](#) in order to inform the public of the proposed project. Signs describing the project have been posted on the project site since July 2021. A joint community and environmental scoping meeting was held on September 9, 2021, to inform the surrounding community of the proposed project. Both the community meeting notice and notice of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. Following the [City Council Policy on the Preservation of Historic Landmarks](#), the project was discussed at the Historic Landmark Commission under “Early Referral” on June 2, 2021, due to the Candidate City Landmark on site. The project received positive feedbacks on building design.*

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

*Analysis: There is only one building being proposed on the project site. The building consists of a L-shape tower and a one-story portion (new restaurant) at the street corner in respecting the existing Bo Town Restaurant footprint. The roof of the new restaurant and the tower have the same style as the existing restaurant. The existing Bo Town signage would remain. The project would have active commercial use on the ground floor and residential use and amenities on the upper floors. Access to the loading area and the underground garage is from a two-way driveway at East San Salvador Street. The project would be required to implement street and sidewalk improvements required by Public Works Department and Department of Transportation as discussed previously to enhance the pedestrian and bicycle circulation and connection.*

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

*Analysis: The project is compatible with adjacent development and the downtown character as defined by a growing number of high intensity developments. Two high-rise development projects are currently being proposed to the east across South 2<sup>nd</sup> Street and to the north across East San Salvador Street. The project would apply the same façade treatment as the proposed Valley Title Commercial Office project to the north across East San Salvador Street. The project would reduce the massing impact to the existing one to two-story buildings to the west of the site by placing the tower portion of the building at*

*least 20 feet from the western property line. Also as discussed above, the project would rebuild the restaurant in place, apply the similar materials and roof style as the original design, which would help retain the character of the neighborhood. The project would therefore be aesthetically harmonious with adjacent development or the character of the neighborhood.*

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

*Analysis: The project is located within an urbanized area. As discussed in the SEIR, the implementation of the proposed project would result in significant cancer risk to sensitive receptors near the project site during construction. However, this construction impact is temporary. In addition, the project would be required to adhere to standard building and grading permit conditions as well as air and water quality conditions of approval and mitigation measures during the construction phase, which would minimize related impacts during this project phase. The operation of the project is primarily commercial and residential and therefore would not be a generating source for excessive noise or odor. The project has been evaluated for compliance with the City's stormwater treatment requirements. The project would therefore not result in unacceptable negative effect on adjacent properties.*

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

*Analysis: The proposed building would conceal the plumbing, utility, and trash facilities within the proposed building as shown on the project plans (Exhibit F). All mechanical equipment is screened on the roof and not visible from the street or surrounding buildings.*

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

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

### **Evaluation Criteria for Demolition**

Chapter [20.80.460](#) of the San José Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. The following shall be considered to determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation:

1. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
2. The failure to approve the permit would jeopardize public health, safety or welfare;
3. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
4. The approval of the permit should maintain the supply of existing housing stock in the City of San Jose;

5. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
6. Rehabilitation or reuse of the existing building would not be feasible; and
7. The demolition, removal, or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*Analysis: Implementation of the proposed project would demolish an existing restaurant, an accessory building, and two storage structures on site. The existing restaurant, which is currently vacant, is listed on the HRI as a Structure of Merit and is eligible as a Candidate City Landmark. The proposed project would include a new restaurant which reflects the existing restaurant building as discussed previously. The removal of the four buildings and structures would facilitate the proposed development which is compatible with the surrounding area as discussed above. Re-use or rehabilitation of the buildings would not be feasible given the project objective to construct a high-rise mixed-use tower on site. The removal of these buildings and structures would not reduce the City's housing stock.*

*The removal of the Bo Town Restaurant building would result in a significant and unavoidable impact to the cultural resources and a significant cumulative cultural impact. As analyzed in the SEIR, there are no other alternatives that can preserve the historic building while achieving the project objectives. To reduce the impact to cultural resources, the project would be required to implement the mitigation measures as described in the MMRP (Exhibit H).*

### **Tree Removal Permit Findings**

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

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

*Analysis: One ordinance-size redwood tree and one non-ordinance-size London Plane tree would be removed to accommodate the development. These two trees cannot be retained due to the requirement to fully excavate the site to construct the building foundation and below-grade parking. Seven 15-gallon replacement trees are required. The project would plant 16 15-gallon trees on site.*

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). The Notice of Preparation (NOP) was circulated from September 7<sup>th</sup>, 2021 until October 7<sup>th</sup>, 2021. The Draft SEIR itself was circulated for public review and comment from April 29<sup>th</sup>, 2022 through June 14<sup>th</sup>, 2022.

The City received three written comment letters during the public circulation period. Comments were submitted by three agencies, which were the Santa Clara Valley Transportation Authority (VTA), Valley Water, and the Bay Area Air Quality Management District (BAAQMD). VTA applauded the proposed number of bicycle parking spaces provided but recommended that the project also allow residents to keep bicycles in their unit to get closer to the bicycle parking supply goal for residential projects of one bicycle parking space per bedroom per the updated VTA Bicycle Technical Guidelines bicycle parking chapter. VTA recommended that improvements be made to the existing bus stop on southbound 2<sup>nd</sup> Street in front of the proposed project, including replacing the bus pad, removing the planned street trees, and replacing the existing wooden bench with a new open back advertising shelter. Valley Water provided comments related to dewatering, groundwater, and made recommendations for text edits to the document for flood zones and water usage. BAAQMD applauded the increased housing density, transit demand management (TDM) incentives, and use of green building practices proposed by the project. They also expressed concern about the project's proximity to sensitive receptors and recommended that additional mitigation measures be included to address construction impacts and exhaust emissions. BAAQMD also recommended that enhanced measures should be added to address any potential odor emissions from the project's proposed wastewater treatment facility.

None of the comments received address an issue of sufficiency of the SEIR and no new mitigation measures are required. SEIR text revisions were included in the First Amendment to address bus stop information, dewatering, flood zone information, revisions to reports, and other suggested texts from agencies.

Additionally, the City responded to all comments received on the Draft SEIR and incorporated them into the First Amendment to the Draft SEIR. The First Amendment, taken together with the Draft SEIR, and the MMRP constitutes the Final SEIR. The Draft SEIR and First Amendment to the Draft SEIR (FSEIR) are available for review on the project page on the City's Active EIR website at:

<https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/bo-town-mixed-use-project>. A copy of the signed MMRP is attached to the proposed CEQA resolution (**Exhibit H**).

#### *Identified Significant and Unavoidable Impacts*

The Draft SEIR found that the project would result in a significant and unavoidable impacts to Air Quality from significant cancer risk and Cultural Resources from demolition of the eligible Candidate City Landmark. Due to the size and placement of the proposed project, there are no suggested feasible mitigation measures to reduce the impacts. Therefore, a Statement of Overriding Considerations is required.

#### *EIR Recirculation Unnecessary*

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

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR

address significant environmental points and comments on the content and adequacy of the SEIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the Draft SEIR. No significant new information has been added to the SEIR since publication of the Draft SEIR; therefore, the Draft SEIR does not need to be recirculated.

## **PUBLIC OUTREACH**

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

A formally noticed Community Meeting with the Environmental Scoping was held on September 9, 2021, to introduce the proposed project to the community. Nine members of the public attended the meeting and one member of the public spoke, representing PAC-SJ. The commenter stated the project design is appropriate in respecting the Bo Town Restaurant and stated that the impacts to the nearby property, Studio Theater, that is not listed on the HRI should also be evaluated in the SEIR.

An Historic Assessment was completed for the project in October 2021 by TreanorHL. A reconnaissance survey of 27 properties within 200 feet of the proposed project, including the Studio Theater located at 396 S. 1st Street site, was conducted as part of the historic assessment (Appendix G of the SEIR, Page 33). The Studio Theater was not listed on the HRI as of completion of the Historic Assessment and the reconnaissance survey found that no identified historic resources in the surrounding area would be directly or indirectly impacted.

Subsequent to the historic resource assessment prepared by TreanorHL, the Studio Theater was listed on the Historic Resources Inventory as an Identified Structure on September 7th 2022, by the Historic Landmarks Commission. According to the Envision 2040 General Plan, Identified Structures are not considered historical resources for the purposes of CEQA and documentation prepared by Archaeological Resource Management in 1999 concluded that the property did not qualify for listing in the National Register of Historic Places or the California Register of Historical Resources. If the Studio Theater were reevaluated and determined to be a historical resource under CEQA, the project must demolish or materially alter in an adverse manner those physical characteristics of a historical resource that convey its historical significance to cause a significant impact to an adjacent historical resource. No work is proposed on the Studio Theater, therefore there would be no significant impact if the property were determined to be a historical resource.

**Project Manager:** Angela Wang

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

<b>ATTACHMENTS:</b>	
Exhibit A:	Vicinity Map, Aerial
Exhibit B:	Existing General Plan Land Use Designation

Exhibit C:	Zoning District
Exhibit D:	Draft EIR Resolution
Exhibit E:	Draft Site Development Permit Resolution
Exhibit F:	Site Development Permit Plan Set
Exhibit G:	TDM Plan
Exhibit H:	Signed MMRP

<b>Applicant/Owner:</b>
Project Bo Town LLC. 2107 Elliott Avenue, Suite 303 Seattle, Washington 98121



Exhibit A: Vicinity Map, Aerial

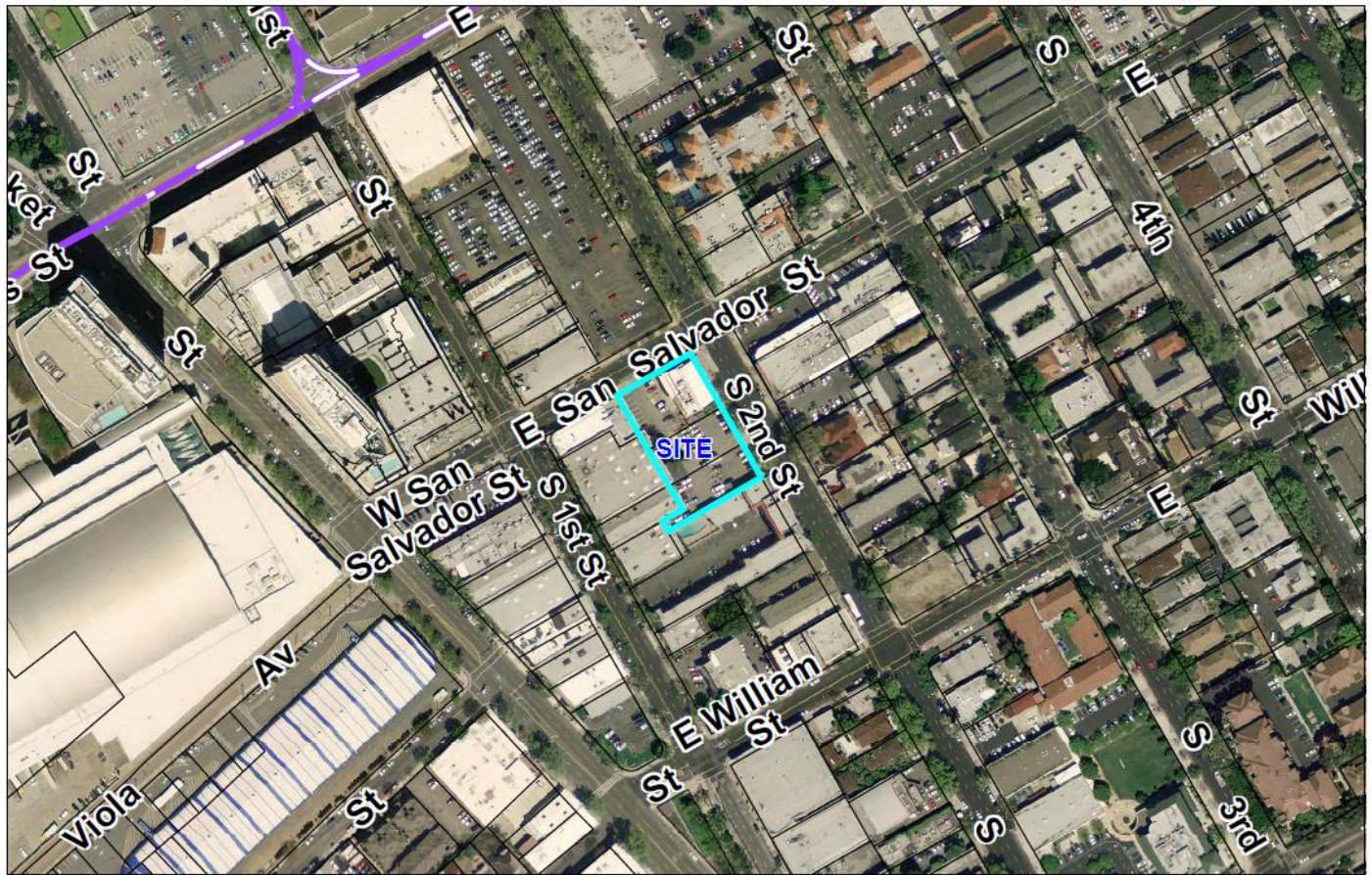
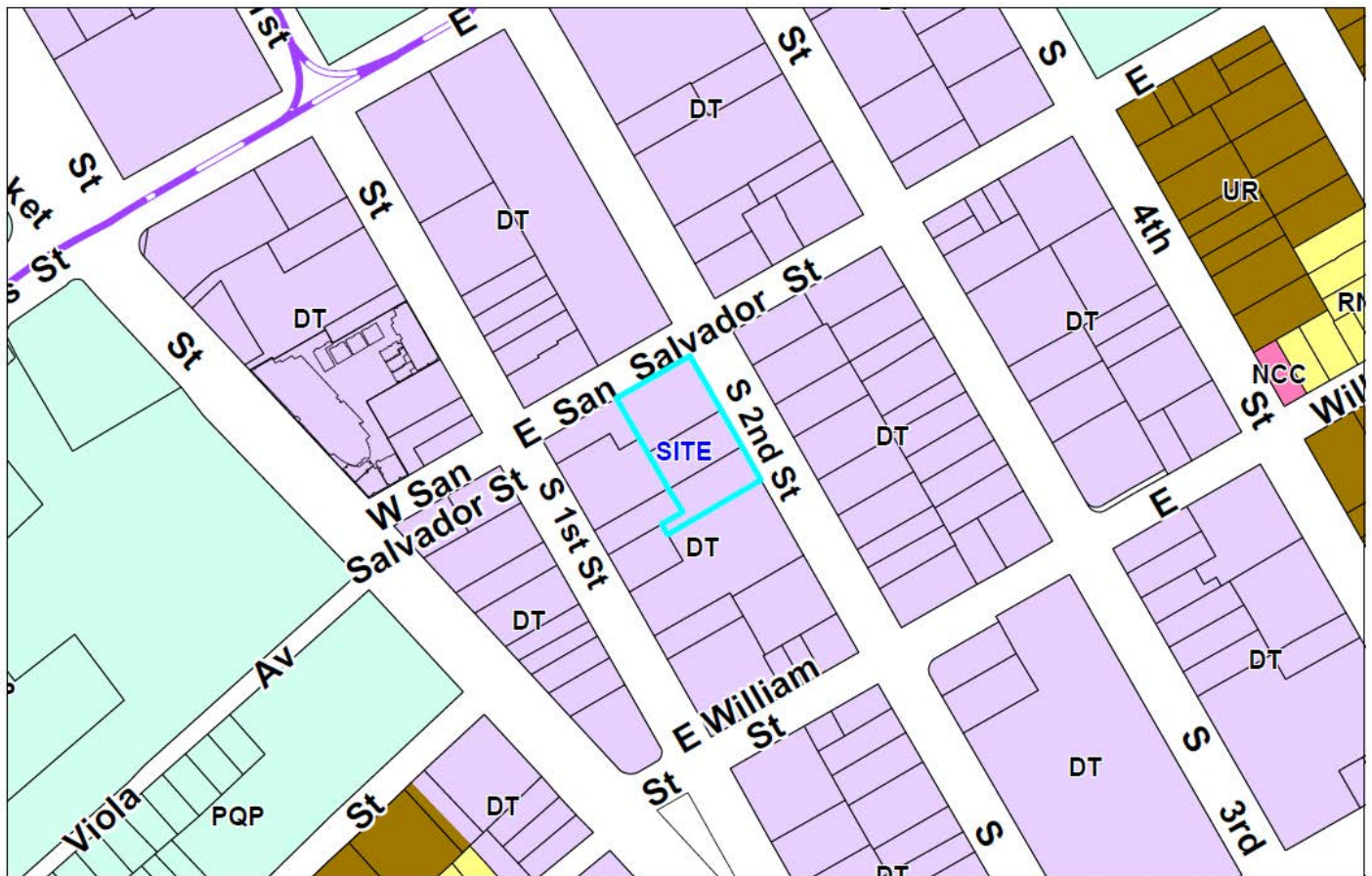
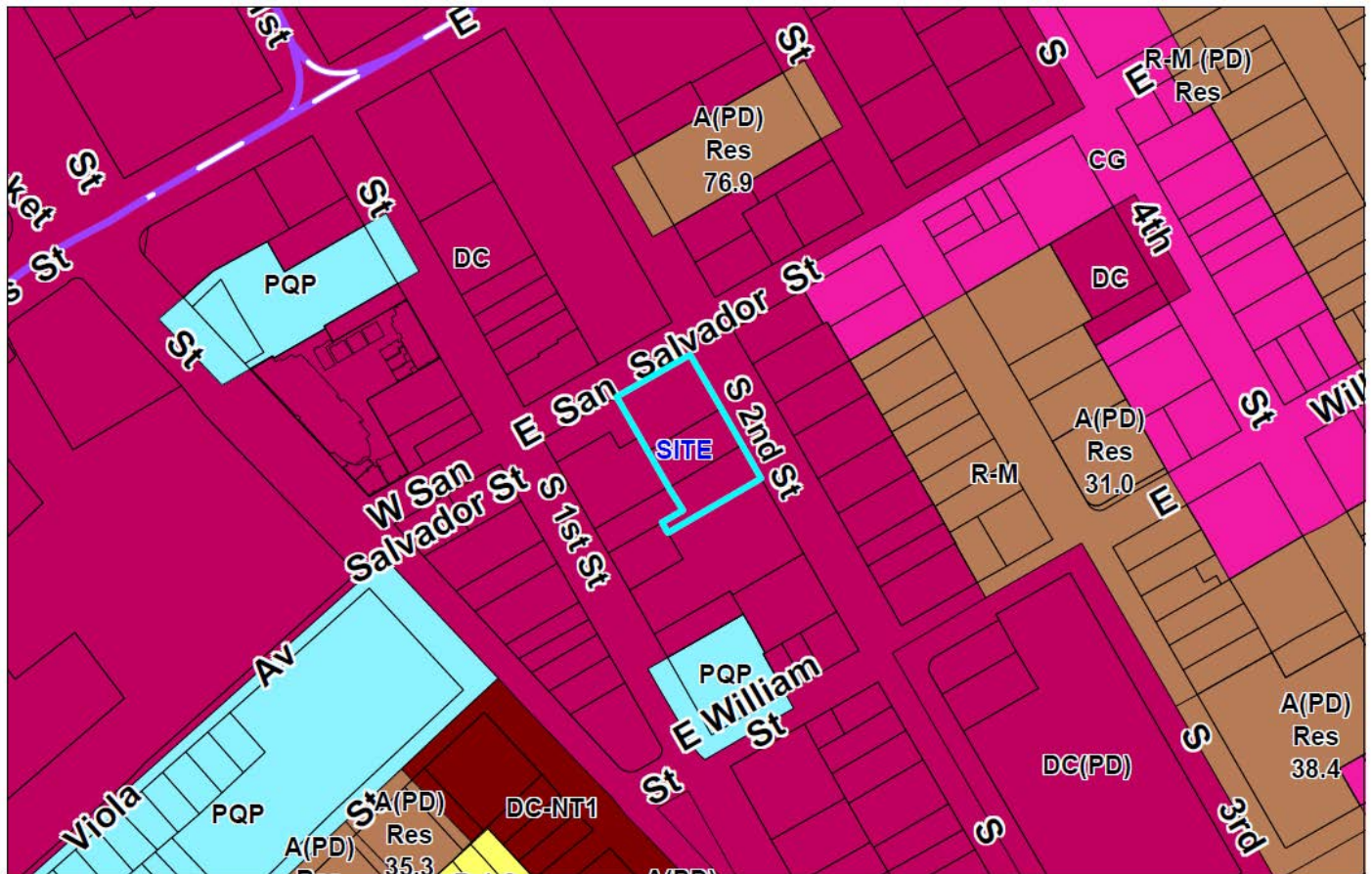




Exhibit B: General Plan Land Use Designation



## Exhibit C: Zoning Map



## **H20-038**

### **Links to Attachment D-H**

Click on the title to view document

<a href="#">Exhibit D: Draft EIR Resolution</a>
<a href="#">Exhibit E: Draft Site Development Permit Resolution</a>
<a href="#">Exhibit F: Site Development Permit Plan Set</a>
<a href="#">Exhibit G: TDM Plan</a>
<a href="#">Exhibit H: Signed MMRP</a>