

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN JOSE CERTIFYING THE 19 NORTH SECOND  
STREET 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 proposed 19 North Second Street Mixed-Use Project (File Nos. SP21-044 and HP21-001) includes a Special Use Permit and Historic Preservation Permit to allow the partial demolition of the existing on-site Realty Building, a City Landmark (HL01-136), removing the majority of extant building components except for the front façade, the exterior walls, and a portion of the interior core, including the central entry vestibule and corridor on the first floor, the stairs, and the second-floor central lobby; and the construction of a 22-story building consisting of 18,643 square feet of commercial uses

and 220 affordable senior housing units resulting in no more than four commercial condominium units and one residential condominium unit, and a basement level located at 19 North Second Street on an approximately 0.22-gross-acre site in the City of San José, California (collectively referred to herein as the “Project”); and

**WHEREAS**, approval of the Special Use Permit and Historic Preservation Permit would constitute a Project under the provisions of the California Environmental Quality Act of 1970, together with 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 (“SEIR”) for the Project pursuant to and in accordance with CEQA, which the Final SEIR is comprised of the Draft SEIR and the First Amendment to the Draft SEIR (collectively, the “FSEIR”); and

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

**WHEREAS**, on February 22, 2023, the Planning Commission of the City of San José reviewed the FSEIR prepared for the 19 North Second Street Mixed-Use 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 a resolution certifying the FSEIR; and

**WHEREAS**, CEQA requires that, in connection with approval of a project for which an environmental impact report has been prepared that 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 avoidance measures to minimize

impacts consistent with City policies and requirements and a statement of overriding considerations 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 incorporated herein as if fully set forth in the body of this Resolution; 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 judgement 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. That 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.

## **19 NORTH SECOND STREET MIXED-USE PROJECT SIGNIFICANT ENVIRONMENTAL IMPACTS**

### **Air Quality**

**Impact:** **Impact AQ-1:** Development of the Project would result in 14.51 (infant) cancer cases per one million during construction, which exceeds the maximum single-source cancer risk threshold of 10 in one million established by the Bay Area Management Air Quality Management District (BAAQMD).

**Mitigation:** **MM AQ-1:** Prior to the issuance of any grading or demolition permits (whichever occurs first), the Project applicant shall prepare a construction operations plan with equipment verified by a qualified air quality specialist that demonstrates off-road equipment used on-site to construct the project would achieve a fleet-wide average of a 35 percent reduction or more in diesel particulate matter (DPM) exhaust emissions which would reduce DPM emissions below the 10 in one million BAAQMD threshold. Specifically, this plan shall include, but is not limited to, the measures identified below:

- 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. EPA Tier 4 emission standards for particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>). If use of Tier 4 equipment is not available, alternatively use equipment that meets 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 achieve a 60 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination); or
- Use of electrical or non-diesel fueled equipment.

The construction operations plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs first).

**Finding:** Implementation of MM AQ-1, along with BAAQMD best management practices identified in standard permit conditions, would reduce Project construction emissions from 14.51 chances per one million to 3.07 chances in per million, below the BAAQMD threshold. (**Less than Significant Impact with Mitigation**)

**Facts in Support of the Finding:** Construction equipment and associated heavy-duty truck generates diesel exhaust which is a known toxic air contaminant (TAC). These exhaust air pollutant emissions would not be considered to contribute substantially to existing or projected air quality violations; however, construction exhaust emissions may still pose health risks for sensitive receptors such as surrounding residents. The primary community risk impact issue associated with construction emissions are cancer risk and exposure to particulate matter 2.5 microns in size (PM 2.5). Diesel exhaust poses both a potential health and nuisance impact to nearby receptors. A health risk assessment of the project construction activities was conducted that evaluated potential health effects to nearby sensitive receptors from construction emissions of DPM and PM 2.5. The health risk assessment included dispersion modeling to predict the offsite and onsite concentrations resulting from project construction, so that increased cancer risks and non-cancer health effects could be evaluated. The increased cancer risk calculations were based on applying the BAAQMD recommended age sensitivity factors to the TAC concentrations. Age-sensitivity factors reflect the greater sensitivity of infants and small children to cancer-causing TACs. Third trimester, infant, child and adult exposures were assumed to occur at all residences during the entire construction period. The project impact is computed by adding the construction cancer risk for an infant/child to the increased cancer risk for the project operational conditions for the generator at the maximally exposed individual (MEI) over a 30-year period. The project MEI is identified as the sensitive receptor that is most impacted by the project's construction and operation. The project was found to result in an exceedance with respect to community risk caused by project construction and operation activities, since the maximum unmitigated cancer risk of 14.51 cases per one million exceeds the BAAQMD single-source threshold of 10 cases per one million.

As stated above, with the implementation of best management practices to control dust and exhaust during construction and implementation of MM-AQ-1, the project's cancer risk would be lowered to 3.07 cases per one million. The California Emissions Estimator Model (CalEEMod) was used to compute emissions. The model assumed mitigation measure MM AQ-1 (i.e., all equipment larger than 25 horsepower met U.S. EPA Tier 4 interim engines standards) and best management practices for construction were incorporated. Based on the assumptions and inputs, the model showed that

the construction cancer risk levels (assuming infant exposure) would be reduced by 86 percent to 1.89 chances per million with implementation of this mitigation. Once the construction risk is combined with the operational generator cancer risk, the project's total mitigated cancer risk level would be 3.07 cases per million. Therefore, the project's risk impacts would no longer exceed the BAAQMD single-source significance threshold of 10 in one million. This would result in a less than significant impact during construction of the Project.

### **Cultural Resources**

**Impact:** **Impact CR-1:** The Project's partial demolition of the Realty Building, a designated City Landmark, and construction of a new 22-story building would cause a substantial adverse change to this historical resource and, therefore, the Project would have a significant impact. Mitigation measures CR-1a through CR-1d would reduce, but not fully avoid, the substantial loss of a historical resource and the impact would remain significant and unavoidable.

**Mitigation:** **MM CR-1a Protection Measures:** Protection measures for the front façade, the exterior walls, and a portion of the interior core including the central entry vestibule and corridor on the first floor, the stairs, and the second-floor central lobby of the designated City Landmark shall be implemented as follows:

Prepare and implement an Onsite Historical Resource Protection Plan (HRPP) to protect the historic fabric of the designated City Landmark on the site during construction activities. Prior to the commencement of construction activities, including demolition, the project applicant shall retain a qualified historic architect and structural engineer to prepare an Onsite HRPP to establish procedures to protect and stabilize the building. The Onsite HRPP shall be submitted to the City's Historic Preservation Officer for review and approval. Following City approval, the project applicant shall ensure the contractor follows the Onsite HRPP while working in/near the historical resource. At a minimum, the Onsite HRPP shall include:

- Guidelines for operation of construction equipment adjacent to the onsite historic resource,
- Requirements for monitoring and documenting compliance with the Onsite HRPP, and,
- Education/training of construction workers on the implementation of the Onsite HRPP and their responsibilities.

**MM CR-1b HABS-Level Documentation:** Prior to the issuance of a demolition permit to remove any part of the City Landmark, the building shall be documented and recorded following Historic American Buildings Survey (HABS) specifications. This documentation shall include:

- Drawings – sketch floor plans of the buildings and a site plan.
- Photographs – digital photographs meeting the National Register Photo Policy Factsheet (updated 5/15/2013).
- Written data – a historical report or the DPR 523 forms featuring the property description, history of the property, and historical significance evaluation.

An architectural historian meeting the qualifications in the Secretary of the Interior's Professional Qualification Standards shall oversee the preparation of the sketch plans, photographs, and written data. The documentation shall be reviewed and approved by the City's Historic Preservation Officer. After City review and approval, the documentation shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee of the City of San José and to History San José. Proof of receipt by History San José shall be submitted to the City following submittal.

**MM CR-1c Commemoration and Public Interpretation:** The project applicant shall retain a qualified historic resources consultant to develop and design a commemorative interpretive program, exhibit, display including, but not limited to interpretive text and historic photographs, art or sculpture, video, interactive media, or oral histories. The display shall be placed in a suitable publicly accessible location on the project site. Commemoration and interpretation shall be designed by a qualified consultant and implemented by the project applicant in coordination with the City. The proposal and preliminary design shall be reviewed and approved the City's Historic Preservation Officer. The proposal and design of the proposed commemoration and public interpretation shall be submitted to the City of San José Historic Preservation Officer for review and approval. Following City review and approval, the final product shall be implemented in a suitable publicly accessible location on the site as determined by the City.

**MM CR-1d Salvage Interior Architectural Features:** Prior to demolition of the building on the site, interior architectural features shall be identified for salvage and preferably incorporated into the new design or used as part of interpretive program or made available to museums, archives, curation facilities, the public, and nonprofit organizations to preserve, interpret, and display the history of the historical resource. No materials shall be salvaged or removed until HABS recordation and documentation are completed, and an inventory of key interior features and materials is completed by qualified

historic architect or historic resources consultant. The salvage program shall be reviewed and approved by the Director of Planning Building and Code Enforcement or Director's designee prior to implementation.

**Finding:** Mitigation Measures CR-1a through CR-1d would reduce impacts to the historically significant Realty Building. However, even with implementation of MMs CR-1a through CR-1d, partial demolition of the Realty Building and construction of the proposed mixed-use building would cause a substantial adverse change to this historical resource. **(Significant and Unavoidable Impact)**

**Facts in Support of the Finding:** As discussed in Section 3.5 of the Draft SEIR, and the supporting Historical Evaluation prepared for the Project (Appendix C of the Draft SEIR), the Project would partially demolish the existing Realty Building by removing the majority of extant building components except for the front façade, the exterior walls, and a portion of the interior core including the central entry vestibule and corridor on the first floor, the stairs, and the second-floor central lobby. The Project, therefore, would have a significant impact to this onsite historic cultural resource. The partial demolition of a historical resource typically cannot be mitigated to a less than significant level. Although the SEIR identifies MMs CR-1, these measures are not considered adequate under CEQA to mitigate the substantial loss of a historical resource significant for its historic association and architecture and, therefore, the impact would remain significant and adverse. The loss of the Realty Building would remain a significant and unavoidable impact.

**Impact:** **Impact CR-2:** The project site has a high possibility for historic-era buried and pre-contact archaeological deposits, therefore, excavation for project construction could result in potentially significant impacts on archaeological resources.

**Mitigation:** **MM CR-2 Cultural Sensitivity Training:** Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), construction personnel shall meet with a qualified archaeologist and a qualified Native American representative registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally affiliated with the geographic area, prior to the start of any-ground disturbing activities for at least one cultural sensitivity training and to review the cultural resource management protocols and coordinate the field effort.

**On-site Monitoring.** In areas where ground disturbing activities are expected to occur, archaeological monitoring shall be conducted by a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission



and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Monitoring is intended to ensure that appropriate cultural protective measures are effective prior to initiation of construction activities and to document and protect cultural resources from inadvertent damage. During ground-disturbing activities that may impact cultural resources, at least one archaeological monitor and one Native American monitor shall be on-site. Archaeological monitors have the authority to halt construction with the finding of an archaeological discovery and to authorize construction to resume. Construction that requires monitoring includes but is not limited to demolition activities that could disturb native soil, any earthmoving, (e.g., grading or excavation for foundations, footings, and trenching for underground utilities). Monitoring shall continue until the monitor has determined that excavation has reached the maximum depth at which archaeological remains could be expected to occur. To facilitate project planning the following must be furnished by the applicant: 1) plans, blueprints, conceptual drawings, etc., detailing proposed impacts to the project site (grading or excavation prints will normally be sufficient); and 2) the proposed construction schedule or activity to be monitored, with types of excavation and/or earth-moving identified. The results of the monitoring shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of monitoring activities.

If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, and the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified. The on-site archaeologist and Native American representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include reinterment of artifacts and materials, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move away any cultural materials.

**Finding:** Implementation of MM CR-2 would address and protect archaeological resources, should any be encountered during construction, to reduce potential impacts of the Project on archaeological resources to a less than significant level. Therefore, the cultural resource impacts of the Project

associated with archaeological resources would be less than significant.  
**(Less than Significant Impact with Mitigation)**

**Facts in Support of the Finding:** As discussed in Section 3.5 of the Draft SEIR and the archaeological report prepared for the Project (confidential and limited to qualified reviewers), construction of the Project could encounter and potentially impact archaeological/cultural resources. In addition to requiring an archaeologist and Native American representative provide training to the construction crew prior to ground disturbance and monitor during ground-disturbing activities, the mitigation measures also outline specific procedures to be taken if resources are encountered. Therefore, the impacts of the Project on archaeological/cultural resources would be less than significant.

**Impact**      **Impact LU-1:** The Project would conflict with General Plan Policies LU-13.2, LU-13.6, LU-13.7, and LU-13.8 and is partially consistent with the Secretary of the Interior's Standards for Rehabilitation.

**Mitigation:** See MM CR-1 (a-d), and MM CR-2

**Finding:** As discussed in Section 3.11 of the Draft SEIR, the Project would conflict with the City of San Jose's goals and policies for historic preservation and is only partially consistent with the principles and guidelines for rehabilitation and adaptive reuse with respect to the City Landmark at 19 N. Second Street. The Project would conflict with General Plan Policies LU-13.2, LU-13.6, LU-13.7, and LU-13.8 and is partially consistent with the Secretary of the Interior's Standards for Rehabilitation. As a result, the Project would conflict with existing land use policies and regulations adopted for the purpose of avoiding or mitigating an environmental effect.

**Facts in Support of Finding:** The project would remove the majority of extant building components except for the City Landmark's front façade, the exterior walls, and a portion of the interior core, including the central vestibule and corridor on the first floor, the stairs, and the second-floor central lobby, and construct a 22-story tower above the preserved portions of the building which would result in the loss of the historic resource as a building and loss of its significance and eligibility as a City Landmark. With implementation of Mitigation Measure CR-1 (a-d) and CR-2, impacts to resources listed on the City's Historic Resources Inventory would be reduced; however, not to a less than significant level. As a result, the Project would have a significant unavoidable impact.

## **Hazards and Hazardous Materials**

**Impact:** **Impact HAZ-1:** Construction of the Project could potentially expose construction workers and the public to halogenated volatile organic compounds (HVOCs) and heavy metals during the construction phase of the project.

**Mitigation:** **MM HAZ-1:** Prior to demolition or issuance of grading permits, the project applicant shall retain a qualified environmental professional to evaluate potential contamination issues identified in the Phase I Environmental Site Assessment by performing a Phase II soil, soil gas, and groundwater contamination investigation. The results shall be compared to established construction worker safety and regulatory residential environmental screening levels. If the Phase II results indicate soil, soil gas, and/or groundwater contamination above the appropriate regulatory screening levels for the project, the applicant shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health (or Department of Toxic Substance Control) under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified hazardous materials consultant. The Plan must establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and occupants.

The results of Phase II investigation and evidence of regulatory oversight and the appropriate plan, e.g., SMP, RAP, or equivalent document, shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee.

**Finding:** Implementation of MM HAZ-1 and project Standard Permit Conditions would reduce potential hazardous materials impacts to construction workers, adjacent uses, and nearby sensitive receptors and residences to a less than significant impact. **(Less than Significant Impact with Mitigation)**

**Facts in Support of the Finding:** As discussed in Section 3.9 of the Draft SEIR, and Phase I Assessment (Appendix E of the Draft SEIR) prepared for the Project, the project site is not located on the State's Department of Toxic Substances Control's Hazardous Waste and Substances Sites (also known as Cortese List). The property has historically been used for office uses. The existing Realty Building on the site was constructed in 1925 and was used for realty offices. The building is currently occupied by office and restaurant uses. The hazardous disclosure information indicates that several contaminated sites are located within 1/8-mile of the site; however, the potential for soil contamination on the project site from offsite sources is

unknown. Based on the Phase I investigation and available information, the presence of halogenated volatile organic compounds (HVOCs), including PCE, in soil, soil-gas, indoor air and shallow groundwater at concentrations above their respective regulatory screening criteria at the project site. In addition, elevated HVOC levels have been detected in soil, soil-gas, groundwater, and indoor air samples collected from the properties located north/northeast of the site (cross-to down-gradient) including the subject property. In addition, the Phase I Assessment concluded that elevated heavy metals may exist beneath the site subsurface. Therefore, construction of the Project could potentially expose construction workers and the public to HVOCs and heavy metals during the construction phase of the Project. For the purposes of CEQA, a Project impact to hazards and hazardous materials would be considered significant if the Project would create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. With implementation of Mitigation Measure HAZ-1 and compliance with existing regulations such as compliance with State-mandated and City-enforced protocols and treatment of asbestos containing materials and/or lead-based paint, the Project would not create a significant hazard to the public or environment from hazardous materials. Therefore, the impacts of the Project related to hazardous materials would be less than significant.

### **Noise and Vibration**

**Impact:** **Impact NSE-1:** Construction noise from the Project would exceed ambient levels by five dBA for a period of more than 12 months, which exceeds City thresholds defined in General Plan Policy EC-1.7 (i.e., within 500 feet of residential uses or 200 feet of commercial or office uses).

**Mitigation:** **MM NSE-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 the construction noise logistics plan 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:

- 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 project contractor shall locate staging areas and construction material areas as far away as possible from adjacent land uses.

**Finding:** With implementation of Mitigation Measure NSE-1 and standard permit conditions, the Project would have a less than significant construction noise impact. In addition, with implementation of Municipal Code requirements (i.e., Section 20.100.450) and the noise measures included in the Downtown San José Strategy Plan 2040 FEIR, the temporary construction noise impact would be reduced to a less than significant level. **(Less than Significant Impact with Mitigation Incorporated)**

**Facts in Support of the Finding:** As discussed in Section 3.13 of the Draft SEIR and the supporting Noise and Vibration Assessment prepared for the Project (Appendix F of the Draft SEIR), the Project is located within 500 feet of existing residences and 200 feet of existing commercial uses. Construction of the Project would exceed ambient noise levels by five dBA for a period of more than 12 months, which exceeds City thresholds defined in General Plan Policy EC-1.7 which considers significant construction impacts to occur if a project is located within 500 feet of residential uses or 200 feet of commercial or office uses and involves substantial noise generating activities continuing for more than 12 months. Implementation of the mitigation measure is not meant to reduce the construction noise to specific threshold; however, because the mitigation language includes use of noise shielding and muffling devices for power construction equipment and staging construction areas as far away as possible from adjacent land uses, the construction noise would inevitably be reduced. The mitigation measure also includes preparation and implementation of a construction noise logistics plan which would manage any noise complaints for the duration of construction.

**Impact:** **Impact NSE-2:** Project construction would generate vibration levels exceeding General Plan Policy EC-2.3 threshold of 0.08 inches/second Peak Particle Velocity (in/sec PPV) at historic properties within 60 feet of

the project site and 0.2 in/sec PPV at conventional buildings within 30 feet of the site. Such vibration levels would be capable of cosmetically damaging the adjacent historic and commercial buildings.

**Mitigation: MM NSE-2:** The Downtown Strategy 2040 FEIR recognized that construction vibration for future projects in Downtown could exceed vibration thresholds and included mandatory measures to be implemented by future projects to reduce vibration impacts. Consistent with General Plan Policy EC-2.3, the proposed project would implement the following mitigation measures during all phases of construction on-site.

Prior to the issuance of any demolition, grading, or building permits, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be 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 (HPO) 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 and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.
- 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 and at all conventional structures within 30 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 and for each conventional structure within 30 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, and shall include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures.
- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.
- If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.
- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. The survey will be submitted to the City of San José's Director of Planning, Building and Code Enforcement or the Director's designee.

**Finding:** Implementation of Mitigation Measure NSE-2, consistent with General Plan Policy EC-2.3, would reduce construction vibration impacts to a less than significant level. **(Less than Significant Impact with Mitigation Incorporated)**

**Facts in Support of the Finding:** As discussed in Section 3.13 of the Draft SEIR and supporting Noise and Vibration Assessment prepared for the Project (Appendix F of the Draft SEIR), construction of the Project would use heavy

vibration-generating construction equipment with the potential to produce vibration levels exceeding the thresholds described in General Plan Policy EC-2.3. Project construction activities, such as drilling, use of jackhammers, rock drills and other high-power or vibratory tools, and rolling stock equipment (tracked vehicles, compactors, etc.) may generate substantial vibration in the immediate vicinity of the historical or conventional buildings adjoining the project site. Even though no pile driving is proposed, project construction would have the potential to exceed the 0.08 inches per second PPV threshold for historic buildings within 60 feet of the project site and the 0.2 inches per second PPV threshold for conventional buildings within 30 feet of the project site given the project site's proximity to historic and conventional buildings. The noise study identifies the highest vibration levels to be 1.23 PPV inches per second at the historic and conventional building property lines with use of a vibratory roller, and implementation of mitigation measure NSE-2 would reduce the vibration impacts to less than significant; that is less than 0.08 PPV inches per second for historic buildings and 0.2 PPV inches per second for conventional buildings. The Project applicant is required to prepare and implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities to avoid exceeding the established vibration thresholds. If vibration levels approach limits, construction would be suspended to implement contingency measures to either lower vibration levels or secure the affected structures. Therefore, the impact to nearby historic and conventional structures would be less than significant.

## **FINDINGS CONCERNING ALTERNATIVES**

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 commonsense 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.

The alternatives analyzed in the DSEIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects. The following are evaluated as alternatives to the proposed Project:

### **1. No Project Alternative**



2. Preservation/Adaptive Reuse Alternative
3. Reduced Alternative
4. Decreased Alternative

### Project Objectives

The proposed Project would contribute to the job growth and residential development as envisioned in the Downtown Strategy 2040 and General Plan by accommodating the demand for affordable senior housing in downtown San Jose as well as the provision of commercial uses. Specifically, the objectives of the proposed Project are as follows:

1. Contribute to the job growth and the development of affordable housing as envisioned in the Downtown Strategy 2040 and the General Plan by providing a high-density housing project of approximately 220 affordable senior housing units and approximately 18,500 square feet of commercial space.
2. Locate high density development near transit corridors.
3. Provide high density affordable housing close to light rail to encourage future residents to take public transit, thereby reducing traffic congestion.
4. Provide on-site community benefits for the residents including a rooftop deck.
5. Provide bicycle parking for residents to help support the goals of the Envision San Jose 2040 General Plan in promoting San Jose as a thriving bicycling community.
6. Assist the City of San José to satisfy its capital regional housing needs allocation for below market rate housing.
7. Align with the following broad goals and objectives of the Downtown Strategy 2040 and General Plan:
  - Make Downtown a memorable and creative metropolitan center where people live, work, learn, play, shop, dine, and engage in public life;
  - Enhance the identity of Downtown San Jose as the urban and cultural center of Silicon Valley, and further enhance San Jose as an international city;
  - Create an accessible, walkable, bike-friendly, and transit-rich Downtown; and
  - Promote and prioritize development that serves the needs of the entire city, valley, and Bay Area region.

### Selection of Alternatives

CEQA, the CEQA Guidelines, and case law on the subject have found that feasibility can be based on a wide range of factors and influences. The CEQA Guidelines advise that such factors can include (but are not necessarily limited to) the suitability of an alternative site, economic viability, availability of infrastructure, consistency with the general plan or

other plans or regulatory limitations, jurisdictional boundaries, and whether the project proponent can “reasonably acquire, control or otherwise have access to the alternative site” (Section 15126.6[f][1]).

### **1. No Project Alternative**

- A. **Description of Alternative:** The No Project Alternative leaves the site intact. Because the No Project Alternative would not result in any redevelopment of the Project site, this alternative would avoid all of the environmental impacts from the Project.
- B. **Comparison of Environmental Impacts:** Implementation of the No Project – No Development Alternative would avoid all the significant environmental impacts of the Project in the areas of air quality (construction TACs), cultural resources (historic and archaeologic), hazardous materials, land use/planning, and construction vibration. Future development that proposes an addition of more than two stories that is not setback from the Realty Building façade and does not meet the Secretary of the Interior’s (SOI) Standards for Rehabilitation would likely result in a significant impact to the City Landmark on the property.
- C. **Finding:** Although this alternative would avoid the significant impacts identified in the Draft SEIR, it would not meet any of the Project objectives because the No Project – No Development Alternative would not provide high density affordable senior housing and commercial uses in the downtown area of the City of San José. Therefore, because this alternative would not meet any of the Project objectives, this alternative is rejected.

### **2. Preservation/Adaptive Reuse Alternative**

- A. **Description of Alternative:** This alternative consists of the adaptive reuse of the historic Realty Building. Adaptive reuse refers to the process of taking an existing structure and updating or adapting it for a new use or purpose. Given the square footage of the existing building (15,000 gross square feet), approximately 20 residential units could be accommodated. However, modifications may be required to make the structure habitable; this alternative assumes that these alterations would be to the interior and comply with the SOI Standards for Rehabilitation and other relevant Design Guidelines.
- B. **Comparison of Environmental Impacts:** Implementation of the Preservation/Adaptive Reuse Alternative would avoid all the significant and unavoidable environmental impacts (i.e., cultural resources and land use and planning) of the Project as it would maintain/preserve the existing building in place

and all modifications would be interior to the building. However, this alternative would result in the construction of only approximately 20 residential units, short of the 220 envisioned units and would not accommodate any ground-floor commercial space.

- C. **Finding:** Although this alternative would avoid the significant unavoidable impacts related to cultural/historical resources and land use, it would not meet most of the Project objectives furthering City goals, including objectives 1-3,6 and 7. Specifically, the Preservation/Adoptive Reuse Alternative would not provide high-density affordable senior housing and commercial uses in the downtown area of the City of San José. Additionally, the alternative would not meet the City's Downtown growth goals or help the City further its Regional Housing Needs Allocation obligation. Therefore, because this alternative would not meet the Project objectives, this alternative is rejected.

### **3. Reduced Alternative**

- A. **Description of Alternative:** The Reduced Alternative is a design option that would consist of a maximum two-story addition on top of the City Landmark that is set back 15 feet from the front façade of the building. This Alternative would maintain the exterior of the City Landmark but result in the removal of the existing interior staircase to the second floor of the building. The Reduced Alternative could accommodate an estimated 55 residential units and 5,000 square feet of commercial space on the ground floor.
- B. **Comparison of Environmental Impacts:** The Reduced Alternative would result in similar impacts to the proposed Project but may avoid the significant impacts to historic resources and the associated land use impact. As discussed in Section 8.2.3 of the Draft SEIR, this alternative could be more consistent with the Standards for Rehabilitation because the general size and scale of the historic Realty Building would be preserved and this alternative would only alter the stairs in the building. Therefore, this design change would avoid the significant unavoidable cultural and land use and planning impacts to the City Landmark building.
- C. **Finding:** Although this alternative would 1) avoid the significant impacts to historic resources and land use; 2) meet the Project objectives to provide housing near the light rail; 3) assist the City in meeting its capital regional housing needs allocation (although to a lesser degree than the proposed Project); 4) feasibly accommodate the rooftop deck amenity; and 5) provide bicycle parking for residents, it does not meet the Project objectives to develop 220 affordable senior housing units in the downtown core. This alternative reduces the size of the proposed Project by 165 units and reduces the proposed commercial space by 13,500 square feet.

Therefore, because this alternative would not meet all of the Project objectives, this alternative is rejected.

#### **4. Decreased Alternative**

- A. **Description of Alternative:** The Decreased Alternative would consist of a 22-story tower with 120 residential units. The exterior walls of the Realty Building would be retained along with its historic façade. The interior core of walls, stairs, and entry would also be retained, as would the existing second-floor roof diaphragm. The new building would be set back approximately 58 feet from the front façade of the Realty Building, thus preserving the historic integrity of the general massing of the two-story portion of the City Landmark that is visible from the street.
- B. **Comparison of Environmental Impacts:** Compared to the proposed Project, this alternative would result in a reduction of 100 residential units and an approximately 56 percent reduction in gross building square footage. The Decreased Alternative would result in environmental impacts comparable to the proposed Project, although it would improve the proposed Project's conformance with the Standards for Rehabilitation -specifically with respect to the setback from the historic front façade for the residential tower- but not to a less than significant level because the height of the tower would still not conform to the Standards for Rehabilitation since its size, scale, massing, and proportion would materially impair the historic integrity of the City Landmark building.
- C. **Finding:** The Decreased Alternative does not reduce any of the significant impacts identified in the Draft SEIR and does not fully meet all the Project objectives to develop 220 affordable senior housing units in the downtown core, since it reduces the size of the proposed Project by 100 units and may also reduce the proposed commercial space to accommodate a maximum of 120 units in a smaller structure. This alternative would not fully meet Project objectives because the unit count would be reduced from the proposed Project, which would in turn reduce the density the Project could provide near transit corridors and affect the total number of units in furtherance of the City's Regional Housing Needs Allocation obligation. Therefore, because this alternative would not reduce any of the significant impacts and would not fully meet the Project objectives, this alternative is rejected.

#### **Environmentally Superior Alternative**

The environmentally superior alternative would be the No Project - No Development Alternative, which would avoid the identified significant impacts of the proposed Project.

CEQA requires that another alternative be chosen when the No Project Alternative is environmentally superior.

The Preservation/Adaptive Reuse Alternative would eliminate the significant unavoidable impacts to historic resources and associated land use/planning effects. Therefore, the Preservation/Adaptive Reuse Alternative would be the environmentally superior alternative. However, the alternative would not meet the primary Project objective of providing 220 affordable senior housing units and 18,500 square feet of commercial space in downtown. Additionally, the alternative would not meet the City's Downtown growth goals or help the City further its Regional Housing Needs Allocation obligation.

## 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 significant and unavoidable impact of the Project as outlined above and the anticipated economic, social, and other benefits of the Project.

- A. **Significant Unavoidable Impacts.** With respect to the foregoing findings and in recognition of those facts which are included in the record, the City has determined the Project has significant unavoidable impacts, as set forth above, associated with the demolition of a City Landmark.
- 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 impact of the Project is acceptable in light of the economic and social considerations noted below, because the benefits of the Project outweigh the significant unavoidable impact of the Project. The City Council finds that the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant unavoidable 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.
- C. **Benefits of the Proposed Project.** While the City recognizes that there is historic value in retaining the Landmark Realty Building, the City also recognizes that affordable housing, specifically affordable senior housing, is in short supply. The Envision San José 2040 General Plan has designated growth areas such as Downtown, in alignment with Major Strategy #3 Focused Growth, for the development of dense, mixed-use, multi-modal projects. 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) **Provision of a Mixed-Use Project in an Identified Growth Area.** Consistent with Major Strategy #3 (Focused Growth) of the General Plan, this Project would provide 220 dwelling units and 18,643 square feet of commercial space within a 22-story building, sited across from public transportation, primarily served by Valley Transportation Authority's (VTA) Bus Routes 72 (Downtown San José – Senter and Monterey via McLaughlin), and 73 (Downtown San José – Senter and Monterey via Senter), and located less than 0.5 mile of VTA's Santa Clara South rail station, and is within 50 feet of East Santa Clara Street, a Grand Boulevard and future VTA/BART transit route. Placing complementary land uses like residential and commercial/retail uses near each other will increase the foot traffic in the Downtown area and reduce the number of single-occupancy automobile trips and vehicle miles traveled compared with the equivalent amount of development in a more suburban location where uses are separated; less trips would contribute to a decrease in Project-generated greenhouse gas emissions.
- 2) **Complete Communities.** The proposed development is also consistent with the General Plan's Major Strategy #9 which supports the continued growth in the Downtown area to contribute to the unique and important employment and residential neighborhood. The Project will advance this Envision San José 2040 General Plan strategy and policies to create a complete community by providing a mixed-use building (residential/commercial) within a transit-rich area in the core of Downtown, within walking distance of City amenities and public spaces and commercial businesses along North Second Street and East Santa Clara Street. The residential portion of the Project would specifically cater to seniors (55 years or older) meeting the state's very-low, low-, and moderate-income levels. Due to the Project site's central location and incentives afforded by the state for affordable housing developments, no vehicle parking will be provided. The Project will, however, provide dedicated areas for bicycle parking. The Project would also construct curb, gutter and a 15-foot attached sidewalk with tree wells behind back of curb along North Second Street and maintain the existing VTA BRT bus stop and elements. The Project would also be required to contribute its fair share contribution towards the continued rehabilitation and beautification of the St. James Park (approximately 0.1 mile from the Project site) via the Parkland Impact In-lieu fee. Therefore, focusing growth within the Downtown will support the Plan's economic, fiscal, environmental, and urban design/ placemaking goals.
- 3) **Affordable Housing.** The current use of the historic two-story building at 19 N. Second Street is commercial. The Project would allow for a 22-story mixed-use building consisting of 220 affordable residential units targeting the 55 and

older population. Specifically, the affordability mix would include 110 units (50 percent) to very-low-income households earning up to 50 percent of the Area Median Income, and 110 units (50 percent) to moderate-income households earning up to 60 percent of the Area Median Income. By replacing the two-story commercial building with a 22-story mixed-use building inclusive of residential, the Project would provide the highest density and best use of the Project site for its location. As stated above, the Project site is located in a transit-rich area across from two major VTA transit bus stops and is less than 0.5 miles from a VTA rail station, and around the corner from the proposed VTA/BART transit corridor.

Based on the above, the Project would meet the strategies and goals of the Envision San José 2040 General Plan criteria of locating high-density development near transit corridors, activating North Second Street by providing ground floor retail, and providing much needed affordable housing units.

The City Council has weighed each of the above benefits of the proposed Project against its significant unavoidable impacts identified in the FSEIR, and hereby determines that these benefits outweigh the adverse environmental effect of the Project and, therefore, further determines that the adverse environmental effect is 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 Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, Third Floor Tower, San José, CA 95113.

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ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk



# **MITIGATION MONITORING AND REPORTING PROGRAM**

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## **19 North Second Street Mixed-Use File Nos. SP21-044 and HP21-001 August 2022**

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## PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program 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 (to the Final Environmental Impact Report for the Downtown Strategy 2040) prepared for the 19 North Second Street 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 Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

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

I, LOIDA KIRKLEY, the applicant, on the behalf of Roygbiv Real Estate Dev't, LLC, hereby agree to implement the mitigation measures described below which have been developed in conjunction with the preparation of a Supplemental Environmental Impact Report (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

Date

08/17/22

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<b>Air Quality</b>					
<b>Impact AQ-1:</b> Development of the project would result in 14.51 (infant) cancer cases per one million, which exceeds the maximum single-source unmitigated cancer risk threshold of 10 in one million established by the BAAQMD.					
<b>MM AQ-1:</b> Prior to the issuance of any grading or demolition permits (whichever occurs first), the project applicant shall prepare a construction operations plan with equipment verified by a qualified air quality specialist that demonstrates off-road equipment used on-site to construct the project would achieve a fleet-wide average of a 35 percent reduction or more in diesel particulate matter (DPM) exhaust emissions which would reduce DPM emissions below the BAAQMD threshold. Specifically, this plan shall include, but is not limited to, the measures identified below: <ul style="list-style-type: none"> <li>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. EPA Tier 4 emission standards for particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>). If use of Tier 4 equipment is not available, alternatively use equipment that meets 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 achieve a 60 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination).</li> </ul>	<p>Develop a feasible plan which demonstrates a reduction in the project's construction emissions such that increased cancer risk and annual PM<sub>2.5</sub> concentrations from construction would be reduced to below significance levels.</p> <p>Submit the construction operations plan to the Director of Planning, Building, and Code Enforcement or the Director's designee</p>	<p>Prior to the issuance of any grading or demolition permits (whichever occurs earliest).</p>	<p>Director of Planning, Building, and Code Enforcement or the Director's designee.</p>	<p>Review and approve the plan and requirements to reduce construction equipment diesel particulate matter exhaust emissions.</p>	<p>Prior to the issuance of any grading or demolition permits (whichever occurs earliest).</p>

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	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
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<ul style="list-style-type: none"> <li>Use of electrical or non-diesel fueled equipment.</li> </ul> <p>The construction operations plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs first).</p>					
<b>Cultural Resources</b>					
<b>Impact CR-1:</b> The project's partial demolition of the Realty Building, a designated City Landmark, and construction of a new 22-story building would cause a substantial adverse change to this historical resource and, therefore, the project would have a significant impact. The mitigation measures identified below would reduce, but not fully avoid, the substantial loss of a historical resource and the impact would remain significant and unavoidable.					
<b>MM CR-1a: Protection Measures.</b> Protection measures for the front façade, the exterior walls, and a portion of the interior core including the central entry vestibule and corridor on the first floor, the stairs, and the second-floor central lobby of the designated City Landmark shall be implemented as follows:  Prepare and implement an on-site Historical Resource Protection Plan (HRPP) to protect the historic fabric of the designated City Landmark on the site during construction activities. Prior to the commencement of construction activities, including demolition, the project applicant shall retain a qualified historic architect and structural engineer to prepare an on-site HRPP to establish procedures to protect and stabilize the resource. The on-site HRPP shall be submitted to the City's Historic Preservation Officer for review and approval. Following City approval, the project	Prepare and implement a Historical Resource Protection Plan (HRPP).	Prior to the issuance of any demolition permits.	City of San José Historic Preservation Officer and Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve HRPP	Prior to the issuance of any demolition permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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<p>applicant shall ensure the contractor follows the on-site HRPP while working in/near the historical resource. At a minimum, the Onsite HRPP shall include: Guidelines for operation of construction equipment adjacent to the onsite historic resource,</p> <ul style="list-style-type: none"> <li>• Requirements for monitoring and documenting compliance with the Onsite HRPP, and,</li> <li>• Education/training of construction workers on the implementation of the Onsite HRPP and their responsibilities.</li> </ul>					
<p><b>MM CR-1b: HABS-Level Documentation.</b> Prior to the issuance of a demolition permit to remove any part of the City Landmark, the building shall be documented and recorded following Historic American Buildings Survey (HABS)<sup>1</sup> specifications. This documentation shall include:</p> <ul style="list-style-type: none"> <li>• Drawings – sketch floor plans of the buildings and a site plan.</li> <li>• Photographs – digital photographs meeting the National Register Photo Policy Factsheet (updated 5/15/2013).</li> <li>• Written data – a historical report or the DPR 523 forms featuring the property description, history of the property, and historical significance evaluation.</li> </ul> <p>An architectural historian meeting the qualifications in</p>	<p>An architectural historian, meeting the qualifications in the Secretary of the Interior’s Professional Qualification Standards shall prepare HABS documentation, including:</p> <ul style="list-style-type: none"> <li>• Drawings – sketch floor plans of the buildings and a site plan.</li> <li>• Photographs – digital photographs meeting the National Register Photo Policy Factsheet (updated 5/15/2013).</li> </ul>	<p>Prior to the issuance of any demolition permits.</p>	<p>City of San José Historic Preservation Officer and Director of Planning, Building and Code Enforcement or Director’s designee.</p>	<p>Review and approve HABS documentation.</p>	<p>Prior to the issuance of any demolition permits.</p>

<sup>1</sup> “HABS Guidelines,” National Park Service, <https://www.nps.gov/hdp/standards/habsguidelines.htm> (accessed February 19, 2021).

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the Secretary of the Interior's Professional Qualification Standards shall oversee the preparation of the sketch plans, photographs, and written data. The documentation shall be reviewed and approved by the City's Historic Preservation Officer. After City review and approval, the documentation shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee of the City of San José and to History San José. Proof of receipt by History San José shall be submitted to the City following submittal.	<ul style="list-style-type: none"> <li>Written data – a historical report or the DPR 523 forms featuring the property description, history of the property, and historical significance evaluation.</li> </ul>				
<b>MM CR-1c: Commemoration and Public Interpretation.</b> The project applicant shall retain a qualified historic resources consultant to develop and design a commemorative interpretive program, exhibit, display including, but not limited to interpretive text and historic photographs, art or sculpture, video, interactive media, or oral histories. The display shall be placed in a suitable publicly accessible location on the project site. Commemoration and interpretation shall be designed by a qualified consultant and implemented by the project applicant in coordination with the City. The proposal and preliminary design shall be reviewed and approved the City's Historic Preservation Officer. The proposal and design of the proposed commemoration and public interpretation shall be submitted to the City of San José Historic Preservation Officer for review and approval. Following City review and approval, the final product shall be implemented in	<p>Prepare a permanent exhibit/display of the history of the property including, but not limited to, historic and current condition photographs, interpretive text, or drawings.</p> <p>Place the exhibit/display at a suitable, publicly accessible location on the site, or in the lobby of the proposed building.</p>	Prior to the issuance of any demolition permits.	City of San José Historic Preservation Officer.	Review and approve exhibit/display.	Prior to the issuance of any demolition permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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a suitable publicly accessible location on the site as determined by the City.					
<b>MM CR-1d: Salvage Interior Architectural Features.</b> Prior to demolition of the building on the site, interior architectural features shall be identified for salvage and preferably incorporated into the new design or used as part of interpretive program or made available to museums, archives, curation facilities, the public, and nonprofit organizations to preserve, interpret, and display the history of the historical resource. No materials shall be salvaged or removed until HABS recordation and documentation are completed, and an inventory of key interior features and materials is completed by qualified historic architect or historic resources consultant. The salvage program shall be reviewed and approved by the Director of Planning Building and Code Enforcement or Director's designee prior to implementation.	Prepare salvaging program identifying architectural materials to be salvaged and incorporated into the new design or used as part of interpretive program or made available to museums, archives, curation facilities, the public, and nonprofit organizations.	Prior to the issuance of any demolition permits and after HABS documentation.	Director of Planning Building and Code Enforcement or Director's designee.	Review and approve salvaging program.	Prior to the issuance of any demolition permits and after HABS documentation.
<b>Impact CR-2:</b> The project site has a high possibility for historic-era buried and pre-contact archaeological deposits, therefore, excavation for project construction could result in potentially significant impacts on archaeological resources.					
<b>MM CR-2: Cultural Sensitivity Training.</b> Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), construction personnel shall meet with a qualified archaeologist and a qualified Native American representative registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally affiliated with the geographic area prior to the start of any-ground disturbing activities for at least	Conduct a Cultural Awareness Training, facilitated by a Native American representative, for construction personnel prior to ground disturbances.	Prior to the issuance of any demolition, grading, or building permits (whichever occurs first).	Director of Planning, Building, and Code Enforcement or the Director's designee.	Review evidence of cultural awareness training.	Prior to issuance of any demolition, grading, or building permits (whichever occurs first).

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>one cultural sensitivity training and to review the cultural resource management protocols and coordinate the field effort.</p> <p><b>On-site Monitoring.</b> In areas where ground disturbing activities are expected to occur, archaeological monitoring shall be conducted by a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Monitoring is intended to ensure that appropriate cultural protective measures are effective prior to initiation of construction activities and to document and protect cultural resources from inadvertent damage. During ground-disturbing activities that may impact cultural resources, at least one archaeological monitor and one Native American monitor shall be on-site. Archaeological monitors have the authority to halt construction with the finding of an archaeological discovery and to authorize construction to resume. Construction that requires monitoring includes but is not limited to demolition activities that could disturb native soil, any earthmoving, (e.g., grading or excavation for foundations, footings, and trenching for underground utilities). Monitoring shall continue until the monitor has determined that excavation has reached the maximum depth at which archaeological remains could be expected to occur. To facilitate project</p>	<p>Retain qualified archeologist, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare a monitoring plan for all earthmoving activities.</p>	<p>Prior to issuance of any demolition, grading, or building permits (whichever occurs first).</p>	<p>Director of Planning, Building, and Code Enforcement or the Director's designee.</p>	<p>Review and approve contracts for archaeologist and tribal monitor. Review and approve the monitoring plan.</p> <p>Monitor implementation of plan.</p> <p>Receive final monitoring plan showing results of the monitoring.</p>	<p>Prior to issuance of any demolition, grading, or building permits (whichever occurs first).</p> <p>During ground disturbance activities.</p> <p>Receive plan 14 days after completion of monitoring activities.</p>



MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>planning the following must be furnished by the applicant: 1) plans, blueprints, conceptual drawings, etc., detailing proposed impacts to the project site (grading or excavation prints will normally be sufficient); and 2) the proposed construction schedule or activity to be monitored, with types of excavation and/or earth-moving identified. The results of the monitoring shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of monitoring activities.</p> <p>If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, and the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified. The on-site archaeologist and Native American representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include reinterment of artifacts and materials, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the</p>					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Northwest Information Center (if applicable). Project personnel shall not collect or move away any cultural materials.					
<b>Hazards and Hazardous Materials</b>					
<b>Impact HAZ-1</b> Construction of the proposed project could potentially expose construction workers and the public to HVOCs and heavy metals during the construction phase of the project.					
<b>MM HAZ-1:</b> Prior to demolition or issuance of grading permits, the project applicant shall retain a qualified environmental professional to evaluate potential contamination issues identified in the Phase I Environmental Site Assessment by performing a Phase II soil, soil gas, and groundwater contamination investigation. The results shall be compared to established construction worker safety and regulatory residential environmental screening levels. If the Phase II results indicate soil, soil gas, and/or groundwater contamination above the appropriate regulatory screening levels for the project, the applicant shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health (or Department of Toxic Substance Control) under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified hazardous materials consultant. The Plan must establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and occupants.	Retain qualified consultant to prepare a Site Management Plan (SMP) or equivalent.	Prior to issuance of any demolition or grading permits.	Director of Planning, Building, and Code Enforcement or the Director's designee.  Santa Clara County Department of Environmental Health (or Department of Toxic Substance Control) as needed.	Review and approve SMP or equivalent.	Prior to issuance of any demolition or grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
The results of Phase II investigation and evidence of regulatory oversight and the appropriate plan, e.g., SMP, RAP, or equivalent document, shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee.					
<b>Noise and Vibration</b>					
<b>Impact NSE-1:</b> Construction noise would exceed ambient levels by five dBA for a period of more than one year, which exceeds City thresholds defined in General Plan Policy EC-1.7, within 500 feet of residential uses or 200 feet of commercial or office uses. in the vicinity of residential and commercial uses.					
<p><b>MM NSE-1:</b> 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 the construction noise logistics plan 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.</p> <p>Consistent with the Downtown Strategy 2040 FEIR, the construction noise logistics plan shall include but is not limited to the following measures:</p>	<p>Retain qualified consultant to prepare a Vibration Monitoring, Treatment, and Reporting Plan.</p> <p>Submit Plan to the Director of Planning, Building and Code Enforcement for review and approval.</p> <p>Implement Plan.</p>	<p>Prior to the issuance of any grading, demolition, or building permits, and during construction.</p>	<p>Director of Planning, Building, and Code Enforcement or the Director's designee.</p>	<p>Review and approve Vibration Monitoring, Treatment, and Reporting Plan</p>	<p>Prior to the issuance of any grading, demolition, or building permits, and during construction.</p>

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<ul style="list-style-type: none"> <li>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.</li> <li>The project contractor shall locate staging areas and construction material areas as far away as possible from adjacent land uses.</li> </ul>					
<b>Impact NSE-2:</b> Project construction would generate vibration levels exceeding the General Plan Policy EC-2.3 threshold of 0.08 in/sec PPV at historic properties within 60 feet of the project site and 0.2 in/sec PPV at conventional buildings within 30 feet of the site. Such vibration levels would be capable of cosmetically damaging the adjacent historic and commercial buildings.					
<b>MM NSE-2:</b> Prior to the issuance of any demolition, grading, or building permits, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be 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 (HPO) for review and approval prior to issuance of a demolition, grading,	Implement construction vibration monitoring plan.          Submit Plan to the Director of Planning, Building and Code Enforcement and the HPO for review and approval.	Prior to the issuance of any grading, demolition, or building permits, and during construction.       Prior to the issuance of any grading, demolition, or building permits,	Director of Planning, Building, and Code Enforcement or the Director’s designee and the HPO.	Review and approve construction vibration monitoring plan.	Prior to the issuance of any grading, demolition, or building permits, and during construction.

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<p>or building permit, whichever occurs earliest. The Plan shall include, but not be limited to, the following measures:</p> <ul style="list-style-type: none"> <li>• A description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.</li> <li>• A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.</li> <li>• Use of heavy vibration-generating construction equipment shall be prohibited within 61 feet of historic buildings and</li> </ul>		and during construction.			

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<p>buildings eligible for listing as historic, if feasible.</p> <ul style="list-style-type: none"> <li>Document conditions at all historic structures located within 61 feet of construction and at all conventional structures within 30 feet of construction prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically: <ul style="list-style-type: none"> <li>Vibration limits shall be applied to vibration-sensitive structures located within 61 feet of any construction activities identified as sources of high vibration levels.</li> <li>Performance of a photo survey, elevation survey, and crack monitoring survey for each historic structure within 61 feet and for each conventional structure within 30 feet of construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, and shall include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations,</li> </ul> </li> </ul>					

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<p>walls and other structural elements in the interior and exterior of said structures.</p> <ul style="list-style-type: none"> <li>• Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.</li> <li>• If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.</li> <li>• Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.</li> <li>• Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. The survey will be submitted to the City of</li> </ul>					

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San José's Director of Planning, Building and Code Enforcement or the Director's designee.					

*Source: Supplemental Environmental Impact Report to the Final Environmental Impact Report for the Downtown Strategy 2040, 19 North Second Street Mixed-Use, City of San José, August 2022.*