RESOLUTION NO._____

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

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 a Special Use Permit and Vesting Tentative Map (SP21-031/T21-033/ER21-134) under the Downtown Strategy 2040 EIR, which includes the demolition of an existing gas station, church, parking lot and three commercial buildings on-site (totaling approximately 22,527 square feet), and construction of an office tower and a residential tower (21 stories and 27 stories tall, respectively) including up to 415 residential units, approximately 516,500 square feet of

office space and 8,500 square feet of ground-floor retail uses on an approximately 2.1-acre site that is bound by East St. John Street to the north, North 4th Street to the east, East Santa Clara Street to the south, and commercial buildings and senior apartments to the west (APNs: 467-20-079, 467-20-081, 467-20-060 and a portion of 467-20-080) in the City of San José, (collectively referred to herein as the “Project”); and

WHEREAS, approval of the Project would constitute a Project under the provisions of the California Environmental Quality Act of 1970, together with related state and local implementation guidelines and policies promulgated thereunder, all as amended to date (collectively, "CEQA"); and

WHEREAS, the City is the lead agency for the Project, and has prepared a Final Supplemental Environmental Impact Report for the Project pursuant to and in accordance with CEQA, which the Final Environmental Impact Report is comprised of the Draft Supplemental Environmental Impact Report for the Project (the “Draft SEIR”), together with the First Amendment to the Draft SEIR (collectively, all of said documents are referred to herein as the “FSEIR”); and

WHEREAS, on October 26, 2022 the Planning Commission of the City of San José reviewed the FSEIR prepared for the Project, and recommended to the City Council that it find the environmental clearance for the proposed Project was completed in accordance with the requirements of CEQA and further recommended the City Council adopt this Resolution; and

WHEREAS, CEQA requires that, 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 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 above recitals are true and correct; and

2. That the City Council does hereby find and certify that the FSEIR has been prepared and completed in compliance with CEQA; and

3. The City Council was presented with, and has independently reviewed and analyzed, the FSEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the FSEIR and the Project, prior to acting upon or approving the Project, and has found that the FSEIR represents the independent judgment of the City of San José ("City") as lead agency for the Project, and designated the Director of Planning, Building and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and record of proceedings on which the decision of the City is based; and

4. That the City Council does hereby find and recognize that the FSEIR contains additions, clarifications, modifications, and other information in its response to comments on the Draft SEIR or obtained by the City after the Draft SEIR was issued and circulated for public review and does hereby find that such changes and additional information are not significant new information as that phrase is described under CEQA because such changes and additional information do not indicate that any of the following would result from approval and implementation of the Project: (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 has been proposed and would not be implemented, or (iii) any feasible alternative considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented; and

5. That the City Council does hereby find and determine that recirculation of the FSEIR for further public review and comment is not warranted or required under the provisions of CEQA; and

6. The City Council does hereby make the following findings with respect to the significant effects of the environment of the Project, as identified in the FSEIR, with the understanding that all of the information in this Resolution is intended as a summary of the full administrative record supporting the FSEIR, which full administrative record should be consulted for the full details supporting these findings.

ICON-ECHO MIXED-USE PROJECT
SIGNIFICANT ENVIRONMENTAL IMPACTS

Air Quality

Impact: **Impact AIR-1:** Construction activities associated with the proposed Project would expose the maximum exposed individual (MEI) to a cancer risk of 42.39 cases per one million for infants which exceeds the Bay Area Air Quality Management District (BAAQMD) significance threshold of 10 cases per one million.

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 information in sufficient detail as to how the Project applicant and/or its contractor shall meet the following engine requirements and enhanced just control measures. The plan shall be accompanied by a letter signed by an air quality specialist.

Engine Requirements: Verification that the equipment included in the plan meets the standards set forth below:

- All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall, at a minimum, meet U.S. EPA Tier 4 final emission standards for particulate matter (PM_{10} and $PM_{2.5}$).
- If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. Environmental Protection Agency (EPA) emission standards for Tier 3 engines and include particulate matter emissions control equivalent to California Air Resources Board (CARB) Level 3 verifiable diesel emission control

devices that altogether achieves a 77 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.

- Use of alternatively fueled or electric equipment.
- Stationary cranes and construction generator sets shall be powered by electricity.

As an alternative to the measures above, the Project applicant could request a plan from a qualified air quality specialist that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 77 percent or greater. The plan shall be submitted to the City of San José Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

Enhanced Dust Control Measures: The Project applicant shall implement the following BAAQMD enhanced dust control requirements during construction of the Project:

- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 miles-per-hour (mph).
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- All construction equipment shall be maintained and properly tuned in
- accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air

District's phone number shall also be visible to ensure compliance with applicable regulations.

- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
- Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- Site accesses to a distance of 100 feet from the paved road shall be treated with a six to 12-inch compacted layer of wood chips, mulch, or gravel.
- Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes. Clear signage shall be provided for construction workers at all access points.

Finding: With implementation of the Standard Permit Conditions for dust control, including BAAQMD Enhanced Dust Control Measures and Mitigation Measure AIR-1.1, the infant residential cancer risk would be reduced to 3.58 cases per one million for Tier 4 final engines or 7.31 cases per one million for Tier 4 interim engines, both of which would be below the BAAQMD significance threshold of 10 per one million cases for cancer risk. The annual $PM_{2.5}$ concentration and Hazard Index (HI) would not exceed BAAQMD significance thresholds. Therefore, implementation of Mitigation Measure AIR-1.1 and all identified Standard Permit Conditions would reduce the off-site community risk impact to less than significant. **[Same**

Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]

Facts in Support of Finding: Construction equipment and associated heavy-duty truck traffic that generate diesel exhaust, which is a known Toxic Air Contaminant (TAC), pose a health risk to nearby receptors. For the purposes of this analysis, receptors include locations where sensitive populations would be present for extended periods of time, including all existing childcare and residences surrounding the Project site. A community risk assessment of the Project construction activities was completed for the proposed Project. The assessment evaluated potential health effects for nearby receptors (within 1,000 feet of the Project site) from construction emissions of diesel particulate matter (DPM) and $PM_{2.5}$.

The CalEEMod model was used to determine total annual DPM and $PM_{2.5}$ dust emissions for the off-road construction equipment and on-road vehicles that would be used during Project construction. Additionally, the U.S. EPA AERMOD dispersion model was used to predict construction-related DPM and $PM_{2.5}$ concentrations at existing receptors in the vicinity of the Project. The off-site truck and passenger vehicle emission rates were calculated using the EMFAC2021 model.

Implementation of Mitigation Measure AIR-1.1 and the required standard permit conditions would achieve greater than an 80 percent reduction in on-site fugitive PM2.5 emissions. These measures are consistent with recommendations in the BAAMQD CEQA Guidance for providing “best management practices” to control construction emissions, and would reduce emissions below the BAAQMD significance threshold of 10 per one million cases for cancer risk. Therefore, the Project would have a less than significant off-site community risk impact from construction.

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, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.

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 preconstruction 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 will 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 ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest. 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 (whichever occur first), the applicant shall submit the ornithologist's 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: Migratory birds, like nesting raptors, are protected under the Migratory Bird Treaty Act and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800. The CDFW defines "taking" as causing abandonment and/or loss of reproductive efforts through disturbance. Any loss of fertile effs, nesting raptors, or any activities resulting in nest abandonment would constitute a significant impact. With implementation of Mitigation Measures BIO-1.1, tree removal would be scheduled to avoid the nesting season or, pre-construction surveys would be completed, and a report indicating the results of the survey and any designated buffer zones would be submitted to the Director or Director's

designee prior to any tree removal, or approval of any grading or demolition permits (whichever occur first) to reduce impacts to nesting birds to a less than significant level.

Cultural Resources

Impact: **Impact CUL-1:** Construction activities on-site could uncover historic-era archaeological resources associated with pre-1906 earthquake residential and commercial activities.

Mitigation: **MM CUL-1.1: Preliminary Investigation.** After demolition of existing above-ground structures and prior to below-grade demolition/excavation activities, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology, in collaboration with a Native American representative registered with the Native American Heritage Commission (NAHC) 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 subsurface exploration at the site, to determine if there are any indications of discrete Native American or historic-era subsurface archaeological features. Exploration of 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 archaeological 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 of Planning, Building and Code Enforcement or Director's designee for review and approval prior to issuance of any grading permit.

Mitigation: **MM CUL-1.2: Treatment Plan.** Based on the findings of the subsurface testing (MM CUL-1.1), an archaeological resources treatment plan shall be prepared by a qualified archaeologist in collaboration with a Native American representative, registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, if necessary. The treatment plan shall consist of 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 approval 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.

All Native American and historic-era features identified during exploration shall be evaluated by the qualified archaeologist. After completion of the field work, all artifacts shall be catalogued, and the appropriate forms shall be completed and filed with the Northwest Information Center of the California Archaeological Inventory at Sonoma State University.

A final report verifying completion of the archaeological resources treatment plan and mitigation program shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for approval prior to issuance of any certificate of occupancy. This report shall contain a description of the mitigation programs and results of the mitigation, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.

Finding: With implementation of the Standard Permit Condition identified in the SEIR and Mitigation Measures CUL-1.1 and CUL-1.2, the proposed Project would result in a less than significant impact to subsurface archaeological resources. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

Facts in Support of Finding: Native American and historic artifacts have been found throughout the downtown area, particularly near the Guadalupe River. The Project site is located approximately 0.6-mile east of Guadalupe River. Based on the literature search referenced for analysis in the SEIR, there is high potential in the Project area for historic-era archaeological deposits associated with pre-1906 earthquake residential and commercial activities and low to moderate potential for pre-historic Native American cultural resources in the immediate vicinity of the Project site. However, no recorded resources were identified on the Project site. As part of the Project, the entire site would be excavated to a depth of ten feet below ground surface to accommodate the parking garage. As a result, Project ground disturbing activities could impact previously historic-era archaeological resources and/or previously undocumented tribal cultural resources. Implementing Mitigation Measures MM CUL-1.1 and MM CUL-1.2, which include a preliminary investigation and a treatment plan prior to any permits for ground-disturbing activities, and evaluation of any resources identified during Project construction, would reduce any potential impacts associated with Project construction to a less than significant level. Additional mitigation measures specific to tribal cultural resources are discussed under "Tribal Cultural Resources" below.

Hazards and Hazardous Materials

Impact: **Impact HAZ-1:** Construction activities associated with the proposed Project could expose the public and/or the environment to hazardous materials and/or soil, soil vapor, and/or groundwater contamination from existing and former uses of the site (existing gas station and former automobile repair and service, gas station, drycleaner, and lumber businesses).

Mitigation: **MM HAZ-1.1:** Prior to the issuance of any demolition, grading, or building permits, whichever occurs first, a geophysical survey shall be prepared by an environmental professional to identify the potential presence of underground storage tanks (USTs) below East Santa Clara Street. Additionally, the two UST vent pipes at the southern corner of the Project site shall also be analyzed.

Any identified objects or structures (e.g., the existing USTs, dispensers, and associated piping) shall be removed in coordination with the San José Fire Department and the Santa Clara County Department of Environmental Health (SCCDEH). As part of the removal, a qualified environmental

professional shall collect soil samples below the existing USTs, dispensers, and associated piping, as directed under regulatory oversight by the SCCDEH and/or San José Fire Department, to determine if leaks have occurred. The geophysical survey, soil samples, evidence of regulatory oversight, and confirmation that identified objects have been removed in accordance with San José Fire Department and SCCDEH requirements shall be provided to the Director of Planning, Building, and Code Enforcement, or Director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

MM HAZ-1.2: Prior to issuance of any demolition, grading, or building permit, whichever occurs first, the Project applicant shall enroll in the SCCDEH Site Cleanup Program. The Project applicant shall work under regulatory oversight to determine if additional Phase II soil, soil vapor and groundwater investigations and remediation are required. The Project applicant shall provide documents such as a Site Management Plan, Removal Action Plan or equivalent plans as required by the DEH. The Plan(s) and evidence of regulatory oversight shall be provided to the Director of Planning, Building, and Code Enforcement, or Director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

MM HAZ-1.3: As part of the facility closure process for occupants that use and/or store hazardous materials, the Project applicant shall ensure that the occupants submit a closure plan that describes required closure activities, such as removal of remaining hazardous materials, cleaning of hazardous material handling equipment, decontamination of building surfaces, and waste disposal practices. The facility closure plans shall be submitted to the San José Fire Department and SCCDEH for review and approval to ensure that the required closure and any necessary site cleanup activities are completed prior to the issuance of demolition, grading, or building permits, whichever occurs first. Evidence of regulatory oversight and documentation of facility closure in compliance with San José Fire Department and SCCDEH requirements shall be submitted to the Director of Planning, Building, and Code Enforcement, or Director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

MM HAZ-1.4: The facility at 147 East Santa Clara Street previously contained three vehicle service bays which contained below-grade hydraulic lifts. Prior to issuance of a grading or building permit, whichever occurs first, a qualified environmental professional shall document that the

lifts and oil-water separator have been removed from the site. In addition, the qualified environmental professional shall analyze the soils for potential contamination. Documentation of removal shall be provided to the Director of Planning, Building, and Code Enforcement or Director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

Finding: With implementation of mitigation measures MM HAZ-1.1 to MM HAZ-1.4, redevelopment of the Project site would not significantly impact the public or the environment due to exposure to any hazards or contamination sources. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

Facts in Support of Finding: Existing and historic uses on the site (existing gas station and former automobile repair and service, gas station, drycleaner, and lumber businesses) represent a Recognized Environmental Condition and the Project site is listed on the Geotracker database for a closed leaking underground storage tank case. The proposed Project would include grading and excavation during construction of the proposed buildings and below-grade parking garage which could result in impacts to construction workers from exposure to hazardous materials and/or soil, soil vapor, and/or groundwater contamination. Implementation of Mitigation Measures MM HAZ-1.1 through MM HAZ-1.4 requires the completion of a geophysical survey of the site to determine the presence and extent of hazardous materials, underground storage tanks, in-ground lifts, clarifiers, or drains associated with historic uses of the site; obtaining regulatory oversight for the Project from the Santa Clara County Department of Environmental Health, including preparation of and compliance with a site management plan, removal action plan or equivalent document as required by the regulatory oversight agency; and closure plans for existing uses that store hazardous materials , which would reduce potential impacts to construction workers to a less than significant level.

Noise and Vibration

Impact: **Impact NOI-1:** Mechanical equipment noise levels would exceed the City's 55 dBA DNL threshold defined in General Plan Policy EC-1.3 at the future residential building located across North Fourth Street to the east of the site (Miro Towers/Res-3).

Mitigation: **MM NOI-1.1:** Prior to the issuance of any building permits, mechanical equipment shall be selected and designed to meet the City's 55 dBA DNL noise level requirement at the nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building façades farthest from the nearest residences), where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures 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 building permits.

Finding: With implementation of Mitigation Measure NOI-1.1, the Project would have a less than significant operational noise impact from mechanical equipment. **[Less Impact than Approved Project with Mitigation Incorporated (Significant Unavoidable Impact)]**

Facts in Support of Finding: A qualified acoustical consultant would be retained to evaluate the mechanical noise equipment selected for the Project to ensure that the City's 55 dBA DNL noise level requirement is met at the nearby noise-sensitive land uses. The acoustical consultant would identify noise reduction measures such as utilizing alternative equipment, constructing noise barriers, and identifying alternative locations for the mechanical equipment. These measures would be presented to the Director of Planning, Building and Code Enforcement, or Director's designee prior to the issuance of any building permits. Implementation of Mitigation Measure NOI-1.1 would reduce operational noise impacts to a less than significant level.

Impact: **Impact NOI-2:** Construction noise would exceed ambient levels by five dBA for a period of more than one year within 500 feet of residential uses or 200 feet of commercial or office uses, which exceeds the City thresholds defined in General Plan Policy EC-1.7.

Mitigation: **MM NOI-2.1:** Prior to the issuance of any grading or demolition permits, whichever occurs first, 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 noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits for review and approval, whichever occurs first.

Consistent with the Downtown Strategy 2040 FEIR, the construction noise logistics plan shall include but is not limited to the following measures:

- Construction shall be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday 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.
- The Project contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the Project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
- The unnecessary idling of internal combustion engines shall be prohibited.
- Staging areas and stationary noise-generating equipment shall be located as far as possible from noise-sensitive receptors such as residential uses (a minimum of 200 feet, where feasible).
- The surrounding neighborhood within 500 feet shall be notified early and frequently of the construction activities.
- A "noise disturbance coordinator" shall be designated to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for

the disturbance coordinator would be conspicuously posted at the construction site.

Finding: With implementation of the Standard Permit Conditions identified in the SEIR and Mitigation Measure NOI-2.1, the proposed Project would have a less than significant construction noise impact. **[Less Impact than Approved Project with Mitigation Incorporated (Significant Unavoidable Impact)]**

Facts in Support of Finding: The proposed Project would be constructed in approximately 36 months, which exceeds the City's 12-month construction noise threshold in General Plan Policy EC-1.7. The applicant would be required to submit and implement a construction noise logistics plan which would include: 1) specific hours of construction, 2) noise and vibration minimization measures, 3) posting and notification of construction schedules and equipment to be used, and 4) designation of a noise disturbance coordinator. The noise logistics plan incorporates best management practices for reducing construction noise and minimizing nuisances to adjacent sensitive receptors, and would be submitted to the Director of the Department of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any grading or demolition permits. Implementation of Mitigation Measure NOI-2.1 would reduce construction noise impacts to a less than significant level.

Impact: **Impact NOI-3:** Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec Peak Particle Velocity (PPV) for historic buildings within 61 feet of the Project site.

Mitigation: **MM NOI-3.1:** Prior to the issuance of any demolition, grading, or building permits, whichever occurs earliest, 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 undertaken 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 and the City's Historic Preservation Officer 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:

- 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 known to produce high vibration levels (e.g., clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning, Building or Code Enforcement or the Director's designee 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 for reducing vibration levels below the thresholds. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.
- Use of heavy vibration-generating construction equipment shall be prohibited within 61 feet of historic buildings and buildings eligible for listing as historic, if feasible.
- Document conditions at all historic structures located within 61 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 61 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 61 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after Project completion. The surveys shall include internal and external crack monitoring in the structure, settlement, and distress, and shall document the condition of the foundation, walls and other structural elements in the interior and exterior of the structure.
- 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.

- If vibration levels approach limits, construction shall be suspended and contingency measures shall be implemented to lower vibration or secure affect 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-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs in accordance with the Secretary of the Interior's Standards where damage has occurred as a result of construction activities.

Finding: With implementation of the Mitigation Measure NOI-3.1, the Project would have a less than significant construction vibration impact. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

Facts in Support of Finding: As described in the Cultural Resources section of the DSEIR, a reconnaissance survey conducted of buildings in the Project vicinity found 17 age-eligible historic properties within 200 feet of the site, including 13 buildings listed on the City's Historic Resources Inventory. The City of San José relies on guidance developed by Caltrans to address vibration impacts from development projects in San José, which was used to draft General Plan Policy EC-2.3. According to this Policy, a vibration limit of 0.2 inches/sec PPV has been used for buildings that are found to be structurally sound but where structural damage is a major concern. For historic buildings or buildings that are documented to be structurally weakened, a limit of 0.08 inches/sec PPV is used to provide the highest level of protection. Table 3.6-6 of the SEIR shows Project-generated vibration levels exceeding the General Plan threshold of 0.08 in/sec PPV at the adjacent historic buildings located within 61 feet of the Project site. With implementation of Mitigation Measure NOI-3.1, the Project-generated vibration levels would not exceed the General Plan threshold of 0.08 in/sec PPV. As a result, the Project would have a less than significant impact with mitigation incorporated.

Tribal and Cultural Resources

Impact: **Impact TCR-1:** Construction activities associated with the proposed Project could result in the disturbance of previously undocumented tribal cultural resources due to a known village site in the immediate Project vicinity.

Mitigation: **MM TCR-1.1: Sensitivity Training.** Prior to issuance of any grading permits, the Project applicant shall submit evidence to the Director of Planning, Building and Code Enforcement or the Director's designee that an Archaeological Monitoring Contractor Awareness Training was held prior to ground disturbance. The training shall be facilitated by a qualified archaeologist in coordination with a Native American representative from a California Native American tribe that has consulted on the Project, is registered with the Native American Heritage Commission (NAHC) for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.

Mitigation: **MM TCR-1.2: Monitoring.** A qualified Native American monitor, registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, in collaboration with a qualified archeologist, shall also be present during all earthmoving activities such as, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.

Finding: With implementation of existing regulations, the Standard Permit Conditions identified in the SEIR, and Mitigation Measures CUL-1.1, CUL-1.2 (as described under Impact CUL-1), TCR-1.1, and TCR-1.2, the proposed Project would have a less than significant impact on tribal cultural resources. **[New Less Than Significant Impact with Mitigation Incorporated (Less than Significant Impact)]**

Facts in Support of Finding: The Project site is located 0.6 mile west of Guadalupe River, an area identified as highly sensitive for prehistoric and archaeological deposits including tribal cultural objects, thus Project construction could result in impacts to previously undocumented tribal cultural resources. However, implementation of City Standard Permit Conditions and Mitigation Measures CUL-1.1, CUL-1.2, TCR-1.1 and TCR-1.2 would reduce potential impacts to tribal cultural resources to a less than significant level. Implementing these required measures, including a treatment plan for any resources identified during Project construction,

would reduce any potential impacts to tribal cultural resources associated with Project construction to a less than significant level.

SIGNIFICANT UNAVOIDABLE ENVIRONMENTAL IMPACTS

Impact: **Impact CUL-2:** The proposed development of the Northern Tower would impair the overall historic integrity of the St. James Square City Landmark District as it does not comply with: the Secretary of the Interior's Standard 9 for Rehabilitation, the Site Layout/Setbacks, Surface Treatment, Detailing, and Landscaping guidelines of the St. James Square Historic District Design Guidelines, and the design, feeling, and association integrity of the St. James Square City Landmark District.

Mitigation: None.

Finding: There are no feasible mitigation measures available that could be implemented to reduce the impact to the integrity of the St. James Square Historic District to a less than significant level absent a redesign of the Project to substantially conform with the St. James Square Historic District Design Guidelines. **[New Significant and Unavoidable Impact (Less Than Significant Impact with Mitigation Incorporated)]**

Facts in Support of Finding: As discussed in Section 3.3.2.1 of the DSEIR, the proposed Northern Tower would not be compatible with the St. James Square Historic Design Guidelines for site layout/setbacks, surface treatment (fenestration and detailing), detailing, and landscaping guidelines. Furthermore, out of the two applicable Secretary of Interior Standards, the proposed Northern Tower would not be compatible with the St. James Square Historic District in terms of features, size, scale, proportion, and massing (Standard 9). However, the proposed Northern Tower would comply with Standard 10[1].

Impact: **Impact (C)CUL-1 and (C)CLU-1:** The proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District due to incompatible infill, which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984.

[1] Standard 10 – New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Mitigation: None.

Finding: There are no feasible mitigation measures available that could be implemented to reduce the impact to the integrity of the St. James Square Historic District to a less than significant level absent a redesign of the Project to substantially conform with the St. James Square Historic District Design Guidelines. **[New Significant and Unavoidable Cumulative Impact (Less Than Significant Impact with Mitigation Incorporated)]**

Facts in Support of Finding: As discussed in Section 3.3.2.2 of the DSEIR, the St. James Square City Landmark District has undergone several alterations since it was locally designated in 1984. When the historic district was designated, the boundaries originally included 25 parcels, 11 of which were contributing. Two of the contributors were demolished (Four-Wheel Brake Building/Letcher Garage at 200 North First Street and Eagles Hall at 152 North Third Street), and three new buildings were constructed (St. James Plaza at 152 North Third Street, the office building at 96 North Third Street, and The James Apartments at 98 North First Street) which are five- to ten-stories tall, stucco or masonry clad, and large and bulky in scale.

The proposed Northern Tower would not be compatible with the St. James Square City Landmark District in terms of features, size, scale, proportion, massing, setbacks, surface treatment, and landscaping. The boundaries of the St. James Square City Landmark District were intentionally drawn to include 16 non-contributing properties and vacant lots. The resolution adopted by the San José City Council to create the historic district (Resolution No. 57147) states that it was established to a large degree because of the City's concern for the protection of the St. James Park area which contains a large number of historically significant buildings. The purpose of the historic district designation is to assure that the preservation and thoughtful modification of structures in this area will be compatible with the historic character of the area. The design of the proposed Northern Tower does not fulfill the purpose of the inclusion of the non-contributing property/properties in the historic district to provide compatible development. The proposed Northern Tower would diminish the historic integrity of the St. James Square City Landmark District which would have a cumulative impact when combined with the alterations to the historic district that have occurred over time since its designation in 1984, and there are no feasible mitigation measures that could be implemented to reduce the impact to a less than significant level.

Land Use

Impact: **Impact LU-1:** The proposed Project would have a significant unavoidable shade and shadow impact on St. James Park because it would result in an increase in shadow of greater than 10% on March 21 and September 21.

Mitigation: None.

Finding: The proposed Project would result in an increase in shade onto St. James Park, a public space, in excess of 10% during the spring and autumnal equinoxes. Absent a substantial redesign of the Project, there are no mitigation measures that would reduce this impact to a less than significant level. **[New Significant and Unavoidable Impact (Less Than Significant Impact with Mitigation Incorporated)]**

Facts in Support of Finding: The Downtown Strategy 2040 FEIR identifies significant shade and shadow impacts as occurring when a building or other structure located in the downtown area substantially reduces natural sunlight on certain public open spaces, measured on winter solstice when the sun is lowest in the sky (December 21st); the spring/autumnal equinox, when day and night are approximately equal in length (March 21st and September 21st); and summer solstice when the sun is at its highest point in the sky (June 21st). The Downtown Strategy 2040 FEIR established that a significant shade and shadow impact would occur if a 10 percent or greater shadow is cast onto any of the six major open space areas in the downtown San José area (St James Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park, McEnery Park). As discussed in Section 3.5.2.1 of the DSEIR, the proposed Project would cast shadows on St. James Park for limited hours during the spring, summer, and winter months. However, the Project would shade St. James Park in the morning of the spring/autumnal equinox resulting in a net new increase shadow of 14.7 percent, which exceeds the 10 percent threshold defined in the Downtown Strategy 2040 FEIR.

FINDINGS CONCERNING ALTERNATIVES

In order to comply with the purposes of CEQA, it is important to identify alternatives that reduce the significant impacts that are anticipated to occur if the Project is implemented and to try to meet as many of the Project's objectives as possible. The CEQA Guidelines emphasize a common sense approach -- the alternatives should be reasonable, should

"foster informed decision making and public participation," and should focus on alternatives that avoid or substantially lessen the significant impacts.

As stated in Section 2.3 of the DSEIR, The Project objectives identified in the SEIR are as 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 along transit corridors to foster transit use and the efficiency of urban services to strengthen downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José. Specifically, provide high density, high-rise housing in the downtown area in excess of 198 units per acre that is accessible to downtown jobs, retail and entertainment and various modes of public transit. The development of office and retail uses will provide for jobs at this infill location, which will in turn help to support transit use and existing amenities.
2. Support smart growth, and ideally reduce vehicle miles traveled, by adding housing units, office and retail space to a central transit location served by various modes of public transportation such as bikeways, VTA light rail and buses, and within 0.5 miles of a planned BART extension.
3. Create an attractive new building adding to the City's skyline and activating the ground floor with retail and a connected commercial complex.
4. Create a modern Class A office project with large open floor plates consisting of 20,000 to 40,000 square feet. These large floor plates are intended to attract tenants that are in the technology sector that are looking to increase their businesses and increase employment.
5. Provide bicycle parking in excess of City requirements for residents and employees to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community. The commercial building will provide for associated showers and lockers for employee bike commuters. In addition, a bike repair kitchen will be made available to both Project residents and employees.

The alternatives analyzed in the Draft SEIR 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. Six alternatives were explored, including a Location Alternative that was determined to be infeasible and subsequently rejected. The following are evaluated as alternatives to the proposed Project:

1. No Project – No Development Alternative
2. Reduced Height of Northern and Southern Towers Alternative

3. Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback Alternative
4. Reduced Height of Northern Tower to 160 Feet and 135 Feet Alternative
5. 20-Foot Setback of Northern Tower Alternative

1. No Project – No Development Alternative

A. **Description of Alternative:** The No Project – No Development Alternative would retain the existing buildings and parking lot as is. No new development would occur on the site.

B. **Comparison of Environmental Impacts:** The No Project – No Development Alternative would avoid all of the Project's environmental impacts. Because no towers would be constructed, significant impacts to cultural resources and shade/shadow, as well as impacts to air quality, nesting birds, hazards, and noise, would not occur and mitigation would not be required.

C. **Finding:** The No Project – No Development Alternative would avoid the Project's significant unavoidable impacts from activities associated with the Project. 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 an underutilized site in the downtown area near transit with a high-density development.

2. Reduced Height of Northern and Southern Towers Alternative

A. **Description of Alternative:** The purpose of the Reduced Height of Northern and Southern Towers Alternative is to lessen the impact the Northern Tower would have on the St. James Square City Landmark District compared to the proposed Project by reducing the height of the buildings and thereby reducing the amount of shadow cast on St. James Park. Under this alternative, both towers would be 15 stories tall, instead of 21 stories and 27 stories tall with the proposed Project, and connected via a podium on the basement floor to the eighth floor.

B. **Comparison of Environmental Impacts:** The proposed heights of the Northern and Southern Towers under this alternative would reduce the shadow cast on St. James Park to from 14.7 percent to 9.8 percent at 10:00 a.m. on March 21 and September 21, which would be below the 10 percent threshold. Therefore, the Project would have a less than significant shading impact on St. James Park. However, this alternative would still result in significant and unavoidable impacts to the historic integrity of St. James Park Historical District. All other identified significant impacts, including those for construction air quality, biological resources, cultural resources, noise, and hazardous materials would remain, as

major construction activities would still occur for a period of greater than one year due to the size of the Project.

C. **Finding:** The Reduced Height of Northern and Southern Towers Alternative would meet four of the five Project objectives; however, it would not meet objective 1, which is to provide high density, high-rise housing in the downtown area in excess of 198 units per acre that is accessible to downtown jobs, retail and entertainment and various modes of public transit. This alternative would result in a residential density of 102 units per acre. The Reduced Height of Northern and Southern Towers Alternative would reduce the amount of shadow cast on St. James Park compared to the proposed Project; however, all other identified significant impacts would remain the same as the proposed Project.

3. Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback Alternative

A. **Description of Alternative:** The purpose of the Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback Alternative is to potentially avoid the significant impact of the Northern Tower on the St. James Square City Landmark District. Under this alternative, the height of the proposed Northern Tower would be reduced from 268 feet to 70 feet and a 20-foot setback from East St. John Street would be implemented where a 10-foot street setback is currently proposed under the Project.

B. **Comparison of Environmental Impacts:** This alternative would avoid a significant and unavoidable impact related to the historic integrity of the St. James Square City Landmark District and the Secretary of Interior's Standard 9 as the massing will substantially conform with the St. James Square District Design Guidelines. While the reduction in height for the Northern Tower would help reduce the shade and shadow impact to St. James Park, the Southern Tower would still be 268 feet tall, and this alternative would still exceed the 10 percent threshold for shade and shadow. All other identified significant impacts, including those for construction air quality, biological resources, noise, and hazardous materials would remain as major construction activities would still occur for a period of greater than one year due to the size of the Project. These impacts would be the same as the proposed Project with all identified mitigation measures, Conditions of Approval, and Standard Permit Conditions.

C. **Finding:** The Reduced Height of Northern Tower to 70 Feet and 20 Foot Setback Alternative would meet four of the five Project objectives; however, it would not meet objective 1 which is to provide high density, high-rise housing in the downtown area in excess of 198 units per acre that is accessible to downtown jobs,

retail and entertainment and various modes of public transit. This alternative would result in a net decrease of 379 units compared to the proposed Project, providing only 36 residential units.

4. Reduced Height of Northern Tower to 160 Feet and 135 Feet Alternative

A. **Description of Alternative:** The purpose of the Reduced Height of Northern Tower to 160 Feet and 135 Feet Alternative is to achieve greater conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and to be more compatible with the contributing buildings in the St. James Square City Landmark District. Under this alternative, the height of the Northern Tower would be reduced from 268 feet to 160 feet for the portion of the building along North Fourth Street, and from 268 feet to 135 feet for the majority of the building along East St. John Street. The building would be set back 10 feet from East St. John Street from a 40-foot podium height where a five-foot, one-story recess above the fifth floor is currently proposed under the Project.

B. **Comparison of Environmental Impacts:** The Reduced Height of Northern Tower to 160 Feet and 135 Feet Alternative would achieve greater conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and would be more compatible with the St. James Square City Landmark District. This alternative would also lessen the impact of the Northern Tower on the St. James Square City Landmark District by reducing the shade and shadow to St. James Park; however, it would not reduce the impact below the 10 percent threshold. Therefore, although identified significant impacts would be reduced, this alternative would continue to have a significant and unavoidable shade and shadow impact, as well as on the historic integrity to the St. James Park Historical District. All other identified significant impacts, including those for construction air quality, biological resources, noise, and hazardous materials would remain as major construction activities would still occur for a period of greater than one year due to the size of the Project.

C. **Finding:** The Reduced Height of Northern Tower to 160 Feet and 135 Feet Alternative would meet four of the five Project objectives; however, it would not meet objective 1 which is to provide high density, high-rise housing in the downtown area in excess of 198 units per acre that is accessible to downtown jobs, retail and entertainment and various modes of public transit. This alternative would result in a net decrease of 190 units per acre compared to the proposed Project and would provide 225 residential units which would result in a residential density of 170 units per acre, which is less than 198 units per acre.

5. 20-Foot Setback of Northern Tower Alternative

A. **Description of Alternative:** The purpose of the 20-Foot Setback of Northern Tower Alternative is to lessen the Project's incompatibility with various design standards and guidelines within the St. James Square Historic District. This alternative would reduce the height of the portion of the Northern Tower facing St. James Park by two stories. Under this alternative, the building would be set back 20 feet from East St. John Street from a 40-foot podium height where a five-foot, one-story recess above the fifth floor is currently proposed under the Project.

B. **Comparison of Environmental Impacts:** The 20-Foot Setback of Northern Tower Alternative would achieve greater conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and would be more compatible with the St. James Square City Landmark District. This alternative would also lessen the impact of the Northern Tower on the St. James Square City Landmark District by reducing the shade and shadow to St. James Park; however, it would not reduce the impact below the 10 percent threshold. Therefore, although identified significant impacts would be reduced, this alternative would continue to have a significant and unavoidable shade and shadow impact, as well as on the historic integrity to the St. James Park Historical District. All other identified significant impacts, including those for construction air quality, biological resources, noise, and hazardous materials would remain as major construction activities would still occur for a period of greater than one year due to the size of the Project.

C. **Finding:** The 20-Foot Setback of Northern Tower Alternative would meet four of the five Project objectives; however, it would not meet objective 1 which is to provide high density, high-rise housing in the downtown area in excess of 198 units per acre that is accessible to downtown jobs, retail and entertainment and various modes of public transit. This alternative would result in a net decrease of 70 units compared to the proposed Project and would provide 345 residential units, which would result in a residential density of 164 dwelling units, which is less than 198 units per acre planned for the site. This alternative would more closely meet Project objective 1 than the Reduced Height of the Northern Tower to 70 Feet and 20-foot Setback Alternative and the Reduced Height of Northern Tower to 160 Feet and 135 Feet Alternative.

Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the discussion of Project alternatives, the environmentally superior alternative to the Project is the No Project – No Development Alternative because it would avoid all of the Project's significant environmental impacts. 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." Therefore, in addition to the No Project Alternative, the Reduced Height of Northern Tower to 70 Feet and 20-foot Setback Alternative is the environmentally superior alternative because it alters the proposed setback, size, scale, proportion, and massing of the building to be more compatible with the St. James Square City Landmark District, and the features such as fenestration and architecture features could be refined further to achieve maximum conformance with the Standards and Guidelines. The significant reduction in height and significant increase in setback would avoid the significant impact of the proposed Northern Tower to the St. James Square City Landmark District and would also avoid the Land Use impact related to conflict with plans, policies and regulation adopted to avoid or mitigate an environmental affect. While the reduction in height for the Northern Tower would help reduce the shade and shadow impact to St. James Park, the Southern Tower would still be 268 feet tall and this alternative would exceed the 10 percent threshold for shade and shadow, and all other identified significant impacts, including those for construction air quality, biological resources, noise, and hazardous materials would remain as major construction activities similar to the Project.

STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to the provisions of 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 of the Project as outlined above and the anticipated economic, social, and other benefits of the Project.

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 cultural resources (impacts to the St. James Square City Landmark District) and land use (shade and shadow impacts on St. James Park).

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 an underutilized downtown 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, including a planned Bay Area Rapid Transit (BART) station. 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 415 residential units, 525,000 square feet of office space, and 8,500 square feet of ground floor retail. The Project's location in the Downtown core will allow residents, office workers, 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 415 residential units, 525,000 square feet of office space, and 8,500 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 650 feet east of the nearest Santa Clara Valley Transportation Authority (VTA) Light Rail stop and is served by high-frequency bus service directly adjacent to the Project on East Santa Clara Street. The Project will focus new residential and employment 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**

The Project will advance the goals of the Downtown Strategy 2040, adopted in 2018, to facilitate the development of up to 14,360 residential units, 14.2 million square feet of office uses, 1.4 million square feet of retail uses, and 3,600 hotel rooms in Downtown by 2040. The Project will also build 525,000 square feet of office within the Employment Priority Area overlay established by the Downtown Strategy 2040. The purpose of the Employment Priority Area is for intensive job growth in close proximity to the future BART station.

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 will maximize 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.

4. **Pedestrian and Bicycle Improvements**

The Project applicant will construct bicycle and pedestrian improvements adjacent to the Project site, improving the streetscape in a portion of downtown with heavy vehicle and pedestrian traffic. Improvements include construction of a 21-foot-wide sidewalk and raised bikeway along North Fourth Street; a 16-foot-wide sidewalk with tree wells along East Santa Clara Street; a 12-foot-wide sidewalk with tree wells along St. John Street; and construction of a bulb-out at the northwest and southwest corner of Fourth Street and East Santa Clara Street. These improvements will

significantly improve pedestrian and bicyclist safety at an intersection with heavy traffic.

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 Section 21081.6 of the CEQA Statute and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation of 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 City's Department of Planning, Building and Code Enforcement, San José City Hall, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and are also available for viewing electronically on the Department of Planning, Building and Code Enforcement website. The City Council hereby designates the City's Director of Planning, Building, and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

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ADOPTED this ___ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Icon-Echo Mixed-Use Project
File Nos. SP21-031, T21-033, & ER21-134
October 2022

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

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 Icon-Echo 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, Erik Hayden, the applicant, on the behalf of UC Chevron Owner 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 DocuSigned by: 757977B1EF41467...

Date 10/19/2022

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Planning, Building and Code Enforcement
CHRISTOPHER BURTON, DIRECTOR

Icon-Echo Mixed-Use Project
File Nos. SP21-031, T21-033, & ER21-13

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**
AIR QUALITY					
Impact AIR-1: Construction activities associated with the proposed project would expose the maximum exposed individual (MEI) to a cancer risk of 42.39 cases per one million for infants which exceeds the Bay Area Air Quality Management District (BAAQMD) significance threshold of 10 cases per one million.					
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 or Director's designee of the City of San José Department of Planning, Building and Code Enforcement that includes information in sufficient detail as to how the project applicant and/or its contractor shall meet the following engine requirements and enhanced just control measures. The plan shall be accompanied by a letter signed by an air quality specialist. **Engine Requirements:** Verification that the equipment included in the plan meets the standards set forth below: • All construction equipment (larger than 25 horsepower) operating on-site for more than two days continuously (or 20 hours total) shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 final or interim emission standards for particulate matter (PM_{10} and $PM_{2.5}$). • If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours	Submit a construction operations plan and a letter signed by a qualified air quality specialist, verifying that the equipment and specifications for fugitive dust control included in the plan meet the standards defined in MM AIR-1.1.	Prior to issuance of any demolition, grading, or building permits (whichever occurs earliest).	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve construction operations plan and letter for compliance with standards.	Prior to issuance of any demolition, grading, or building permits (whichever occurs earliest).

total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieves a 77 percent reduction in particulate matter exhaust. • Use of alternatively fueled or electric equipment. • Stationary cranes and construction generator sets shall be powered by electricity. As an alternative to the measures above, the project applicant could request a plan from a qualified air quality specialist that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 77 percent or greater. The plan shall be submitted to the City of San José Director of Planning, Building and Code Enforcement ort the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest). **Enhanced Dust Control Measures:** The project applicant shall implement the following BAAQMD enhanced dust control requirements during construction of the project: • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 miles-per-hour (mph). • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. • All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a					

certified mechanic and determined to be running in proper condition prior to operation. • Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph. • Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity. • Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established. • The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time. • All trucks and equipment, including their tires, shall be washed off prior to leaving the site. • Site accesses to a distance of 100 feet from the paved road shall be treated with a six to 12-inch compacted layer of wood chips, mulch, or gravel. • Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes. Clear signage shall be provided for construction workers at all access points.					

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, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.					
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 will 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 ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest. 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 demolition or grading permits (whichever occurs first), the applicant shall submit the ornithologist's 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.	Avoid construction activities during nesting seasons. If construction activities cannot be scheduled outside of nesting season, conduct a pre-construction nesting bird survey by a qualified ornithologist in compliance with the survey timing defined in MM BIO-1.1, designate a construction-free buffer zone around any discovered nest. The ornithologist shall submit a report indicating the results of the survey and any designated buffer zones.	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.	Confirm that demolition and construction activities are scheduled outside of the nesting season, or review report indicating the results of the survey and any designated buffer zones.	Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities.

CULTURAL RESOURCES					
Impact CUL-1: Construction activities on-site could uncover historic-era archaeological resources associated with pre-1906 earthquake residential and commercial activities.					
MM CUL-1.1: Preliminary Investigation. After demolition of existing above-ground structures and prior to below-grade demolition/excavation activities, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology, in collaboration with a Native American representative registered with the Native American Heritage Commission (NAHC) 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 subsurface exploration at the site, to determine if there are any indications of discrete Native American or historic-era subsurface archaeological features. Exploration of 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 archaeological 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 of the City of San José Department of Planning, Building and Code Enforcement or Director's designee for review and approval prior to issuance of any grading permit.	A qualified archaeologist who is trained in both local prehistoric and historical archaeology, in collaboration with a Native American representative registered with the Native American Heritage Commission (NAHC) 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 subsurface exploration at the site, to determine if there are any indications of discrete historic-era subsurface archaeological features. Briefly document, tarp for protection, and leave in place any archaeological resources that may be exposed. The qualified archaeologist shall submit results of the presence/absence exploration, including any treatment recommendations, if any.	After demolition of existing above-ground structures and prior to below-grade demolition/ excavation activities.	Director of Planning, Building and Code Enforcement or the Director's designee.	Review and approval of the results of the presence/absence exploration and any treatment recommendations.	Prior to issuance of any grading permits.
MM CUL-1.2: Treatment Plan. Based on the findings of the subsurface testing (MM CUL-1.1), an archaeological resources treatment plan shall be	A qualified archaeologist in collaboration with a Native American representative,	Prior to issuance of any grading permits.	Director of the City of San José Department of Planning, Building	Review and approval of the archaeological	Treatment Plan: Prior to issuance of any

prepared by a qualified archaeologist in collaboration with a Native American representative, registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, if necessary. The treatment plan shall consist of permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement or Director's designee prior to approval 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. All Native American and historic-era features identified during exploration shall be evaluated by the qualified archaeologist. After completion of the field work, all artifacts shall be cataloged and the appropriate forms shall be completed and filed with the Northwest Information Center of the California Archaeological Inventory at Sonoma State University.	registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall prepare an archaeological resources treatment plan. The treatment plan shall include the items identified under MM CUL-1.2.		and Code Enforcement or Director's designee.	resources treatment plan.	grading permits.
A final report verifying completion of the archaeological resources treatment plan and mitigation program shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for approval prior to issuance of any certificate of occupancy. This	Submit a final report verifying completion of the archaeological resources treatment plan and	Final Report: Prior to release of a certificate of occupancy	Director of the City of San José Department of Planning, Building	Review and approval of the final report verifying	Final Report: Prior to release of a certificate of occupancy

report shall contain a description of the mitigation programs and results of the mitigation, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.	mitigation program to the Director of Planning, Building and Code Enforcement or Director's designee for approval.		and Code Enforcement or Director's designee.	completion of the archaeological resources treatment plan and mitigation program.	
HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: Construction activities associated with the proposed project could expose the public and/or the environment to hazardous materials and/or soil, soil vapor, and/or groundwater contamination from existing and former uses of the site (existing gas station and former automobile repair and service, gas station, drycleaner, and lumber businesses).					
MM HAZ-1.1: Prior to the issuance of any demolition, grading, or building permits, whichever occurs first, a geophysical survey shall be prepared by an environmental professional to identify the potential presence of underground storage tanks (USTs) below East Santa Clara Street. Additionally, the two UST vent pipes at the southern corner of the project site shall also be analyzed. Any identified objects or structures (e.g., the existing USTs, dispensers, and associated piping) shall be removed in coordination with the San José Fire Department and the Santa Clara County Department of Environmental Health (SCCDEH). As part of the removal, a qualified environmental professional shall collect soil samples below the existing USTs, dispensers, and associated piping, as directed under regulatory oversight by the SCCDEH and/or San José Fire Department, to determine if leaks have occurred. The geophysical survey, soil samples, evidence of regulatory oversight, and confirmation that identified objects have been removed in accordance with San José Fire Department and SCCDEH requirements shall be provided to the City of San José Director of Planning, Building, and Code Enforcement, or Director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.	An environmental professional shall perform a geophysical survey of project site to identify any objects or structures for removal. Any identified objects or structures shall be removed in coordination with the San José Fire Department and the Santa Clara County Department of Environmental Health (SCCDEH). An environmental professional shall collect soil samples below the existing USTs, dispensers, and associated piping, as directed by the SCCDEH and/or San José Fire Department.	Prior to the issuance of any demolition, grading, or building permits.	Director of Planning, Building and Code Enforcement or Director's designee. Environmental Compliance Officer in the City of San José's Environmental Services Department. San José Fire Department and SCCDEH.	Review results of geophysical survey. Coordinate with the project applicant for removal of any identified objects or structures.	Prior to the issuance of any demolition, grading, or building permits.
MM HAZ-1.2: Prior to issuance of any demolition, grading or building permit, whichever occurs first, the project applicant shall enroll in the SCCDEH Site	Enroll in the Santa Clara County Department of Environmental Health	Prior to the issuance of any demolition, grading or building	Director of Planning, Building and Code	Review evidence of regulatory oversight and	Prior to the issuance of any demolition,

Cleanup Program. The project applicant shall work under regulatory oversight to determine if additional Phase II soil, soil vapor and groundwater investigations and remediation are required. The project applicant shall provide documents such as a Site Management Plan, Removal Action Plan or equivalent plans as required by the DEH. The Plan(s) and evidence of regulatory oversight shall be provided to the City of San José Director of Planning, Building, and Code Enforcement, or director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.	(DEH) Site Cleanup Program and work under regulatory oversight to determine additional Phase II soil, soil vapor and groundwater investigations and any required remediation. Provide the plan(s) and evidence of regulatory oversight.	permits, whichever occurs first.	Enforcement or Director's designee. Environmental Compliance Officer in the City of San José's Environmental Services Department.	review Site Management Plan, Removal Action Plan or equivalent, as necessary.	grading or building permits, whichever occurs first.
MM HAZ-1.3: As part of the facility closure process for occupants that use and/or store hazardous materials, the project applicant shall ensure that the occupants submit a closure plan that describes required closure activities, such as removal of remaining hazardous materials, cleaning of hazardous material handling equipment, decontamination of building surfaces, and waste disposal practices. The facility closure plans shall be submitted to the San José Fire Department and SCCDEH for review and approval to ensure that the required closure and any necessary site cleanup activities are completed prior to the issuance of demolition, grading, or building permits, whichever occurs first. Evidence of regulatory oversight and documentation of facility closure in compliance with San José Fire Department and SCCDEH requirements shall be submitted to the City of San José Director of Planning, Building, and Code Enforcement, or director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.	The project applicant shall ensure that occupants submit a closure plan and facility closure shall be coordinated with the San José Fire Department and Santa Clara County Department of Environmental Health (SCCDEH) to ensure that the required closure activities are completed prior to site redevelopment.	Prior to the issuance of demolition, grading, or building permits .	Director of Planning, Building and Code Enforcement or Director's designee. Environmental Compliance Officer in the City of San José's Environmental Services Department. San José Fire Department and SCCDEH.	Ensure that the required closure activities are completed prior to site redevelopment.	Prior to the issuance of demolition, grading, or building permits.
MM HAZ-1.4: The facility at 147 East Santa Clara Street previously contained three vehicle service bays which contained below-grade hydraulic lifts. Prior to issuance of a grading or building permit, whichever occurs first, a qualified environmental professional shall document that the lifts and oil-water separator have been removed from the site. In addition, the qualified environmental professional shall analyze the soils for potential contamination. Documentation of removal shall be provided to the City of San José Director of Planning, Building, and Code Enforcement, and the	An environmental professional shall document that the lifts and oil-water separator have been removed from the site when the building is demolished and analyze the soils for potential contamination.	Prior to issuance of a grading or building permit, whichever occurs first .	Director of Planning, Building and Code Enforcement or Director's designee. Environmental Compliance Officer in the City of San José's Environmental Services Department.	Review documentation.	Prior to issuance of a grading or building permit, whichever occurs first .

Environmental Compliance Officer in the City of San José's Environmental Services Department.					
NOISE AND VIBRATION					
Impact NOI-1: Mechanical equipment noise levels would exceed the City's 55 dBA DNL threshold defined in General Plan Policy EC-1.3 at the future residential building located across North Fourth Street to the east of the site (Miro Towers/Res-3).					
MM NOI-1.1: Prior to the issuance of any building permits, mechanical equipment shall be selected and designed to meet the City's 55 dBA DNL noise level requirement at the nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building façades farthest from the nearest residences), where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures 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 building permits.	A qualified acoustical consultant shall review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City's 55 dBA DNL noise level requirement and submit the findings and recommendations for noise reduction measures.	Prior to the issuance of any building permits.	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the findings and recommendations from the acoustical consultant.	Prior to the issuance of any building permits.
Impact NOI-2: Construction noise would exceed ambient levels by five dBA for a period of more than one year within 500 feet of residential uses or 200 feet of commercial or office uses, which exceeds the City thresholds defined in General Plan Policy EC-1.7.					
MM NOI-2.1: Prior to the issuance of any grading or demolition permits, whichever occurs first, 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 noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during	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	Prior to the issuance of any grading or demolition permits, whichever occurs first.	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the noise logistics plan.	Prior to the issuance of any grading or demolition permits, whichever occurs first.

construction to reduce noise impacts on neighboring residents and other uses. The noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits for review and approval, whichever occurs first. Consistent with the Downtown Strategy 2040 FEIR, the construction noise logistics plan shall include but is not limited to the following measures: • Construction shall be limited to the hours of 7:00 AM to 7:00 PM. Monday through Friday 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. • The project contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components. • The unnecessary idling of internal combustion engines shall be prohibited. • Staging areas and stationary noise-generating equipment shall be located as far as possible from noise-sensitive receptors such as residential uses (a minimum of 200 feet, where feasible). • The surrounding neighborhood within 500 feet shall be notified early and frequently of the construction activities. • A "noise disturbance coordinator" shall be designated to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the	noise disturbance coordinator. Implement the standard noise control measures listed under MM NOI-2.1.				

disturbance coordinator would be conspicuously posted at the construction site.					
Impact NOI-3: Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings within 61 feet of the project site.					
MM NOI-3.1: Prior to the issuance of any demolition, grading, or building permits, whichever occurs earliest, 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 undertaken 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 and the City's Historic Preservation Officer 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: • 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 known to produce high vibration levels (e.g., clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning, Building or Code Enforcement or the Director's designee 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 for reducing vibration levels below the thresholds. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period. • Use of heavy vibration-generating construction equipment shall be prohibited within 61 feet of	Prepare and implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Submit the Plan to the Director of Planning, Building and Code Enforcement or Director's designee and the City's Historic Preservation Officer for review and approval. The Plan shall include the measures identified under MM NOI-3.1.	Prior to issuance of any demolition, grading, or building permits, whichever occurs earliest.	Director of Planning, Building and Code Enforcement, or Director's designee, and the City's Historic Preservation Officer.	Review and approval of the Plan and monitoring reports.	Prior to issuance of any demolition, grading, or building permits, whichever occurs earliest.

historic buildings and buildings eligible for listing as historic, if feasible. • Document conditions at all historic structures located within 61 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: o Vibration limits shall be applied to vibration-sensitive structures located within 61 feet of any construction activities identified as sources of high vibration levels. o Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 61 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion. The surveys shall include internal and external crack monitoring in the structure, settlement, and distress, and shall document the condition of the foundation, walls and other structural elements in the interior and exterior of the structure. • 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. • If vibration levels approach limits, construction shall be suspended and contingency measures shall be implemented to lower vibration or secure affect 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-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs in accordance with the Secretary of the Interior's Standards where damage has occurred as a result of construction activities.					
TRIBAL CULTURAL RESOURCES					
Impact TCR-1: Construction activities associated with the proposed project could result in the disturbance of previously undocumented tribal cultural resources due to a known village site in the immediate project vicinity.					
MM TCR-1.1: Sensitivity Training. Prior to issuance of any grading permits, the project applicant shall submit evidence to the Director of Planning, Building and Code Enforcement or the Director's designee that an Archaeological Monitoring Contractor Awareness Training was held prior to ground disturbance. The training shall be facilitated by a qualified archaeologist in coordination with a Native American representative from a California Native American tribe that has consulted on the project, is registered with the Native American Heritage Commission (NAHC) for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.	Submit evidence that an Archaeological Monitoring Contractor Awareness Training was held prior to ground disturbance by a qualified archaeologist in coordination with a Native American representative from a California Native American tribe that has consulted on the project, is registered with the Native American Heritage Commission (NAHC) for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.	Prior to issuance of any grading permits.	Director of Planning, Building and Code Enforcement or the Director's designee.	Review evidence.	Prior to issuance of any grading permits.
MM TCR-1.2: Monitoring. A qualified Native American monitor, registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, in collaboration with a qualified archeologist, shall also be present during all earthmoving activities such as, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.	A qualified Native American monitor, registered with the Native American Heritage Commission for the City of San José that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, in collaboration with a qualified archeologist shall be present on-site.	During all earthmoving activities.	Director of Planning, Building and Code Enforcement or the Director's designee.	Written confirmation by Native American monitor and archaeologist that they were present during all earthmoving activities.	During all earthmoving activities.

Source: City of San José. Draft SEIR (June 2022) and 1st Amendment to Draft SEIR for the Icon-Echo Mixed-Use Project.