GP16-013 DEFERRED FROM 11/15/17

Please note, C17-032 has been dropped to be renoticed to a future date.

Thank you.

PC AGENDA: 11-15-17
ITEM: 8.b.

PLANNING COMMISSION STAFF REPORT

File No.	GP16-013 / C17-032
Applicant	Erik Schoennauer
Location	120 N. 4th Street
Existing General Plan Land Use Designation	Transit Residential Residential Neighborhood
Proposed General Plan Land Use Designation	Downtown
Existing Zoning District	CG Commercial General
Proposed Zoning District	DC Downtown Primary Commercial
Council District	3
Historic Resource	No
Annexation Date:	March 27, 1850 (Original City)
CEQA:	Negative Declaration

APPLICATION SUMMARY:

File No. GP16-013: General Plan Amendment request to change the Land Use/Transportation Diagram land use designation from Transit Residential and Residential Neighborhood to Downtown on an approximately 0.91-gross acre site located on the northeast corner of N. 4th Street and E. Saint John Street (120 N. 4th Street), and to expand the Downtown Growth Area boundary to include the subject site.

File No. C17-032: Conforming Rezoning from CG Commercial General to DC Downtown Primary Commercial on an approximately 0.91-gross acre site located on the northeast corner of N. 4th Street and E. Saint John Street (120 N. 4th Street).

RECOMMENDATION:

Recommend that the City Council:

1. Adopt a resolution approving the Negative Declaration in accordance with CEQA.
2. Adopt a resolution amending the *Envision San José 2040 General Plan* Land Use/Transportation Diagram land use designation from Transit Residential and Residential Neighborhood to Downtown, and to expand the Downtown Growth Area boundary to include the subject site.
3. Adopt an ordinance approving the Conforming Rezoning from the CG Commercial General Zoning District to the DC Downtown Primary Commercial Zoning District.

PROJECT DATA

General Plan		☒ **Consistent** ☐ Inconsistent	
SURROUNDING USES			
	General Plan Land Use	**Zoning**	**Existing Use**
North	Residential Neighborhood	CG Commercial General	Single-family residence
South	Downtown	DC Downtown Primary Commercial	Multi-family affordable housing
East	Transit Residential Residential Neighborhood	R-M Multiple Residence	Single-family residences Parking lot Multi-family housing
West	Downtown	CG Commercial General	Commercial/office buildings

RELATED APPROVALS	
Date	**Action**
2004	Special Use Permit to allow demolition of two office buildings for a surface parking lot, and rehabilitation of a Victorian residence on a 0.55 gross acre site (File No. SP02-049)

PROJECT DESCRIPTION

On November 4, 2016, the applicant applied for a General Plan Amendment to change the General Plan Land Use/Transportation Diagram land use designation from Residential Neighborhood to Transit Residential on an approximately 0.61-gross acre site. On May 2, 2017, the applicant requested to modify the proposed General Plan Amendment application to change the General Plan land use designation from Residential Neighborhood and Transit Residential to Downtown and add 0.3 acres to the application making the subject site approximately 0.91-gross acres; and to expand the Downtown Growth Area Boundary to include the subject site. Additionally, the applicant submitted a Conventional Rezoning application to change the subject site from the CG Commercial General Zoning District to the DC Downtown Primary Commercial Zoning District. The applicant also submitted a Tentative Map and Site Development Permit application for a proposed 26-story mixed-use commercial/residential building, but the Tentative Map and Site Development Permit have since been withdrawn.

The proposed Downtown General Plan land use designation and expansion of the Downtown Growth Area boundary would allow up to 728 dwelling units on the subject site and up to approximately 1,189,000 square feet of commercial/office uses on the site.

Background

In 2002, a former property owner filed a Special Use Permit (File No. SP02-049) to demolish two office buildings for use of the site as a surface parking lot. A condition of approval stated that "prior to the issuance of a building permit for the construction of the parking lot including the demolition of the office buildings, the applicant shall submit a permit adjustment containing details for the rehabilitation of the existing Victorian residence at 146 North 4th Street." Upon approval of the Special Use Permit, the previous property owner demolished the office buildings and constructed the surface parking lot, but did not rehabilitate the Victorian residence. The Special Use Permit has since expired.

In 2015, the Planning Division began updating the *Downtown Strategy 2000*, a long-range conceptual program for revitalizing downtown San José by allowing high-density infill development and replacement of underutilized uses. Part of the current update process proposes a slight expansion of the Downtown boundary along the east side of N. 4th Street between E. St. John Street and E. Julian Street, which includes the subject site. It is expected that City Council will consider the Downtown Strategy 2000 Update by September 2018; however, the applicant has requested to expand the Downtown Growth Area boundary to include the subject site to facilitate entitlements consistent with the Downtown General Plan land use designation and DC Downtown Primary Commercial Zoning District, prior to Council consideration of the Downtown Strategy 2000 Update.

Site Location

The site is located on the northeast corner of N. 4th Street and E. Saint John Street (120 N. 4th Street). The property is not located within a General Plan Growth Area or Development Policy area, but is directly adjacent to the Downtown Growth Area. The site currently includes five parcels containing a parking lot and two single-family residential homes.

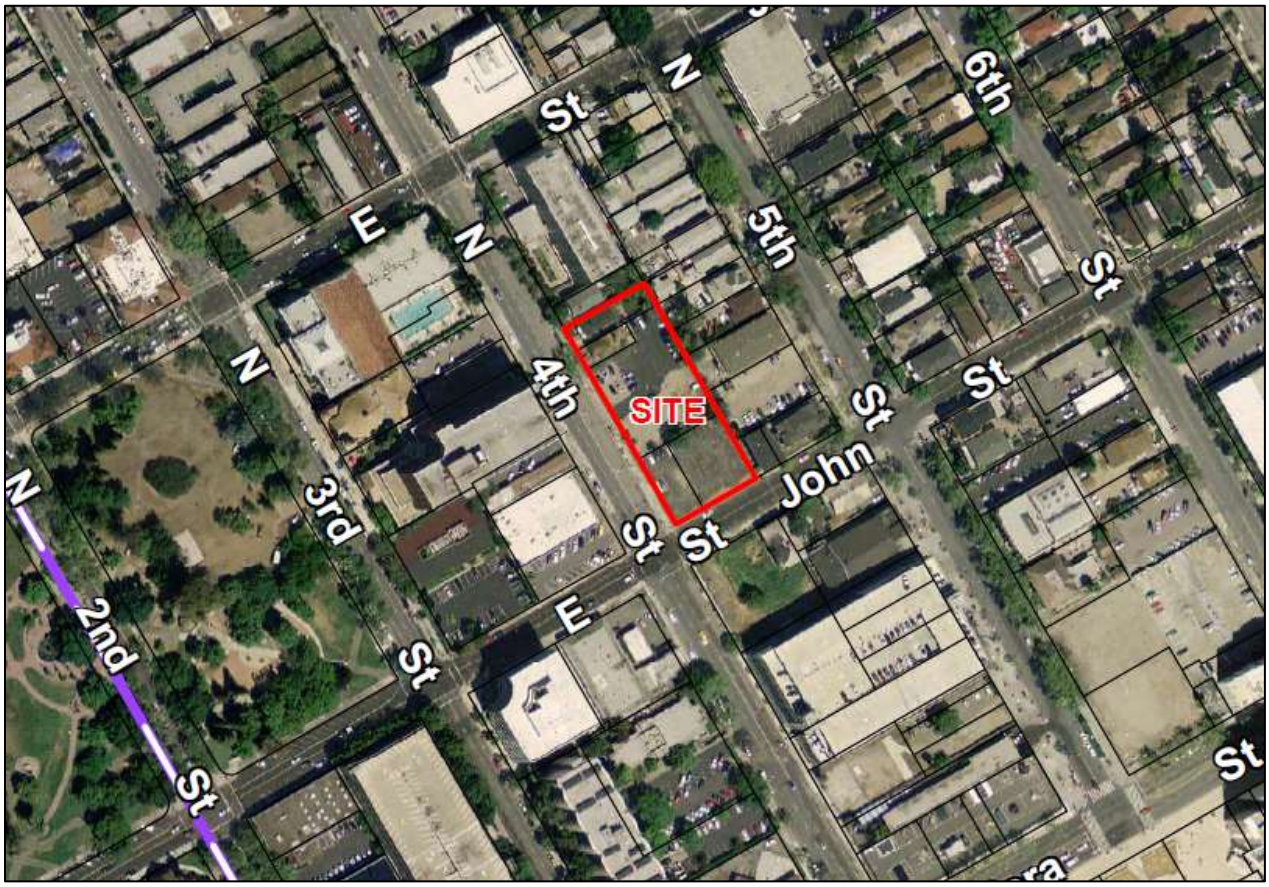

Figure 1: Site Location

Downtown Growth Area

The General Plan supports the Downtown Growth Area as the physical and symbolic center of the city, and supports the development of Downtown as a regional job center including high-rise development. The project site is located adjacent to the Downtown Growth Area; however, the proposed General Plan Amendment requests to include the subject site within the boundary. The Downtown Growth Area currently plans for 48,500 new jobs and 10,360 new dwelling units; the proposed General Plan Amendment and Rezoning would not affect the capacity of the Downtown Growth Area. The Downtown Strategy 2000 Update proposes to expand the Downtown Growth Area boundary to include the eastern half of the block along N. 4th Street between E. St. John Street and Julian Street, which includes the subject site. The update also plans to increase the Downtown Growth Area's capacity by 4,000 new dwelling units and 10,000 new jobs, increasing the total capacity to 58,500 new jobs and 14,360 new dwelling units.

ANALYSIS

The proposed General Plan Amendment and Conventional Rezoning were analyzed for conformance with the Envision San José 2040 General Plan and the Zoning Ordinance.

Envision San José 2040 General Plan Conformance

Existing General Plan Land Use Designation: Transit Residential

This is the primary designation for new high-density, mixed-use residential development sites that are located close to transit, jobs, amenities, and services. This designation may also be appropriate for some sites within Urban Village areas as identified through an Urban Village Planning process. This designation supports intensive commercial employment uses, such as office, retail, hotels, hospitals and private community gathering facilities. To help contribute to "complete communities," commercial uses should be included with new residential development in an amount consistent with achievement of the planned job growth and Urban Village Plan for the relevant Urban Village area. The allowable density/intensity for mixed-use development will be determined using an FAR 2.0 to 12.0 to better address the urban form and potentially allow fewer units per acre if in combination with other uses such as commercial or office. The allowable density for this designation is further defined within the applicable Zoning Ordinance designation and may also be addressed within an Urban Village Plan or other policy document.

Existing General Plan Land Use Designation: Residential Neighborhood

This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas which comprise most of its developed land. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern. New infill development should improve and/ or enhance existing neighborhood conditions by completing the existing neighborhood pattern and bringing infill properties into general conformance with the quality and character of the surrounding neighborhood. New infill development should be integrated into the existing neighborhood pattern, continuing and, where applicable, extending or completing the existing street network. The average lot size, orientation, and form of new structures for any new infill development must therefore generally match the typical lot size and building form of any adjacent development, with emphasis given to maintaining consistency with

other development that fronts onto a public street to be shared by the proposed new project. Densities permitted by this land use designation include typically 8 dwelling units per acre for residential development and up an FAR up to 0.7 for commercial/office development.

Proposed General Plan Land Use Designation: Downtown

This designation supports office, retail, service, residential, and entertainment uses in the Downtown. Redevelopment should be at very high intensities, unless incompatible with other major policies within the Envision General Plan (such as Historic Preservation Policies). Where single-family detached homes are adjacent to the perimeter of the area designated as Downtown, new development should serve as a transition to the lower-intensity use while still achieving urban densities appropriate for the perimeter of downtown in a major metropolitan city. All development within this designation should enhance the "complete community" in downtown, support pedestrian and bicycle circulation, and increase transit ridership. Residential projects within the Downtown designation should generally incorporate ground floor commercial uses. This designation does not have a minimum residential density range (DU/AC) to facilitate mixed-use projects that may include small amounts of residential in combination with significant amounts of non-residential use. Such mixed-use projects should be developed within the identified FAR range of up to 30. While this land use designation allows up to 800 dwelling units to the acre, achievable densities may be much lower in a few identified areas to ensure consistency with the Countywide Land Use Plan (CLUP). The broad range of uses allowed in Downtown could also facilitate medical office uses or full-service hospitals.

Figure 2: Existing General Plan Land Use Designation

Figure 3: Proposed General Plan Land Use Designation

Proposed Expansion of the Downtown Growth Area Boundary

As described above, the General Plan Amendment request includes an expansion to the Downtown Growth Area boundary to include the subject site; which would enable the site's land use designation to be changed to Downtown and the zoning district to DC Downtown Primary Commercial (shown by Figure 4). The applicant is not proposing to change the planned housing yield or planned job capacity of the Downtown Growth Area as part of this process.

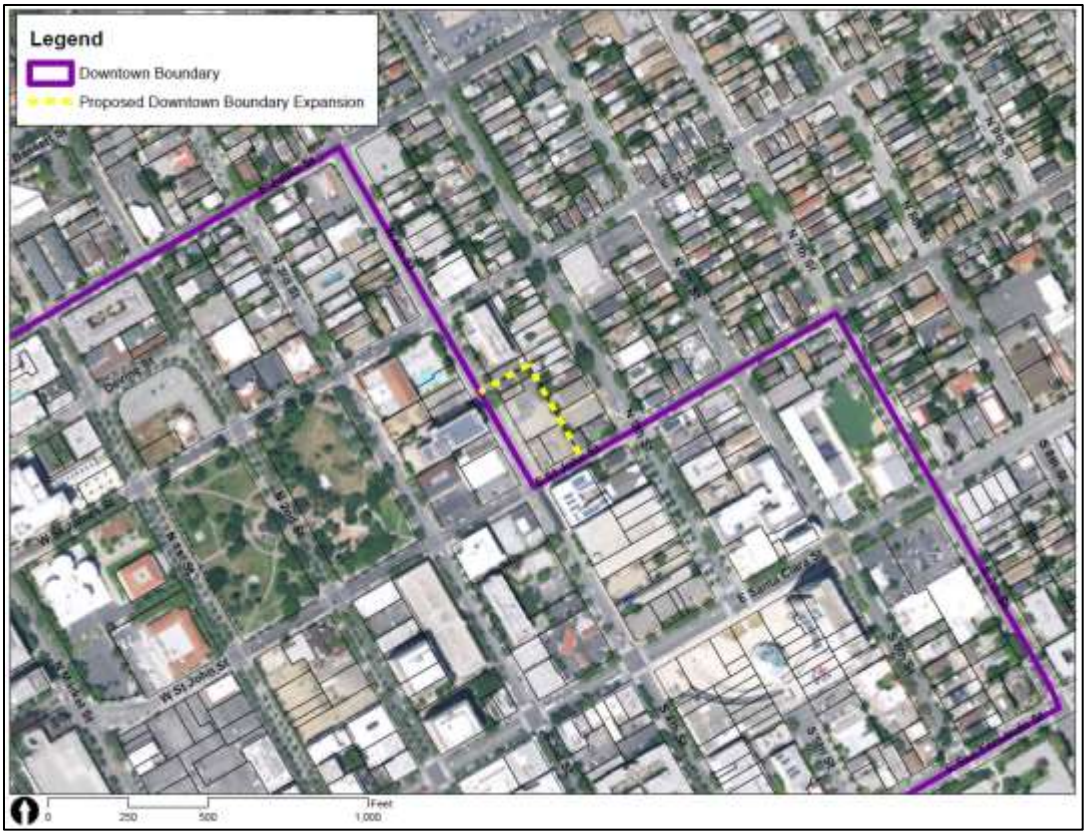

Figure 4. Proposed Expansion of Downtown Boundary

General Plan Goals and Policies

The proposed General Plan Amendment and Conventional Rezoning are **consistent** with the following Major Strategies, goals, and policies:

1. **Major Strategy #3 – Focused Growth:** The Focused Growth Major Strategy encourages new growth to be focused into areas of San Jose that will promote the City's goals for economic growth, fiscal sustainability and environmental stewardship, and support the development of new attractive urban neighborhoods. The General Plan focuses growth to increase employment capacity in areas surrounding the City's regional employment centers. The Focused Growth Major Strategy is intended to reduce environmental impacts and foster transit use and walkability.

   Analysis: The proposed General Plan Amendment to expand the Downtown Growth Area Boundary and designate the subject site as Downtown would expand a designated Growth Area to incorporate an
   underutilized site, thereby allowing more intense development nearby existing regional employment centers. While the proposed General Plan Amendment and Rezoning would not expand the employment capacity of the Downtown Growth Area, the proposals would allow greater density of residential and commercial/office on properties adjacent to employment uses, transit facilities, and other urban amenities.

2. **Major Strategy #9 – Destination Downtown:** The Destination Downtown Major Strategy calls for the City to focus new growth within Downtown to support the General Plan's economic, environmental, and urban design/place-making goals. Downtown San José is the

cultural heart of San José and provides employment, entertainment, and cultural activities more intensely than in any other area. The Downtown also consists of valuable historic resources, buildings with distinctive architecture, and unique neighborhoods where residents have convenient access to urban activities and amenities.

Analysis: The proposed General Plan Amendment would further the Focused Growth and Destination Downtown Major Strategy by allowing more intensive development on an underutilized site near transit and other amenities in Downtown. An example of amenities within a half-mile of the subject site include St. James Park, San José State University, the MLK Library, San José City Hall, San Pedro Square, Plaza de Cesar Chavez, multiple VTA light rail stations and bus stops, various places of worship, and the N. 1st Street and E. Santa Clara Street Urban Villages.

The Downtown Strategy 2000 Update proposes to incorporate the eastern half of the block along N. 4th Street between E. St. John Street and Julian Street, because the area includes underutilized parcels and more intensive buildings typical of Downtown. The applicant's proposal to expand the Downtown boundary aligns with the proposed update of the Downtown Strategy 2000 and would allow the applicant to bring forth a specific development proposal prior to Council consideration of the Downtown Strategy 2000 Update.

3. **Downtown Policy CD-6.1:** Recognize Downtown as the most vibrant urban area of San José and maximize development potential and overall density within the Downtown.

   General Land Use Policy LU-1.7: Locate employee-intensive commercial and industrial uses within walking distance of transit stops.

   Downtown Goal LU-3: Strengthen Downtown as a regional job, entertainment, and cultural destination and as the symbolic heart of San José.

   Downtown Policy LU-3.8: Leverage Downtown's urban nature and promote projects that will help achieve economic, fiscal, and environmental, cultural, transportation, social, or other objectives of this plan.

   Analysis: Expanding the Downtown Growth Boundary to include the underutilized subject site will strengthen Downtown as a regional center by allowing more flexibility of uses and greater densities than currently allowed under the existing land use designations. Allowing high-density development at this location may also provide nearby residents and employees a wider range of services and amenities, and development of the site would support nearby transit facilities, such as the VTA light rail and BRT, and the future BART expansion into Downtown.

Zoning Conformance

The site currently has a CG Commercial General Zoning District. The proposed Conventional Rezoning would change the site's zoning district from CG Commercial General to DC Downtown Primary Commercial, as shown by Figures 5 and 6.

Figure 5. Existing Zoning District

Figure 6. Proposed Zoning District

If the proposed General Plan Amendment is approved to expand the Downtown Growth Area boundary and change the subject site's land use designation to Downtown, the proposed Conventional Rezoning would be in conformance with the General Plan as per Table 20-270 of the Zoning Ordinance.

Land Use

The DC Downtown Primary Commercial Zoning District is the most intense commercial and residential zoning district in the city, allowing for high-density residential and high-intensity commercial uses. However, as the site is located at the perimeter of the Downtown Growth Boundary, the future proposed projects would need to serve as a transition to adjacent low-density residential uses.

Setbacks and Height

Per the Zoning Ordinance, properties located in the DC Zoning District are not subject to any minimum setback requirements and building heights are limited by FAA regulations. However, given the property's location on the outer edge of Downtown and adjacency to single-family and two-story multi-family residential uses, some setbacks and building height step-downs would likely need to be incorporated into future development proposals consistent with the General Plan and the Downtown land use designation.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

An Initial Study/Negative Declaration (IS/ND) entitled "Fourth and St. John General Plan Amendment & Rezoning" was prepared by the Director of Planning, Building, and Code Enforcement to address the environmental impacts of the subject General Plan Amendment and Conventional Rezoning. The IS/ND was completed in compliance with the California Environmental Quality Act (CEQA). The document was circulated for public review from October 24, 2017 to November 13, 2017. The Negative Declaration states that the proposed General Plan Amendment will not have a significant effect on the environment. No impacts were identified; therefore, no mitigation is required. The Initial Study and Negative Declaration are available for review on the Planning website at: http://www.sanjoseca.gov/index.aspx?nid=5720

PUBLIC HEARING NOTIFICATION

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

Community Meeting

Staff held a community meeting on September 7, 2017 at the St. James Plaza Office Building.. At the time of the meeting, the applicant had a specific project proposal including a Tentative Map and Site Development Permit. Since the community meeting, the applicant has withdrawn both the Tentative Map and Site Development Permit applications. Approximately 35 community members attended the meeting, and provided input predominantly about the withdrawn proposed project. Comments related to the proposed General Plan Amendment and Conventional Rezoning included the following:

- Desire to include all parcels between N. 4th Street and N. 5th Street within the expanded Downtown Growth Area boundary to allow for more flexibility in building design;
- Request for applicant to maintain sensitivity to nearby single-family homes by creating a large setback between any proposed development and the existing residential buildings along N. 5th Street; and
- Desire for personal services and retail that meet the daily needs of surrounding residents.

Project Manager: Kimberly Vacca
Approved by: , Planning Official for Rosalynn Hughey, Interim Planning Director

Date: 11/7/17

Owner:
Brent Lee 152 N. Third Street, 9/F San José, CA 95112

Attachments:
A) Initial Study and Negative Declaration B) Draft Ordinance

INITIAL STUDY

for

FOURTH and ST. JOHN GENERAL PLAN AMENDMENT & REZONING

City File Nos.: GP16-013 and C17-032

CITY OF SAN JOSÉ
CALIFORNIA

October 2017

NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Fourth and St. John General Plan Amendment and Rezoning

PROJECT FILE NUMBER: GP16-013 & C17-032

PROJECT DESCRIPTION: The project proposes a General Plan Amendment to include the project site within the Downtown Growth Area and to change the General Plan Land Use Designation from Residential Neighborhood and Transit Residential to Downtown. The project also proposes a conventional rezoning of the site from CG Commercial General Zoning District to the Downtown Primary Commercial Zoning District.

PROJECT LOCATION: Northeast corner of Fourth Street and St. John Street in San José

ASSESSORS PARCEL NO.: 467-20-019, 020, 021, 022, and 040 **COUNCIL DISTRICT:** 3

APPLICANT CONTACT INFORMATION: Brent Lee, 152 N. 3rd Street, Suite M, San José, CA 95112

FINDING: The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies no significant effects on the environment.

NO MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

A. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

B. **AGRICULTURE AND FOREST RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

C. **AIR QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.

D. **BIOLOGICAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

E. **CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

F. **GEOLOGY AND SOILS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

G. **GREENHOUSE GAS EMISSIONS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

H. **HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

I. **HYDROLOGY AND WATER QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.

J. **LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.

K. **MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

L. **NOISE** – The project will not have a significant impact on this resource, therefore no mitigation is required.

M. **POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.

N. **PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

O. **RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.

P. **TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on this resource, therefore no mitigation is required.

Q. **UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

R. **MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **Monday November 13, 2017** any person may:

1. Review the Draft Negative Declaration (ND) as an informational document only; or

2. Submit written comments regarding the information and analysis in the Draft ND. Before the ND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft ND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final ND.

Rosalynn Hughey, Interim Director
Planning, Building and Code Enforcement

10/23/17
Date

SBWalsh
Deputy

Circulation period: Tuesday October 24, 2017 to Monday November 13, 2017

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A. Arborist Report
B. GHG Evaluation Memo
C. Phase I Assessment
D. General Plan Amendments Long-Range Traffic Impact Analysis

Chapter 1. Background Information

PROJECT DATA

1. **Project Title**: Fourth and St. John General Plan Amendment and Rezoning

2. **Lead Agency Name and Address:** City of San José Planning, Building and Code Enforcement, 200 E. Santa Clara Street, San José, CA 95113

3. **Project Applicant:** Brent Lee, 152 N. 3rd Street, Suite M, San José, CA 95112 Project Representative: Erik E. Schoennauer, The Schoennauer Company, LLC, 90 Hawthorne Way, San José, CA 95110 (408) 947-7774

4. **Project Location:** The project is located on approximately 0.91 gross acre site at the northeast corner of Fourth Street and St. John Street. The project site is currently occupied by parking areas and two vacant single family homes.

   Assessor's Parcel Numbers (APNs): 467-20-019, 020, 021, 022, and 040
   City Council District: 3

5. **Project Description Summary:** The project proposes a General Plan Amendment to include the project site into the Downtown Growth Area and to change the General Plan land use designation on the site from *Residential Neighborhood* and *Transit Residential* to *Downtown*. The project also proposes rezoning of the site from General Commercial Zoning District to Downtown Primary Commercial Zoning District.

6. **Envision 2040 San José General Plan Designation**: *Residential Neighborhood* and *Transit Residential*

7. **Zoning Designation**: CG – Commercial General

8. **Habitat Conservation Plan Designations**:
   Area 4: Urban Development Equal to or Greater than 2 Acres Covered
   Land Cover: Urban-Suburban
   Land Cover Fee Zone: Urban Areas (No Land Cover Fee)

9. **Surrounding Land Uses**:
   - North: Residential
   - South: Residential
   - East: Residential
   - West: Commercial, Residential

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Chapter 2. Project Description

PROJECT LOCATION

The project is proposed within the City limits of San José, in Santa Clara County (refer to Figure 1). The site is located on Assessor's Parcel Numbers (APNs) 467-20-019, 020, 021, 022, and 040 (refer to Figure 2). The project is proposed on an approximately 0.91 gross acre site located at the northeast corner of Fourth Street and St. John Street.

The project site is currently occupied by surface parking areas and two vacant single-family homes. The project site is located directly adjacent to the Downtown Growth Area to the west. An aerial photograph of the project site and surrounding area is presented in Figure 3.

PROJECT DESCRIPTION

The project proposes an Amendment to the Envision San José 2040 General Plan (General Plan) Land Use Transportation Diagram. This General Plan Amendment is proposed to incorporate the project site into the Downtown Growth Area and to change the General Plan land use designation on the site from *Residential Neighborhood* and *Transit Residential* to *Downtown*. The project also proposes rezoning of the site from General Commercial Zoning District to Downtown Primary Commercial Zoning District. No specific development is proposed at this time. Future development proposed on the site would be required to comply with the allowed land uses and goals of the General Plan Designation and Zoning District, and would require the issuance of appropriate development permits.

The proposed *Downtown* land use designation and expansion of the Downtown Growth Area boundary would allow up to 728 dwelling units on the project site or up to 1,189,200 square feet of commercial/office uses. This designation does not have a minimum residential density range (DU/AC) in order to facilitate mixed-use projects that may include small amounts of residential in combination with significant amounts of non-residential use. Such mixed-use projects should be developed within the identified FAR range of up to 30. While this land use designation allows up to 800 dwelling units to the acre, achievable densities may be much lower in a few identified areas to ensure consistency with the Santa Clara County Comprehensive Land Use Plan (CLUP) for Norman Y. Mineta San José International Airport.

PROJECT SCHEDULE

The project is a General Plan Amendment and rezoning; no specific development is proposed at this time.

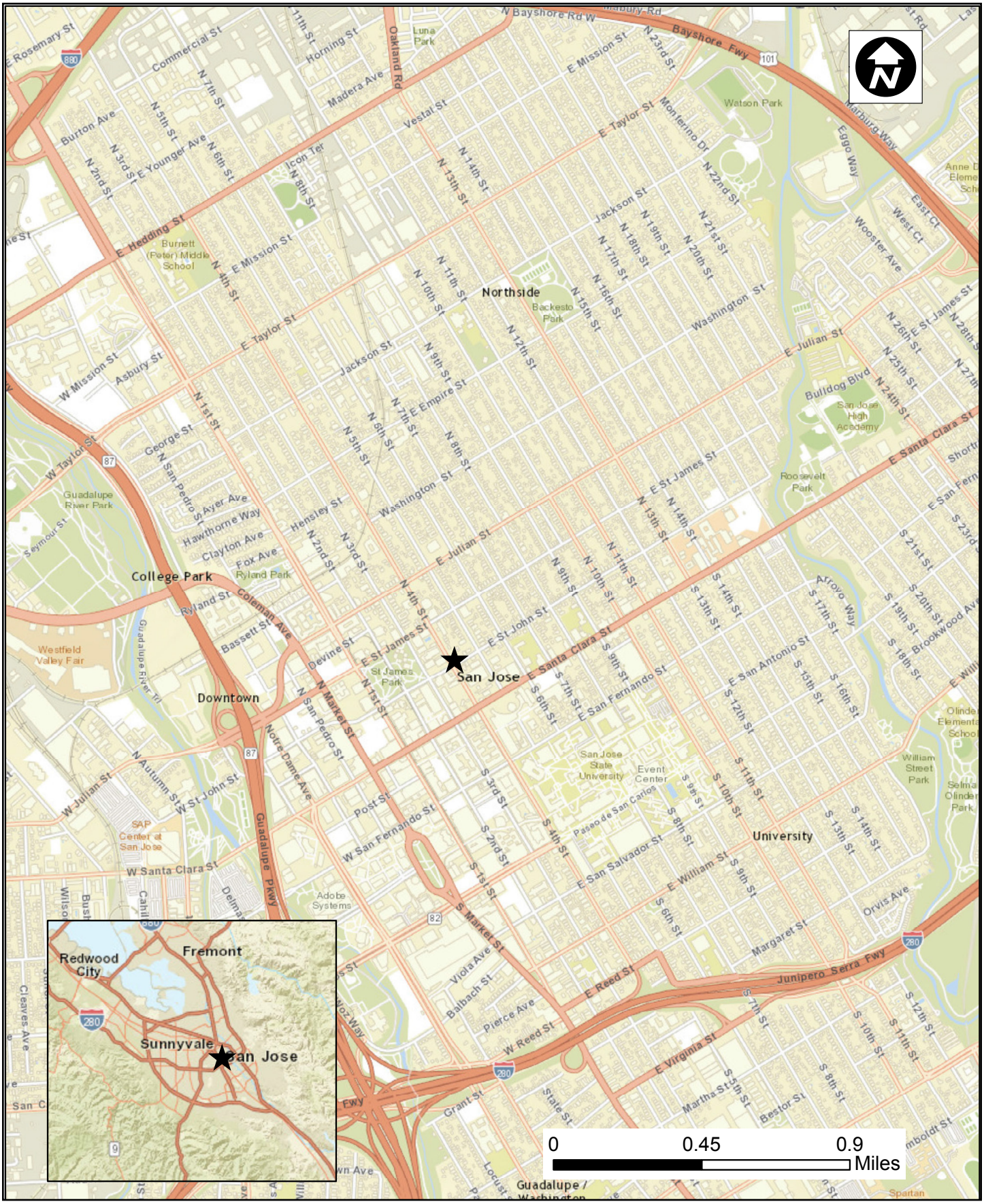
PROJECT OBJECTIVES

The objective of the project is to amend the City of San José Envision 2040 General Plan and rezone the site to allow increased development densities on the site in the future.

PROJECT APPROVALS

The project will require the following approvals:

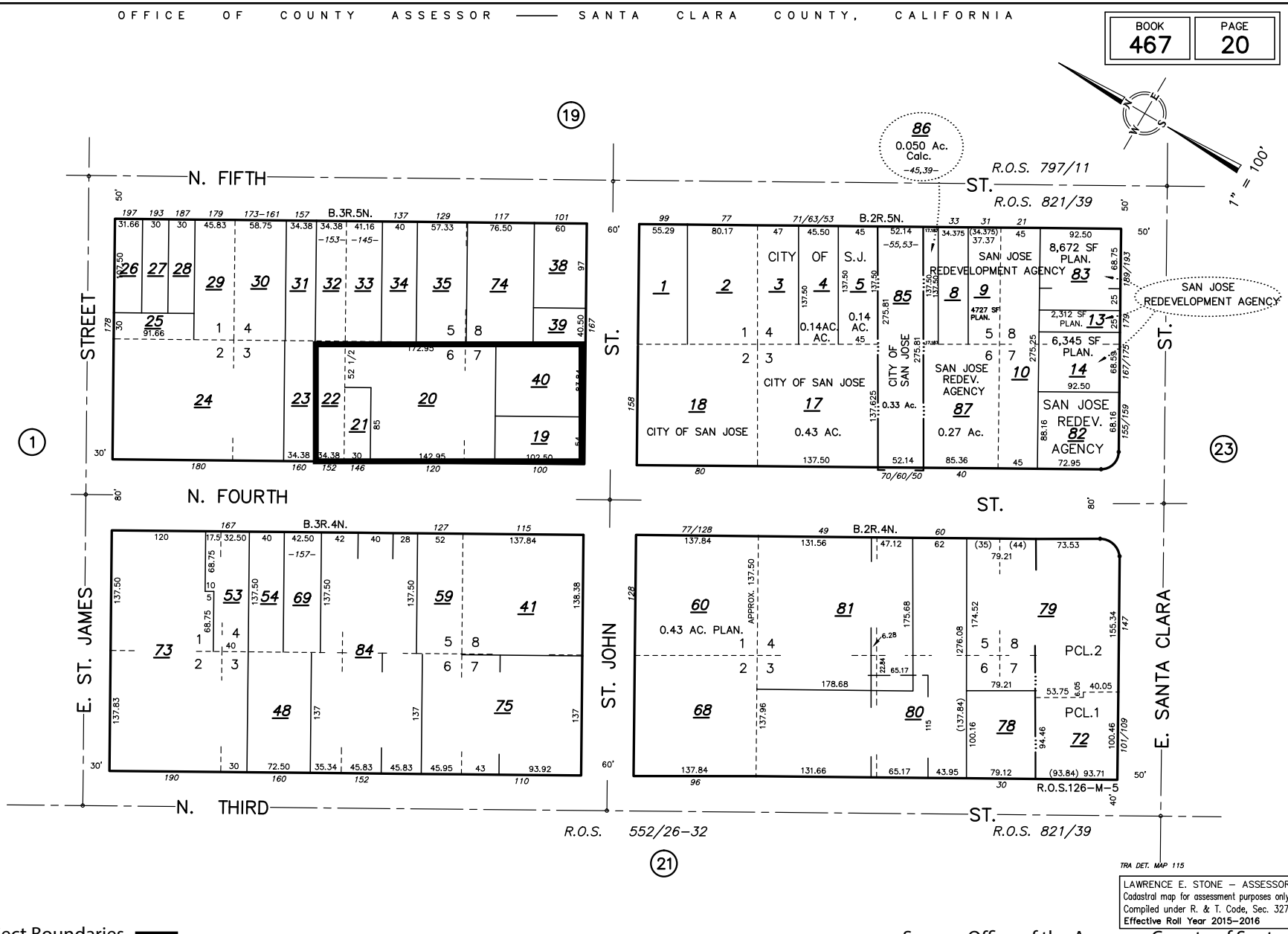
- City of San José – Environmental Clearance, General Plan Amendment, Rezoning



Location Map

Fourth/St. John
Initial Study

Figure
1



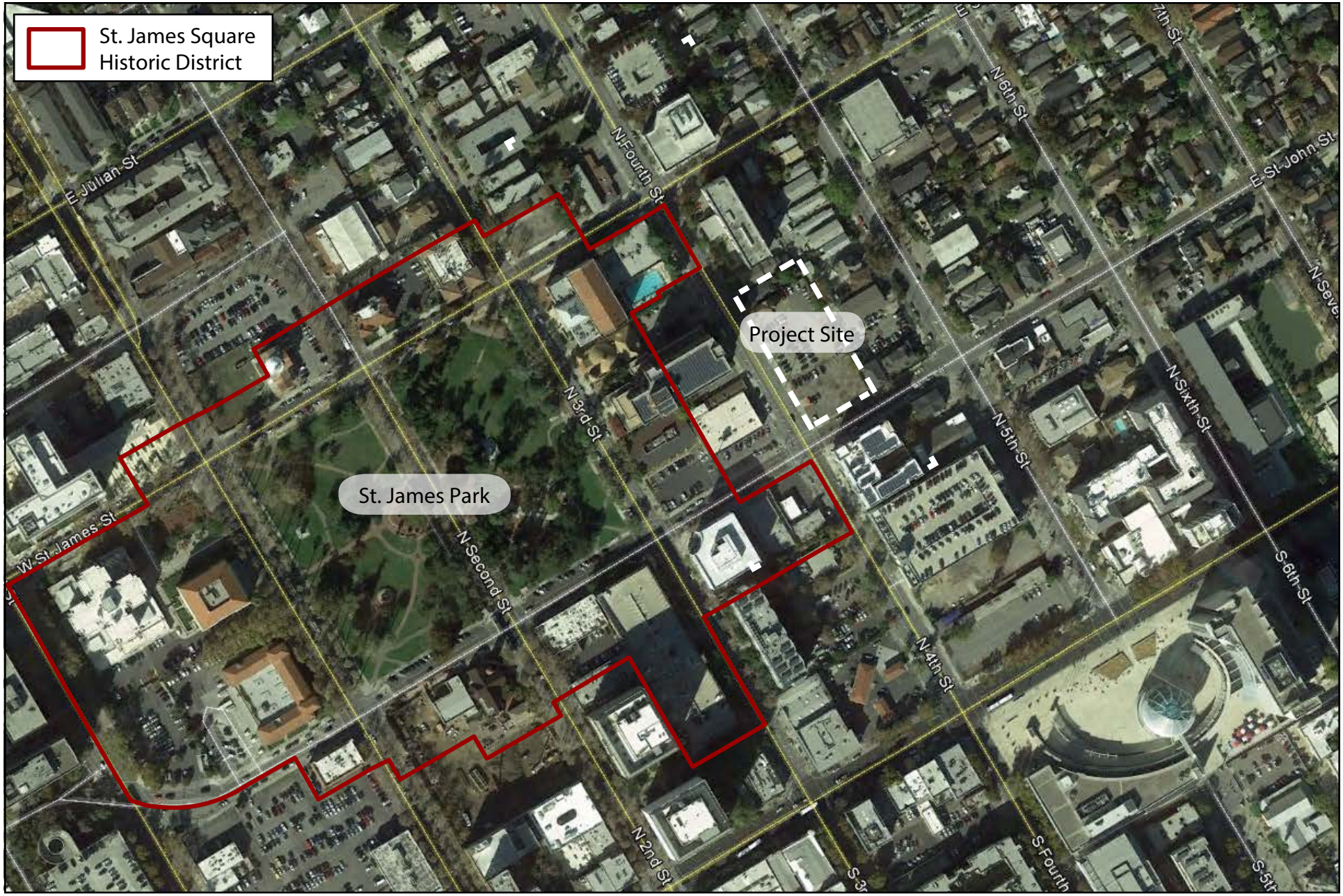
Project Boundaries

Source: Office of the Assessor, County of Santa Clara, 2017

APN Map

Figure 2

Fourth/St. John
Initial Study



Aerial Map

Fourth/St. John
Initial Study

Figure
3

Photo 1. Project site from 4th Street. Taken from the southwest corner of the site, facing northeast.

Photo 2. Project site from St. John Street. Taken from southeast corner of the site, facing northwest .

Photo 3. Project site from intersection of St. John Street and 4th Street. Taken from southern corner of the site, facing north.

Photo 4. View of the two vacant single-family residences on the northwest corner of the site.

Source: Google, 2017

Photos of Site and Surrounding Areas

Fourth/St. John
Initial Study

Figure
4a

Photo 5. View of development west of the project site, taken from 4th Street looking northwest.

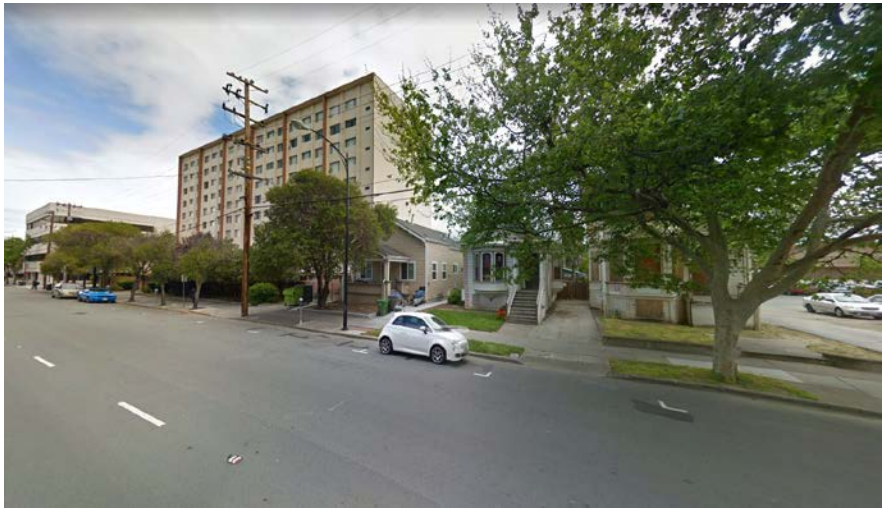


Photo 6. View of development north of the project site, taken from 4th Street looking northeast.

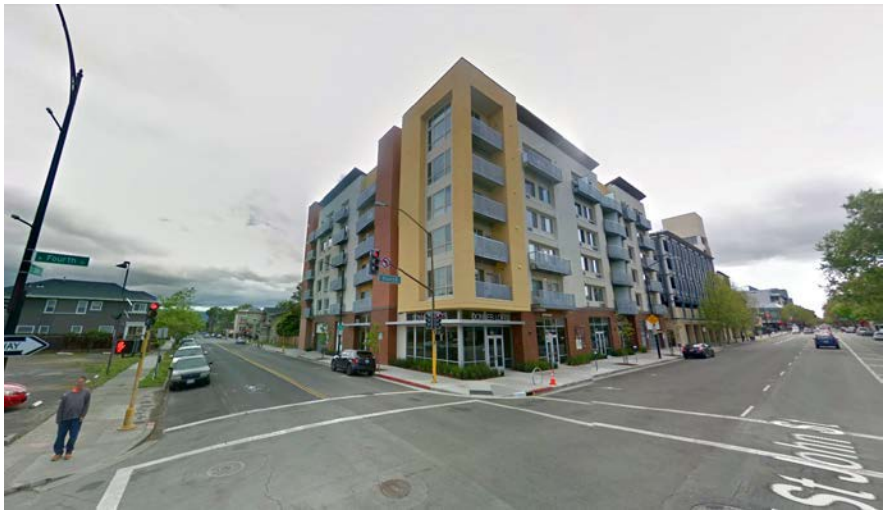


Photo 7. View of development south of the project site, taken from the corner of 4th and St. John Streets looking southeast.

Photo 8. View of development east of the project site, taken from St. John Street looking northeast.

Source: Google, 2017

Photos of Site and Surrounding Areas

Fourth/St. John
Initial Study

Figure
4b

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Chapter 3. Environmental Evaluation

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The key environmental factors potentially impacted by the project are identified below and discussed within Chapter 3. Environmental Setting and Impacts. Sources used for analysis of environmental effects are cited in parenthesis after each discussion, and are listed in Chapter 4. References.

☒ Aesthetics	☒ Agricultural Resources	☒ Air Quality
☒ Biological Resources	☒ Cultural Resources	☒ Geology/Soils
☒ Greenhouse Gas Emissions	☒ Hazards/Hazardous Materials	☒ Hydrology/Water Quality
☒ Land Use/Planning	☒ Mineral Resources	☒ Noise
☒ Population/Housing	☒ Public Services	☒ Recreation
☒ Transportation/Traffic	☒ Utilities/Service Systems	☒ Mandatory Findings of Significance

EVALUATION OF ENVIRONMENTAL IMPACTS

1. A brief explanation is required for all answers except “No Impact” answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A “No Impact” answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A “No Impact” answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on project-specific screening analysis).

2. All answers must take into account the whole action involved, including offsite as well as onsite, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4. “Less Than Significant With Mitigation Incorporated” applies where the incorporation of mitigation measures has reduced an effect from “Potentially Significant Impact” to a “Less Than Significant Impact.” The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level mitigation measures.

5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

a) Earlier Analysis Used. Identify and state where they are available for review.

b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7. Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8. This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9. The explanation of each issue should identify:

a) The significance criteria or threshold, if any, used to evaluate each question; and

b) The mitigation measure identified, if any, to reduce the impact to less than significance.

ENVIRONMENTAL SETTING AND IMPACTS

The following section describes the environmental setting and identifies the environmental impacts anticipated from implementation of the proposed project. The criteria provided in the CEQA environmental checklist was used to identify potentially significant environmental impacts associated with the project. Sources used for the environmental analysis are cited in the checklist and listed in Chapter 4 of this Initial Study.

A. AESTHETICS

Setting

The project site is located on a developed parcel within an urbanized area of San José. The property is occupied by parking areas and two vacant single family homes. The project site is bordered by the following uses:

- North: Residential
- East: Residential
- West: Residential, commercial
- South: Residential

Photographs of the property and surrounding area are presented in Figure 4, and an aerial of the project area is provided in Figure 3. As shown in the photos, the project site contains parking areas and two vacant homes, one of which is boarded up. The site also contains eight trees scattered throughout the site.

The State Scenic Highways Program is designed to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. The project site is not located near any scenic highways. In addition, General Plan defines scenic vistas in the City of San José as views of and from the Santa Clara Valley, surrounding hillsides, and urban skyline. Scenic urban corridors, such as segments of major highways that provide gateways into the City, can also be defined as scenic resources by the City. The City of San José has many General Plan-designated scenic resources and routes. The designation of a scenic route applies to routes affording especially aesthetically pleasing views. The project property is not located along any scenic corridors per the City's Scenic Corridors Diagram.

The City of San José's Outdoor Lighting Policy (City Council Policy 4-3) promotes energy efficient outdoor lighting on private development to provide adequate light for nighttime activities while benefiting the continued enjoyment of the night sky and continuing operation of the Lick Observatory by reducing light pollution and sky glow.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating aesthetic impacts from development projects. All future development allowed by the proposed land use designation would be subject to the aesthetic policies in the General Plan presented below.

Envision San José 2040 Relevant Aesthetic Policies	
Policy CD-1.1	Require the highest standards of architecture and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
Policy CD-1.13	Use design review to encourage creative, high-quality, innovative, and distinctive architecture that helps to create unique, vibrant places that are both desirable urban places to live, work, and play and that lead to competitive advantages over other regions.

Envision San José 2040 Relevant Aesthetic Policies	
Policy CD-1.17	Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm. Ensure that garage lighting does not impact adjacent uses, and to the extent feasible, avoid impacts of headlights on adjacent land uses.
Policy CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
Policy CD-4.5	For new development in transition areas between identified Growth Areas and non-growth areas, use a combination of building setbacks, building step-backs, materials, building orientation, landscaping, and other design techniques to provide a consistent streetscape that buffers lower-intensity areas from higher intensity areas and that reduces potential shade, shadow, massing, viewshed, or other land use compatibility concerns.
Policy CD-4.9	For development subject to design review, ensure the design of new or remodeled structures is consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).
Policy CD-8.1	Ensure new development is consistent with specific height limits established within the City's Zoning Ordinance and applied through the zoning designation for properties throughout the City. Land use designations in the Land Use/ Transportation Diagram provide an indication of the typical number of stories.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
1. AESTHETICS. Would the project:					
a) Have a substantial adverse effect on a scenic vista?			X		1, 2
b) Substantially damage scenic resources, including but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?				X	1, 2
c) Substantially degrade the existing visual character or quality of the site and its surroundings?			X		1, 2
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?			X		1, 2

Explanation

a) **Less Than Significant Impact**. The project site is located in an urbanized location near downtown. Future development is not expected to significantly impact any scenic vistas.

b) **No Impact**. The project site is not located within any City or state-designated scenic routes.

c) **Less Than Significant Impact**. The project is limited to a General Plan Amendment and rezoning, which would not alter the existing visual character or quality of the site and its surroundings. Future development of the project site would alter the existing visual character of the property and its surroundings by introducing more dense urban development than what currently exists on the property. The project site is surrounded by residential and commercial uses including one to two-story buildings. Future development on the site will be subject to the Downtown Design Guidelines, Zoning Ordinance, General Plan policies, Municipal Code standards, and other relevant regulations to assure high quality design. Thus, future development would not substantially degrade the existing visual character or quality of the site and its surroundings.

d) **Less Than Significant Impact**. The project site is located in an area of existing ambient night lighting associated with the surrounding uses. Future development on the site could increase nighttime lighting in the area. However, this impact would be less-than-significant with compliance with the City's outdoor lighting policies, including the City's Outdoor Lighting Policy for Private Development (Council Policy 4-3).

Conclusion: Implementation of the General Plan Policies and City's development guidelines would ensure that future development on the site would have a less-than-significant impact on aesthetics.

B. AGRICULTURAL AND FOREST RESOURCES

Setting

The project site is currently occupied by two residences and parking areas. The site also contains eight scattered trees.

Regulatory Background

In California, agricultural land is given consideration under CEQA. According to Public Resources Code §21060.1, "agricultural land" is identified as prime farmland, farmland of statewide importance, or unique farmland, as defined by the U.S. Department of Agriculture land inventory and monitoring criteria, as modified for California. CEQA also requires consideration of impacts on lands that are under Williamson Act contracts. The project area is identified as "urban/built-up land" on the Santa Clara County Important Farmlands Map.

CEQA requires the evaluation of forest and timber resources where they are present. The site does not contain any forest land as defined in Public Resources Code section 12220(g), timberland as defined by Public Resources Code section 4526, or property zoned for Timberland Production as defined by Government Code section 51104(g).

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating agricultural impacts from development projects. All future development allowed by the proposed land use designation would be subject to the agricultural policies in the General Plan presented below.

Envision San José 2040 Relevant Agricultural Resources Policies	
Policy LU-12.3	Protect and preserve the remaining farmlands within San José's sphere of influence that are not planned for urbanization in the timeframe of the Envision General Plan through the following means: • Limit residential uses in agricultural areas to those which are incidental to agriculture. • Restrict and discourage subdivision of agricultural lands. Encourage contractual protection for agricultural lands, such as Williamson Act contracts, agricultural conservation easements, and transfers of development rights. • Prohibit land uses within or adjacent to agricultural lands that would compromise the viability of these lands for agricultural uses. • Strictly maintain the Urban Growth Boundary in accordance with other goals and policies in this Plan.
Policy LU-12.4	Preserve agricultural lands and prime soils in non-urban areas in order to retain the aquifer recharge capacity of these lands.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source(s)
2. AGRICULTURAL AND FOREST RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:					
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X	4
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X	2
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?				X	2
d) Result in the loss of forest land or conversion of forest land to non-forest uses?				X	2
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?				X	2

Explanation

a) **No Impact**. The project site is an infill property designated as urban land on the Important Farmlands Map for Santa Clara County, and does not contain any prime farmland, unique farmland, or farmland of statewide importance. The project will not affect agricultural land.

b) **No Impact**. The project site is an infill property and is not zoned for agricultural use and does not contain lands under Williamson Act contract; therefore, no conflicts with agricultural uses would occur from future development of the site.

c) **No Impact**. The project would not impact forest resources since the site does not contain any forest land as defined in Public Resources Code section 12220(g), timberland as defined by Public Resources Code section 4526, or property zoned for Timberland Production as defined by Government Code section 51104(g).

d) **No Impact**. See c) above. No other changes to the environment would occur from the project that would result in the loss of forest land or conversion of forest land to non-forest uses.

e) **No Impact**. As per the discussion above, the proposed project would not involve changes in the existing environment which, due to their location or nature, could result in conversion of farmland or forest land, since none are present on this infill property.

Conclusion: The project and future development would have no impact on agricultural and forest resources.

C. AIR QUALITY

Setting

The project is located within the San Francisco Bay Area Air Basin. The Bay Area Air Quality Management District (BAAQMD) is the local agency authorized to regulate stationary air quality sources in the Bay Area. The Federal Clean Air Act and the California Clean Air Act mandate the control and reduction of specific air pollutants. Under these Acts, the U.S. Environmental Protection Agency and the California Air Resources Board have established ambient air quality standards for specific "criteria" pollutants, designed to protect public health and welfare. Primary criteria pollutants include carbon monoxide (CO), reactive organic gases (ROG), nitrogen oxides (NO_X), particulate matter (PM_{10}), sulfur dioxide (SO_2), and lead (Pb). Secondary criteria pollutants include ozone (O_3), and fine particulate matter ($PM_{2.5}$).

The U.S. EPA administers the National Ambient Air Quality Standards (NAAQS) under the Federal Clean Air Act. EPA sets the NAAQS and determines if areas meet those standards. Violations of ambient air quality standards are based on air pollutant monitoring data and judged for each air pollutant. Areas that do not violate ambient air quality standards are considered to have attained the standard. EPA has classified the region as a nonattainment area for the 8-hour O_3 standard and the 24-hour $PM_{2.5}$ standard. The Bay Area has met the CO standards for over a decade and is classified as an attainment area by the U.S. EPA. The U.S. EPA has deemed the region as attainment/unclassified for all other air pollutants, which include PM_{10}. At the State level, the Bay Area is considered nonattainment for ozone, PM_{10} and $PM_{2.5}$.

The BAAQMD is primarily responsible for assuring that the federal and state ambient air quality standards are attained and maintained in the Bay Area. The BAAQMD's May 2017 CEQA Air Quality Guidelines update the 2010 CEQA Air Quality Guidelines, addressing the California Supreme Court's 2015 opinion in the *California Building Industry Association vs. Bay Area Air Quality Management District* court case.

The BAAQMD, along with other regional agencies (e.g., ABAG and MTC), develop plans to reduce air pollutant emissions. The most recent clean air plan is the Bay Area 2017 Clean Air Plan: Spare the Air, Cool the Climate (2017 CAP), which was adopted by BAAQMD in April 2017. This is an update to the 2010 CAP, and centers on protecting public health and climate. The 2017 CAP identifies a broad range of control measures. These control measures include specific actions to reduce emissions of air and climate pollutants from the full range of emission sources and is based on the following four key priorities:

- Reduce emissions of criteria air pollutants and toxic air contaminants from all key sources.
- Reduce emissions of "super-GHGs" such as methane, black carbon, and fluorinated gases.
- Decrease demand for fossil fuels (gasoline, diesel, and natural gas).
- Decarbonize our energy system.

Toxic Air Contaminants

Toxic air contaminants (TACs) are a broad class of compounds known to cause morbidity or mortality (usually because they cause cancer). TACs are found in ambient air, especially in urban areas, and are caused by industry, agriculture, fuel combustion, and commercial operations (e.g., dry cleaners). TACs are typically found in low concentrations, even near their source (e.g., diesel particulate matter near a freeway). Because chronic exposure can result in adverse health effects, TACs are regulated at the regional, state, and federal level.

Sensitive Receptors

The BAAQMD defines sensitive receptors as facilities where sensitive population groups are located, including residences, schools, childcare centers, convalescent homes, and medical facilities. Land uses such as schools and hospitals are considered to be more sensitive than the general public to poor air quality because of an increased susceptibility to respiratory distress within the populations associated with these uses. The closest sensitive receptors to the project site are multi-family apartments to the east and single-family residences immediately north, east, and south of the project site.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating air quality impacts from development projects. All future development allowed by the proposed land use designation would be subject to the air quality policies in the General Plan presented below.

Envision San José 2040 Relevant Air Quality Policies	
Policy MS-10.1	Assess projected air emissions from new development in conformance with the BAAQMD CEQA Guidelines and relative to state and federal standards. Identify and implement air emissions reduction measures.
Policy MS-10.2	Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's Clean Air Plan and State law.
Policy MS-11.2	For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.
Policy MS-11.5	Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses.
Policy MS-13.1	Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.

Envision San José 2040 Relevant Air Quality Policies	
Policy CD-3.3	Within new development, create and maintain a pedestrian-friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
3. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:					
a) Conflict with or obstruct implementation of the applicable air quality plan?			X		2, 3
b) Violate any air quality standard or contribute to an existing or projected air quality violation?			X		2, 3
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?			X		2, 3
d) Expose sensitive receptors to substantial pollutant concentrations?			X		2, 3
e) Create objectionable odors affecting a substantial number of people?			X		2

Explanation

a) **Less Than Significant Impact**. The project proposes a General Plan Amendment to change the land use designation from *Residential Neighborhood* and *Transit Residential* to *Downtown*, which would be consistent with the uses in the adjacent Downtown area. The project also proposes a rezoning from General Commercial Zoning District to Downtown Primary Commercial Zoning District. Using the BAAQMD's methodology, a determination of consistency with the 2017 CAP should demonstrate that a project: 1) supports the primary goals of the air quality plan; 2) includes applicable control measures from the air quality plan, and 3) does not disrupt or impede implementation of air quality plan control measures.

The project is a General Plan Amendment and rezoning that would allow for construction of additional residential and/or commercial/office uses within a developed area of San José near downtown. The General Plan Amendment proposes to incorporate the project site into the Downtown Growth Area and is well-served by public transit. The project would not result in a substantial increase in vehicle miles traveled by residents of San José and would be consistent with the 2017 CAP. Future development would incorporate applicable control measures consistent with the CAP.

b) **Less Than Significant Impact**. The City of San José uses the thresholds of significance established by the BAAQMD to assess air quality impacts of proposed development. The BAAQMD CEQA Guidelines include screening levels and thresholds for evaluating air quality impacts in the Bay Area. The proposed land use designation change to *Downtown* and the expansion of the Downtown Growth Area boundary would allow up to 728 dwelling units or up to 1,189,200 square feet of commercial/office uses. No specific project is proposed at this time. When future development is proposed, a project-specific air quality assessment will be required to confirm conformance with the BAAQMD thresholds in compliance with General Plan Policy 10-1.

Construction of future development would temporarily generate fugitive dust in the form of PM_{10} and $PM_{2.5}$. Sources of fugitive dust would include disturbed soils at the construction site and trucks carrying uncovered loads of soils. The BAAQMD CEQA Guidelines identify best management practices to minimize air pollutant emissions during construction. Future construction on the project site would implement these practices in accordance with General Plan Policies MS-13.1 and MS-13.2.

c) **Less Than Significant Impact**. See discussion b) above. Non-attainment pollutants of concern for the San Francisco Bay Air Basin are ozone, PM_{10}, and $PM_{2.5}$. In developing thresholds of significance for air pollutants, BAAQMD considers the emission levels for which a project's individual emissions would be cumulatively considerable. If a project exceeds the significance thresholds, its emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions. Future construction on the site would be required to implement BAAQMD's Best Management Practices for dust control in accordance with the City's General Plan Policies MS-13.1 and MS-13.2.

d) **Less Than Significant Impact**. Future development could introduce new sensitive receptors (residential uses) to the area. In addition, construction activity would generate dust and diesel equipment exhaust on a temporary basis that could adversely affect nearby sensitive receptors. A health risk assessment would be required for future development on the site in accordance with the City's General Plan Policy MS-11.2 to identify potential health risks and mitigation measures as needed.

e) **Less Than Significant Impact**. Implementation of the proposed General Plan Amendment and rezoning would not create objectionable odors affecting a substantial number of other residential uses near the site. Future development on the site is not expected to create any permanent new sources of odor and would not be located in an area affected by existing or planned odor-generating sources. During future construction activities, use of diesel powered vehicles and equipment could temporarily generate localized odors; however these odors would be temporary and would cease upon project completion.

Conclusion: Implementation of General Plan policies and BAAQMD Guidelines would ensure that future development would have a less-than-significant impact on air quality.

D. BIOLOGICAL RESOURCES

Setting

The project site is located within an urbanized area adjacent to downtown San José. The existing property is developed with buildings and pavement and contains eight trees, six of which are ordinance size trees. Due to the disturbed and developed nature of the site, the property has a low habitat value.

The City of San José's Municipal Code (Title 13) regulates the removal of trees, including any live or dead woody perennial plant, having a main stem or trunk 56 inches or more in circumference (18 inches in diameter) at a height of 24 inches above the natural grade slope. In addition, City-designated heritage trees are considered sensitive resources. A heritage tree is any tree located on private property, which because of factors including (but not limited to) history, girth, height, species, or unique quality has been found by the City Council to have special significance to the community. It is unlawful to vandalize, mutilate, remove or destroy heritage trees. The project site does not contain any City-designated heritage trees.

An arborist report was prepared for the project site by Jake Minnick, ISA Certified Arborist (March 24, 2017), and is provided in Appendix A. The results of the tree survey are presented in Table 1 below. The site contains eight trees, ranging in diameter from 10.2 to 27.7 inches. Of these, six trees exceed 18 inches in diameter and are considered to be ordinance size. There are no designated heritage trees on the site. A description of the trees by type, size, and general condition is provided in Table 1 below.

Table 1
Tree Survey Results

No.	Common Name	Botanical Name	Diameter (Inches)	Ordinance Size (Y/N)
1	Mexican Fan Palm	*Washingtonia robusta*	27.7	Y
2	Mexican Fan Palm	*Washingtonia robusta*	23.0	Y
3	Mexican Fan Palm	*Washingtonia robusta*	18.8	Y
4	Jacaranda	*Jacaranda mimosifolia*	12.2	N
5	Mexican Fan Palm	*Washingtonia robusta*	22.1	Y
6	Angel's Trumpet	*Brugmansia "Charles Grimaldi"*	10.2	N
7	Tree of Heaven	*Ailanthus altissima*	27.1	Y
8	London Plane	*Platanus acerifolia*	21.7	Y

Source: Jake Minnick, ISA Certified Arborist #WE-11830A, March 24, 2017

Santa Clara Valley Habitat Plan/Natural Communities Conservation Plan

The Santa Clara Valley Habitat Plan/Natural Communities Conservation Plan (HCP) was developed through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority, U.S. Fish and Wildlife Service, and California Department of Fish and Wildlife. The HCP is intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in approximately 500,000 acres of southern Santa Clara County. The project site is located within the boundaries of the HCP and is designated as follows:

Area 4: Urban Development Equal to or Greater than 2 Acres Covered
Land Cover: Urban-Suburban
Land Cover Fee Zone: Urban Areas (No Land Cover Fee)

Special Status Species

Special-status species are those plants and animals that have been formally listed or proposed for listing as Endangered or Threatened, or are Candidates for such listing under the federal Endangered Species Act (ESA) or the California Endangered Species Act (CESA). Listed species are afforded legal protection under the ESA and CESA. Species that meet the definition of Rare or Endangered under the CEQA Section 15380 are also considered special-status species. Animals on the CDFG's list of "species of special concern" (most of which are species whose breeding populations in California may face extirpation if current population trends continue) meet this definition and are typically provided management consideration through the CEQA process, although they are not legally protected under the ESA or CESA. Additionally, the CDFG includes some animal species that are not assigned any of the other status designations in the CNDDB "Special Animals" list. The CDFG considers the taxa on this list to be those of greatest conservation need, regardless of their legal or protection status.

Plants listed as rare under the California Native Plant Protection Act (CNPPA) or on the California Native Plant Society (CNPS) lists are also treated as special-status species. In general, CDFG considers plant species on List 1 (List 1A [Plants Presumed Extinct in California] and List 1B [Plants Rare, Threatened, or Endangered in California and Elsewhere]), or List 2 (Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere) of the CNPS Inventory of Rare and Endangered Vascular Plants of California (CNPS, 2010) as qualifying for legal protection under this CEQA provision. In addition, species of vascular plants, bryophytes, and lichens listed as having special-status by CDFG are considered special-status plant species.

Raptors (e.g., eagles, hawks, and owls) and their nests are protected under both federal and state laws and regulations. The federal Migratory Bird Treaty Act (MBTA) of 1918 and CDFG Code Section 3513 prohibit killing, possessing, or trading migratory birds except in accordance with regulation prescribed by the Secretary of the Interior. Birds of prey are protected in California under CDFG Code Section 3503.5. Section 3503.5 states that it is "unlawful to take, possess, or destroy the nest or eggs of any such bird except otherwise provided by this code or any regulation adopted pursuant thereto." In addition, fully protected species under the DFG Code Section 3511 (birds), Section 4700 (mammals), Section 5515 (fish), and Section 5050 (reptiles and amphibians) are also considered special-status animal species. Species with no formal special-status designation but thought by experts to be rare or in serious decline are also considered special-status animal species (DFG, 2012).

The project site is developed and does not contain special-status species, with the possible exception of nesting raptors and birds protected under the MBTA.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating biological resource impacts from development projects. All future development allowed by the proposed land use designation would be subject to the biological resource policies in the General Plan presented below.

Envision San José 2040 Relevant Biological Resource Policies	
Policy CD-1.24	Within new development projects, include preservation of ordinance-sized and other significant trees, particularly natives. Avoid any adverse effect on the health and longevity of such trees through design measures, construction, and best maintenance practices. When tree preservation is not feasible, include replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest.
Policy ER-5.1	Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance of activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
Policy ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
Policy MS-21.4	Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.
Policy MS-21.5	As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
Policy MS-21.6	As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies or guidelines.
Policy MS-21.8	For Capital Improvement Plan or other public development projects, or through the entitlement process for private development projects, require landscaping including the selection and planting of new trees to achieve the following goals: 1. Avoid conflicts with nearby power lines. 2. Avoid potential conflicts between tree roots and developed areas. 3. Avoid use of invasive, non-native trees. 4. Remove existing invasive, non-native trees. 5. Incorporate native trees into urban plantings in order to provide food and cover for native wildlife species. 6. Plant native oak trees and native sycamores on sites which have adequately sized landscape areas and which historically supported these species.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
4. BIOLOGICAL RESOURCES. Would the project:					
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?			X		1, 2
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?				X	1, 2
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X	1, 2
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?			X		1, 2
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?			X		1, 2
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan?			X		1, 2

Explanation

a) **Less Than Significant Impact**. The project site is located in an urban area developed with buildings, pavement, and scattered trees. No sensitive habitats or habitats suitable for special-status plants or wildlife species occur within or adjacent to the project site. The project site is considered to have a low habitat value, due to the developed nature of the property and high human activity levels surrounding the property.

The site does, however, contain mature trees that could provide habitat for nesting raptors and other birds. Nesting birds are among the species protected under provisions of the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 2800. Future development of the site during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes abandonment and/or loss of reproductive effort is considered a taking. Future construction activities, such as tree removal and site grading, would be

required to avoid and/or reduce impacts to nesting birds (if present on or adjacent to the site) through completion of pre-construction bird surveys, consistent with General Plan Polices ER-5.1 and ER-5.2.

b) **No Impact.** The project site is developed and highly disturbed, and does not contain any riparian or sensitive natural communities.

c) **No Impact**. The project site does not contain any wetland resources; therefore, the proposed project and future development would not adversely affect federally protected wetlands as defined by Section 404 of the Clean Water Act.

d) **Less Than Significant Impact**. Given the project site's location in a highly urban setting, and that the property does not contain any watercourse, river, or habitat that facilitates the movement of any native resident or migratory fish or wildlife species, the project and future development would not substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

e) **Less Than Significant Impact**. The project site contains eight trees, ranging in diameter from 10.2 to 27.7 inches. Of these, six trees exceed 18 inches in diameter and are considered to be ordinance size. There are no designated heritage trees on the site. A description of the trees by type, size, and general condition is provided in Table 1 above. Future development on the site that would require tree removal would be subject to City Policies and the City's Tree Removal Ordinance. The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement at the development permit phase. Tree replacement would occur on-site in accordance with the City's tree replacement ratios presented below, or the applicant will pay an in-lieu fee to Our City Forest to compensate for the loss of trees on-site.

Diameter of Tree to be Removed	**Type of Tree to be Removed**			**Minimum Size of Each Replacement Tree**
	Native	**Non-Native**	**Orchard**	
18 inches or greater	5:1	4:1	3:1	24-inch box
12-17 inches	3:1	2:1	none	24-inch box
Less than 12 inches	1:1	1:1	none	15-gallon container

x:x = tree replacement to tree loss ratio
Note: Trees greater than 18" diameter shall not be removed unless a tree removal permit, or equivalent, has been approved for the removal of such trees.
Replacement trees are to be above and beyond standard landscaping; required street trees do not count as replacement trees.

f) **Less Than Significant Impact**. The project is located within the boundaries of the Santa Clara Valley HCP. No covered species are known or expected to occur within the project site. Future development on the site will be subject to relevant HCP fees, including the nitrogen deposition fee, and conditions as applicable.

Conclusion: Implementation of General Plan policies, HCP requirements, and state and federal laws would ensure that future development would have a less-than-significant impact on biological impacts.

E. CULTURAL RESOURCES

Setting

Archaeological Resources

An archaeological literature review was completed for the project site by Holman & Associates (March 9, 2017), which included a search of the Northwest Information Center (NWIC) at Sonoma State University.

No cultural resources are recorded within the project site, nor are any cultural resources listed in federal, state, or local listings. No nearby archaeological sites are recorded. In this portion of San José, Native American sites have been identified within a half mile of the Guadalupe River. Other archaeological sites in San José have been recorded close proximity to springs and wetlands, with isolated burials also encountered. Approximately 60% of these Native American cultural resources were buried under alluvium or historical/recent layers. The project site is located about 0.65 miles from the Guadalupe River on part of large valley terrace. In addition, recent archaeological monitoring conducted for a nearby property suggests that there is a moderate to high potential for Native American archaeological resources on the project site.

Native American Heritage Commission (NAHC)

The NAHC was created by statute in 1976, is a nine-member body appointed by the Governor to identify and catalog cultural resources (i.e., places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands) in California. The Commission is responsible for preserving and ensuring accessibility of sacred sites and burials, the disposition of Native American human remains and burial items, maintaining an inventory of Native American sacred sites located on public lands, and reviewing current administrative and statutory protections related to these sacred sites.

California Assembly Bill (AB) 52

AB 52 went into effect on July 1, 2015, and establishes a new category of CEQA resources for "tribal cultural resources" (Public Resources Code §21074). The intent of AB 52 is to provide a process and scope that clarifies California tribal government's involvement in the CEQA process, including specific requirements and timing for lead agencies to consult with tribes on avoiding or mitigating impacts to tribal cultural resources. AB 52 also creates a process for consultation with California Native American Tribes in the CEQA process. Tribal Governments can request consultation with a lead agency and give input into potential impacts to tribal cultural resources before the agency decides what kind of environmental assessment is appropriate for a proposed project. The Public Resources Code requires avoiding damage to tribal cultural resources, if feasible. If not, lead agencies must mitigate impacts to tribal cultural resources to the extent feasible. The City of San José sent notification letters to a list of Native American contacts provided by the NAHC in compliance with AB 52 and Senate Bill (SB) 18.[1] At the time of preparation of this Initial Study, the City of San José had yet to receive any requests for notification from tribes.

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[1] [1] SB 18 requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process. These consultation and notice requirements apply to approvals and amendments of both general plans and specific plans.

Historical Resources

The project site contains two homes that are over 45 years in age. These homes have not been recorded in the National Register of Historic Places, the California National Register of Historic Resources, or the San José Historic Resources Inventory.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating cultural resource impacts from development projects. All future development allowed by the proposed land use designation would be subject to the cultural resource policies in the General Plan presented below.

Envision San José 2040 Relevant Cultural Resource Policies	
Policy LU-13.22	Require the submittal of historic reports and surveys prepared as part of the environmental review process. Materials shall be provided to the City in electronic form once they are considered complete and acceptable.
Policy LU-14.4	Discourage demolition of any building or structure listed on or eligible for the Historic Resources Inventory as a Structure of Merit by pursuing the alternatives of rehabilitation, re-use on the subject site, and/or relocation of the resource.
Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.
Policy ER-10.2	Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
Policy ER-10.3	Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
5. CULTURAL RESOURCES. Would the project:					
a) Cause a substantial adverse change in the significance of a historical resource as defined in CEQA 15064.5?			X		1, 2
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA 15064.5?			X		1, 2, 6

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?			X		1, 2
d) Disturb any human remains, including those interred outside of formal cemeteries?			X		1, 2
TRIBAL CULTURAL RESOURCES: Would the project:					
e) Cause a substantial adverse change in the significance of a tribal cultural resources, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:					
1. Listed or eligible for listing in the California Register of Historic Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or			X		1, 2, 6
2. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.			X		1, 2, 6

Explanation

a) **Less Than Significant Impact**. The project site contains two vacant residential buildings that are over 45 years of age. These structures have not been recorded in the National Register of Historic Places, the California National Register of Historic Resources, or the San José Historic Resources Inventory. Future development of the site would be subject to General Plan Policy LU-13.22, which requires the submittal of historic reports and surveys as part of the environmental review process.

b) **Less Than Significant Impact**. The archaeological study for the project site indicates that there is moderate to high potential for Native American archaeological resources on the project site. Future development on the site would be subject to General Plan Policies ER-10.2 and ER-10.3, to reduce or avoid impacts to subsurface cultural resources. Future development would be required to comply with the following conditions in accordance with the City's General Plan Policies ER-10.2 and ER-10.3.

- In the event that 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, the Director of Planning, Building and Code Enforcement shall be notified, and the archaeologist will examine the find and make appropriate recommendations prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings

documenting any data recovery during monitoring would be submitted to the Director of Planning, Building and Code Enforcement.

- In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped. The Santa Clara County Coroner shall be notified and make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner will notify the Native American Heritage Commission (NAHC) immediately. Once the NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.

c) **Less Than Significant Impact**. The project site is disturbed and not known to contain any paleontological resources. Future development of the project site has a low potential to impact undiscovered paleontological resources, based on the age and type of surface soils. However, future development on the site would comply with General Plan Policy ER-10.3 to reduce and avoid impacts to as yet unidentified paleontological resources.

d) **Less Than Significant Impact**. Though unlikely, human remains may be encountered during construction activities for future development. See b) above.

e) **Less Than Significant Impact**. Tribal cultural resources consider the value of a resource to tribal cultural tradition, heritage, and identity in order to establish potential mitigation, and to recognize that California Native American tribes have expertise concerning their tribal history and practices. No tribal cultural resources have been listed or determined eligible for listing in the California Register or a local register of historical resources. Further, notification as part of SB 18 requirements was conducted by the City with applicable Santa Clara County tribal representatives identified by the NAHC in compliance with AB 52 and SB 18. At the time of preparation of this Initial Study, no Native American tribes that are or have been traditionally culturally affiliated with the project vicinity have requested notification from the City of San José.

The archaeological report for the project site concluded that the property has a moderate to high potential for prehistoric archaeological deposits. Future development on the site would be subject to General Plan Policies, permit conditions, and mitigation measures to minimize effects on tribal cultural resources.

Conclusion: Implementation of General Plan policies and regulations would ensure that future development would have a less-than-significant impact on cultural and tribal resources.

F. GEOLOGY AND SOILS

Setting

The City of San José is located in the Santa Clara Valley, a broad alluvial-covered plain lying between the Santa Cruz Mountains to the west and the Diablo Range to the east. The project site is located at an elevation of approximately 80 feet above mean sea level.

The project is located in the seismically-active San Francisco Bay Area region. Major active fault systems in the area are the San Andreas, Calaveras, Hayward, and Monte Vista-Shannon. The probability of a magnitude 6.7 or greater earthquake occurring in the Bay Area by 2030 is approximately 70% (USGS and California Division of Mines & Geology, 1999). The project site will be subject to strong ground shaking in the event of a large magnitude earthquake on any of the regional fault systems.

California Building Code

The 2016 California Building Standards Code (CBC) was published July 1, 2016, with an effective date of January 1, 2017. The CBC is a compilation of three types of building criteria from three different origins:

- Building standards that have been adopted by state agencies without change from building standards contained in national model codes;
- Building standards that have been adopted and adapted from the national model code standards to meet California conditions; and
- Building standards, authorized by the California legislature, that constitute extensive additions not covered by the model codes that have been adopted to address particular California concerns.

The CBC identifies acceptable design criteria for construction that addresses seismic design and loadbearing capacity, including specific requirements for seismic safety; excavation, foundation and retaining wall design, site demolition, excavation, and construction, and; drainage and erosion control.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating geology and soils impacts from development projects. All future development allowed by the proposed land use designation would be subject to the geology and soils policies in the General Plan presented below.

Envision San José 2040 Relevant Geology and Soil Policies	
Policy EC-3.1	Design all new or remodeled habitable structures in accordance with the most recent California Building Code and California Fire Code as amended locally and adopted by the City of San José, including provisions regarding lateral forces.
Policy EC-4.1	Design and build all new or remodeled habitable structures in accordance with the most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and storm water controls.
Policy EC-4.2	Development in areas subject to soils and geologic hazards, including unengineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on the site or on adjoining properties. The City of San José Geologist will review and approve geotechnical and geological investigation reports for projects within these areas as part of the project approval process. [The City Geologist will issue a Geologic Clearance for approved geotechnical reports.]
Policy EC-4.4	Require all new development to conform to the City of San José's Geologic Hazard Ordinance.
Policy EC-4.5	Ensure that any development activity that requires grading does not impact adjacent properties, local creeks, and storm drainage systems by designing and building the site to drain properly and minimize erosion. An Erosion Control Plan is required for all private development projects that have a soil disturbance of one acre or more, adjacent to a creek/river, and/or are located in hillside areas. Erosion Control Plans are also required for any grading occurring between October 1 and April 30.
Action EC-4.11	Require the preparation of geotechnical and geological investigation reports for projects within areas subject to soils and geologic hazards, and require review and implementation of mitigation measures as part of the project approval process.
Action EC-4.12	Require review and approval of grading plans and erosion control plans prior to issuance of grading permits by the Director of Public Works.
Policy ES-4.9	Permit development only in those areas where potential danger to health, safety, and welfare of the persons in that area can be mitigated to an acceptable level.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS		Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
6.	GEOLOGY AND SOILS. Would the project:					
a)	Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:					
i)	Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X	1, 2
ii)	Strong seismic ground shaking?			X		1, 2
iii)	Seismic-related ground failure, including liquefaction?			X		1, 2
iv)	Landslides?				X	1, 2
b)	Result in substantial soil erosion or the loss of topsoil?			X		1, 2
c)	Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?			X		1, 2
d)	Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?			X		1, 2
e)	Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?				X	1, 2

Explanation

ai) **No Impact**. The project site is not located within a State of California Earthquake Fault Hazard Zone and no known active faults cross the site. The project is not mapped within an Alquist-Priolo Earthquake Fault Zone. The risk of ground rupture within the site is considered low.

aii) **Less Than Significant Impact**. Due to its location in a seismically active region, future development may be subject to strong seismic ground shaking during its design life in the event of a major earthquake on any of the region's active faults. Compliance with General Plan Policies, as discussed in aiii) below, would ensure future development on the project site minimizes seismic-related hazards.

aiii) **Less Than Significant Impact**. The site is located in a seismically active region subject to strong shaking and seismic-related hazards, including liquefaction. In accordance with the City's General Plan Policies and the Municipal Code, future development on the project site would be constructed using standard engineering and seismic safety design techniques.

Building design and construction at the site would be completed in conformance with the recommendations of a design-level geotechnical investigation, which will be included in a report subject to review and approval by the City.

aiv) **No Impact**. The project site has virtually no vertical relief and is not subject to landslides.

b) **Less Than Significant Impact**. The project would not result in soil erosion or the loss of topsoil. Construction of future development on the project site could result in a temporary increase in erosion. Future development of the site would be required to comply with General Plan Policies and Municipal Code regulations pertaining to erosion and protection of water quality.

c) **Less Than Significant Impact**. The project site is not subject to landslides. The potential for lateral spreading to affect the site is not known at this time. Future development of the site would be required to comply with General Plan Policies and Municipal Code regulations to avoid geotechnical hazards. In accordance with the City's General Plan and Municipal Code, future development on the project site must be constructed using standard engineering and seismic safety design techniques. Future building design and construction at the site will be conducted in conformance with the recommendations of a design-level geotechnical investigation, which will be included in a report to the City. Additionally, future buildings must meet the requirements of applicable Building and Fire Codes.

d) **Less Than Significant Impact**. Future development of the site would be required to comply with General Plan Policies and Municipal Code regulations to avoid geotechnical hazards, including expansive soils. Future development must be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. In addition, the City of San José Department of Public Works requires a grading permit to be obtained prior to the issuance of a Public Works Clearance. These practices would ensure that future buildings on the site are designed properly to account for the presence of expansive soils on the site. Conformance with the standard engineering practices required by the Municipal Code would ensure that the effects of soil-related hazards would be addressed through building design at the time of future development of the site.

e) **No Impact**. The project site has access to public services and utilities and future development would not involve the use of septic tanks or alternative wastewater disposal systems.

Conclusion: Implementation of General Plan policies and regulations would ensure that future development on the site would have a less-than-significant impact related to geology and soils.

G. GREENHOUSE GAS EMISSIONS

Setting

Various gases in the earth's atmosphere, classified as atmospheric greenhouse gases (GHGs), play a critical role in determining the earth's surface temperature. Solar radiation enters the atmosphere from space and a portion of the radiation is absorbed by the earth's surface. The earth emits this radiation back toward space, but the properties of the radiation change from high-frequency solar radiation to lower-frequency infrared radiation. Greenhouse gases, which are transparent to solar radiation, are effective in absorbing infrared radiation. As a result, this radiation that otherwise would have escaped back into space is retained, resulting in a warming of the atmosphere. This phenomenon is known as the greenhouse effect. Among the prominent GHGs contributing to the greenhouse effect, or climate change, are carbon dioxide (CO_2), methane (CH_4), ozone (O_3), water vapor, nitrous oxide (N_2O), and chlorofluorocarbons (CFCs). Human-caused emissions of these GHGs in excess of natural ambient concentrations are responsible for enhancing the greenhouse effect. In California, the transportation sector is the largest emitter of GHGs, followed by electricity generation.

Regulatory Background

Assembly Bill (AB) 1493

In 2002, Assembly Bill (AB) 1493 was passed requiring that the California Air Resources Board (CARB) develop and adopt, by January 1, 2005, regulations that achieve "the maximum feasible reduction of greenhouse gases emitted by passenger vehicles and light-duty truck and other vehicles determined by the ARB to be vehicles whose primary use is noncommercial personal transportation in the state."

Executive Order S-3-05

Executive Order S-3-05, signed by Governor Schwarzenegger in 2005, proclaims that California is vulnerable to the impacts of climate change. It declares that increased temperatures could reduce the Sierra's snow pack, further exacerbate California's air quality problems, and potentially cause a rise in sea levels. To combat those concerns, the Executive Order established total greenhouse gas emission targets. Specifically, emissions are to be reduced to the 2000 level by 2010, the 1990 level by 2020, and to 80% below the 1990 level by 2050. The Executive Order directed the Secretary of the California Environmental Protection Agency (CalEPA) to coordinate a multi-agency effort to reduce greenhouse gas emissions to the target levels. The Secretary must also submit biannual reports to the governor and state legislature describing: 1) progress made toward reaching the emission targets; 2) impacts of global warming on California's resources; and 3) mitigation and adaptation plans to combat these impacts. To comply with the Executive Order, the Secretary of the CalEPA created a Climate Act Team (CAT) made up of members from various state agencies and commission.

Assembly Bill (AB) 32

AB 32, the Global Warming Solutions Act of 2006, codifies the State of California's GHG emissions target by directing CARB to reduce the state's global warming emissions to 1990 levels by 2020. AB 32 was signed and passed into law by Governor Schwarzenegger on September 27, 2006. Since that time, CARB, CEC, the California Public Utilities Commission (CPUC), and the Building Standards Commission have all been developing regulations that will help meet the goals of AB 32 and Executive Order S-3-05.[2]

A Scoping Plan for AB 32 was adopted by CARB in December 2008. It contains the State of California's main strategies to reduce GHGs from BAU emissions projected in 2020 back down to 1990 levels. BAU is the projected emissions in 2020, including increases in emissions caused by growth, without any GHG reduction measures. The Scoping Plan has a range of GHG reduction actions, including direct regulations, alternative compliance mechanisms, monetary and non-monetary incentives, voluntary actions, and market-based mechanisms such as a cap-and-trade system. It required CARB and other state agencies to develop and adopt regulations and other initiatives reducing GHGs by 2012.

As directed by AB 32, CARB has also approved a statewide GHG emissions limit. On December 6, 2007, CARB staff resolved an amount of 427 MMT of CO2e as the total statewide GHG 1990 emissions level and 2020 emissions limit. The limit is a cumulative statewide limit, not a sector-or facility-specific limit. CARB updated the future 2020 BAU annual emissions forecast, in light of the economic downturn, to 545 MMT of CO2e. Two GHG emissions reduction measures currently enacted that were not previously included in the 2008 Scoping Plan baseline inventory were included, further reducing the baseline inventory to 507 MMT of CO2e. Thus, an estimated reduction of 80 MMT of CO2e is necessary to reduce statewide emissions to meet the AB 32 target by 2020.

Senate Bill (SB) 1368

SB 1368 is the companion bill of AB 32 and was signed by Governor Schwarzenegger in September 2006. SB 1368 required the California Public Utilities Commission (PUC) to establish a greenhouse gas emission performance standard. Therefore, on January 25, 2007, the PUC adopted an interim GHG Emissions Performance Standard in an effort to help mitigate climate change. The Emissions Performance Standard is a facility-based emissions standard requiring that all new long-term commitments for baseload generation to serve California consumers be with power plants that have emissions no greater than a combined cycle gas turbine plant. That level is established at 1,100 pounds of CO2 per megawatt-hour. "New long-term commitment" refers to new plant investments (new construction), new or renewal contracts with a term of five years or more, or major investments by the utility in its existing baseload power plants. In addition, the California Energy Commission (CEC) established a similar standard for local publicly owned utilities that cannot exceed the greenhouse gas emission rate from a baseload combined-cycle natural gas fired plant. On July 29, 2007, the Office of Administrative Law disapproved the Energy Commission's proposed Greenhouse Gases Emission Performance Standard rulemaking action and subsequently, the CEC revised the proposed regulations. SB 1368 further requires that all electricity provided to California, including imported electricity, must be generated from plants that meet the standards set by the PUC and CEC.

[2] Note that Assembly Bill (AB) 197 was adopted in September 2016 to provide more legislative oversight of CARB.

Senate Bill 375

Senate Bill 375, signed in August 2008, requires sustainable community strategies (SCS) to be included in regional transportation plans (RTPs) to reduce emissions of GHGs. The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) adopted an SCS in July 2013 that meets GHG reduction targets. The Plan Bay Area is the SCS document for the Bay Area, which is a long-range plan that addresses climate protection, housing, healthy and safe communities, open space and agricultural preservation, equitable access, economic vitality, and transportation system effectiveness within the San Francisco Bay region (MTC 2013). The document is updated every four years so the MTC and ABAG are currently developing the Plan Bay Area 2040.

City of San José Municipal Code

The City's Municipal Code includes the following regulations that would reduce GHG emissions from future development:

- Green Building Ordinance (Chapter 17.84)
- Water Efficient Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10)
- Transportation Demand Programs for employers with more than 100 employees (Chapter 11.105
- Construction and Demolition Diversion Deposit Program (Chapter 9.10)
- Wood Burning Ordinance (Chapter 9.10)

City of San José Private Sector Green Building Policy (6-32)

In October 2008, the City adopted the Private Sector Green Building Policy (6-32), which identifies baseline green building standards for new private construction and provides a framework for the implementation of these standards. This Policy requires that applicable projects achieve minimum green building performance levels using the Council adopted standards.

City of San José Greenhouse Gas Reduction Strategy

The City's General Plan includes a GHG Reduction Strategy that was originally adopted in November 2011. Following litigation, the San José City Council certified a Supplemental Program Environmental Impact Report to the Envision San José 2040 Final Program Environmental Impact Report in December 2015 and re-adopted the City's GHG Reduction Strategy in the General Plan. The GHG Reduction Strategy identifies specific General Plan policies and action items intended to reduce GHG emissions, which center around five strategies: energy, waste, water, transportation, and carbon sequestration. Projects that are consistent with the GHG Reduction Strategy are considered to have a less-than-significant impact related to GHG emissions through 2020. The Envision San José 2040 Final Program Environmental Impact Report identified significant unavoidable GHG emissions impacts for development and the built environment in the 2035 timeframe, and the City Council adopted overriding considerations for those impacts in 2015.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS		Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source(s)
7.	GREENHOUSE GAS EMISSIONS. Would the project:					
a)	Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?			X		1, 3, 7
b)	Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			X		1, 3, 7

Explanation

Less Than Significant Impact. Since the project includes a General Plan Amendment, it is not covered by the City's GHG Reduction Strategy. However, once the Amendment is approved, future projects would be evaluated for consistency with the GHG Reduction Strategy. Illingworth & Rodkin prepared a GHG evaluation of the proposed GPA (see Appendix B). This evaluation applied the development assumptions for the project site consistent with the long-range cumulative traffic analysis for the 2017 General Plan Amendments. This study assumed an average development density on the project site of 337 units and commercial square footage to support 22 new jobs, after subtracting out the units/jobs generated by the existing General Plan land use designations on the site.

To determine if a project may have a significant impact from GHG emissions, the BAAQMD established three criteria for evaluating operational GHG emissions in their CEQA Guidelines. A project is considered to have less-than-significant GHG emissions if it complies with one of three following criteria: 1) the project is consistent with an adopted qualified Climate Action Plan or adopted GHG Reduction Strategy; 2) the operational emissions from the project do not exceed a "bright-line" threshold of 1,100 metric tons (MT) of carbon dioxide equivalent per year (CO_2e/year); or 3) the annual project emissions do not exceed an efficiency threshold of 4.6 MT per project service population (residents plus employees).

To assess GHG emissions, the CalEEMod model was used with the following inputs: 337 dwelling units entered as "Apartment High Rise," 8,800 square feet of retail as "Strip Mall," and 400 spaces as "Enclosed Parking with Elevator."[3] Emissions in 2020 from the GPA were computed as 2,474 metric tons of CO2e per year. The per-capita emissions were computed by dividing the project annual emissions by the number of residents and workers. For the proposed project, the total service population considering future residents and employees was calculated as 1,104 people[4]. The per-capita emissions would, therefore, be 2.24 metric tons of CO2e per year. This is well below the BAAQMD 2020 per-capita threshold of 4.6 metric

[3] The square footage associated with 22 workers was computed assuming 2.5 employees per 1,000 square feet of commercial space or 22 employees divided by 2.5. The number of parking spaces conservatively assumed 1.5 spaces per dwelling unit and 95 spaces for the commercial use.
[4] Assumes 1,082 new residents, based on 337 units and 3.21 persons per household, and 22 workers.

tons per year and likely to be below any 2030 threshold that may be identified based on current AB 32 scoping plan targets. The low per capita emissions reflect the lower emission rate that results from infill or urban multi-family residential uses. The GHG emissions from the project, therefore, would be less-than-significant.

No specific project is proposed at this time. GHG emissions will be generated during construction of future development. Neither the City nor BAAQMD have adopted thresholds of significance for construction-related GHG emissions, although BAAQMD recommends quantifying emissions and disclosing GHG construction emissions. The BAAQMD also encourages the incorporation of best management practices to reduce GHG emissions during construction where feasible.

The following discussion is provided to determine if the GHG emissions from the project would represent a cumulatively considerable contribution to climate change based on its consistency with City of San José and statewide efforts to decrease GHG emissions. While future emission reductions are anticipated due to energy efficiency of equipment and reduced GHG emissions associated with energy production, the City of San José and CARB have not identified or adopted feasible enforceable measures to reduce projected GHG emissions citywide in the mid or long-term (by 2030 or 2035) to meet the aggressive mid and long-term GHG reduction goals of SB 32 (2030 targets) and Executive Order S-3-05 (2050 targets). These goals include an aggressive target of 40 percent reduction in GHG emissions by 2030.

As described in the General Plan Final Supplemental Program EIR, the information needed to estimate a second mid-term or interim efficiency target (statewide emissions, population and employment in 2030) is being reviewed by CARB. Under SB 32 and AB 197, CARB is also charged with identifying and adopting rules and regulations to achieve the maximum technologically feasible and cost-effective GHG emissions reductions to meet this new interim statewide GHG target. The draft 2017 Climate Change Scoping Plan Update identifies local actions, although these actions have not been adopted and the City of San José has not updated its GHG Reduction Strategy to address the interim, mid-term 2030 target. The City's GHG Reduction Strategy, in addition to local and state regulations for low carbon and no carbon fueled transportation, energy, and efficiency are some of the measures that would minimize cumulative GHG impacts.

The proposed General Plan Amendment and rezoning would not result in any new or greater impacts than were previously identified in the General Plan Final Supplemental Program EIR. Future development of the project site consistent with the City's GHG Reduction Strategy would not result in a significant operational GHG emissions impact.

a) **Less Than Significant Impact**. Development projects in San José that comply with the City's GHG Reduction Strategy are considered to reduce that project's contribution to cumulative GHG emission impacts to a less-than-significant level through 2020. However, future development of the project site after 2020 would be required to conform to San José's GHG Reduction Strategy to reduce GHG emissions to a less-than-significant level, including relevant mandatory measures for all projects and other measures that are considered voluntary, at the City's discretion.

The City's projected 2020 GHG emissions, in total and compared to emissions in 2008, would not prevent California from meeting its 2020 targets for reducing statewide GHG emissions under AB 32. However, significant cumulative GHG emissions projected for 2035 could prevent California from maintaining a statewide path toward achieving Executive Order S-3-05 emission levels in 2050. Mitigation measures, in the form of additional policies to be implemented by the City, were identified in the Envision San José 2040 Final Program Environmental Impact Report; however, given the uncertainties of achieving the needed emission reductions, the impacts were determined to be significant and unavoidable and the City Council adopted overriding considerations for the impacts.

Conclusion: Future development of the project site would have a less-than-significant impact on GHG emissions through 2020.

H. HAZARDS AND HAZARDOUS MATERIALS

Setting

A Phase I Environmental Assessment was prepared for the project site by ACS Associates (October 4, 2017) to determine the potential for hazardous materials contamination on the property. This report is contained in Appendix C. The Phase I Assessment included the following: 1) review of local agency files, 2) examination of historic aerials and maps of the area, 3) a regulatory database search, 4) interview with the property owner(s), and 5) inspection of the site. The purpose of the Phase I assessment is to identify any recognized environmental conditions (RECs). An REC is defined as the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property.

The project site contains vacant lots used for parking and two vacant residences. The site inspection did not identify any evidence of hazardous waste or storage containers or other sources of onsite contamination. The neighboring, mostly residential properties are well maintained with no evidence of hazardous material contamination (ACS, March 2017).

The Phase I included a review of topographic maps dated 2012, 1980, 1973, 1968, 1961, 1953, 1899, 1897, and 1889. The maps showed that the neighboring properties to the site were not yet developed around the early 1900s. A review of the aerial photographs was also completed for the years 2012, 2010, 2009, 2006, 2005, 1998, 1993, 1982, 1974, 1968, 1963, 1956, 1950, 1948, and 1939. These indicated that the site was developed with a gas/service station at the corner of Fourth and St. John Streets in the 1960s. The gas/service station was not shown in the photographs in the 1980s. The area surrounding the site was developed as early as the 1930s, mostly as residential and minor commercial uses. The map and photograph review did not indicate any significant environmentally hazardous land usage in the past, with the exception of the gas station on the project site.

A database search was conducted to identify recorded hazardous materials incidents in the project area. This review included federal, state, and/or local lists of known or suspected contamination sites; known generators/handlers of hazardous waste; known waste treatment, storage, and disposal facilities; and permitted underground storage tank sites. Review of environmental regulatory databases and agency records with the exception of a former gas station on the site, described below. The database search did not identify any other on-site or off-site sources of contamination with the potential to impact the project site.

Based on the government and other available records, the project site was previously occupied by residential development and a gas service station. A gas station occupied the corner of Fourth and St. John Streets (100 N. Fourth Street) between about 1949 and 1969. This site was a recorded Leaking Underground Storage Tank (LUST) case. The case was closed by the County of Santa Clara as documented in a letter dated March 3, 2006 from the Department of Environmental Health, Environmental Resources Agency. This represents a historic recognized environmental condition.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating hazardous materials impacts from development projects. All future development allowed by the proposed land use designation would be subject to the hazardous materials policies in the General Plan presented below.

Envision San José 2040 Relevant Hazardous Material Policies	
Policy EC-7.1	For development and redevelopment projects, require evaluation of the proposed site's historical and present uses to determine if any potential environmental conditions exist that could adversely impact the community or environment.
Policy EC-7.2	Identify existing soil, soil vapor, groundwater and indoor air contamination and mitigation for identified human health and environmental hazards to future users and provide as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and groundwater contamination shall be designed to avoid adverse human health or environmental risk, in conformance with regional, state and federal laws, regulations, guidelines and standards.
Policy EC-7.5	In development and redevelopment sites, require all sources of imported fill to have adequate documentation that it is clean and free of contamination and/or acceptable for the proposed land use considering appropriate environmental screening levels for contaminants. Disposal of groundwater from excavations on construction sites shall comply with local, regional, and State requirements.
Action EC-7.11	Require sampling for residual agricultural chemicals, based on the history of land use, on sites to be used for any new development or redevelopment to account for worker and community safety during construction. Mitigation to meet appropriate end use such as residential or commercial/industrial shall be provided.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
7. HAZARDS AND HAZARDOUS MATERIALS. Would the project:					
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?			X		1, 2, 8
b) 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?			X		1, 2, 8
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within ¼ mile of an existing or proposed school?			X		1, 2, 8

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?			X		1, 2, 8
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?			X		1, 2
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X	1, 2
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?			X		1, 2
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X	1, 2

Explanation

a) **Less Than Significant Impact**. The proposed project and future development is not expected to involve the routine transport, use, or disposal of hazardous materials.

b) **Less Than Significant Impact**. A gas station occupied the corner of Fourth and St. John Streets (100 N. Fourth Street) between about 1949 and 1969. This site was a recorded Leaking Underground Storage Tank (LUST) case. The case was closed by the County of Santa Clara as documented in a letter dated March 3, 2006 from the Department of Environmental Health, Environmental Resources Agency. This represents a historic recognized environmental condition.

The project site could contain hazardous materials in soils related to the previous gas station. Future development of the project site could disturb soils and could expose construction workers and future site occupants to hazardous materials if present. In addition, future development could require the demolition of two existing residential structures on the site. Due to their age, these structures likely contain asbestos building materials and/or lead-based paint.

In accordance with General Plan Policy EC-7.2, future development of the project site would be required to implement mitigation measures for contamination to adverse human health or environmental risk, in conformance with regional, state and federal laws, regulations, guidelines and standards. In addition, demolition of existing structures by future development must be conducted in conformance with federal, state and local regulations to avoid exposure of construction workers and/or the public to asbestos and lead-based paint.

In addition, future development would be required to comply with policies and standard permit conditions that would include a Site Management Plan (SMP)[5] and standard abatement measures for proper management and disposal of asbestos and/or lead-based paint during any future demolition of existing structures on the property.

c) **Less Than Significant Impact**. The project site is located within ¼ mile of a school (Horace Mann Elementary School lies approximately ¼ mile to the east); however, the future development is not anticipated to routinely emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. See also b) above.

d) **Less Than Significant Impact**. The project site is not located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 (i.e., Cortese List).

e) **Less Than Significant Impact**. The Mineta San José International Airport is located approximately two miles northwest of the project site. The project site is not located within the Santa Clara County Airport Land Use Commission's adopted Airport Influence Area for the airport, nor is it located within an Airport Safety Zone. However, Federal Aviation Regulations, Part 77, "Objects Affecting Navigable Airspace" (referred to as FAR Part 77) set forth standards and review requirements for protecting the airspace for safe aircraft operation, particularly by restricting the height of potential structures and minimizing other potential hazards to aircraft such as reflective surfaces, flashing lights, and electronic interference. These regulations require that the Federal Aviation Administration (FAA) be notified of certain proposed construction projects located within an extended zone defined by an imaginary slope radiating outward for several miles from an airport's runways, or which would otherwise stand at least 200 feet in height above ground. City General Plan Policy would require FAA issuance of "no hazard" determinations prior to any future development permit approval on the site.

f) **No Impact**. The project site is not located within the vicinity of a private airstrip.

g) **Less Than Significant Impact**. Future development on the site is not expected to interfere with any emergency response or evacuation plans since it would be required to comply with all Fire Department codes and regulations.

h) **No Impact**. The project site will not expose people or structures to risk of loss, injury or death from wildland fires as it is located in a highly urbanized area that is not prone to such events.

Conclusion: Implementation of General Plan policies and regulations would ensure that future development on the site would result in less-than-significant impacts related to hazards and hazardous materials.

[5] An SMP establishes management practices for handling contaminated soil or other hazardous materials encountered during construction activities.

I. HYDROLOGY AND WATER QUALITY

Setting

The project site is essentially flat and lies at an elevation of about 80 feet above mean sea level. The 0.91 acre site is currently occupied by parking areas and two vacant residences. The current runoff from the site is directed into existing inlets that discharge to drainage facilities in Fourth and St. John Streets. Local groundwater is located about 14 feet below ground surface, according to a CalEPA monitoring well 0.5 miles south of the site (ACS, March 2017).

The project site does not contain any natural drainages or waterways. The nearest waterway is the Guadalupe River located about 0.65 miles from the site. The Flood Insurance Rate Maps issued by the Federal Emergency Management Agency (FEMA) indicate that the project site is located within Zone D. Zone D is defined as an area of undetermined but possible flood hazard outside the 100-year floodplain. The City does not have any floodplain restrictions for development in Zone D.

Regulatory Background

Any construction or demolition activity that results in land disturbance equal to or greater than one acre must comply with the Construction General Permit (CGP), administered by the State Water Resources Control Board (SWRCB). The CGP requires the installation and maintenance of Best Management Practices (BMPs) to protect water quality until the site is stabilized. Prior to the commencement of construction or demolition, the project must file a Notice of Intent (NOI) with the SWRCB and develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants associated with construction activities.

All development projects, whether subject to the CGP or not, shall comply with the City of San José's Grading Ordinance, which requires the use of erosion and sediment controls to protect water quality while the site is under construction. Prior to the issuance of a permit for grading activity occurring during the rainy season, the project will submit to the Director of Public Works an Erosion Control Plan detailing BMPs that will prevent the discharge of stormwater pollutants.

The City of San José is required to operate under a Municipal Stormwater NPDES Permit to discharge stormwater from the City's storm drain system to surface waters. On October 14, 2009, the San Francisco Bay Regional Water Quality Control Board adopted the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit (MRP) for 76 Bay Area municipalities, including the City of San José. The Municipal Regional Permit mandates the City of San José use its planning and development review authority to require that stormwater management measures are included in new and redevelopment projects to minimize and properly treat stormwater runoff. Provision C.3 of the MRP regulates the following types of development projects:

- Projects that create or replace 10,000 square feet or more of impervious surface.
- Special Land Use Categories that create or replace 5,000 square feet or more of impervious surface.

The MRP requires regulated projects to include Low Impact Development (LID) practices, such as site design measures, pollutant source control measures, and stormwater treatment features aimed to

maintain or restore the site's natural hydrologic functions. The MRP requires that stormwater treatment measures are properly installed, operated, and maintained.

The City has developed policies that implement Provision C.3, consistent with the MRP. The City's Post-Construction Urban Runoff Management Policy (6-29) establishes specific requirements to minimize and treat stormwater runoff from new and redevelopment projects. The policy also allows certain projects that are located within special district or priority development areas in transit-oriented locations within the City to utilize LID treatment reduction credits ("Special Projects"). These Special Projects may use alternatives to the exclusive use of LID measures for the treatment of all or a portion of a project's runoff. The project would also need to demonstrate, through a narrative discussion, the limiting factors of the site and the reasons why the project would not be able to implement 100% LID measures on the site and must be approved by the City. The allowed LID reduction credits would also be to the extent to which a project qualified for LID treatment reduction credits in accordance with the approved Special Projects provisions of the Municipal Regional Stormwater Permit.

The City's Post-Construction Hydromodification Management Policy (8-14) establishes an implementation framework for incorporating measures to control hydromodification impacts from development projects.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating hydrology and water quality impacts from development projects. All future development allowed by the proposed land use designation would be subject to the hydrology and water quality policies in the General Plan presented below.

Envision San José 2040 Relevant Hydrology and Water Quality Policies	
Policy IN-3.7	Design new projects to minimize potential damage due to stormwaters and flooding to the site and other properties.
Policy IN-3.9	Require developers to prepare drainage plans for proposed developments that define needed drainage improvements per City standards.
Policy MS-3.4	Promote the use of green roofs (i.e., roofs with vegetated cover), landscape-based treatment measures, pervious materials for hardscape, and other stormwater management practices to reduce water pollution.
Policy ER-8.1	Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
Policy ER-8.3	Ensure that private development in San José includes adequate measures to treat stormwater runoff.
Policy EC-4.1	Design and build all new or remodeled habitable structures in accordance with the most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and stormwater controls.
Policy EC-5.7	Allow new urban development only when mitigation measures are incorporated into the project design to ensure that new urban runoff does not increase flood risks elsewhere.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS		Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
8.	HYDROLOGY AND WATER QUALITY. Would the project:					
a)	Violate any water quality standards or waste discharge requirements?			X		1, 2
b)	Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local ground water table level (for example, the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X	1, 2
c)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site.			X		1, 2
d)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?			X		1, 2
e)	Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?			X		1, 2
f)	Otherwise substantially degrade water quality?			X		1, 2
g)	Place housing within a 100-year flood-hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X	1, 2
h)	Place within a 100-year flood-hazard area structures which would impede or redirect flood flows?			X		1, 2
i)	Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?			X		1, 2
j)	Inundation by seiche, tsunami, or mudflow?				X	1, 2

Explanation

a) **Less Than Significant Impact**. The project would not violate any water quality standards or waste discharge requirements. Grading, excavation, and other site disturbance activities for future development would result in erosion and temporary impacts to surface water quality during construction. Runoff may contain sediments that would be discharged into surface waters. All new development projects in San José must comply with the City's Grading Ordinance whether or not the projects are subject to the NPDES General Permit for Construction Activities. The City of San José Grading Ordinance requires the use of erosion and sediment controls to protect water quality while a site is under construction.

b) **No Impact**. Future development would not deplete or otherwise affect groundwater supplies or recharge, since the site is not located within a groundwater recharge area.

c) **Less Than Significant Impact**. There are no watercourses on or adjacent to the project site and future development on the project site would not substantially alter existing drainage patterns or cause alteration of streams or rivers.

d) **Less Than Significant Impact**. Future development on the project site would not significantly alter the drainage pattern of the site and surrounding area. Future development would be required to develop and implement a Stormwater Control Plan to retain and control runoff in accordance with City and RWQCB requirements. Therefore, future development would not result in an increase in flooding on or off-site.

e) **Less Than Significant Impact**. See a) and d) above. Future development of the site is not expected to result in runoff that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.

f) **Less Than Significant Impact**. See a) and d) above.

g) **No Impact**. The project site is located in Zone D, and is not located within a 100-year floodplain or flood hazard zone as mapped by FEMA.

h) **Less Than Significant Impact**. See g) above.

i) **Less Than Significant Impact**. See g) and h) above. The project site is not subject to flooding from failure of a dam.

j) **No Impact**. The project site is not located in an area subject to significant seiche, tsunami, or mudflow risk.

Conclusion: Implementation of General Plan policies and regulations would ensure that future development on the site would result in less-than-significant impacts related to hydrology and water quality.

J. LAND USE

Setting

The project site is designated *Residential Neighborhood* and *Transit Residential* in the City's Envision San José 2040 General Plan Land Use/Transportation Diagram. The project proposes a General Plan Amendment to change the land use designation on the site to *Downtown* to increase the residential and commercial density allowed on the site. The project also proposes inclusion into the Downtown Growth Area Boundary, which lies just west of the site, and rezoning from General Commercial Zoning District to Downtown Primary Commercial Zoning District.

Surrounding uses include residential to the north, commercial and residential to the west, and residential to the south and east. The site is currently occupied by parking areas and two vacant residences.

The project is located about two miles southeast of the Mineta San José International Airport. The project is located within the Santa Clara County Airport Land Use Commission's adopted Airport Influence Area for the airport. For the project site, any proposed structure exceeding approximately 65 feet in height above ground would be required under FAA Part 77 to be submitted to the FAA for airspace safety review.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating land use impacts from development projects. All future development allowed by the proposed land use designation would be subject to the land use policies in the General Plan presented below.

Envision San José 2040 Relevant Land Use Policies	
Policy CD-4.5	For new development in transition areas between identified Growth Areas and non-growth areas, use a combination of building setbacks, building step-backs, materials, building orientation, landscaping, and other design techniques to provide a consistent streetscape that buffers lower-intensity areas from higher intensity areas and that reduces potential shade, shadow, massing, viewshed, or other land use compatibility concerns.
Policy LU-2.1	Provide significant job and housing growth capacity within strategically identified "Growth Areas" in order to maximize use of existing or planned infrastructure (including fixed transit facilities), minimize the environmental impacts of new development, provide for more efficient delivery of City services, and foster the development of more vibrant, walkable urban settings.
Policy LU-9.8	When changes in residential densities in established neighborhoods are proposed, the City shall consider such factors as neighborhood character and identity; historic preservation; compatibility of land uses and impacts on livability; impacts on services and facilities, including schools, to the extent permitted by law; accessibility to transit facilities; and impacts on traffic levels on both neighborhood streets and major thoroughfares.
Policy LU-10.2	Distribute higher residential densities throughout our city in identified growth areas and facilitate the development of residences in mixed-use development within these growth areas.

Envision San José 2040 Relevant Land Use Policies	
Policy IE-1.5	Promote the intensification of employment activities on sites in close proximity to transit facilities and other existing infrastructure, in particular within the Downtown, North San José, the Berryessa International Business Park and Edenvale.
Policy TR-8.4,	Discourage, as part of the entitlement process, the provision of parking spaces significantly above the number of spaces required by code for a given use.
Policy VN-1.11	Protect residential neighborhoods from the encroachment of incompatible activities or land uses which may have a negative impact on the residential living environment.
Policy VN1.12	Design new public and private development to build upon the vital character and desirable qualities of existing neighborhoods

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
9. LAND USE AND PLANNING. Would the project:					
a) Physically divide an established community?				X	1, 2
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?			X		1, 2, 3
c) Conflict with any applicable Habitat Conservation Plan or Natural Community Conservation Plan?			X		1

Explanation

a) **No Impact**. The project is proposed on an infill site in an urban area that is currently developed and future development would not physically divide an established community.

b) **Less Than Significant Impact**. The project's consistency with the City's General Plan is evaluated below.

Envision San José 2040 General Plan

The project is designated in the City's 2040 General Plan as *Residential Neighborhood* and *Transit Residential*. The *Residential Neighborhood* designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas which comprise the majority of its developed land. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern. New infill

development should improve and/or enhance existing neighborhood conditions by completing the existing neighborhood pattern and bringing infill properties into general conformance with the quality and character of the surrounding neighborhood. This designation allows a density of typically 8 DU/AC (to match existing neighborhood character) at a height of one to 2.5 stories, and an FAR up to 0.7.

The *Transit Residential* designation is the primary designation for new high-density, mixed-use residential development sites that are located in close proximity to transit, jobs, amenities and services. This designation also supports intensive commercial employment uses, such as office, retail, hotels, hospitals, and private community gathering facilities. The allowable density for residential development is 50-250 DU/AC and for mixed-use development will be determined using an FAR 2.0 to 12.0 to better address the urban form and potentially allow fewer units per acre if in combination with other uses such as commercial or office.

The project proposes a General Plan Amendment to change the land use designation to *Downtown*. The *Downtown* designation includes office, retail, service, residential, and entertainment uses in the Downtown. Redevelopment should be at very high intensities, unless incompatibility with other major policies within the Envision General Plan (such as Historic Preservation Policies) indicates otherwise. Where single-family detached homes are adjacent to the perimeter of the area designated as Downtown, new development should serve as a transition to the lower-intensity use while still achieving urban densities appropriate for the perimeter of downtown in a major metropolitan city. All development within this designation should enhance the "complete community" in downtown, support pedestrian and bicycle circulation, and increase transit ridership.

Residential projects within the *Downtown* designation should generally incorporate ground floor commercial uses. This designation does not have a minimum residential density range (DU/AC) in order to facilitate mixed-use projects that may include small amounts of residential in combination with significant amounts of non-residential use. Such mixed use projects should be developed within the identified FAR range of up to 15.0. The broad range of uses allowed in Downtown could also facilitate medical office uses or full-service hospitals.

The Downtown Urban Design Policies speak to the urban, pedestrian-oriented nature of this area. As such, uses that serve the automobile should be carefully controlled in accordance with the Downtown Land Use Policies This designation allows a density of up to 800 DU/AC and an FAR up to 30.0.

The proposed General Plan land use change to *Downtown* is intended to increase the allowable densities on the site compared to those permitted by the current land use designations. The project also proposes a General Plan Amendment to include the project site in the Downtown Growth Area and rezoning of the site from General Commercial Zoning District to Downtown Primary Commercial Zoning District. Including the project site within the Downtown Growth Area would allow the site to be eligible for the Downtown land use designation and Downtown Primary Commercial Zoning District. No specific development is proposed at this time. However, future development on the project site would be required to conform to the City's General Plan policies.

Downtown Design Guidelines

The City has developed the *Downtown Design Guidelines* (July 2004) to provide direction for new development in the downtown area. The Guidelines are divided into three sections that address: 1) context (site), 2) architecture, and 3) scale. The Guidelines take into account tall, mid-rise and low-rise buildings, with adjustments made to achieve design excellence. Below is a summary of the Guidelines.

Context/Site: Address the development context. Develop an architectural concept and compose the building's massing in response to geographic conditions and patterns of urban form found nearby or beyond the immediate context of the building site; design of building tops will give identity to the skyline.

Architecture: Integrate the holistic architectural form. Consider the predominant attributes of the immediate neighborhood and reinforce desirable siting patterns, massing arrangements, and streetscape characteristics of nearby development. Design of middle portions of buildings will integrate the tops and the bottoms, as well as define the proportion and reduce the bulkiness of the massing.

Street Wall: Focus where the building meets the ground. Spaces for street level uses should be designed to engage pedestrians with the activities occurring within them. Sidewalk-related spaces should appear safe, welcoming, and open to the general public. Design of the base of buildings will allow for lasting social interaction at the ground through transparency and durable materials.

Future development on the project site would be required to conform to the City's Downtown Design Guidelines.

Conclusion

The proposed *Downtown* land use designation and expansion of the Downtown Growth Area boundary would allow up to 728 dwelling units on the project site or up to 1,189,200 square feet of commercial/office uses. This designation does not have a minimum residential density range (DU/AC) in order to facilitate mixed-use projects that may include small amounts of residential in combination with significant amounts of non-residential use. Such mixed-use projects should be developed within the identified FAR range of up to 30. While this land use designation allows up to 800 dwelling units to the acre, achievable densities may be much lower in a few identified areas to ensure consistency with the Santa Clara County Comprehensive Land Use Plan (CLUP) for Norman Y. Mineta San José International Airport.

With implementation of the Downtown Design Guidelines, General Plan policies, and other applicable regulations, future development allowed by the General Plan Amendment and rezoning would not result in significant land use impacts or conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

c) **Less Than Significant Impact**. Please refer to D. Biological Resources for a discussion of the Santa Clara Valley Habitat Conservation Plan.

Conclusion: Implementation of General Plan policies related to land use compatibility and environmental effects would ensure that future development on the site would have less-than-significant impacts related to land use and planning.

K. MINERAL RESOURCES

Setting

Under the Surface Mining and Reclamation Act of 1975 (SMARA), the State Mining and Geology Board has designated only the Communications Hill Area of San José as containing mineral deposits of regional significance for aggregate (Sector EE). There are no mineral resources in the project area. Neither the State Geologist nor the State Mining and Geology Board has classified any other areas in San José as containing mineral deposits that are of statewide significance or for which the significance requires further evaluation. Other than the Communications Hill area cited above, San José does not have mineral deposits subject to SMARA. The project site lies outside of the Communications Hill area.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
10. MINERAL RESOURCES. Would the project:					
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X	1, 2
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?				X	1, 2

Explanation

a), b) **No Impact**. The project site is located outside the Communications Hill area, the only area in San José containing mineral deposits subject to SMARA; therefore, the project will not result in a significant impact from the loss of availability of a known mineral resource.

Conclusion: The project would have no impact on mineral resources.

L. NOISE & VIBRATION

Setting

Noise is defined as unwanted or objectionable sound. State and local regulations define objectionable noise levels and identify land use compatibility standards. Sound is comprised of three variables: magnitude, frequency, and duration. The magnitude of air pressure changes associated with sound waves results in the quality commonly referred to as "loudness." Variations in loudness are measured on the "decibel" (dB) scale. On this scale, noise at zero decibels is barely audible, while noise at 120-140 decibels is painful and may cause hearing damage. These extremes are not encountered in commonplace environments.

Noise is typically characterized using the A-weighted sound level or dBA. This scale gives greater weight to those frequencies that the human ear is most sensitive. For evaluating noise over extended periods, the "Day-Night Noise Level" scale (DNL or Ldn) or "Community Noise Equivalent Level" (CNEL) are measures of the average equivalent sound level during a 24-hour period. The City's Envision San José 2040 General Plan applies the Day-Night Level (DNL) descriptor in evaluating noise conditions. The DNL represents the average noise level over a 24-hour period and penalizes noise occurring between the hours of 10 PM and 7 AM by 10 dB.

The noise environment at the project site is dominated by vehicular traffic along Fourth Street and St. John Street. Aircraft associated with the Mineta San José International Airport also contribute to the noise environment in the area.

San José General Plan Noise Compatibility Guidelines

The City's Envision San José 2040 General Plan includes goals and policies pertaining to noise and vibration. Community Noise Levels and Land Use Compatibility (commonly referred to as the Noise Element) of the General Plan utilizes the DNL descriptor and identifies interior and exterior noise standards for residential uses. The Envision San José 2040 General Plan and the San José Municipal Code include the following criteria for land use compatibility and acceptable noise levels in the City.

EXTERIOR NOISE EXPOSURE (DNL IN DECIBELS DBA)
FROM GENERAL PLAN TABLE EC-1: Land Use Compatibility Guidelines for Community Noise in San José

Land Use Category	Exterior DNL Value In Decibels					
	55	60	65	70	75	80
1. Residential, Hotels and Motels, Hospitals and Residential Care						
2. Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds						
3. Schools, Libraries, Museums, Meeting Halls, and Churches						
4. Office Buildings, Business Commercial, and Professional Offices						
5. Sports Arenas, Outdoor Spectator Sports						
6. Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters						

EXTERIOR NOISE EXPOSURE (DNL IN DECIBELS DBA) FROM GENERAL PLAN TABLE EC-1: Land Use Compatibility Guidelines for Community Noise in San José	
	Normally Acceptable: Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.
	Conditionally Acceptable: Specified land use may be permitted only after detailed analysis of the noise reduction requirements and noise mitigation features included in the design.
	Unacceptable: New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies. (Development will only be considered when technically feasible mitigation is identified that is also compatible with relevant design guidelines.)

San José Municipal Code

Per the San José Municipal Code Title 20 (Zoning Ordinance) Noise Performance Standards, the sound pressure level generated by any use or combination of uses on a property shall not exceed the decibel levels indicated in the table below at any property line, except upon issuance and in compliance with a Special Use permit as provided in Chapter 20.100.

City of San José Zoning Ordinance Noise Standards	
Land Use Types	**Maximum Noise Levels in Decibels at Property Line**
Residential, open space, industrial or commercial uses adjacent to a property used or zoned for residential purposes	55
Open space, commercial, or industrial use adjacent to a property used for zoned for commercial purposes or other non-residential uses	60
Industrial use adjacent to a property used or zoned for industrial use or other use other than commercial or residential purposes	70

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating noise impacts from development projects. All future development allowed by the proposed land use designation would be subject to the noise policies in the General Plan presented below.

Envision San José 2040 Relevant Noise Policies	
Policy EC-1.1	Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include: Interior Noise Levels • The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected *Envision General Plan* traffic volumes to ensure land use compatibility and General Plan consistency over the life of this plan.

Envision San José 2040 Relevant Noise Policies	
	Exterior Noise Levels • The City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses (refer to Table EC-1 in the General Plan. Residential uses are considered "normally acceptable" with exterior noise exposures of up to 60 dBA DNL and "conditionally compatible" where the exterior noise exposure is between 60 and 75 dBA DNL such that the specified land use may be permitted only after detailed analysis of the noise reduction requirements and needed noise insulation features are included in the design.
Policy EC-1.2	Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Land Use Categories 1, 2, 3 and 6 in Table EC-1 in the General Plan by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would: • Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or • Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.
Policy EC-1.3	Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to uses through noise standards in the City's Municipal Code.
Policy EC-1.6	Regulate the effects of operational noise from existing and new industrial and commercial development on adjacent uses through noise standards in the City's Municipal Code.
Policy EC-1.7	Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would: • Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months. For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.
Policy EC-2.3	Require new development to minimize vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, a vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
11. NOISE. Would the project result in					
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance or applicable standards of other agencies?			X		1, 2, 3
b) Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?			X		1, 2, 3
c) Substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?			X		1, 2, 3
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			X		1, 2, 3
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?			X		1, 2, 3
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?			X		1, 2, 3

Explanation

a) **Less Than Significant Impact**. The City's Land Use Compatibility Guidelines for Community Noise are presented in the setting above. Potential noise sources from future development could include outdoor mechanical equipment and operation, traffic noise, and truck deliveries/docking. Future development on the site would be required to comply with the City's noise standards and General Plan policies for adjacent sensitive uses (e.g., residential uses, historic resources). Specifically, future development would be required to provide a noise assessment as part of its environmental review to address potential noise impacts.

b) **Less Than Significant Impact**. The project site is not subject to groundborne vibration; however, construction of future development on the project site could generate temporary vibration that could affect adjacent uses. Future development would be subject to General Plan Policy EC-2.3, which requires new development to minimize vibration impacts to adjacent uses during demolition and construction.

c) **Less Than Significant Impact**. Future development could result in permanent ambient noise increases above existing levels. Noise will be generated on the site in the short-term during construction activities as described in d) below. Future development on the site would be required to comply with the City's noise standards and General Plan policies for adjacent sensitive uses (e.g., residential uses) to minimize temporary construction noise impacts.

d) **Less Than Significant Impact**. Construction of future development would result in short-term noise impacts on nearby sensitive uses (e.g., residential uses). Noise sensitive land uses located near the project site consist of residential uses surrounding the site; the nearest are located adjacent to the property to the north and east. Future development would be subject to the City's Municipal Code, which limits construction hours near residential land uses. General Plan Policy EC-1.7 identifies requirements for limiting construction noise.

e), f) **Less Than Significant Impact** The project site is located outside the 2027 60 dBA CNEL noise contour for the San José International Airport and is not within the vicinity of a private airstrip.

Conclusion: Implementation of General Plan policies and regulations would ensure that future development on the site would result in less-than-significant impacts related to noise and vibration.

M. POPULATION AND HOUSING

Setting

Current census data indicates that the population of San José is approximately 1,026,908 (U.S. Census Bureau, 2015).

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
12. POPULATION AND HOUSING. Would the project:					
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?			X		1, 2
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X	1, 2
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X	1, 2

Explanation

a) **Less Than Significant Impact**. The project proposes a General Plan Amendment to change the land use designation on the project site to *Downtown* and include the site within the Downtown Growth Area. The proposed *Downtown* designation allows a density of up to 800 DU/AC and an FAR up to 30.0. The *Downtown* designation and expansion of the Downtown Growth Area boundary would allow up to 728 dwelling units on the project site or up to 1,189,200 square feet of commercial/office uses. This designation does not have a minimum residential density range (DU/AC) in order to facilitate mixed-use projects that may include small amounts of residential in combination with significant amounts of non-residential use.

Future development on the site based on the proposed General Plan Amendment and rezoning would increase in population and/or employment opportunities on the site; however, it is consistent with the City's policies to increase development densities in the downtown area. Future development on the site would be required to conform to the City's General Plan policies related to land use development.

b) **Less Than Significant Impact**. The project site contains two vacant residences that could be removed by future development. This does not represent a substantial number of displaced housing units.

c) **Less Than Significant Impact**. See b) above. The project would not displace substantial numbers of people.

Conclusion: Future development of the project site would have a less-than-significant impact on population and housing.

N. PUBLIC SERVICES

Setting

Fire Protection: Fire protection services are provided to the project site by the San José Fire Department (SJFD). The closest fire station to the project site is Station #1, located 0.4 miles west of the site at 225 N. Market Street.

Police Protection: Police protection services are provided to the project site by the San José Police Department (SJPD) headquartered at 201 West Mission Street. The City has four patrol divisions and 16 patrol districts. Patrols are dispatched from police headquarters and the patrol districts consist of 83 patrol beats, which include 357 patrol beat building blocks.

Parks: There are several parks in downtown San José. The nearest park to the project site is St. James Park, located within walking distance less than a ¼ mile west of the site. The City of San José has adopted the Parkland Dedication Ordinance and Park Impact Ordinance, which require residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for the increase in demand for neighborhood parks.

Schools: The project site is located in the San José Unified School District. Schools in the project area are listed below.

Schools in Project Area		
Elementary	**Middle**	**High**
Horace Mann Elementary 55 North 7th Street San José, CA 95112	Peter Burnett Middle School 850 North 2nd Street San José, CA 95112	San José High School 275 North 24th Street San José, CA 95116

State law (Government Code §65996) identifies the payment of school impact fees as an acceptable method for offsetting a project's impact on school facilities. In San José, developers can either negotiate directly with the affected school district or make a payment per square foot of new residential units and/or new commercial uses. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code.

Libraries: The San José Public Library System consists of one main library and 18 branch libraries. The nearest branches to the project site are the Dr. Martin Luther King Jr. Library (0.3 miles southeast of the site) and the Joyce Ellington Branch Library (0.8 miles north of the site).

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating public service impacts from development projects. All future development allowed by the proposed land use designation would be subject to the public services policies in the General Plan presented below.

Envision San José 2040 Relevant Public Service Policies	
Policy ES-2.2	Construct and maintain architecturally attractive, durable, resource-efficient, and environmentally healthful library facilities to minimize operating costs, foster learning, and express in built form the significant civic functions and spaces that libraries provide for the San José community. Library design should anticipate and build in flexibility to accommodate evolving community needs and evolving methods for providing the community with access to information sources. Provide at least 0.59 SF of space per capita in library facilities.
Policy ES-3.1	Provide rapid and timely Level of Service (LOS) response time to all emergencies: 1. For police protection, use as a goal a response time of six minutes or less for 60 percent of all Priority 1 calls, and of eleven minutes or less for 60 percent of all Priority 2 calls. 2. For fire protection, use as a goal a total response time (reflex) of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents.
Policy ES-3.9	Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publically-visible and accessible spaces.
Policy ES-3.11	Ensure that adequate water supplies are available for fire-suppression throughout the City. Require development to construct and include all fire suppression infrastructure and equipment needed for their projects. PR-1.1 Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
Policy PR-1.2	Provide 7.5 acres per 1,000 population of citywide /regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
13. PUBLIC SERVICES. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:					
a) Fire protection?			X		1, 2
b) Police protection?			X		1, 2
c) Schools?			X		1, 2
d) Parks?			X		1, 2
e) Other public facilities?			X		1, 2

Explanation

a) **Less Than Significant Impact**. Future development would result in an incremental increase in the demand for fire protection services, but is not expected to significantly impact fire protection services or require the construction of new or remodeled facilities since it represents infill development. In addition, future development would be constructed in accordance with current building and fire codes and would be required to be maintained in accordance with applicable City policies such as General Plan Policy ES-3.9 and ES-3.11 to promote public and property safety.

b) **Less Than Significant Impact**. Future development would result in an incremental increase in the demand for police protection services, but is not expected to significantly impact police protection services or require the construction of new or remodeled police facilities since it represents infill development.

c) **Less Than Significant Impact**. Future development that includes residential uses could incrementally increase demands on school services. State law (Government Code §65996) identifies the payment of school impact fees as an acceptable method of offsetting a project's impact on school facilities.

d) **Less Than Significant Impact**. Future development that includes residential uses could incrementally increase demands on park services, but is not expected to significant impact park facilities or require the construction of new or remodeled recreational facilities since it represents infill development. See discussion under Setting above and Section O. Recreation of this Initial Study.

e) **Less Than Significant Impact.** Future development that includes residential uses could incrementally increase demands on library services, but is not expected to significant impact libraries or require the construction of new or remodeled library facilities since it represents infill development.

Conclusion: Implementation of General Plan policies and regulations would ensure that future development on the site would result in less-than-significant impacts to public services or facilities.

O. RECREATION

Setting

There are several parks near downtown San José. The nearest park to the project site is St. James Park, located within walking distance less than a ¼ mile west of the site. The City of San José has adopted the Parkland Dedication Ordinance and Park Impact Ordinance, which require residential developers to dedicate public park land or pay in-lieu fees (or both) to compensate for increases in the demand for neighborhood park services.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating recreation impacts from development projects. All future development allowed by the proposed land use designation would be subject to the recreation policies in the General Plan presented below.

Envision San José 2040 Relevant Recreation Policies	
Policy PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
Policy PR-1.2	Provide 7.5 acres per 1,000 population of citywide/regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
Policy PR-1.3	Provide 500 SF per 1,000 population of community center space.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
14. RECREATION. Would the project:					
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?			X		1, 2
b) Include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?			X		1, 2

Explanation

a), b) **Less Than Significant Impact**. Future development would be required to conform to the City's Parkland Dedication and Park Impact Ordinances would ensure that the increase in residential population on the project site would result in less-than-significant impacts to neighborhood and regional park facilities.

Conclusion: Implementation of General Plan policies and regulations would ensure that future development on the site would result in less-than-significant impacts to recreational facilities.

P. TRANSPORTATION

Setting

The proposed project is located at the northeast corner of Fourth and St. John Streets. Regional access to the project site is provided by SR 87. Local site access is provided by Market Street, First Street, Second Street, Third Street, Fourth Street, Fifth Street, St. James Street, St. John Street, and Santa Clara Street.

Bicycle and Pedestrian Facilities

Pedestrian facilities consist mostly of sidewalks along the streets in the study area. Crosswalks with pedestrian signal heads are located at all the signalized intersections in the study area. Overall, the existing network of sidewalks and crosswalks in the immediate vicinity of the project site has good connectivity and provides pedestrians with safe routes to transit services and other points of interest in the study area. The Guadalupe River multi-use trail system runs through the City of San José along the Guadalupe River and is shared between pedestrians and bicyclists and separated from motor vehicle traffic. This trail system can be accessed via W. St John Street, 0.6 miles west of the project site.

The following segments of roadway in the immediate vicinity of the project site include Class II county-designated bike lanes:

- Third Street, between Jackson Street and I-280
- Fourth Street, between Jackson Street and I-280

Within the larger study area, the following roadways also contain bike lanes:

- Coleman Avenue, west of SR 87
- N. Almaden Boulevard, south of W. St. John Street
- San Fernando Street, between Bird Avenue and Tenth Street

Shared bike routes, or Sharrows, are present on St. John Street for its entirety.[6] The City of San José participates in the Bay Area Bike Share program, which allows users to rent and return bicycles at various locations around the downtown area. There are currently 16 Bike Share stations in downtown San José, with one station located on Third Street just 400 feet west of the project site. The Diridon Station also has a bike share station and is located about 1¼ miles from the project site. The Guadalupe River multi-use trail system is also available. The Guadalupe River trail is an 11-mile continuous Class I bikeway from Curtner Avenue in south San José to Alviso in the north.

[6] Sharrows are painted shared lane markings on a road that indicate to motorists that bicyclists may use the full travel lane.

Public Transit Facilities

Existing public transit services to the project area are provided by the Santa Clara Valley Transportation Authority (VTA), Caltrain, Altamont Commuter Express (ACE), and Amtrak. Several VTA bus lines operate within the project area. The majority of these bus lines operate along either First, Second, or Santa Clara Streets; many bus stops are located within walking distance of the project site. The Alum Rock/Santa Clara Bus Rapid Transit (BRT) line provides limited-stop service from the Eastridge Transit Center to the Arena Station in downtown San José via the Santa Clara-Alum Rock corridor. The closest BRT stop, the Downtown San José station, is located less than ¼ mile from the project site on Santa Clara Street between First and Second Streets. The Stevens Creek BRT and El Camino Real BRT lines are also planned.

The VTA currently operates the VTA light rail line system extending from south San José through downtown to the northern areas of San José, Santa Clara, Milpitas, Mountain View and Sunnyvale. The service operates nearly 24-hours a day with 15-minute headways during much of the day. The Mountain View-Winchester LRT line (route 902) and Santa Teresa-Alum Rock LRT line (route 901) operate within walking distance of the project site. The St. James LRT station is located two blocks west of the project site.

The San José Diridon station is located approximately 1¼ miles from the project site and is served by Caltrain, ACE, and Amtrak. Commuter rail service between San Francisco and Gilroy is provided by Caltrain, which currently operates 92 weekday trains. The Diridon Station provides 581 parking spaces, as well as 16 bike racks and 48 bike lockers. Caltrain provides passenger train service seven days a week, and provides extended service to Morgan Hill and Gilroy during weekday commute hours. Altamont Commuter Express (ACE) service provides passenger train service across the Altamont between Stockton and San José, with stops in Tracy and Pleasanton, during the weekday commute periods. Amtrak provides daily commuter passenger train service along the 170-mile Capitol Corridor between the Sacramento region and the Bay Area.

Regulatory Background

The City of San José's Council Policy 5-3 "Transportation Level of Service" acts as a guide to analyze and make determinations regarding the overall conformance of a proposed development with the City's various General Plan multi-modal transportation policies, which together seek to provide a safe, efficient, and environmentally sensitive transportation system for the movement of people and goods. It also establishes thresholds to determine environmental impacts and requires new development to mitigate for significant impacts.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating transportation impacts from development projects. All future development allowed by the proposed land use designation would be subject to the transportation policies in the General Plan presented below.

Envision San José 2040 Relevant Transportation Policies	
Policy TR-1.1	Accommodate and encourage use of non-automobile transportation modes to achieve San José's mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).
Policy TR-1.2	Consider impacts on overall mobility and all travel modes when evaluating transportation impacts of new developments or infrastructure projects.
Policy TR-1.4	Through the entitlement process for new development, fund needed transportation improvements for all transportation modes, giving first consideration to improvement of bicycling, walking and transit facilities. Encourage investments that reduce vehicle travel demand.
Policy TR-1.5	Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences.
Policy TR-1.6	Require that public street improvements provide safe access for motorists and pedestrians along development frontages per current City design standards.
Policy TR-2.8	Require new development where feasible to provide on-site facilities such as bicycle storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.
Policy TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute towards transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.
Policy TR-5.3	The minimum overall roadway performance during peak travel periods should be level of service "D" except for designated areas and specified exceptions identified in the General Plan including the Downtown Core Area. Mitigation measures for vehicular traffic should not compromise or minimize community livability by removing mature street trees, significantly reducing front or side yards, or creating other adverse neighborhood impacts.
Policy TR-8.4	Discourage, as part of the entitlement process, the provision of parking spaces significantly above the number of spaces required by code for a given use.
Policy TR-9.1	Enhance, expand and maintain facilities for walking and bicycling, particularly to connect with and ensure access to transit and to provide a safe and complete alternative transportation network that facilitates non-automobile trips.
Policy CD-3.3	Within new development, create a pedestrian friendly environment by connecting the internal components with safe, convenient, accessible, and pleasant pedestrian facilities and by requiring pedestrian connections between building entrances, other site features, and adjacent public streets.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS		Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Source(s)
15.	TRANSPORTATION/TRAFFIC. Would the project:					
a)	Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?			X		1, 2
b)	Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?			X		1, 2, 9
c)	Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?			X		1, 2
d)	Substantially increase hazards due to a design feature (for example, sharp curves or dangerous intersections) or incompatible uses (for example, farm equipment)?			X		1, 2
e)	Result in inadequate emergency access?			X		1, 2
f)	Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?			X		1, 2

Explanation

Less Than Significant Impact. The City of San José's General Plan Amendment procedures require an analysis of proposed General Plan Amendments when they would result in more than 250 peak hour trips. A cumulative long-range traffic study was prepared for the 2017 General Plan Amendments, described in b) below. This study assumed an average development density on the project site of 337 units and commercial square footage to support 22 new jobs, after subtracting out the units/jobs generated by the existing General Plan land use designations on the site.[7]

The City of San José has determined that the proposed project would not meet the threshold required for a long-term General Plan traffic analysis, since the increase in traffic volume for the project would not exceed 250 peak hour trips. Therefore, the proposed General Plan amendment does not require a project-specific General Plan traffic analysis, and future residential development on the project site under the proposed land use designation is not expected to conflict with an adopted plan, ordinance, or policy related to the effectiveness of the circulation system.

[7] 2017 land use data for the City of San José 2017 General Plan Amendments Long-Range Traffic Impact Analysis, Hexagon Transportation Consultants, Inc. in collaboration with City of San José, August 2017.

No specific development is proposed at this time. Future development on the site would be required to meet the City's Transportation LOS Policy, which establishes an acceptable standard of LOS D at affected intersections.

a) **Less Than Significant Impact**. The cumulative long-range traffic impacts of all of the proposed 2017 General Plan Amendments were evaluated in a Long-Range Traffic Impact Analysis model forecast prepared by Hexagon Transportation Consultants (see Appendix D). This analysis evaluated the cumulative impacts of 10 proposed General Plan Amendments, listed in Table 2. Each of the proposed General Plan Amendments would result in changes to the assumed number of households and/or jobs on each site when compared to the Envision San José 2040 General Plan assumptions for each site. However, the total number of jobs and households citywide would not change as a result of these Amendments. Table 2 summarizes the existing (adopted 2040 General Plan) and proposed land uses and density for each of the 10 sites under each General Plan Amendment.

The City of San José has adopted policy goals in the Envision San José 2040 General Plan to reduce the drive alone mode share to no more than 40 percent of all daily commute trips, and to reduce the Vehicle Miles Traveled (VMT) per service population by 40 percent from 2008 conditions. To meet these goals by the General Plan horizon year of 2040, and to satisfy CEQA requirements, three Measures of Effectiveness (MOE) thresholds are used to evaluate long-range transportation impacts resulting from implementation of the General Plan Amendments. The General Plan Amendments would be considered to have a significant cumulative long-range traffic impact if one or more of the following occurs: 1) the Amendments result in an increase in daily VMT per service population, 2) the Amendments result in an increase in the percentage of journey-to-work drive alone trips; and/or 3) the Amendments result in a 7.5 percent decrease in average vehicle speeds on designated transit priority corridors (summarized in Table 3). In addition to the three MOEs, the cumulative traffic analysis evaluated potential cumulative effects on adjacent jurisdictions.

Table 2 2017 General Plan Land Use Amendments – Existing and Proposed Land Use								
					Existing General Plan		**Proposed General Plan Amendment**	
Site No.	**Project Name**	**Location**	**APN**	**Size (acres)**	**Land Use**	**Max. Density**	**Land Use**	**Max. Density**
1	GP16-011 (Oakland Rd.)	1202 Oakland Rd.	241-11-014, 020, 021, 022	1.54	Heavy Industrial	FAR up to 1.5	Combined Industrial/ Commercial	FAR up to 12.0
2	GP16-012 (Booksin Ave.)	2720 Booksin Ave.	446-33-040	1.65	Public/Quasi-Public	N/A	Residential Neighborhood	8 DU per AC; FAR up to 0.7
3	GP16-013 (N. 4th St.)	120 N. 4th St.	467-20-019, 020, 021, 022, 040	0.91	Residential Neighborhood & Transit Residential	8 DU/ AC; FAR up to 0.7; 50-250 DU/AC; FAR 2.0 to 12.0	Downtown	50-800 DU/AC; FAR 2.0 to 12.0
4	GP17-001 (Capitol Ave.)	100 S. Capitol Avenue	484-23-039	0.35	Neighborhood/ Community Commercial	FAR up to 3.5	Residential Neighborhood	8 DU/ AC; FAR up to 0.7
5	GP17-002 (Moorpark Ave.)	2323 Moorpark Avenue	282-01-014, 015, 016, 020, 021, 022	1.07	Residential Neighborhood	8 DU/ AC; FAR up to 0.7	Mixed-Use Neighborhood	up to 30 DU/AC; FAR 0.25 to 2.0
6	GP17-003 (Branham LR Park & Ride)	4746 Narvaez Road	462-02-022, 024, 026, 027, 028, 021, 023, 025	3.14	Mixed-Use Neighborhood	up to 30 DU/AC; FAR 0.25 to 2.0	Transit Residential	50-250 DU/AC; FAR 2.0 to 12.0
7	GP17-004 (Cottle LR Park & Ride)	272 Internationa l Circle	706-05-038	4.48	Neighborhood/ Community Commercial Public/Quasi-Public	FAR up to 3.5; N/A	Transit Residential	50-250 DU/AC; FAR 2.0 to 12.0
8	GP17-005 (Lincoln Ave.)	2119 Lincoln Avenue	439-08-059	0.28	Neighborhood/ Community Commercial	FAR up to 3.5	Urban Residential	30-95 DU/AC; FAR 1.0 to 4.0
9	GP17-006 (W. Julian St.)	715 W. Julian Street	261-01-030, 094	1.22	Mixed-Use Commercial	up to 50 DU/AC FAR 0.5 to 4.5	Urban Village	up to 250 DU/AC; FAR up 10.0
10	GP17-007 (Trimble Road)	370 W. Trimble Road	101-02-013, 014	19.4	Industrial Park	FAR up to 10.0	Combined Industrial/ Commercial	FAR up to 12.0
Notes: FAR = floor-to-area ratio; DU = dwelling units; AC = acre; APN = assessor's parcel number; N/A = not applicable. Source: City of San José Planning Department (June 2017)								

Table 3 MOE Significance Thresholds	
Measure of Effectiveness (MOE)	**Citywide Threshold**
Daily VMT/Service Population	Any increase over current 2040 General Plan conditions.
Journey-to-Work Mode Share (Drive Alone %)	Any increase in journey-to-work drive alone mode share over current 2040 General Plan conditions.
Transit Corridor Travel Speeds	Decrease in average travel speed on a transit corridor below current 2040 General Plan conditions in the AM peak one-hour period when: 1. The average speed drops below 15 mph or decreases by 25% or more, or 2. The average speed drops by one mph or more for a transit corridor with average speed below 15 mph under current 2040 General Plan conditions.
Adjacent Jurisdiction	When 25% or more of total deficient lane miles on streets in an adjacent jurisdiction are attributable to the City of San José during the AM peak-4-hour period: 1. Total deficient lane miles are total lane miles of street segments with V/C ratios of 1.0 or greater. 2. A deficient roadway segment is attributed to San José when trips from the City are 10% or more on the deficient segment.
Source: Envision San José 2040 General Plan TIA, October 2010.	

The results of the cumulative Long-Range traffic analysis for all of the 2017 General Plan Amendments are discussed below and summarized in Tables 4 through 7.

Daily Vehicle Miles Traveled per Service Population. Compared to the current General Plan, the proposed General Plan Amendments (GPAs) would not result in an increase in VMT per service population, as shown in Table 4 below. Therefore, cumulatively, the 2017 GPAs would result in a less-than-significant impact on citywide daily VMT per service population. It is important to note that the VMT per service population is based on raw model output and does not reflect the implementation of adopted General Plan policies and goals that would further reduce VMT by increased use of non-auto modes of travel.

Table 4
Daily Vehicle Miles Traveled per Service Population

	Base Year (2015)	**Existing General Plan**	**Existing General Plan plus GPAs**
Citywide Daily VMT	20,588,249	31,251,446	31,290,755
Citywide Service Population	1,385,030	2,065,461	2,065,461
Daily VMT Per Service Population	14.9	15.1	15.1
Increase in VMT/Service Population over General Plan	--	--	0.0
Significant Impact?			**No**

Note: Service Population = Residents + Jobs
Source: City of San José 2017 General Plan Amendments: Long-Range Traffic Impact Analysis, Hexagon Transportation Consultants, Inc., August 18, 2017.

Journey-to-Work Mode Share. The proposed General Plan Amendments will not result in an increase of drive alone journey-to-work mode share when compared to the current General Plan, as shown in Table 5. Therefore, cumulatively, the 2017 GPAs would result in a less-than-significant impact on citywide journey-to-work mode share.

Table 5 Journey-to-Work Mode Share Percentages						
	Base Year (2015)		**Existing General Plan**		**Existing General Plan plus GPAs**	
Mode	**Trips**	**%**	**Trips**	**%**	**Trips**	**%**
Drive Alone	724,530	78.3	1,061,730	72.5	1,062,180	72.4
Carpool 2	112,030	12.1	178,190	12.2	178,670	12.2
Carpool 3+	42,310	4.6	79,220	5.4	79,660	5.4
Transit	26,820	2.9	99,570	6.8	100,580	6.9
Bicycle	7,060	0.8	19,610	1.3	19,770	1.3
Walk	12,130	1.3	26,260	1.8	26,470	1.8
Increase in Drive Alone Percentage over General Plan Conditions						-0.1
Significant Impact?					**No**	
Source: City of San José 2017 General Plan Amendments: Long-Range Traffic Impact Analysis; Hexagon Transportation Consultants, Inc.; dated August 18, 2017.						

Average Vehicle Speeds in Transit Priority Corridors. The proposed General Plan Amendments will not result in a decrease in travel speeds of greater than one mph or 25 percent on any of the 14 transit priority corridors when compared to current General Plan conditions as shown in Table 6. Therefore, cumulatively, the 2017 GPAs would result in a less than significant impact on the AM peak-hour average vehicle speeds on the transit priority corridors.

Table 6
AM Peak-Hour Vehicle Speeds (mph)
in Transit Priority Corridors

Transit Priority Corridor	Base Year (2015)	Existing General Plan	Existing General Plan plus GPAs	% Change (Existing General Plan plus GPAs – Existing GP)	Absolute Change (Existing General Plan plus GPAs – Existing GP)
2nd St from San Carlos St to St. James St	11.4	11.4	11.4	0	0.0
Alum Rock Av from Capitol Av to US 101	21.2	15.3	15.1	-2	-0.3
Camden Av from SR 17 to Meridian Av	22.2	14.6	15.2	4	0.6
Capitol Av from S. Milpitas Bl to Capitol Expwy	23.9	20.8	20.5	-1	-0.2
Capitol Expwy from Capitol Av to Meridian Av	25.8	24.5	25.0	2	0.5
E. Santa Clara St from US 101 to Delmas Av	20.3	16.9	16.7	-1	-0.2
Meridian Av from Park Av to Blossom Hill Rd	22.7	19.1	18.7	-3	-0.5
Monterey Rd from Keyes St to Metcalf Rd	24.2	17.2	17.3	1	0.1

Table 6 AM Peak-Hour Vehicle Speeds (mph) in Transit Priority Corridors					
N. 1st St from SR 237 to Keyes St	19.8	12.7	13.4	5	0.7
San Carlos St from Bascom Av to SR 87	22.1	21.0	20.7	-2	-0.3
Stevens Creek Bl from Bascom Av to Tantau Av	21.3	17.2	17.2	0	0.0
Tasman Dr from Lick Mill Bl to McCarthy Bl	24.0	13.5	13.5	0	0.0
The Alameda from Alameda Wy to Delmas Av	19.7	14.1	13.7	-3	-0.5
W. San Carlos St from SR 87 to 2nd St	19.3	18.3	18.2	0	0.0
Source: City of San José 2017 General Plan Amendments: Long-Range Traffic Impact Analysis; Hexagon Transportation Consultants, Inc.; dated August 18, 2017.					

Adjacent Jurisdictions. The current General Plan land use designations and proposed General Plan Amendment land use adjustments result in the same impacts to roadway segments within the same 14 adjacent jurisdictions identified in the Envision San José 2040 General Plan, as shown in Table 7. Therefore, the proposed General Plan Amendment land use adjustments would not result in further impact on roadways in adjacent jurisdictions than that identified for the current General Plan land uses in the adopted Envision San José 2040 General Plan EIR.

Table 7
AM 4-Hour Traffic Impacts in Adjacent Jurisdictions

City	Base Year (2015)			Existing General Plan			Existing General Plan plus GPAs		
	Total Deficient Lane Miles (1)	Total Deficient Lane Miles Attributed to San José (2)	% of Deficient Lane Miles Attributed to San José	Total Deficient Lane Miles (1)	Total Deficient Lane Miles Attributed to San José (2)	% of Deficient Lane Miles Attributed to San José	Total Deficient Lane Miles (1)	Total Deficient Lane Miles Attributed to San José (2)	% of Deficient Lane Miles Attributed to San José
Campbell	0.14	0.14	100	0.86	0.86	**100**	0.86	0.86	**100**
Cupertino	3.76	2.96	79	1.01	0.79	**78**	1.01	0.79	**78**
Gilroy	0.00	0.00	0	1.13	1.13	**100**	1.13	1.13	**100**
Los Altos	1.21	0.25	21	1.63	0.25	**15**	1.24	0.25	**20**
Los Altos Hills	0.65	0.00	0	1.71	0.93	**54**	1.71	0.93	**54**
Los Gatos	0.70	0.70	100	1.02	1.02	**100**	0.82	0.82	**100**
Milpitas	1.08	0.87	81	10.56	10.56	**100**	10.8	10.8	**100**
Monte Sereno	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0
Morgan Hill	0.46	0.46	100	0.56	0.56	**100**	0.24	0.24	**100**
Mountain View	1.69	1.51	89	1.91	1.63	**85**	1.96	1.67	**85**
Palo Alto	0.64	0.16	25	2.81	0.16	6	2.81	0.16	6
Santa Clara	0.04	0.04	100	1.06	0.99	**93**	1.06	0.99	**93**
Saratoga	1.86	1.57	85	3.22	3.22	**100**	3.22	3.22	**100**
Sunnyvale	0.95	0.46	49	1.01	1.1	**100**	1.01	1.01	**100**

Table 7 AM 4-Hour Traffic Impacts in Adjacent Jurisdictions									
Caltrans Facilities	5,311	4,131	78	5,234	4,402	**84**	5,236	4,402	**84**
SC Co. Expressways	2.75	2.75	100	13.03	12.83	**98**	11.84	11.64	**98**

Notes:
(1) Total deficient lane miles are total lane miles of street segments with V/C ratios of 1.0 or greater.
(2) A deficient roadway segment is attributed to San José when trips from the City are 10% or more on the deficient segment.

Bold: Indicates Significant Impacts

Source: City of San José 2017 General Plan Amendments: Long-Range Traffic Impact Analysis; Hexagon Transportation Consultants, Inc.; dated August 18, 2017.

Conclusion. Compared to the Envision San José 2040 General Plan, the 2017 General Plan Amendments Long-Range Traffic Analysis found that the General Plan Amendments: 1) would not result in an increase citywide daily VMT per service population; 2) would reduce the percentage of journey-to-work drive alone trips; and 3) would increase average vehicle speeds on the transit priority corridors consistent with the cumulative traffic threshold criteria established. Future development on each of the General Plan Amendment project sites will be required to evaluate near-term traffic for project-level CEQA clearance for each planning permit.

b) **Less Than Significant Impact**. Future development would not result in any changes to air traffic patterns. See discussion in Section H. Hazards and Hazardous Materials regarding compliance with FAA review requirements.

c) **Less Than Significant Impact**. The project is not expected to substantially increase hazards due to a design feature or incompatible uses since it does not propose any roadway modifications. Future development in accordance with City design standards will ensure that hazards due to a design feature would be avoided.

e) **Less Than Significant Impact**. Future development would not result in inadequate emergency access since it would be required to comply with all police and fire department codes and regulations.

f) **Less Than Significant Impact**. Future development is not expected to conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities. Future development could encourage the use of multi-modal transportation given its location near downtown with good accessibility to public transit and pedestrian and bicycle facilities.

Conclusion: Implementation of General Plan policies will ensure that future development on the site would result in less-than-significant impacts on the transportation system.

Q. UTILITIES AND SERVICE SYSTEMS

Setting

Utilities and services are furnished to the project site by the following providers:

- Wastewater Treatment: treatment and disposal provided by the San José/Santa Clara Water Regional Wastewater Facility (RWF); sanitary sewer lines maintained by the City of San José
- Water Service: San Jose Water Company (SJWC)
- Storm Drainage: City of San José
- Solid Waste: Republic Services
- Natural Gas & Electricity: PG&E

Regulatory Background

Assembly Bill (AB) 939

California AB 939 established the California Integrated Waste Management Board (CalRecycle), which required all California counties to prepare Integrated Waste Management Plans. In addition, AB 939 required all municipalities to divert 50 percent of their waste stream by the year 2000.

California Green Building Standards Code

In January 2017, California adopted the most recent version of the California Green Building Standards Code, which establishes mandatory green building standards for new and remodeled structures in California. These standards include a mandatory set of guidelines and more stringent voluntary measures for new construction projects, in order to achieve specific green building performance levels as follows:

- Reduce indoor water use by 20 percent;
- Reduce wastewater by 20 percent;
- Recycle and/or salvage 50 percent of nonhazardous construction and demolition debris; and
- Provide readily accessible areas for recycling by occupant.

San José Zero Waste Strategic Plan/Green Vision

The City's Green Vision provides a comprehensive approach to achieving sustainability through technology and innovation. The Zero Waste Strategic Plan outlines policies to help the City of San José facilitate a healthier community and achieve its Green Vision goals, including 75 percent waste diversion by 2013, which has been achieved, and zero waste by 2022.

Private Sector Green Building Policy

The City of San José Green Building Policy for private sector new construction encourages building owners, architects, developers, and contractors to incorporate sustainable building goals early in the building design process. This policy establishes baseline green building standards for new private construction projects, and provides a framework for the implementation of these standards. The

Policy is also intended to enhance the public health, safety, and welfare of the City's residents, workers, and visitors by encouraging design, construction, and maintenance practices that minimize the use and waste of energy, water, and other resources in the City.

General Plan Policies

Policies in the General Plan have been adopted for the purpose of avoiding or mitigating utilities and service system impacts from development projects. All future development allowed by the proposed land use designation would be subject to the utilities and service system policies in the General Plan presented below.

Envision San José 2040 Relevant Utilities and Service System Policies	
Policy MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
Policy MS-3.2	Promote use of green building technology or techniques that can help to reduce the depletion of the City's potable water supply as building codes permit.
Policy MS-3.3	Promote the use of drought tolerant plants and landscaping materials for nonresidential and residential uses.
Action EC-5.16	Implement the Post-Construction Urban Runoff Management requirements of the City's Municipal NPDES Permit to reduce urban runoff from project sites.
Policy IN-3.3	Meet the water supply, sanitary sewer and storm drainage level of service objectives through an orderly process of ensuring that, before development occurs, there is adequate capacity. Coordinate with water and sewer providers to prioritize service needs for approved affordable housing projects.
Policy IN-3.5	Require development which will have the potential to reduce downstream LOS to lower than "D", or development which would be served by downstream lines already operating at a LOS lower than "D", to provide mitigation measures to improve the LOS to "D" or better, either acting independently or jointly with other developments in the same area or in coordination with the City's Sanitary Sewer Capital Improvement Program.
Policy IN-3.7	Design new projects to minimize potential damage due to stormwaters and flooding to the site and other properties.
Policy IN-3.9	Require developers to prepare drainage plans that define needed drainage improvements for proposed developments per City standards.
Policy IN-3.10	Incorporate appropriate stormwater treatment measures in development projects to achieve stormwater quality and quantity standards and objectives in compliance with the City's National Pollutant Discharge Elimination System (NPDES) permit.

Impacts and Mitigation

Thresholds per CEQA Checklist

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
16. UTILITIES AND SERVICE SYSTEMS. Would the project:					
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X	1, 2
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction or which could cause significant environmental effects?			X		1, 2
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			X		1, 2
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?			X		1
e) Result in a determination by the wastewater treatment provider, which serves or may serve the project, that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?			X		1
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?			X		1
g) Comply with federal, state, and local statutes and regulations related to solid waste?			X		1

Explanation

a) **No Impact**. Future development is not expected to exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board. Wastewater from the project site would be transported to the Regional Wastewater Facility (RWF) for treatment. The RWF is currently operating under a 120 million gallon per day dry weather effluent flow constraint. Future development would not substantially increase wastewater from the site that could cause an exceedance of the RWQCB's treatment requirements for the RWF.

b) **Less Than Significant Impact**. An existing 18-inch sanitary sewer line is located in Fourth Street and a 30-inch sanitary sewer line is located in St. John Street. Existing 12-inch water mains are located in both Fourth and St. John Streets. Future development on the project site would incrementally increase water demands and wastewater generation; however, this increase is not expected to require or result in the construction of new water or wastewater treatment facilities or any substantial expansion of existing facilities for this infill site.

c) **Less Than Significant Impact**. Future development would be required to provide a drainage system to manage stormwater runoff. Implementation of local and regional regulations would minimize the amount of runoff entering the City's storm drainage system.

d) **Less Than Significant Impact**. See b) above. Sufficient water supplies are available to serve future development on this infill site from existing entitlements and resources.

e) **Less Than Significant Impact**. The wastewater treatment provider, RWF, has adequate capacity to serve incremental demand from future development on the proposed infill site. The City currently has excess wastewater treatment capacity. Future development on the site would not exceed the City's allocated capacity at the City's wastewater treatment facility.

f) **Less Than Significant Impact**. Future development would not generate substantial solid waste that would adversely affect any landfills. The total permitted landfill capacity of the five operating landfills in the City is approximately 5.3 million tons per year; therefore, sufficient landfill capacity is available to serve the project. Additionally, any future development project at the site would be subject to ongoing implementation of the City's Zero Waste Strategic Plan, including the 75 percent diversion goal.

g) **Less Than Significant Impact**. Future development would comply with all federal, state, and local statutes and regulations related to solid waste.

Conclusion: Implementation of General Plan policies and regulations would ensure that future development of the project site would result in less-than-significant impacts on utilities and service systems.

R. MANDATORY FINDINGS OF SIGNIFICANCE

ENVIRONMENTAL IMPACTS	Potentially Significant Issues	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	Checklist Source(s)
17. MANDATORY FINDINGS OF SIGNIFICANCE. Does the project:					
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?			X		1-9
b) Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of the past projects, the effects of other current projects, and the effects of probable future projects.			X		1-9
c) Have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?			X		1-9

Explanation

a) **Less Than Significant Impact**. Based on the analysis provided in this Initial Study, future development allowed by the proposed General Plan Amendment and rezoning would not substantially degrade or reduce wildlife species or habitat, or impact historic or other cultural resources with implementation of the General Plan policies and other applicable regulations.

b) **Less Than Significant Impact**. Ten General Plan Amendments are proposed within the City for 2017. Each of the proposed General Plan Amendments would result in changes to the assumed number of households and/or jobs on each site when compared to the Envision San José 2040 General Plan assumptions for each site. However, the total number of jobs and households citywide would not change as a result of these Amendments. Table 2 summarizes the existing (adopted 2040 General Plan) and proposed land uses and density for each of the 10 sites under each General Plan Amendment. The primary environmental concern from the 10 General Plan Amendments is traffic. The cumulative long-range traffic impacts of the proposed 2017 General Plan Amendments were evaluated in a Long-Range Traffic Impact Analysis model, as discussed in Section P. Transportation. The study concluded that compared to the Envision San José 2040 General Plan, the 2017 General Plan Amendments: 1) would not result in an increase citywide daily VMT per service population, 2) would reduce the percentage of journey-to-work drive alone trips, and 3) would increase average vehicle speeds on the transit priority corridors. Based on these findings, the cumulative long-range traffic effects of the 2017 General Plan Amendments would be less-than-significant based on the City's significance criteria.

c) **Less Than Significant Impact.** Based on the analysis provided in this Initial Study, future development allowed by the proposed General Plan Amendment and rezoning would not result in environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly with implementation of the General Plan policies, Downtown Design Guidelines, and other applicable regulations.

Chapter 4. References

LEAD AGENCY

City of San José Department of Planning, Building and Code Enforcement

Rosalynn Hughey, (Interim) PBCE Director
Susan Walsh, Supervising Planner
Dipa Chundur, Environmental Planner
Kimberly Vacca, Planner

REPORT PREPARATION

Denise Duffy & Associates, Inc.
Environmental Consultant

Leianne Humble, Project Manager
Jami Davis, Environmental Scientist
Ashley Quackenbush, Planner
Robyn Simpson, Editor/Graphics

PERSONS CONTACTED

James Reyff, Illingworth & Rodkin
Erik Schoennauer, The Schoennauer Company
At Van den Hout, Hexagon Transportation Consultants

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CHECKLIST SOURCES

1. CEQA Guidelines and professional expertise of consultant
2. Project Plan and Site Review
3. 2040 Envision San José General Plan
4. Santa Clara County Important Farmlands Map
5. BAAQMD CEQA Guidelines, 2017
6. Archaeological Review, 2017
7. GHG Evaluation, 2017
8. Phase I Assessment, 2017
9. 2017 General Plan Amendments Long Range Traffic Analysis, 2017

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE REZONING CERTAIN REAL PROPERTY OF APPROXIMATELY 0.91 ACRE SITUATED ON THE NORTHEAST CORNER OF ST. JOHN STREET AND 4TH STREET (715 AND 739 WEST JULIAN STREET) FROM THE CG COMMERCIAL GENERAL ZONING DISTRICT TO THE DC DOWNTOWN PRIMARY COMMERCIAL ZONING DISTRICT

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, a Negative Declaration was prepared in conformance with the California Environmental Quality Act of 1970 (CEQA), as amended, for the subject rezoning to DC Downtown Primary Commercial Zoning District under File Numbers GP16-013 & C17-032 (the "Negative Declaration"); and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to DC Downtown Primary Commercial Zoning District; and

WHEREAS, this Council of the City of San José has considered, approved and adopted said Negative Declaration under separate Council resolution prior to taking any actions on this project;

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

SECTION 1. The recitals above are incorporated herein.

SECTION 2. All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned as DC Downtown Primary Commercial Zoning District.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" and depicted in Exhibit "B" attached hereto and incorporated herein by this reference.

SECTION 3. The district map of the City is hereby amended accordingly.

SECTION 4. The land development approval that is the subject of City File Nos. GP16-013 and C17-032 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

PASSED FOR PUBLICATION of title this _____ day of _____, 2017 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

_____
SAM LICCARDO
Mayor

ATTEST:

_____
TONI J. TABER, CMC
City Clerk

EXHIBIT "A"
FOR REZONING PURPOSES

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of that parcel of land described in the grant deed recorded February 23, 2015, in Document No. 22860313; and all of Parcels Seven, Eight, Nine, Ten and Eleven described in the grant deed recorded May 5, 2013, in Document No. 22219839, both of Santa Clara County Records, described as follows:

BEGINNING at southeasterly corner of said Parcel Ten, being on the northwesterly line of East St John Street;
Thence along said northwesterly line and the northeasterly line of North 4th Street, the following two courses:

1. Thence South 60°06'22" West, 137.95 feet;
2. Thence North 29°53'11" West, 310.11 feet, to the northwesterly line of said parcel of land described in the grant deed recorded in Document No. 22860313;

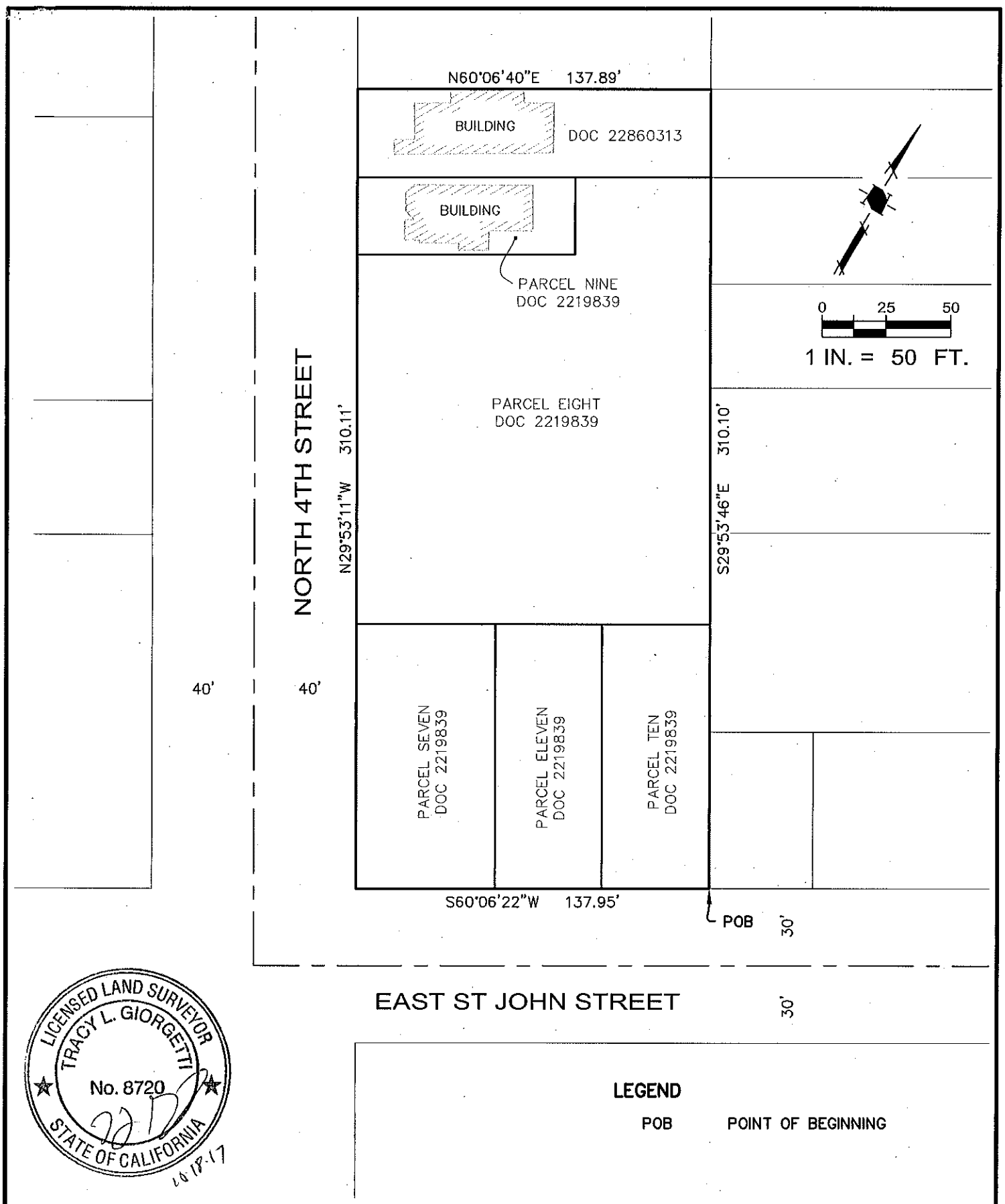
Thence along said northwesterly line, North 60°06'40" East, 137.89 feet, to the northeasterly line of said parcel of land;
Thence along said northeasterly line and its southeasterly prolongation, South 29°53'46" East, 310.10 feet, to the POINT OF BEGINNING.

Containing 0.98 acres, more or less.

For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

LICENSED LAND SURVEYOR
TRACY L. GIORGETTI
No. 8720
STATE OF CALIFORNIA
10-18-17

1570 Oakland Road | San Jose, California 95131 | (408) 487-2200 | (408) 487-2222 Fax | www.HMHca.com



SHEET 1 OF 1

Date:	2017-10-18
Designed:	–
Drawn:	RF
Checked:	TG
Proj. Engr.:	–
463900PL01	

HMH

1570 Oakland Road
San Jose, CA 95131

(408) 487-2200
HMHca.com

EXHIBIT "B"
PLAT TO ACCOMPANY DESCRIPTION:
FOR REZONING PURPOSES

SAN JOSE CALIFORNIA

The following items were received after packets were distributed.

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL (650) 589-1660
FAX (650) 589-5062
tgulesserian@adamsbroadwell.com

MILA A. BUCKNER
DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
RACHAEL E. KOSS
LINDA T. SOBCZYNSKI

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL (916) 444-6201
FAX (916) 444-6209

November 13, 2017

VIA EMAIL and OVERNIGHT DELIVERY

Rosalynn Hughey, Interim Director
Planning, Building and Code Enforcement
City of San Jose
200 E. Santa Clara Street, 3rd Floor
San Jose, CA 95113
Email: rosalynn.hughey@sanjoseca.gov

Dipa Chundur, Environmental Project Manager
Email: dipa.chundur@sanjoseca.gov

Re: Comments on the Initial Study/Negative Declaration for the Fourth and St. John General Plan Amendment and Rezoning (City File Nos. GP16-013 & C17-032

Please accept these comments on behalf of San Jose Residents for Responsible Development regarding the City of San Jose's ("City") Initial Study/Negative Declaration ("IS/ND") for the Fourth and St. John General Plan Amendment and Rezoning (File Nos. GP16-013 and C17-032) ("Project") proposed by Brent Lee ("Applicant"). The project site is located at the northeast corner of Fourth Street and St. John Street in San Jose (APNs: 467-20-019, -020, -021, -022, and -040). The Project proposes 1) a General Plan amendment to include the project site into the Downtown Growth Area and to change the General Plan land use designation on the site from Residential Neighborhood and Transit Residential to Downtown and 2) rezoning of the site from General Commercial Zoning District to Downtown Primary Commercial Zoning District (collectively, "Project"). The Project would allow up to 728 dwelling units on the project site or up to 1,189,200 square feet of commercial/office uses.

As explained more fully below, the IS/ND prepared for the Project is significantly flawed and does not comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.* Moreover, substantial evidence supports a fair argument that the Project may

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result in potentially significant impacts. The City may not approve the Project until the City prepares an environmental impact report ("EIR") that adequately analyzes the Project's potentially significant impacts and incorporates all feasible mitigation measures to minimize the impacts.

I. STATEMENT OF INTEREST

San Jose Residents for Responsible Development is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental impacts of the Project. The association includes: City of San Jose residents Jeff Dreyer Sr., Paul Oller and Mo Salberg; the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, and their members and their families; and other individuals that live and/or work in the City of San Jose and Santa Clara County.

Individual members of San Jose Residents and the affiliated labor organizations live, work, recreate and raise their families in Santa Clara County, including the City of San Jose. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. San Jose Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. SUMMARY OF COMMENTS

Based on our review of the IS/ND and its supporting documents, we conclude that the IS/ND does not comply with the basic requirements of CEQA. The IS/ND fails to meet the informational and public participation requirements of CEQA, because it improperly segments environmental review, fails to analyze potentially significant impacts compared to the existing baseline, fails to evaluate the proposed Project and lacks evidence to support the City's environmental conclusions. Moreover, substantial evidence exists that the Project may result in significant impacts and the negative declaration proposes no mitigation measures. These

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impacts include but are not limited to aesthetics, historical resources, contamination, water quality, public health, air quality, greenhouse gas emissions, land uses, public services and traffic impacts. Because there is substantial evidence supporting a fair argument that the Project may have one or more significant effects on the environment, the City cannot approve the IS/ND and must instead prepare an EIR. All of these issues are discussed more fully below.

We reviewed the IS/ND for the Project with the assistance of traffic engineer Daniel Smith, P.E of Smith Engineering & Management, as well as air quality consultant Hadley Nolan and hazardous materials and hydrology expert Matt Hageman, P.G., C.Hg, of Soil Water Air Protection Enterprise ("SWAPE), each of whom demonstrate that the Project may result in significant, unmitigated impacts that were not analyzed in the IS/ND. Their attached technical comments and their *curricula vitae* (Attachments 1 and 2) are submitted in addition to the comments in this letter. Accordingly, they must be addressed and responded to separately.

III. THE IS/ND IMPROPERLY SEGMENTS ENVIRONMENTAL REVIEW

California courts have also repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."[1] CEQA requires that a project be described with enough particularity that its impacts can be assessed.[2] As articulated by the court in *County of Inyo v. City of Los Angeles*, "a curtailed, enigmatic or unstable project description draws a red herring across the path of public input."[3] Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.[4]

A public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. CEQA prohibits such a "piecemeal" approach and requires review of a Project's impacts as a whole.[5]

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[1] *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 CalApp.3d 185, 193.
[2] *Id.* at 192.
[3] *Id.* at 197-198.
[4] *See, e.g., Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376.
[5] 14 Cal. Code Reg. § 15378, subd. (a); *Burbank- Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

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"Project" is defined as "the whole of an action," which has the potential to result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.[6] CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences."[7] Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project.[8]

Courts have found improper piecemealing where a lead agency conducts separate CEQA reviews for related activities proposed by the same applicant in the same vicinity. In *Plan for Arcadia v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 718, 721, a developer submitted two applications for developments on a 400-acre property, first a 72-acre shopping center and then a parking lot to serve a racetrack on the property. A site plan showed that the owner had plans to redevelop the entire property.[9] Although both projects were exempt from CEQA because they predated CEQA's effective date, it was "clear" to the court that they were "related to each other and that in assessing their environmental impact they should be regarded as a single project under [CEQA]."[10]

In *Tuolumne,* the court articulated "general principles" for determining whether two actions are one CEQA project, including "how closely related the acts are to the overall objective of the project," and how closely related they are in *time, physical location,* and *the entity undertaking the action.*[11] The court rejected arguments that a shopping center and nearby road alignment were "separate and independent" projects, and held that (1) separate approvals do not sever the connections between two activities; (2) the broad definition of a CEQA "project" extends beyond situations where a future activity is "necessitated by" an earlier one

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[6] 14 Cal. Code Reg., § 15378.
[7] *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego,* (1989) 214 Cal.App.3d 1438, 1452.
[8] *Laurel Heights Improvement Assoc. v. Regents of the Univ. of Calif.* (1988) 47 Cal.3d 376, 396-97, 253 Cal.Rptr. 426) (EIR held inadequate for failure to assess impacts of second phase of pharmacy school's occupancy of a new medical research facility).
[9] *Id.* at 719.
[10] *Id.* at 723, 726.
[11] *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1226-1227 ("*Tuolumne*").

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(noting that when actions "actually will be taken," the appropriate inquiry is whether they are related to one another, i.e. they comprise the "whole of an action" or "coordinated endeavor"); and (3) the applicable standard is not always whether two actions "could be implemented independently of each other."[12]

Here, the City improperly segmented the Project in two ways. First, the Project was already included in a separate Notice of Preparation of an EIR circulated to the public for the City's Downtown Strategy 2040 Project.[13] The project described in the NOP included:

> Amending the General Plan's Land Use/Transportation Diagram to reflect a slight modification to the boundaries of Downtown along North 4th Street between East St. John and East Julian Streets (Figure 3);...
>
> Other General Plan amendments as necessary to update Strategy 2000, such as extending the horizon year and changing the General Plan Land Use/Transportation Diagram to reflect modifications to the boundaries of Downtown. [14]

According to the March 2017 Revised NOP, any future development will result in significant impacts, requiring an EIR:

> As of August 2016, approved and/or constructed residential development in Downtown is now approaching residential capacities identified in Phase 1 (7,500 residential units)... However, the required Phase 1 traffic mitigation from the Strategy 2000 EIR...has not been completed and is not programmed within the City's five-year Traffic Capital Improvement Program (CIP).

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[12] *Id.* at 1228-1230 (citing 14 Cal. Code Reg. § 15378(c) and analyzing *Sierra Club v. W. Side Irr. Dist.* (2005) 128 Cal.App.4th 690, 698-700).
[13] Notice of Preparation of a Draft Environmental Impact Report for the Downtown Strategy 2040 Project (File No. PP15-102), p. 5 and Figure 3, October 6, 2015 and Notice of Preparation of a Draft Environmental Impact Report for the Downtown Strategy 2000 Update (Downtown Strategy 2040), Revised March 2017 at https://www.sanjoseca.gov/DocumentCenter/View/66970 ("Revised NOP").
[14] Revised NOP, p. 7.

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> Without implementation of the traffic mitigation, development beyond Phase 1 cannot proceed under the current Strategy 2000 EIR (with Addenda) and future projects would need to prepare individual EIRs or other CEQA documents to receive approvals, potentially delaying development that would benefit the fiscal health of the City.[15]

Despite this, the Applicant requested to proceed with the Project separately, and the City prepared an IS/ND that concludes the Project would have no impacts. Clearly, the City's own documents show that the Project may result in potentially significant traffic impacts requiring preparation of an EIR. Also, the Project is part of a much larger plan to update the Downtown Strategy. The City's preparation of an IS/ND and segmentation of the Project from the Downtown Strategy violate CEQA.

Second, up until the same day that the City released the IS/ND, the Applicant had an application for a Site Development Permit ("SDP") and Vesting Tentative Map ("VTM") pending for the exact same Project site.[16] The high-density residential development contemplated in the SDP and VTM could not be approved without the Project, namely 1) the General Plan amendment to include the project site into the Downtown Growth Area and to change the General Plan land use designation on the site from Residential Neighborhood and Transit Residential to Downtown and 2) rezoning of the site from General Commercial Zoning District to Downtown Primary Commercial Zoning District.

However, as of September 15, 2017, the City requested revisions to the Phase I report, the Traffic Report, the Air Quality Assessment and the Noise and Vibration Report.[17] The City also requested analysis of shade and shadow and contamination and indicated review of the historic report was underway.[18] Shortly thereafter, on October 13th, the Applicant requested to set aside the SDP and rezoning and proceed with the General Plan changes in order to get the General

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[15] Revised NOP, p. 4.
[16] Attachment 3: Universal Planning Application submitted by Brent Lee, July 27, 2017; Attachment 11: Site Development Permit Plans, October 13, 2017; Attachment 6: Letter from Erik Schoennauer to Stefanie Farmer withdrawing applications for site development permit and tentative map, October 24, 2017.
[17] Attachment 4: Email from Richard Smeaton to Erik Schoennauer, September 15, 2017.
[18] *Id.*

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Plan amendment done this year.[19] City staff made their best effort to accommodate the Applicant by agreeing to the Applicant's request. A day later, on October 14th, City staff stated that the initial study had to be revised "with all references to the specific project on the subject site stripped from the document."[20] The revision of the initial study needed to be done within three days in order to release it to the public seven days later. The City also explained that the Applicant needed to withdraw its other applications. In its rush to meet the Applicant's request to process the General Plan amendment this year, the City then released the IS/ND for public review and the Applicant withdrew its SDP and VTM applications, both on October 24, 2017.[21]

The labored process of reviewing late-submitted reports from the Applicant and preparing a factually and legally inadequate environmental review document for the Project and potential future development at the Project site resulted in a less-than-half-baked IS/ND that illegally segments the Project and, as discussed below, is riddled with legal and factual errors. Fortunately, State law requires more.

The City's segmentation of the Project from the Downtown Strategy and segmentation of the Project from the development applications violates CEQA. Also, the City's own records show that the Project, with or without the SDP and VTM, may result in potentially significant impacts. The City must withdraw the IS/ND and prepare an EIR.

IV. THE IS/ND VIOLATES CEQA BY FAILING TO ANALYZE THE PROJECT'S IMPACTS AS COMPARED TO THE EXISTING SETTING

CEQA requires a lead agency to assess a project's impacts on the environment.[22] Any significant impacts must be mitigated or avoided to the extent feasible.[23]

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[19] Attachment 5: Email from Erik Schoennauer to Ned Thomas, Re: H17-042 (4th and St John) Timeline and Resubmittals, October 13, 2017.
[20] Attachment 5: Email from Ned Thomas to Erik Schoennauer, October 14, 2017 (emphasis in original).
[21] IS/ND, October 24, 2017 https://www.sanjoseca.gov/index.aspx?NID=5720; Attachment 6: Letter from Erik Schoennauer to Stefanie Farmer withdrawing applications for site development permit and tentative map, October 24, 2017.
[22] Pub. Res. Code § 21002.1(a), 21061; 14 Cal. Code Reg. § 15125, subd. (d).

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To determine whether a project will have a significant impact, the lead agency must first identify the relevant "environment," and then determine whether the project will cause a "significant effect on the environment."[24] CEQA defines these terms as follows:

> "Environment means the physical conditions which *exist* within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance."[25]

> "Significant effect on the environment means a substantial, or potentially substantial, *adverse change* in the environment."[26]

Additional guidance is provided in section 15125 of the CEQA Guidelines, which provides that an environmental review document must describe the environment in the project's vicinity "as it exists before the commencement of the project . . . ."

The courts have repeatedly held that a project's impacts must be measured against the existing physical conditions in the area, not the conditions that could occur under the current legal standards. For example, in *Environmental Planning and Information Council v. County of El Dorado* ("*EPIC*") (1982) 131 Cal.App.3d 350, 352 [182 Cal.Rptr. 317], the court invalidated an EIR that compared the impacts of a general plan amendment (the proposed project) to the existing general plan. The court held that the County should have considered the effects of the general plan amendment as measured against the level of development that had actually occurred (*i.e.*, the existing physical environment).[27] Failure to do so misled the public and agency decisionmakers about the project's impacts.[28]

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[23] Pub. Res. Code §§ 21002, 21002.1(b), 21081, 21080.5(d)(2)(i).
[24] Pub. Res. Code § 21002.1; 14 Cal. Code Reg. §§ 15063, 15064.
[25] Pub. Res. Code § 21060.5 (emphases added).
[26] Pub. Res. Code § 21068 (emphasis added).
[27] *Environmental Planning and Information Council v. County of El Dorado ("EPIC")* (1982) 131 Cal.App.3d 350, 354 [182 Cal.Rptr. 317].
[28] *Id.* at p. 358.

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Similarly, in *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 186-187, 190-191 [228 Cal.Rptr. 868], the court held that the lead agency should have evaluated the impact of a general plan amendment on the existing physical environment, not the environment as it could have existed under the current general plan. The court reasoned: "As in *EPIC*, an environmental analysis based on a comparison between what was possible under the existing general plan and what was permitted under the amendment was 'illusory.'"[29]

Thus, CEQA requires the City to analyze the Project's impacts by determining whether there would be an adverse impact as measured against the *existing* environment in the area.

The City failed to analyze the Project's impacts as compared to the existing setting in at least two resource areas, traffic and greenhouse gas emissions.

With respect to traffic, the IS/ND traffic analysis evaluated the Project's alleged traffic emissions as compared to land uses that *could, but do not*, exist under the current General Plan. The Project site is currently occupied by surface parking areas and two single-family homes. Traffic engineer Dan Smith explains that "the IS/ND's transportation analysis (and the greenhouse gas analysis) deduct...project trips associated with 49 units of residential and commercial supporting 10 jobs that are presumed to be developed under the existing General Plan and zoning."[30] In other words, the IS/ND's analysis uses assumptions that deduct phantom dwelling units and employment generated by land uses that could be, but are not, on the property under the current General Plan. Mr. Smith explains that "[s]ince the trip generation for the current parking is attributable to nearby development that will remain and the 2 homes are vacant, there could be no deduction in the analysis of the project for existing uses (or perhaps arguably,

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[29] *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 186-187, 190-191 [228 Cal.Rptr. 868]; *see also City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 246 [227 Cal.Rptr. 899] (agency must compare rezoning to "existing physical environment" to provide a realistic assessment of impacts); *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, 1468-1469 [38 Cal.Rptr.2d 93] (focus is on extent to which project may case adverse change to preexisting physical conditions).

[30] Attachment 1: Letter from Dan Smith, Smith Engineering & Management, to Tanya Gulesserian, Subject: Fourth and St. John General Plan Amendment and Rezoning (City File NOS: GP16-013 and C17-032), November 11, 2017, p. 3.

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deduction for the 2 single family homes could be allowed)."[31] Because of this legal error, the IS/ND concludes that the Project's traffic would not exceed the City's threshold of more than 250 peak hour trips, which would trigger a project-specific traffic analysis.

Similarly, with respect to GHG emissions, the IS/ND evaluated the Project's alleged GHG emissions as compared to land uses that could, but do not, exist under the current General Plan. According to the IS/ND's GHG Memo:

> To assess the GHG emissions, the City modeled "a build-out scenario that was based on the development assumptions used for the long-range GPA cumulative traffic analysis, which assumed an average development density on the project site of 337 units and commercial square footage to support 22 new jobs, after accounting for the dwelling units and employment generated by the existing General Plan land use designations on the site."[32]

In other words, the IS/ND's analysis uses assumptions that deduct phantom dwelling units and employment generated by land uses that could be, but are not, on the property under the current General Plan. Because of this legal error, the IS/ND concludes that the Project's GHG impacts would not exceed the Bay Area Air Quality Management District's ("BAAQMD") significance thresholds.

The City failed to evaluate the proposed Project's traffic and GHG emissions as compared to the existing setting, rendering the analysis "illusory."[33] This misled the public and agency decisionmakers about the project's impacts.[34] The City is required to revise its analyses and disclose the Project's potentially significant impacts in an EIR.

V. AN EIR IS REQUIRED

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.[35] "Its purpose is to inform the public

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[31] *Id.*
[32] IS/ND, Appendix B.
[33] *Christward Ministry v. Superior Court, supra*, 184 Cal.App.3d at 190-191.
[34] *EPIC, supra*, 131 Cal.App.3d at 354.
[35] *See* CEQA § 21000; 14 Cal. Code Reg. § 15002.

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and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government."[36] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[37]

CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.[38] CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard. Under that standard, a lead agency "shall" prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.[39]

In contrast, a mitigated negative declaration ("MND") may be prepared instead of an EIR only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

> (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where* <u>*clearly*</u> *no significant effect on the environment would occur*, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.[40]

It is only when there is not even a fair argument of a significant effect on the environment that a negative declaration ("ND") can be prepared.[41] Because "[t]he

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[36] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).
[37] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[38] *See* Pub. Res. Code § 21100.
[39] Pub. Res. Code §§21080(d), 21082.2(d); 14 Cal. Code Reg. §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.
[40] Pub. Res. Code § 21064.5 (emphasis added).
[41] Pub. Res. Code § 21064.

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adoption of a negative declaration . . . has a terminal effect on the environmental review process" by allowing the agency to dispense with the duty to prepare an EIR, negative declarations are allowed only in cases where there is not even a "fair argument" that the project will have a significant environmental effect.[42] The phrase "significant effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment."[43]

Courts have held that if "no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR."[44] The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration.[45] An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.[46]

"Substantial evidence" required to support a fair argument is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[47] Substantial evidence can be provided by technical experts or members of the public.[48]

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[42] *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440; Pub. Resources Code, §§ 21100, 21064.
[43] Pub. Resources Code, § 21068.
[44] E.g. *Communities For a Better Env't. v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320.
[45] *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.
[46] *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 ("If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact").
[47] 14 Cal. Code Reg. § 15384(a).
[48] E.g. *Citizens for Responsible and Open Gov't. v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 (substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy); *see also Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1117-1118 (substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing); *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

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According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064(f):

> [I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

Furthermore, it is improper to defer the formulation of mitigation measures under CEQA. Courts have imposed several parameters for the adequacy of mitigation measures. First, the lead agency may not defer the formulation of mitigation measures until a future time unless there are specific performance standards capable of mitigating the project's impacts to a less than significant level. Deferral is impermissible where an agency simply requires a project applicant to obtain a report and then comply with any recommendations that may be made in the report.[49] Second, a public agency may not rely on mitigation measures of uncertain efficacy or feasibility. Third, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments."[50] Fourth, mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.

With respect to this Project, the IS/ND fails to satisfy the basic purposes of CEQA. The IS/ND failed to adequately disclose, investigate, and analyze the Project's potentially significant impacts, and requires no mitigation to reduce potential impacts to less than significant levels. Because the IS/ND lacks basic information regarding the Project's potentially significant impacts, the IS/ND's conclusion that the Project will have no significant impact on the environment is unsupported.[51] The City failed to gather the relevant data to support its findings and repeatedly, and impermissibly, deferred analysis and formulation of mitigation measures to future reports. Finally, the City's own evidence and that of experts

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[49] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical Gardens Foundation v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604, fn. 5.
[50] 14 Cal. Code Reg. § 15126.4(a)(2).
[51] Pub. Res. Code § 21064.5.

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provide substantial evidence showing that the Project may result in potentially significant impacts. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the City to prepare an EIR.

A. The IS/ND Failed to Consider and Analyze Potentially Significant Impacts from the General Plan Amendment

Although the General Plan amendment would allow for the future development of up to 728 dwelling units or up to 1,189,200 square feet of commercial/office uses, on a less-than-one acre site adjacent to single-family homes, the IS/ND provides *no analysis whatsoever* of these proposed allowable land uses. Rather, the IS/ND states that:

> No specific development is proposed at this time. Future development proposed on the site would be required to comply with the allowed land uses and goals of the General Plan Designation and Zoning District, and would require the issuance of appropriate development permits.[52]

Courts have rejected this position as improper deferral of the environmental analysis that is required upon the adoption or amendment of a general planning document.[53]

It is well established that an agency must analyze the future development contemplated in a plan amendment.[54] CEQA requires analysis of the environmental effects of a project at the earliest possible stage in the planning process.[55] When a Court reviews whether there was an omission of required information from an environmental review document, it reviews whether (1) the document did not contain information required by law and (2) the omission

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[52] IS/ND, p. 3; *see also*, e.g. IS/ND, p. 15.
[53] *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409 (citing *Christward Ministry v. Superior Ct.*, *supra*, 184 Cal.App.3d at 194).
[54] *City of Redlands v. San Bernardino County* (2002) 96 Cal.App.4th 398, 409; *Christian Ministry v. Superior Court* (1986) 184 Cal.App. 3d 180, 194; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370-371.
[55] *City of Redlands v. San Bernardino County*, 96 Cal.App.4th at 410.

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precluded informed decisionmaking.[56] Failure to include the required information is a failure to comply with CEQA.

Here, by deferring analysis of future development contemplated by the Project, the City failed to comply with CEQA. Currently, the General Plan only allows up to 8 dwelling units per acre ("DU/AC") at a height of 2.5 stories and a floor-to-area ratio ("FAR") of 0.7 for the portion of the 0.91 acre site that is designated Residential Neighborhood. The General Plan allows 50 to 250 DU/AC up to 25 stories in height and a FAR between 2.0 and 12.0 for the smaller portion of the site designated Transit Residential. The IS/ND fails to describe the respective acreages of the two different existing designations. In contrast, the proposed General Plan amendment would allow up to 800 DU/AC up to 30 stories in height and a FAR of 30.0 on the entire 0.91 acre site.

Despite this significant change in allowable land uses, the City failed to analyze the potential environmental impacts that may occur from allowing the development of up to 728 dwelling units and over one million square feet of commercial on the 0.91 acre site located adjacent to single-family homes and a residential neighborhood. Instead, the IS/ND states that the project is a General Plan amendment and rezoning and future development on the site would be subject to the General Plan Policies and City's development guidelines.[57] The City did not share the agency's expertise, disclose the agency's analysis, and allow the public to check for accuracy and detect omissions, as required by CEQA.[58]

The City's failure to analyze future development contemplated by the Project in the IS/ND violates CEQA as a matter of law.

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[56] *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 76-77; *Clover Valley Found. v. City of Rocklin* (2011) 197 Cal.App.4th 200, 211 (courts "scrupulously enforc[e] all legislatively mandated CEQA requirements").
[57] *See, e.g.*, IS/ND, p. 15.
[58] 14 Cal. Code Reg. § 15200.

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B. Substantial evidence supports a fair argument that the Project may result in potentially significant impacts on aesthetics.

Under CEQA, an aesthetic impact is considered significant if a project would substantially degrade the existing visual character or quality of the site and its surroundings.[59]

The IS/ND concludes that aesthetic impacts would be less than significant.[60] The IS/ND states:

> The project is limited to a General Plan Amendment and rezoning, which would not alter the existing visual character or quality of the site and its surroundings. Future development of the project site would alter the existing visual character of the property and its surroundings by introducing more dense urban development than what currently exists on the property. The project site is surrounded by residential and commercial uses including one to two-story buildings. Future development on the site will be subject to the Downtown Design Guidelines, Zoning Ordinance, General Plan policies, Municipal Code standards, and other relevant regulations to assure high quality design. Thus, future development would not substantially degrade the existing visual character or quality of the site and its surroundings.[61]

The IS/ND concludes that implementation of the General Plan Policies and City's development guidelines would ensure that future development on the site would have a less-than-significant impact on aesthetics.[62] However, the City's finding is contradicted by the evidence.

Substantial evidence shows that the Project may result in significant impacts on aesthetics, including on neighboring residential properties. The Project site is currently occupied by surface parking areas and two single-family homes.

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[59] CEQA Guidelines, Appendix G.
[60] IS/ND, p. 15.
[61] IS/ND, p. 15.
[62] IS/ND, p. 15.

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Surrounding land uses include residential to the north, residential to the south, residential to the east and residential/commercial to the west.[63]

The General Plan amendment would extend the Downtown Growth Area to the Project site and allow buildings up to 30 stories in height, which is 30 stories taller than the existing setting. The 30 story height limit would be adjacent to parcels with a 2.5 story height limit. The General Plan amendment would allow 800 DU/AC in a high-rise building adjacent to single-family homes at a density of 8 DU/AC. For commercial uses, the General Plan amendment would allow a FAR of 30.0 adjacent to parcels with a FAR of 0.7.

City staff stated "any massing of such a large building at this location is going to have impacts on the neighbors."[64] Also, contrary to the IS/ND conclusion that City policies and guidelines would ensure that future development on the site would have a less-than-significant impact on aesthetics, City staff explained that "the City has not provided specific design guidelines for a 'transition zone,' so we may get stuck with a tall building on the edge [of the Downtown Growth Area]."[65] Therefore, the City *lacks* the necessary regulations, policies and guidelines to enable a more compatible transition at the edge of the Downtown Growth Area adjacent to residences.

Substantial evidence shows that the Project may result in a potentially significant aesthetic impact on the surrounding residences.

C. Substantial evidence supports a fair argument that the Project may result in potentially significant impacts on historic resources.

Under CEQA, a historic resources impact is considered significant if a project would cause a substantial adverse change in the significance of a historical or archaeological resource as defined in CEQA Guidelines section 15064.5.[66] Historical resources include a resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical

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[63] IS/ND, p. 1.
[64] Attachment 7: Email from Ned Thomas to Rick Smeaton, RE: 4th & St. John Project, October 4, 2017.
[65] *Id.*
[66] CEQA Guidelines, Appendix G.

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Resources.[67] A resource included in a local register or identified as significant in an historical resource survey "shall be presumed to be historically or culturally significant."[68] Historical resources also includes "any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California..."[69] "Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources..."[70]

The IS/ND concludes that implementation of General Plan policies and regulations would ensure that future development would have a less-than-significant impact on cultural or tribal resources.[71] Substantial evidence shows the opposite is true.

As early as December 2016, the City identified that the Victorian home on the Project site qualifies as a Structure of Merit.[72] In October 2017, the City stated, "[a]fter reviewing and discussing the report with the consultant I agree with their conclusion that the 2 residences are Eligible for the California Register and that proposed demolition would be a potentially significant impact that will require an EIR."[73] The City stated that a "previous report will corroborate and strengthen the findings of significant impacts to the historic homes in the current report."[74] According to the City, "[t]here will also be some additional analysis of 6 surrounding historic structures within 150-200 ft. to see if they will need to be monitored for potential cracks during pile driving/construction."[75] Thus, the City stated, "[a] Focused EIR is the appropriate CEQA document for the proposed project....The EIR

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[67] 14 Cal. Code Reg. §15064.5(a)(1).
[68] 14 Cal. Code Reg. §15064.5(a)(2).
[69] 14 Cal. Code Reg. §15064.5(a)(3).
[70] *Id.*
[71] IS/ND, p. 31.
[72] Attachment 8: Email from Shaunn Mendrin to Kimberly Vacca, Subject: Policy Mtg, December 13, 2016,
[73] Attachment 9: Email from Susan Walsh to Ned Thomas, Subject: FYI: Update on review of report we received this morning and discussed at our 1pm meeting, October 10, 2017.
[74] Attachment 10: Email from Ned Thomas to Susan Walsh, October 18, 2017.
[75] *Id.*

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may be used to address restoration of the Victorian houses, which was required as a condition of approval for a previous Special Use Permit at this site."[76]

Based on the City's own records, substantial evidence supports a fair argument that the Project may have a significant impact on historic resources, requiring the City to prepare an EIR.

D. Substantial evidence supports a fair argument that the Project may result in potentially significant impacts from hazards on the Project site.

CEQA requires an analysis of whether 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.[77]

The IS/ND concludes that implementation of General Plan policies and regulations would ensure that future development on the site would result in less-than-significant impacts related to hazards and hazardous materials. However, substantial evidence supports a fair argument that the Project may result in significant impacts to public health, safety and the environment from known contamination on the Project site.

The IS/ND fails to acknowledge the City's own evidence that the Project may result in potentially significant impacts due to hazards. The IS/ND admits that "[f]uture development of the site could disturb soils and could expose construction workers and future site occupants to hazardous materials *if present*."[78] However, the IS/ND fails to disclose that those hazardous materials *are present*. According to the Phase I Environmental Assessment, the County of Santa Clara Department of Environmental Health explained, "the following conditions still remain at the site:

> Soil contains 56 parts per million (ppm) Total Petroleum Hydrocarbons as Gasoline (TPHg) and 19 ppm TPH as Diesel (TPHd). Shallow groundwater contains 1,700 parts per billion (ppb) TPHg, 31 ppb

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[76] *Id.*
[77] CEQA Guidelines App. G.
[78] IS/ND, p. 44 (emphasis added).

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> Benzene 2.5 ppb Toluene, 8.3 ppb Ethylbenzene, 2.7 ppb Total Xylenes, and 1.1 ppb 1,2-Dichloroethane.[79]

The County also explained that changes in land use could result in potentially significant impacts:

> "Residual contamination in soil and groundwater at the site could pose an unacceptable risk under certain site development activities such as site grading, excavation, or the installation of water wells. The County and the appropriate planning and building department shall be notified prior to any changes in land use..."[80]

The IS/ND fails to analyze potentially significant impacts from these contaminants during grading and dewatering. In addition, the IS/ND fails to adequately analyze and mitigate the risk of worker and public exposure to these contaminants. Finally, the IS/ND does not provide an analysis of the potential for vapor intrusion from the presence of these compounds in soil and groundwater. Thus, for these reasons, the IS/ND fails to comply with CEQA.

Matt Hagemann, a technical expert in hazardous materials, geology and hydrology, explains that the Project may result in potentially significant impacts from the land uses disturbing known contaminated soil and groundwater on the Project site.[81] Because construction workers, the public and the environment will be exposed to known contamination on site while grading, conducting earth moving operations and dewatering, it is especially critical for the City to fully disclose the potential public health and environmental impacts from contamination on the Project site in an EIR.

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[79] IS/ND, Appendix C: Phase I Assessment, p. 17, citing Letter from Nicole Pullman, Department of Environmental Health, County of Santa Clara to Robert Langlais, Subject: Fuel Leak Case Closure Cornerstone Property, 100 N. Fourth Street, San Jose; Case No. 14-753, SCVWDID No. 07S1E08F05f, March 3, 2006.

[80] *Id.*, pp. C-11 – C.12 (Letter from Nicole Pullman, Department of Environmental Health, County of Santa Clara to Robert Langlais, Subject: Fuel Leak Case Closure Cornerstone Property, 100 N. Fourth Street, San Jose; Case No. 14-753, SCVWDID No. 07S1E08F05f, March 3, 2006.)

[81] Attachment 2: Letter from Matt Hagemann, P.G., C.Hg, and Hadley Nolan to Tanya Gulesserian, Subject: Comments on the Fourth and St. John General Plan Amendment & Rezoning Project, November 13, 2017.

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1. Dewatering Impacts

Substantial evidence shows that the Project may result in potentially significant impacts from dewatering contaminated water. According to the IS/ND, local groundwater is located about 14 feet below ground surface. Shallow groundwater on the Project site contains 1,700 ppb TPHg, 31 ppb Benzene 2.5 ppb Toluene, 8.3 ppb Ethylbenzene, 2.7 ppb Total Xylenes, and 1.1 ppb 1,2-Dichloroethane.[82] The County explained that "[r]esidual contamination in soil and groundwater at the site could pose an unacceptable risk under certain site development activities such as site grading, excavation, or the installation of water wells."[83] According to Mr. Hagemann, the groundwater contamination exceeds effluent limitations and may result in significant impacts during dewatering:

> Effluent limitations for benzene in extracted groundwater prior to discharge in a "drinking water area" is 1 ppb and 5 ppb for "discharge to other surface water areas."[84] These effluent limitations are well below known levels of groundwater contamination in 2006 when benzene was documented in shallow groundwater at 31 ppb (Phase IESA, p. 17).[85]

The City has consistently acknowledged in its environmental review documents that dewatering of utility trenches and/or basement excavation below a depth of seven feet is often required, in addition to subgrade stabilization and waterproofing beneath some slabs. In addition, a site development permit pending on the Project site up until the day the City released the IS/ND for review shows that underground parking is allowed and contemplated on the Project site.[86]

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[82] IS/ND, Appendix C: Phase I Assessment, p. 17, citing Letter from Nicole Pullman, Department of Environmental Health, County of Santa Clara to Robert Langlais, Subject: Fuel Leak Case Closure Cornerstone Property, 100 N. Fourth Street, San Jose; Case No. 14-753, SCVWDID No. 07S1E08F05f, March 3, 2006.

[83] Letter from Nicole Pullman, Department of Environmental Health, County of Santa Clara to Robert Langlais, Subject: Fuel Leak Case Closure Cornerstone Property, 100 N. Fourth Street, San Jose; Case No. 14-753, SCVWDID No. 07S1E08F05f, March 3, 2006.

[84] https://www.waterboards.ca.gov/rwqcb2/board_decisions/adopted_orders/2012/R2-2012-0012.pdf, p. 9.

[85] Attachment 2: Letter from Matt Hagemann, P.G., C.Hg, and Hadley Nolan to Tanya Gulesserian, Subject: Comments on the Fourth and St. John General Plan Amendment & Rezoning Project, November 13, 2017.

[86] Attachment 3: Universal Planning Application submitted by Brent Lee, July 27, 2017.

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Pumped groundwater discharges may contain contaminants. The failure to properly handle contaminated groundwater could result in release of contaminants, possibly endangering habitat and human health.

The IS/ND contains no discussion about how the contaminated groundwater beneath the Project site will be handled and contained to prevent release of contaminants to the environment. The IS/ND merely states that the Project would be required to comply with the Grading Ordinance and submit an Erosion Control Plan to the Director of Public Works.[87] The IS/ND concludes that implementation of General Plan policies and regulations would ensure that future development on the site would result in less-than-significant impacts related to hydrology and water quality.[88]

The IS/ND's reliance on regulations and laws outside of CEQA to mitigate the risks related to disposal of contaminated groundwater is misplaced for two reasons. First, compliance with applicable regulations does not automatically obviate the need for further analysis of impacts. In *Communities for a Better Env't v. California Res. Agency*, the court struck down a CEQA Guideline because it "impermissibly allow[ed] an agency to find a cumulative effect insignificant based on a project's compliance with some generalized plan rather than on the project's actual environmental impacts."[89] The court concluded that "[i]f there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project."[90] Thus, the ruling supports the notion that compliance with a lead agency still has an obligation to consider substantial evidence and analyze and mitigate potentially significant impacts despite assured compliance with applicable standard outside of the CEQA process.

In *Keep our Mountains Quiet v. County of Santa Clara*, neighbors of a wedding venue sued over the County's failure to prepare an EIR due to significant noise impacts. The court concluded that "a fair argument [exists] that the Project may have a significant environmental noise impact" and reasoned that although the

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[87] IS/ND, pp. 46 and 48.
[88] IS/ND, p. 49.
[89] *Communities for a Better Env't v. California Res. Agency* (2002) 126 Cal.Rptr.2d 441, 453.
[90] *Id.*

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noise levels would likely comply with local noise standards, "compliance with the ordinance does not foreclose the possibility of significant noise impacts."[91] The court ordered the County to prepare an EIR. The ruling demonstrates the possibility that a project may be in compliance with an applicable regulation and still have a significant impact.

In *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1355, the court held that conditions requiring compliance with regulations are proper "where the public agency had meaningful information reasonably justifying an expectation of mitigation of environmental effects." The ruling suggests that an agency that merely provides a bare assertion that the project will be in compliance with applicable regulations, without further explanation or enforceability, may not fulfill the requirements of CEQA.

Here, the City failed to provide any information explaining how compliance with the outside laws and regulations would reduce the potentially significant risks related to disposal of contaminated groundwater, including impacts to worker and public health. The City may not rely solely on compliance with regulations or laws as reducing impacts without a full analysis of impacts and enforceable mitigation.

Second, the City has not adequately incorporated compliance with these laws as enforceable mitigation. In *Lotus v. Department of Transportation*, an EIR approved by CalTrans contained several measures "[t]o help minimize potential stress on the redwood trees" during construction of a highway.[92] Although those measures were clearly separate mitigation, the project proponents considered them "part of the project," and the EIR concluded that because of the planned implementation of those measures, no significant impacts were expected.[93] However, the Appellate Court found that because the EIR had "compress[ed] the analysis of impacts and mitigation measures into a single issue, the EIR disregard[ed] the requirements of CEQA."[94] The Court continued, stating "[a]bsent a determination regarding the significance of the impacts... it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered."[95]

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[91] *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.
[92] *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 650.
[93] *Id.*, at 651.
[94] *Id.*, at 656.
[95] *Id.*

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Similarly, the IS/ND for this Project indicates that the provisions of the outside policies, laws and regulations would reduce the risks related to hazards without actually analyzing the impacts. The statement that the Project will comply with these laws is comparable to the risk avoidance measures at issue in *Lotus*, which lacked the appropriate level of analysis and were not incorporated as enforceable mitigation. CEQA requires the City to describe all components of the Project that may have a significant impact, and adequately analyze and require mitigation for all potentially significant impacts related to hazards.

Dewatering contaminated water may result in a potentially significant impact that must be disclosed and analyzed in an EIR. The IS/ND's general reference to an Erosion Control Plan or other policies improperly defers the analysis to after Project approval and outside of the public process and does not adequately address this issue. Instead, specific measures to properly handle and contain the contaminants must be included in an EIR.

2. Worker and Public Health

Workers involved in excavation of basement and utility trenches for the Project's future development may be exposed to contaminated soil and groundwater. The workers may be exposed through dermal contact and through inhalation.

The public in general is also at risk of exposure due to the proximity of the Project site to residential neighbors. Furthermore, workers could expose the public to contamination when leaving the site wearing contaminated and stained clothing. When coming into contact with on-site workers, family members and others may be exposed to health risks when touching contaminated clothing and inhaling vapors.

According to Mr. Hagemann, the Project site contains hazardous materials in soil and groundwater "that could pose risks to construction workers, future residents and neighboring residents." Mr. Hagemann explains:

> Benzene in groundwater at 31 ppb is in excess of the San Francisco Bay Regional Water Quality Board Environmental Screening Level of 1 ppb in shallow groundwater for a vapor intrusion risk under a

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> residential scenario.[96] Vapor intrusion was not contemplated in the IS and no mitigation that would address the benzene-contaminated shallow groundwater was included in the IS.
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> Benzene is a cancer-causing chemical according to the US EPA.[97] Future residents could be exposed to benzene through the vapor intrusion pathway and construction workers could be exposed to benzene through direct contact with contaminated groundwater if the water table is exposed during construction. Groundwater is located at a depth of about 14 feet below ground surface (IS, p. 46). Development of the Project site would likely involve excavation that could intercept the shallow water table.[98]

The IS/ND provides no mitigation to protect workers or the public from exposure to contaminants. The IS/ND merely concludes that implementation of General Plan policies and regulations would ensure that future development on the site would result in less than significant impacts to related to hazards and hazardous materials.[99]

The IS/ND's reliance on regulations and laws outside of CEQA to mitigate the risks related to worker and public health is misplaced for the same two reasons explained above. First, compliance with applicable regulations does not automatically obviate the need for further analysis of impacts.[100] The City is still obligated to consider substantial evidence and analyze and mitigate potentially significant impacts despite assured compliance with applicable standard outside of the CEQA process. Furthermore, a project may be in compliance with an applicable regulation and still have a significant impact.[101] The City's bare assertion that the

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[96] https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/ESL/ESL%20Workbook_ESLs_Interim%20Final_22Feb16_Rev3_PDF.pdf, Table GW-3.
[97] https://www.atsdr.cdc.gov/toxfaqs/tf.asp?id=38&tid=14
[98] Attachment 2: Letter from Matt Hagemann, P.G., C.Hg, and Hadley Nolan to Tanya Gulesserian, Subject: Comments on the Fourth and St. John General Plan Amendment & Rezoning Project, November 13, 2017.
[99] IS/ND, p. 45.
[100] *Communities for a Better Env't v. California Res. Agency* (2002) 126 Cal.Rptr.2d 441, 453.
[101] *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.

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project will be in compliance with applicable regulations, without further explanation or enforceability, does not fulfill the requirements of CEQA.[102]

The IS/ND proposes to mitigate the risk of worker exposure to contamination by requiring compliance with policies and standards, including preparation of a Site Management Plan for clean-up and handling of the contaminated soil.[103] The problems with this approach are, first, that the Site Management Plan need only be reviewed and approved by the City Fire Chief and Planning Department, and not by any regulatory agency charged with overseeing the clean-up of hazardous materials, such as the Santa Clara County Department of Environmental Health or the California Department of Toxics Substances Control ("DTSC"). Second, the City Fire Chief and Planning Department do not have the authority or expertise to approve and oversee contamination clean-up plans. Third, a site management plan "has no regulatory standards and would only be implemented upon Project development and thus improperly defers mitigation to address contamination."[104]

Second, the City has not adequately incorporated compliance with these laws as enforceable mitigation. "Absent a determination regarding the significance of the impacts... it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered."[105] The IS/ND for this Project indicates that the provisions of the outside policies, laws and regulations would reduce the risks related to hazards without actually analyzing the impacts.

Finally, the IS/ND does not consider the potential impacts of contaminated dust from the Project site reaching nearby sensitive receptors during construction and potential site clean-up. Nearby sensitive receptors include residents of adjacent homes and patrons and employees of nearby commercial establishments. Although the Site Management Plan may provide for worker protections, there is no guarantee that any protections will be put in place for nearby receptors.

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[102] *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1355.
[103] IS/ND, p. 45.
[104] Attachment 2: Letter from Matt Hagemann, P.G., C.Hg, and Hadley Nolan to Tanya Gulesserian, Subject: Comments on the Fourth and St. John General Plan Amendment & Rezoning Project, November 13, 2017.
[105] *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656.

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Because the City's own documents show that hazardous materials exist on the Project site that may mobilize and present risks to workers and the public during future development allowed by the Project, an EIR is required. The EIR must include a health risk assessment, with an analysis of mitigation to protect the health of adjacent residents from the disturbance, removal and disposal of site-related contaminants. If necessary, such mitigation should include public notice of hazardous compounds, and the evaluation of a full range of alternatives under a Remedial Action Plan overseen by Santa Clara County and/or DTSC. These measures would help reduce the risk of significant impacts from contaminated dust escaping the Project site during construction and potential soil remediation.

There is substantial evidence to support a fair argument that the Project may result in a range of potentially significant impacts associated with hazardous materials present on the Project site.

E. Substantial evidence supports a fair argument that the Project may result in potentially significant air quality impacts.

The IS/ND air quality analysis defers assessment of the Project's impacts and, thus, fails to comply with CEQA. According to the IS/ND, "[w]hen future development is proposed, a project-specific air quality assessment will be required to confirm conformance with the BAAQMD thresholds in compliance with General Plan Policy 10-1."[106] With respect to construction emissions, the IS/ND states that the Project would implement "best management practices" to minimize air pollutant emissions during construction. The IS/ND concludes that implementation of the General Plan policies and BAAQMD Guidelines would ensure that future development would have a less than significant impact on air quality.[107]

The IS/ND's air quality analysis fails to comply with CEQA in a number of ways. First, the IS/ND's deferral of a project-specific air quality assessment is an approach that has been rejected by the courts. It is an improper deferral of the environmental analysis that is required upon the adoption or amendment of a general planning document.[108] It is well established that an agency must analyze

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[106] IS/ND, p. 22.
[107] IS/ND, p. 22.
[108] *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409 (citing *Christward Ministry v. Superior Ct.*, *supra*, 184 Cal.App.3d at 194).

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the future development contemplated in a plan amendment.[109] CEQA requires analysis of the environmental effects of a project at the earliest possible stage in the planning process.[110]

Second, compliance with applicable regulations does not automatically obviate the need for further analysis of impacts.[111] The City is still obligated to consider substantial evidence and analyze and mitigate potentially significant impacts, despite assured compliance with applicable standard outside of the CEQA process. Furthermore, a project may be in compliance with an applicable regulation and still have a significant impact.[112] The City's bare assertion that the project will be in compliance with applicable regulations, without further explanation or enforceability, does not fulfill the requirements of CEQA.[113]

Third, the City has not adequately incorporated compliance with these policies, such as "best management practices," as enforceable mitigation. In *Lotus v. Department of Transportation*, the project proponents considered mitigation measures as "part of the project," and the EIR concluded that because of the planned implementation of those measures, no significant impacts were expected.[114] The Appellate Court found that because the EIR had "compress[ed] the analysis of impacts and mitigation measures into a single issue, the EIR disregard[ed] the requirements of CEQA."[115] Similarly, the IS/ND for this Project indicates that the provisions of the outside laws and regulations would reduce the risks related to air quality without actually analyzing the impact.

Finally, substantial evidence shows that construction and operation of the Project may result in significant impacts, requiring preparation of an EIR. The IS/ND states that "[f]uture development could introduce new sensitive receptors (residential uses). In addition, construction activity would generate dust and diesel equipment exhaust on a temporary basis that could adversely affect nearby sensitive receptors."[116] Despite this recognition of exposure of people to particulate

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[109] *Id.*
[110] *City of Redlands v. San Bernardino County*, 96 Cal.App.4th at 410.
[111] *Communities for a Better Env't v. California Res. Agency* (2002) 126 Cal.Rptr.2d 441, 453.
[112] *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.
[113] *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1355.
[114] *Id.*, at 651.
[115] *Id.*, at 656.
[116] IS/ND, p. 22.

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matter and toxic air contaminants, the IS/ND defers preparation of a health risk assessment to identify potential health risks and mitigation measures.[117]

The IS/ND fails to comply with CEQA. Because substantial evidence to support a fair argument that the Project may result in a range of potentially significant impacts associated with hazardous materials present on the Project site, the City must prepare an EIR.

F. Substantial evidence supports a fair argument that the Project may result in potentially significant GHG emissions.

Under CEQA, a project may have a significant impact if it would "[g]enerate [GHG] emissions, either directly or indirectly, that may have a significant impact on the environment" or "[c]onflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of [GHGs]."

BAAQMD's significance criteria for GHG emissions states that a project would have a significant impact if it complies with a qualified GHG Reduction Strategy, or produces total emissions of more than 1,100 metric tons of CO_{2e} annually or more than 4.6 metric tons of CO_{2e} per service population annually.[118]

The IS/ND finds that the Project's GHG emissions will have a less than significant GHG impact through 2020. Rather than calculate whether the Project's total emission are more than 1,100 metric tons of CO2e annually, the IS/ND relies on a GHG Memo by Illigworth & Rodkin, Inc. that concludes the Project would not exceed BAAQMD's threshold of 4.5 metric tons of CO2e per service population annually.[119] However, the IS/ND's finding is not supported by a legally defensible analysis. As a result, the City failed to conduct a legally adequate GHG emissions analysis in the IS/ND.

The GHG Memo analyzes the wrong project and fails to evaluate the Project's GHG emissions as compared to the existing setting. According to the Memo:

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[117] IS/ND, p. 22.
[118] BAAQMD CEQA Guidelines, p. 2-4, http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines_May%202011_5_3_11.ashx
[119] IS/ND, Appendix B.

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> To assess the GHG emissions, the City modeled "a build-out scenario that was based on the development assumptions used for the long-range GPA cumulative traffic analysis, which assumed an average development density on the project site of 337 units and commercial square footage to support 22 new jobs, after accounting for the dwelling units and employment generated by the existing General Plan land use designations on the site."[120]

There are two major legal errors in the City's GHG analysis. First, the City's assessment analyzed the wrong project. The Project would allow up to 728 residential units, or 1,189,200 square feet of commercial/office uses (2,973 new jobs).[121] Other sections of the IS/ND acknowledge that the proposed General Plan amendment would allow up 728 residential units and 1,189,200 square feet of commercial/office.[122] Therefore, the GHG analysis' "development assumption," which assumes 337 units and 22 new jobs, does not reflect the proposed Project and is incorrect.

Second, the City failed to evaluate the proposed Project's GHG emissions as compared to the existing setting. Instead, it deducts phantom dwelling units and employment generated by land uses that *could be* on the property under the current General Plan, but *are not*. The courts have repeatedly held that a project's impacts must be measured against the existing physical conditions in the area, not the conditions that could occur under the current legal standards.[123] Failure to do so misled the public and agency decisionmakers about the project's impacts.[124] An environmental analysis based on a comparison between what was possible under the existing general plan and what was permitted under the amendment is "illusory."[125] Therefore, the City is required to assess GHG emissions from the actual project.

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[120] IS/ND, Appendix B.
[121] IS/ND, p. 3. Using the City's assumption of 2.5 employees per 1,000 square feet of commercial space, 1,189,200/1,000 x 2.5 = 2,973 employees.
[122] *See, e.g.* IS/ND Air Quality, p. 22, Land Use, p. 53, Population and Housing, p. 61.
[123] *Environmental Planning and Information Council v. County of El Dorado* ("*EPIC*") (1982) 131 Cal.App.3d 350, 352 [182 Cal.Rptr. 317]; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 186-187, 190-191 [228 Cal.Rptr. 868].
[124] *Id.* at p. 358.
[125] *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 186-187, 190-191 [228 Cal.Rptr. 868]; *see also City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 246 [227 Cal.Rptr. 899] (agency must compare rezoning to "existing physical environment" to provide

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Finally, the IS/ND admits that the Project would result in significant impacts from GHG emissions after 2020.[126] The City then refers to mitigation measures in a prior EIR, the Envision San Jose 2040 Final Program EIR, without disclosing those mitigation measures to the public and states that the other EIR found the impact significant and unavoidable. The City's approach violates CEQA.

If the City wanted to rely on any analysis in a prior EIR, then the City was required to comply with CEQA's procedures for doing so:

> When a Lead Agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the Lead Agency shall use the following procedures: (1) The Lead Agency shall review the proposed project with an initial study . . . to determine whether the [earlier] EIR would adequately describe: (A) The general environmental setting of the project; (B) The significant environmental impacts of the project; and (C) Alternatives and mitigation measures related to each significant effect. (2) . . . [P]rovide public review as provided in Section 15087 . . . The notice shall include as a minimum: . . . (B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project; . . . and (D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered . . .[127]

The City did not comply with these procedures. The City did not undertake any written analysis of whether its prior EIR adequately describes the environmental setting, significant impacts, alternatives and mitigation measures for the new General Plan amendment. The prior EIR is not analyzed in the City's IS/ND for the Project. There is no discussion in the IS/ND as to exactly (or even generally) what analysis in the other EIR applies, including what the environmental setting is, where future uses were allowed, which uses the old analysis applies to, and which impacts have been assessed and mitigated. In

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a realistic assessment of impacts); *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, 1468-1469 [38 Cal.Rptr.2d 93] (focus is on extent to which project may case adverse change to preexisting physical conditions).

[126] IS/ND, p. 41.

[127] 14 Cal. Code Reg. § 15153(b).

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Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 442-443, the Court held, to the extent that an agency "relied on information not actually incorporated or described and referenced" in the environmental review document, "it failed to proceed in the manner provided in CEQA".[128]

The City is required to prepare an EIR to evaluate potentially significant GHG emission impacts, to identify mitigation measures to reduce the impact, to disclose whether this Project would exacerbate the significant and unavoidable impact and, if necessary, enable the City Council to adopt overriding considerations for this Project's impacts.

G. Substantial evidence supports a fair argument that the Project may result in potentially significant land use impacts.

A significant impact on land use exists if the Project would conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.[129] The IS/ND concludes that with implementation of the Downtown Design Guidelines, General Plan policies, and other applicable regulations, future development allowed by the General Plan Amendment and rezoning would not result in significant land use impacts or conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect."[130]

Substantial evidence supports a fair argument that the Project may result in significant land use impacts by conflicting with the General Plan. The IS/ND explains that the intent of the existing General Plan designation – Residential Neighborhood – "is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape,

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[128] In *Vineyard* the court concluded that a later EIR, if it had described its relationship to an earlier EIR, could have been "tiered" to the earlier EIR under CEQA section 21068.5, because the earlier EIR analyzed a water supply project that included the supply for the project analyzed in the later EIR. *Id.* at 442-443. Nonetheless, the reasoning in *Vineyard*, that "[t]he question is . . . not whether the project's significant environmental effects *can* be clearly explained, but whether they *were*," applies here. (*Vineyard* at 443.)
[129] CEQA Guidelines, Appendix G.
[130] IS/ND, p. 53.

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massing and neighborhood form and pattern."[131] Furthermore, "[n]ew infill development should improve and/or enhance existing neighborhood conditions by completing the existing neighborhood patter and brining infill properties into general conformance with the quality and character of the surrounding neighborhood."[132] The IS/ND cites to Downtown Design Guidelines that allegedly "provide direction for new development in the downtown area."[133]

However, the City's design guidelines do nothing to ensure no significant impacts on residences directly abutting the Project site. With respect to this Project on the proposed site, the City stated "any massing of such a large building at this location is going to have impacts on the neighbors."[134] The City also explained that the City has not provided specific design guidelines for a "transition zone," so we may get stuck with a tall building on the edge [of the Downtown Growth Area]."[135] Therefore, the Project may result in a potentially significant land use impact on the surrounding residences and, contrary to the IS/ND, the City lacks the necessary regulations, policies and guidelines to enable a more compatible transition at the edge of the Downtown Growth Area adjacent to residences.

H. Substantial evidence supports a fair argument that the Project may result in potentially significant public service impacts.

Under CEQA, a public facilities and services impact is considered significant if a project would:

> Result in substantial adverse physical impacts associated with the provision or need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public service:
>
> o Fire protection,
> o Police protection,

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[131] IS/ND, p. 51.
[132] *Id.*
[133] IS/ND, p. 53.
[134] Attachment 7: Email from Ned Thomas to Rick Smeaton, RE: 4th & St. John Project, October 4, 2017.
[135] *Id.*

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o Schools, or
o Other public facilities.[136]

The service ratios, response times or other performance standards create a measurable threshold upon which to make a finding of significance. Accordingly, the IS/ND describes the applicable General Plan policies setting forth specific service ratios, response times and other performance standards.

Despite describing the City's acceptable service ratios, response times and other performance standards, the IS/ND contains no description of the *current* service ratios, response times and other performance standards and no analysis of the proposed Project's effects on them.

For example, the IS/ND explains that the City should provide at least 0.59 SF of space per capita in library facilities,[137] but only explains how many libraries there are and the nearest one.[138] The IS/ND then concludes no impact "since it represents infill development."[139] The IS/ND's analysis is incomparable to the threshold and the stated reason ("infill") for its consistency is meaningless.

As another example, the IS/ND explained that for police protection, the response time goal is 6 minutes or less for 60% of all Priority 1 calls, and 11 minutes or less for 60% of all Priority 2 calls.[140] The IS/ND then states how many patrol divisions, districts, patrol beats and patrol beat building blocks there are in the City.[141] Again, the IS/ND concludes no impact "since it represents infill development."[142] Like the analysis for libraries, the IS/ND's analysis of impacts on police services is incomparable to the thresholds and the stated reason ("infill") for its consistency is meaningless.

The IS/ND's "analysis" for fire protection, parks and schools follows the same pattern. The City failed, as a matter of law, to evaluate the proposed Project's potentially significant impacts on public services in the IS/ND.

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[136] CEQA Guidelines, Appendix G.
[137] IS/ND, p. 64.
[138] IS/ND, p. 63.
[139] IS/ND, p. 65.
[140] IS/ND, p. 64.
[141] IS/ND, p. 63.
[142] IS/ND, p. 65.

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I. Substantial evidence supports a fair argument that the Project may result in potentially significant transportation impacts.

The IS/ND states that the City of San Jose requires a traffic analysis of proposed General Plan amendments when they would result in more than 250 peak hour trips.[143] The City concludes that the Project would not meet this threshold. However, the IS/ND relies on a cumulative long-range traffic analysis for another Project, namely a group of contemplated General Plan amendments. This cumulative long-range traffic analysis is inapplicable, based on significant errors with respect to the proposed Project and substantially underestimated the proposed Project's traffic. Furthermore, expert Dan Smith from Smith Engineering & Management reviewed the traffic analysis and concludes that the Project may result in potentially significant traffic impacts requiring preparation of an EIR, along with a traffic analysis for the actual proposed Project.

First, the City's assessment analyzed the wrong project. The Project would allow up to 728 residential units, or 1,189,200 square feet of commercial/office uses (2,973 new jobs). Other sections of the IS/ND acknowledge that the proposed General Plan amendment would allow up 728 residential units and 1,189,200 square feet of commercial/office.[144] The traffic analysis' "development assumption" that assumes 337 units and 22 new jobs does not reflect the proposed Project and is incorrect.[145] This is because the City relied on a cumulative long-range traffic analysis for another project (a group of General Plan amendments) and did not release a project-specific traffic study that was being prepared for the proposed uses on the site. However, as recently as September 2017, Department of Transportation staff similarly reiterated that any traffic report must include traffic generation assumptions that are in alignment with the project description.[146] According to the City, "[t]he traffic consultant has been asked to re-evaluate trip generation and apply the rate for standard multi-family units rather than student parking ratios, and the analysis needs to be consistent with the project

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[143] IS/ND, p. 70.
[144] *See, e.g.*, IS/ND, Air Quality, p. 22, Land Use, p. 53, Population and Housing, p. 61.
[145] Attachment 1: Letter from Dan Smith, Smith Engineering & Management, to Tanya Gulesserian, Subject: Fourth and St. John General Plan Amendment and Rezoning (City File NOS: GP16-013 and C17-032), November 11, 2017, p. 1.
[146] Attachment 4: Email from Ned Thomas to Erik Schoennauer, Sept. 14, 2017.

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description."[147] Although the City is improperly allowing the Applicant to proceed with the General Plan amendment and rezoning at this time, it's clear that the City agrees that a traffic analysis is required to analyze the actual project being proposed.

Second, the City's traffic assessment for a different project unjustifiably discounts the land uses allowed by the proposed General Plan amendment, based on the fact that the Federal Aviation Administration reviews the proposed Project. Mr. Smith explains that the City assumed that FAA review would result in only 337 dwelling units and 8,800 square feet of commercial space, less than half the actual allowable proposed use of 728 dwelling units and 1,189,000 square feet of commercial/office. Mr. Smith correctly points out that FAA review is not justification for considering a smaller project for several reasons. One, it is not supported by any evidence. "[T]here are many structures in downtown San Jose that are much closer to the actual flight path for the airport than the Project site and that are much taller than the height assumed for the Project in the analysis."[148] Hence, "the City's assumption to limit the size of the Project in the analysis to less than half the dwelling units that almost certainly could be developed, plus a minor amount of retail commercial, is unreasonable and inconsistent with the good faith effort to disclose impacts that CEQA demands."[149] Also, there is no enforceable condition in the General Plan amendment that a building over 65 feet is prohibited.[150] Hence, the assumption is factually and legally untenable.

Third, Mr. Smith explains that the City failed to evaluate the proposed Project's traffic emissions as compared to the existing setting.[151] The courts have repeatedly held that a project's impacts must be measured against the existing physical conditions in the area, not the conditions that could occur under the current legal standards.[152] The Project site is currently occupied by surface parking

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[147] *Id.* The email notes that noise and air quality also need to be re-evaluated based on the new traffic analysis.
[148] Attachment 1: Letter from Dan Smith, Smith Engineering & Management, to Tanya Gulesserian, Subject: Fourth and St. John General Plan Amendment and Rezoning (City File NOS: GP16-013 and C17-032), November 11, 2017, p. 2.
[149] *Id.*, p. 2-3.
[150] *Id.*, p. 2.
[151] *Id.*, p. 3.
[152] *Environmental Planning and Information Council v. County of El Dorado* ("*EPIC*") (1982) 131 Cal.App.3d 350, 352 [182 Cal.Rptr. 317]; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 186-187, 190-191 [228 Cal.Rptr. 868].

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areas and two single-family homes. Mr. Smith explains that "the IS/ND's transportation analysis (and the greenhouse gas analysis) deduct from albeit already underestimated traffic trips from the proposed Project, project trips associated with 49 units of residential and commercial supporting 10 jobs that are presumed to be developed under the existing General Plan and zoning."[153] In other words, the IS/ND's analysis uses assumptions that deduct phantom dwelling units and employment generated by land uses that could be on the property under the current General Plan, but are not. Mr. Smith explains how this is incorrect: "Since the trip generation for the current parking is attributable to nearby development that will remain and the 2 homes are vacant, there could be no deduction in the analysis of the project for existing uses (or perhaps arguably, deduction for the 2 single family homes could be allowed)." The City is required to assess traffic impacts from the actual project.

Fourth, Mr. Smith identifies a potentially significant impact from traffic that must be evaluated in a project-specific traffic study. According to Mr. Smith, the allowable development under the proposed General Plan amendment "would have sufficient trip generation (over 250 trips) to exceed the trip significance thresholds" of 100 AM or PM peak hour trips requiring a traffic study of the Project under Santa Clara County Congestion Management Plan procedures.[154] Mr. Smith also concludes that the Project may potentially add enough trips to Caltrans-controlled intersections, ramps and mainline facilities to require a traffic impact analysis in accordance with Caltrans own procedures."[155] Mr. Smith concludes that "[s]ubstantial evidence shows that the proposed Project may result in significant traffic impacts."[156]

Finally, the City's own records show that the Project requires mitigation to reduce its potentially significant impacts on traffic. According to the March 2017 Revised NOP for the City's Downtown Strategy 2040 Project, which includes the

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[153] *Id.*, p. 3.
[154] Attachment 1: Letter from Dan Smith, Smith Engineering & Management, to Tanya Gulesserian, Subject: Fourth and St. John General Plan Amendment and Rezoning (City File NOS: GP16-013 and C17-032), November 11, 2017.
[155] *Id.*, p. 4 (citations omitted).
[156] *Id.*, p. 4.

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proposed Project,[157] any future development will result in significant impacts, requiring an EIR:

> As of August 2016, approved and/or constructed residential development in Downtown is now approaching residential capacities identified in Phase 1 (7,500 residential units)... However, the required Phase 1 traffic mitigation from the Strategy 2000 EIR...has not been completed and is not programmed within the City's five-year Traffic Capital Improvement Program (CIP).
>
> Without implementation of the traffic mitigation, development beyond Phase 1 cannot proceed under the current Strategy 2000 EIR (with Addenda) and future projects would need to prepare individual EIRs or other CEQA documents to receive approvals, potentially delaying development that would benefit the fiscal health of the City.[158]

Therefore, substantial evidence supports more than a fair argument that the Project may result in significant traffic impacts requiring preparation of an EIR. The EIR must include a project-specific analysis and identify mitigation to reduce the impacts to less-than-significant. According to the City, the Department of Transportation "desires any future project to contribute to signal modification improvements at the intersection of St. John Street and 4th Street."[159] This mitigation must be identified in the EIR.

Accordingly, the City is required to prepare a factually and legally correct, project-specific traffic analysis and to disclose the potentially significant traffic impacts and required mitigation in an EIR.

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[157] Notice of Preparation of a Draft Environmental Impact Report for the Downtown Strategy 2040 Project (File No. PP15-102), p. 5 and Figure 3, October 6, 2015 and Notice of Preparation of a Draft Environmental Impact Report for the Downtown Strategy 2000 Update (Downtown Strategy 2040), Revised March 2017 at https://www.sanjoseca.gov/DocumentCenter/View/66970 ("Revised NOP").
[158] Revised NOP, p. 4.
[159] Attachment 12: Letter from Kimberly Vacca, City of San Jose, to Erik Schoennauer, Re: File No. GP16-013, A General Plan Amendment request to change the Land Use/Transportation Diagram designation from Residential Neighborhood to Transit Residential on a 0.98 acre site, located on the east side of N 4th street at 120 N. 4th Street, December 2, 2016, p, 4.

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VI. CONCLUSION

The IS/ND fails to meet the informational and public participation requirements of CEQA, because it improperly segments environmental review, fails to analyze potentially significant impacts compared to the existing baseline, fails to evaluate the proposed Project and lacks evidence to support the City's environmental conclusions. Moreover, substantial evidence exists that the Project may result in significant impacts requiring the City to prepare an EIR. Thank you for your consideration of these comments.

Sincerely,

Tanya Gulesserian

Attachments

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Attachment 1

SMITH ENGINEERING & MANAGEMENT

November 11, 2017

Ms. Tanya Gulesserian
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: Fourth and St. John General Plan Amendment and Rezoning (City File NOS.: GP16-013 and C17-032) P17025

Dear Ms. Gulesserian:

Per your request, I reviewed the Initial Study/Negative Declaration (the "IS/ND") for the proposed Fourth and St. John General Plan Amendment and Rezoning Project (the "Project") in San Jose (the "City"). My review is specific to the Transportation and Circulation matters.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and over 49 years professional consulting engineering practice in the traffic and parking field. I have both prepared and reviewed the transportation and circulation sections of CEQA environmental review documents. My professional resume is attached hereto.

My technical comments follow

The IS/ND Analysis Underestimates the Size of the Project That Could Be Developed on the Site With the Proposed General Plan and Zoning Change

The IS/ND Project Description section discloses at page 3 that the proposed zoning and land use changes would allow a project of up to 728 dwelling units or an office/commercial use of up to 1,189,200 square feet. Section J Land Use reiterates these facts at page 53. Yet the Section P Transportation analysis (and the Section G Greenhouse Gas Emissions analysis) evaluate the Project as involving a development increment of only 337 dwelling units and 8,800 square feet of retail commercial (purportedly enough for a jobs increment of 22 workers). Hence, the project examined for the site on the northeast corner of Fourth and St. John streets in the transportation and greenhouse gas analyses is not the Project described in the IS/ND Project Description. The IS/ND must evaluate a

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728 dwelling unit residential project or an office/commercial use of 1,189,000 square feet that is what is allowed under the proposed General Plan Amendment and rezoning. The IS/ND transportation and greenhouse gas analyses fail to do so.

The Land Use section at page 50 explains that the reason for this lower development assumption is that the Project site falls within an area of the Santa Clara County Airport Land Use Commission's adopted Airport Influence Area for Mineta San Jose International Airport. Within such an area, under Federal Air Regulations Part 77, any proposed structure with a height in excess of about 65 feet must be submitted to the Federal Aviation Administration for an air safety review. However, FAA review does not mean that a building over 65 feet tall is prohibited on the site; nor is there a condition in the General Plan amendment that a building over 65 feet tall is prohibited. The fact that the building height would be subject to a FAA air safety review is not a compelling or convincing reason for assuming that the development on the Project Site would be less than half the number of dwelling units allowable under the proposed General Plan Amendment and Zoning change. The fact is, there are many structures in downtown San Jose that are much closer to the actual flight path for Mineta[1] than the Project site and that are much taller than 65 feet. Examples include:

Location	Approx. Height Above Prevailing Ground
N.W. Corner W. Santa Clara & N. Autumn	117 ft.
N.W. Corner W. Santa Clara & N. Alameda Blvd.	164 ft.
S.E. Corner N. Alameda Blvd. & Carlysle	226 ft.
N.W. Corner W. St. James & N. San Pedro	151 ft.
S.E. Corner S. Market & Post	208 ft.
S.W. Corner S. Market & Post	210 ft.
S.W. Corner S. San Pedro & W. Santa Clara	191 ft.
S.E. Corner S. San Pedro & W. Santa Clara	234 ft.

It is obvious that, given the building heights much closer to the flight path, an FAA air safety review of a similarly tall structure on the Project site would be rather pro forma and result in approval of a building with height similar to the taller ones referenced above. It is also obvious that, even with assumption of rather generous average square footage per dwelling unit, a building with 728 dwelling units could be constructed within the height limits of the taller buildings above. Hence, the City's assumption to limit the size of the Project in the analysis to less than half the dwelling units that almost certainly could be developed, plus a minor amount of retail commercial, is unreasonable and

[1] The primary flight path into Mineta is on a compass bearing of 300 degrees slightly to the west of and roughly parallel to SR 87 (Guadalupe Parkway). In inclement weather the primary flight path out of Mineta is on the same line in the reverse direction (120 degrees).

inconsistent with the good faith effort to disclose impacts that CEQA demands. The City must redo the transportation analysis (and the Greenhouse Gas analysis) assuming full development of the allowable residential units or commercial floor area under the General Plan Amendment and zoning change and recirculate the document for public review.

The IS/ND Transportation Analysis Makes the Wrong Assumption Concerning the Existing Environmental Conditions

CEQA Guidelines § 15125(a) states that the ordinary basis for measuring environmental impact is the environment that existed at the time the Notice of Preparation (NOP) was issued, or if there was no NOP, at the time environmental analysis of the project commenced. The IS/ND Chapter 2. Project Description states at page 3, "*The project site is currently occupied by surface parking areas and two vacant single-family homes*". Since the trip generation for the current parking is attributable to nearby development that will remain and the 2 homes are vacant, there should be no deduction in the analysis of the project for existing uses (or perhaps arguably, deduction for the 2 single family homes could be allowed). However, the IS/ND's transportation analysis (and the greenhouse gas analysis) deduct from albeit already underestimated traffic trips from the proposed Project, project trips associated with 49 units of residential and commercial supporting 10 jobs that are presumed to be developed under the existing General Plan and zoning. This is documented at page 8 of IS/ND Appendix D, Table 2, entry for project # 3. While the City may be permitted to conduct this analysis for its own internal purposes, CEQA requires the City to conduct an analysis that compares the proposed Project to the existing setting. The City's reliance on the deduction for nonexistent but permissible uses analysis alone is not consistent with CEQA Guidelines § 15125(a). At a minimum, the City is required to analyze potentially significant traffic impacts associated with the General Plan Amendment and Rezoning compared to the existing setting. In other words, the City is required to analyze potentially significant traffic impacts associated with 728 dwelling unit and commercial to support 32 workers use that is permissible under the proposed General Plan Amendment and zoning without deduction for the uses and trips that might have been permissible under the existing General Plan and zoning but have never been developed.

The IS/ND Fails To Consider Whether the Full Project Would Require a Site-specific Analysis Under City Procedures or Exceed Trip Thresholds Requiring Analysis Under Santa Clara County CMP or Caltrans Procedures

Had the IS/ND evaluated the entire Project permissible under the proposed General Plan Amendment and zoning, instead of evaluating a significantly scaled down, hypothetical project and deducting nonexistent but permissible

development under the existing General Plan and zoning, it likely would have found that the Project would exceed the 250 trip threshold in the PM peak hour that would require a site specific analysis under City procedures.

Furthermore, the full permissible development under the proposed General Plan Amendment and zoning changes would have sufficient trip generation (over 250 trips) to exceed trip significance thresholds requiring a traffic study of the Project under Santa Clara County Congestion Management Plan procedures (only 100 AM or PM peak hour trips; even the undersized project for this site reviewed in the IS/ND transportation study exceeds that threshold) and potentially add enough trips to Caltrans-controlled intersections, ramps and mainline facilities to require a traffic impact analysis in accordance with Caltrans own procedures[2].

Conclusion

This completes my current comments on the proposed Fourth and St. John General Plan Amendment and Rezoning Project. The IS/ND fails to evaluate the full Project that could be developed under the proposed General Plan Amendment and rezoning and inappropriately discounts allowable uses under the existing General Plan and zoning without conducting any comparison with existing environmental conditions. Substantial evidence shows that the proposed Project may result in significant traffic impacts. The entire analysis should be redone to reflect the full development permissible under the proposed Plan and zoning and recirculated for review.

Sincerely,

Smith Engineering & Management
A California Corporation

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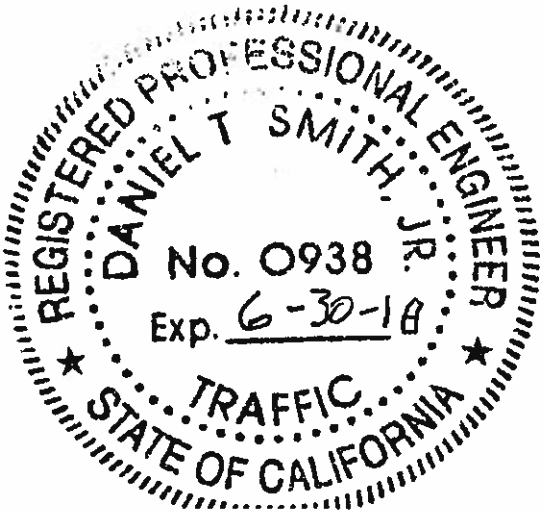
[2] Caltrans *Guide for Preparation of Traffic Impact Studies* states as follows: "The following criterion is a starting point in determining when a TIS is needed. When a project:

1. Generates over 100 peak hour trips assigned to a State highway facility
2. Generates 50 to 100 peak hour trips assigned to a State highway facility – and, affected State highway facilities are experiencing noticeable delay; approaching unstable traffic flow conditions (LOS "C" or "D").
3. Generates 1 to 49 peak hour trips assigned to a State highway facility – the following are examples that may require a full TIS or some lesser analysis[4]:

a. Affected State highway facilities experiencing significant delay; unstable or forced traffic flow conditions (LOS "E" or "F").
b. The potential risk for a traffic incident is significantly increased (i.e., congestion related collisions, non-standard sight distance considerations, increase in traffic conflict points, etc.).
c. Change in local circulation networks that impact a State highway facility (i.e., direct access to State highway facility, a non-standard highway geometric design, etc.)."

Caltrans *Guide for Preparation of Traffic Impact Studies* is available at www.dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa_files/tisguide.pdf



Daniel T. Smith Jr., P.E.
President

SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr.
President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil)
California No. 938 (Traffic)
Nevada No. 7969 (Civil)
Washington No. 29337 (Civil)
Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.). Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin, freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

Transportation Centers. Project manager for Daly City Intermodal Study which developed a $7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard et al., U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

Attachment 2

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405
Matt Hagemann, P.G, C.Hg.
(949) 887-9013
mhagemann@swape.com

November 13, 2017

Tanya A. Gulesserian
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080

Subject: Comments on the Fourth and St. John General Plan Amendment & Rezoning Project

Dear Ms. Gulesserian:

We have reviewed the Initial Study/Mitigated Negative Declaration ("IS/MND") for Fourth and St. John General Plan Amendment & Rezoning Project ("Project") located in the City of San Jose ("City"). The Project proposes a General Plan Amendment to include the project site within the Downtown Growth Area and to change the General Plan Land Use Designation from Residential Neighborhood and Transit Residential to Downtown. The project also proposes a conventional rezoning of the site from CG Commercial General Zoning District to the Downtown Primary Commercial Zoning District. The proposed land use designation change to *Downtown* and the expansion of the Downtown Growth Area boundary would allow up to 728 dwelling units or up to 1,189,200 square feet of commercial/office uses. The Project site is currently developed with two residences and vacant lots used for parking.

Our review concludes that the IS/MND fails to adequately evaluate the Project's Air Quality, Geology and Soil, and Greenhouse Gas (GHG) impacts. A project-specific Draft Environmental Impact Report (DEIR) should be prepared to adequately address these issues and incorporate additional mitigation.

Mitigation for Known Soil and Groundwater Contamination is Improperly Deferred

Residual petroleum-related contamination is likely present in soil and groundwater beneath the Project site. The IS only generally refers to the contamination and provides no specific measure to address the contaminants though further testing or cleanup. A DEIR is necessary to disclose current levels of contamination and to include mitigation measures to cleanup contaminants, if warranted, to protect public health.

Based on a 2017 Phase I ESA, the IS states (p. 42):

> Based on the government and other available records, the project site was previously occupied by residential development and a gas service station. A gas station occupied the corner of

Fourth and St. John Streets (100 N. Fourth Street) between about 1949 and 1969. This site was a recorded Leaking Underground Storage Tank (LUST) case. The case was closed by the County of Santa Clara as documented in a letter dated March 3, 2006 from the Department of Environmental Health, Environmental Resources Agency. This represents a historic recognized environmental condition.

The 2017 Phase I ESA documents that contaminants remained at the Project site at the time of the closure in 2006 including soil "that contains 56 parts per million (ppm) total Petroleum Hydrocarbons as Gasoline TPHg and 19 ppm TPH as Diesel (TPHd). Shallow groundwater contains 1,700 parts per billion (ppb) TPHg, 31ppb Benzene, 2.5 ppb Toluene, 8.3 ppb, Ethylbenzene, 2.7 ppb Total Xylenes, and 1.1 ppb 1,2-dichloroethane" (Phase I, p. 17).

The IS did not address the known residual contamination at the site other than to misleadingly state that "the project site could contain hazardous materials in soils related to the previous gas station." (IS, p. 44). In fact, the Project site at the time of closure did contain hazardous materials in soil and groundwater that could pose risks to construction workers, future residents and neighboring residents. Benzene in groundwater at 31 ppb is in excess of the San Francisco Bay Regional Water Quality Board Environmental Screening Level of 1 ppb in shallow groundwater for a vapor intrusion risk under a residential scenario.[1] Vapor intrusion was not contemplated in the IS and no mitigation that would address the benzene-contaminated shallow groundwater was included in the IS.

Benzene is a cancer-causing chemical according to the US EPA.[2] Future residents could be exposed to benzene through the vapor intrusion pathway and construction workers could be exposed to benzene through direct contact with contaminated groundwater if the water table is exposed during construction. Groundwater is located at a depth of about 14 feet below ground surface (IS, p. 46). Development of the Project site would likely involve excavation that could intercept the shallow water table.

A DEIR is necessary to include a new investigation of contaminants in shallow groundwater and soil to determine current levels of hazardous materials and the health risks they may pose to future residents and construction workers. Mitigation that is identified in the IS (a site management plan) is wholly insufficient to address the contamination that is known to have existed in 2006. A site management plan has no regulatory standards and would only be implemented upon Project development and thus improperly defers mitigation to address contamination.

Dewatering Requirements are Not Considered

Additionally, dewatering would likely be necessary for Project construction if the water table were to be exposed during excavation. No consideration at all is given to dewatering in the IS. Handling contaminated groundwater that is discharged to municipal storm drains or the sewer is subject to requirements under Regional Water Board General Board Order No. R2-2012-0012/NPDES No.

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[1] https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/ESL/ESL%20Workbook_ESLs_Interim%20Final_22Feb16_Rev3_PDF.pdf, Table GW-3.

[2] https://www.atsdr.cdc.gov/toxfaqs/tf.asp?id=38&tid=14

CAG912002. This order requires testing of contaminated groundwater to determine if treatment is necessary prior to discharge. Effluent limitations for benzene in extracted groundwater prior to discharge in a "drinking water area" is 1 ppb and 5 ppb for "discharge to other surface water areas."[3] These effluent limitations are well below know levels of groundwater contamination in 2006 when benzene was documented in shallow groundwater at 31 ppb (Phase IESA, p. 17).

A DEIR is necessary to document current levels of benzene and other contaminants in groundwater and to identify regulatory requirements that would apply to discharge. If contaminants exceed the noted effluent limits, a mitigation measure that would specify treatment for the contaminants should be included in the DEIR.

Air Quality

Failure to Evaluate Reasonably Foreseeable Potentially Significant Impacts

The California Environmental Quality Act (CEQA) Guidelines state that a proposed Project is subject to CEQA, and therefore requires that the Project's potential environmental impacts be evaluated, if the Project will result in a direct or reasonably foreseeable indirect physical change in the environment.[4] As previously stated, the proposed Project would allow up to 728 residential units, or approximately 1,189,200 square feet of commercial/office uses to be built on the Project site, which is currently developed with two residences and vacant parking lots. Thus, it is evidence that the proposed Project will result in a direct physical change on the Project site, and as such, the potential criteria air pollutant emissions that will be generated as a result of construction and operation of the 728 residential units should have been evaluated in the IS/MND in order to determine if a significant air quality impact would occur. Without the findings of such analysis, the Project's impact on local and regional air quality is entirely unknown and unaddressed.

According to guidance from the Bay Area Air Quality Management District (BAAQMD), which has jurisdiction over the proposed Project, general plans often require preparation of an Environmental Impact Report (EIR) due to the significant criteria air pollutant emissions that are normally generated by these types of projects. Furthermore, BAAQMD guidelines state,

> "Due to the [San Francisco Bay Area Air Basin] SFBAAB's nonattainment status for ozone and PM, and the cumulative impacts of growth on air quality, these plans almost always have significant, unavoidable adverse air quality impacts. CEQA requires the Lead Agency to evaluate individual as well as cumulative impacts of general plans, and all feasible mitigation measures must be incorporated within the proposed plan to reduce significant air quality impacts".[5]

Therefore, the potential criteria air pollutant emissions that would be generated by construction and operation of the proposed Project must be adequately evaluated prior to certification of the Project, especially given the findings of analyses conducted for similar projects. Without a proper analysis of the

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[3] https://www.waterboards.ca.gov/rwqcb2/board_decisions/adopted_orders/2012/R2-2012-0012.pdf, p. 9.
[4] http://resources.ca.gov/ceqa/guidelines/art5.html
[5] "CEQA Guidelines." BAAQMD, May 2017, *available at*: http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 9-1.

potential emissions that would be emitted during construction and operational activity, the Project could result in potentially unmitigated significant impacts that could adversely affect the health of nearby residents. Until an analysis is conducted that evaluates the potential criteria air pollutant emissions that would be generated as a result of construction and operational activity on the Project site, the General Plan Amendment should not be approved.

Greenhouse Gas

Failure to Adequately Evaluate Greenhouse Gas Impact

The IS/MND estimates the Project's GHG emissions and concludes that because emissions would be less than the BAAQMD's per-capita emissions threshold "future development of the project site would have a less-than-significant impact on GHG emissions" (p. 39-40). This conclusion, however, is incorrect, as the IS/MND fails to evaluate the proposed Project's GHG emissions to the existing GHG emissions that are currently being generated on the Project site as a result of the existing land uses, as required by CEQA. As a result, we find the IS/MND's conclusion of a less than significant GHG impact to be unsubstantiated and incorrect, and should not be relied upon to determine Project significance.

According to BAAQMD guidance, in order to determine the significance of a Project's GHG impact, the Project's emissions must be evaluated by determining compliance with one of the three following criteria: 1). if the Project is consistent with an adopted GHG Reduction Strategy; 2). if operational emissions do not exceed a "bright-line" threshold of 1,100 metric tons of carbon dioxide equivalents per year (MT CO_2e/yr); or 3). if annual emissions do not exceed the efficiency threshold of 4.6 MT per service population per year (MT CO_2e/sp/yr).[6] According to the Memo, the Project's GHG emissions were modeled by Illingworth & Rodkin, Inc., using the California Emission Estimator Model ("CalEEMod"). The Memo states that the Project's emissions were modeled by taking the difference in the number of residential units between the proposed Project and what is currently allowed under the existing General Plan. The Memo states,

> "To assess GHG emissions, the CalEEMod model was used to assess a build-out scenario that was based on the development assumptions used for the long-range GPA cumulative traffic analysis, which assumed an average development density on the project site of 337 units and commercial square footage to support 22 new jobs, after accounting for the dwelling units and employment generated by the existing General Plan land use designations on the site. Inputs to the model included the following: 337 dwelling units entered as "Apartment High Rise," 8,800 square feet of retail as "Strip Mall," and 400 spaces as "Enclosed Parking with Elevator." Model default square footages were used. The square footage associated with 22 workers was computed assuming that there would be 2.5 employees per 1,000 square feet of commercial spaces or 22 employees divided by 2.5. The number of parking spaces conservatory assumed 1.5 spaces per dwelling units and 95 spaces for the commercial use" (Memo, pp. 2).

[6] *Ibid*, p. 2-4.

Using this methodology, the Memo estimates that the proposed Project's emissions in 2020 would be approximately 2,474 metric tons of carbon dioxide equivalents per year (MT CO_2e/yr) (Memo, pp. 2). Using a service population value of 1,104 people, the Memo estimates that the Project's per-capita emissions would be 2.24 MT CO_2e/yr, which is below the BAAQMD's 2020 per-capita threshold of 4.6 MT CO_2e/yr and "likely to be below any 2030 threshold that may be identified based on current AB 32 scoping plan targets" (pp. 2). As a result, the Memo concludes that the Project's GHG impact would be less than significant (pp. 2). The methodology used to evaluate the Project's GHG impact, however, is incorrect and inconsistent with BAAQMD guidance. A such, we find the conclusions made within the Project's GHG analysis to be incorrect and unreliable and should not be relied upon to determine Project significance.

According to BAAQMD guidance, a project's emissions should be evaluated by comparing existing conditions, otherwise known as business-as-usual (BAU), to the conditions under the proposed project. The IS/MND's GHG analysis, as described in the Memo, demonstrates that the IS/MND fails to model the Project's emissions under the BAU scenario, i.e., the existing emissions generated on the Project site by the parking lot and two residences. By failing to model the Project's emissions resulting from the BAU scenario, the Project's GHG impact is misrepresented and underestimated and violates requirements set forth by CEQA. Until a proper GHG analysis is conducted that accurately estimates the existing conditions under the current General Plan and compares these emissions to the emissions generated by the proposed Project, the Project should not be approved.

Sincerely,

Matt Hagemann, P.G., C.Hg.

Hadley Nolan

Tel: (949) 887-9013
Email: mhagemann@swape.com

Matthew F. Hagemann, P.G., C.Hg., QSD, QSP

Geologic and Hydrogeologic Characterization
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
Industrial Stormwater Compliance
CEQA Review

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.
B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist
California Certified Hydrogeologist
Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2104, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

With Komex H2O Science Inc., Matt's duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, Oxygenates in Water: Critical Information and Research Needs.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

principles into the policy-making process.
- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Coloradao.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal repesentatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

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Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

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Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.

HADLEY KATHRYN NOLAN

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

SOIL WATER AIR PROTECTION ENTERPRISE
2656 29th Street, Suite 201
Santa Monica, California 90405
Mobile: (678) 551-0836
Office: (310) 452-5555
Fax: (310) 452-5550
Email: hadley@swape.com

EDUCATION

UNIVERSITY OF CALIFORNIA, LOS ANGELES **B.S. ENVIRONMENTAL SCIENCES & ENVIRONMENTAL SYSTEMS AND SOCIETY** *JUNE 2016*

PROJECT EXPERIENCE

SOIL WATER AIR PROTECTION ENTERPRISE ***SANTA MONICA, CA***

AIR QUALITY SPECIALIST

SENIOR PROJECT ANALYST: CEQA ANALYSIS & MODELING

- Modeled construction and operational activities for proposed land use projects using CalEEMod to quantify criteria air pollutant and greenhouse gas (GHG) emissions.
- Organized presentations containing figures and tables that compare results of criteria air pollutant analyses to thresholds.
- Quantified ambient air concentrations at sensitive receptor locations using AERSCREEN, a U.S. EPA recommended screening level dispersion model.
- Conducted construction and operational health risk assessments for residential, worker, and school children sensitive receptors.
- Prepared reports that discuss adequacy of air quality and health risk analyses conducted for proposed land use developments subject to CEQA review by verifying compliance with local, state, and regional regulations.

SENIOR PROJECT ANALYST: GREENHOUSE GAS MODELING AND DETERMINATION OF SIGNIFICANCE

- Evaluated environmental impact reports for proposed projects to identify discrepancies with the methods used to quantify and assess GHG impacts.
- Quantified GHG emissions for proposed projects using CalEEMod to produce reports, tables, and figures that compare emissions to applicable CEQA thresholds and reduction targets.
- Determined compliance of proposed land use developments with AB 32 GHG reduction targets, with GHG significance thresholds recommended by Air Quality Management Districts in California, and with guidelines set forth by CEQA.

PROJECT ANALYST: ASSESSMENT OF AIR QUALITY IMPACTS FROM PROPOSED DIRECT TRANSFER FACILITY

- Assessed air quality impacts resulting from implementation of a proposed Collection Service Agreement for Exclusive Residential and Commercial Garbage, Recyclable Materials, and Organic Waste Collection Services for a community.
- Organized tables and maps to demonstrate potential air quality impacts resulting from proposed hauling trip routes.
- Conducted air quality analyses that compared quantified criteria air pollutant emissions released during construction of direct transfer facility to the Bay Area Air Quality Management District's (BAAQMD) significance thresholds.
- Prepared final analytical report to demonstrate local and regional air quality impacts, as well as GHG impacts.

PROJECT ANALYST: EXPOSURE ASSESSMENT OF LEAD PRODUCTS FOR PROPOSITION 65 COMPLIANCE DETERMINATION

- Calculated human exposure and lifetime health risk for over 300 lead products undergoing Proposition 65 compliance review.
- Compiled and analyzed laboratory testing data and produced tables, charts, and graphs to exhibit emission levels.
- Compared finalized testing data to Proposition 65 Maximum Allowable Dose Levels (MADLs) to determine level of compliance.
- Prepared final analytical lead exposure Certificate of Merit (COM) reports and organized supporting data for use in environmental enforcement statute Proposition 65 cases.

ACCOMPLISHMENTS

- **Academic Honoree,** Dean's List, University of California, Los Angeles ***MAR 2013, MAR 2014, JAN 2015, JAN 2016***

Attachment 3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
200 E. Santa Clara Street, San Jose, CA 95113
(408) 535-3555

UNIVERSAL PLANNING APPLICATION

FILE NUMBER: C17-032 / H17-042

RBN: 2017 028685 / 2017 028695

TO BE COMPLETED BY APPLICANT

APN: 467-20-019, 020, 021, 022, 023, 040

PROPERTY ADDRESS/LOCATION: 100-152 N. Fourth Street

PLEASE CHECK ALL THAT APPLY:

- ☐ Annexation
- ☐ Conditional Use Permit/Amendment
- ☐ General Plan Amendment (From _____ to _____)
- ☐ Planned Development Permit/Amendment
- ☐ Planned Development (PD) Rezoning
- ☑ Rezoning (Non-PD) (From CG to Downtown Commercial)
- ☑ Site Development Permit/Amendment
- ☐ Special Use Permit/Amendment
- ☐ Variance/Exception (code section _____)

Note: For other application forms for permits not listed above such as Permit Adjustments, Sign Permits, Tree Removal Permits, Preliminary Review, etc., please see website: http://www.sanjoseca.gov/index.aspx?NID=3839

PROJECT USE:

☑ Residential ☑ Commercial ☐ Industrial ☐ Mixed Use

PROJECT PROPOSAL AND DESCRIPTION: *If the project includes multiple dwelling units, you may use GreenTRIP Connect to calculate savings in money and reductions in greenhouse gas emissions through implementing various strategies. Link to http://connect.greentrip.org, or contact TransForm at (510) 740-3150*

8409 SF Commercial & 400 units student housing in a CND 26-story building w/ one-level underground parking

PLEASE INDICATE IF PROPOSAL INVOLVES ANY OF THE FOLLOWING: (see link to supplemental form)

- ☐ Building Mounted Wireless Communication Antenna
- ☐ Changes to Legal Non-Conforming Use/Structure
- ☐ Child Care Center
- ☐ Demolition of Buildings
- ☐ Development Within 100 feet of Streambed
- ☐ Drive-Through Use
- ☐ Electrical Power Generator
- ☐ Freestanding Wireless Communication Antenna
- ☐ Gas Station Conversion
- ☐ House Conversion to Non-Residential Use
- ☐ Late Night Use (Midnight – 6 a.m.) until _____
- ☐ Off-Sale of Alcohol
- ☐ Off-Site or Alternate Parking Arrangement
- ☐ On-Sale of alcohol (Drinking Establishment)
- ☐ Outdoor Uses
- ☐ Removal of Trees (How many? _____)
- ☐ Residential Care/Service Facility
- ☐ Slope Greater than 5%
- ☐ Temporary Trailer (other than construction office)
- ☐ Wireless Communication Facility

Note: For other applications forms for permits not listed above such as Single-Family House Permits, Administrative Permits, Permit Adjustments, Sign Permits, Tree Removal Permits, Preliminary Review, etc., please see website: http://www.sanjoseca.gov/index.aspx?nid=3839

PROJECT AND SITE DATA:

Site Acreage:	Gross: 0.98	Net: 0.98

This application is accepted by APPOINTMENT ONLY. To arrange an appointment, please visit the Planning Division's website: http://www.sanjoseca.gov/index.aspx?nid=1725. For assistance, call (408) 535-3555.

PROJECT AND SITE DATA (continue):		
Residential Units:	Existing: 2	Proposed: 400
Commercial Square Footage:	Existing: 0 SF	Proposed: 8409 SF
Industrial Square Footage:	Existing:	Proposed:

CONTACT INFORMATION

Applicant Name: Erik Schoenmayer — Email: es@stanfordalumni.org
Mailing Address: 90 Hawthorne Way, San Jose, CA 95110 — Telephone (408) 947-7774

Property Owner's Name: RPRO 152N3, LLC — Email:
Mailing Address: 152 N. 3rd St, #900, San Jose, CA 95112 — Telephone (408) 892-1896

Engineer's Name: HMH — Email:
Mailing Address: 1570 Oakland Rd, San Jose, CA 95131 — Telephone (408) ~~892-1896~~ 205-2175

Architect's Name: LPMD Architects — Email: Anthony.SL.Ho@gmail.com
Mailing Address: 1286 Kifer Rd. Ste 206, Sunnyvale, CA 94086 — Telephone (408) 859-2845

Contact Person's Name: Erik Schoenmayer — Email:
Mailing Address: — Telephone ( )

FOR OFFICE USE ONLY:

Fees Collected: _____ By: _____ (Staff)

Project Manager: _____

Zoning: _____ General Plan: _____ Council District: _____

Previous Planning Permit(s): _____

Staff Comments:

This application is accepted by APPOINTMENT ONLY. To arrange an appointment, please visit the Planning Division's website: http://www.sanjoseca.gov/index.aspx?nid=1725. For assistance, call (408) 535-3555.

AFFIDAVIT OF OWNERSHIP

THE UNDERSIGNED HEREBY DECLARE THAT THE FOLLOWING IS TRUE AND CORRECT:

1. The undersigned are all the owners of all the property described in Exhibit A – Legal Description of Subject Property, or tenants of the entire subject site with a recorded lease and a term remaining of at least five years.

2. The development plans a part of this application show the exact location, size, and use of all easements on the subject site and all easement on surrounding properties benefiting the subject property.

3. If there are any existing active or deactivated water wells on your property, they must be shown on your plans. The property which is the subject of this application:

   ☐ does contain existing active or deactivated water wells and they are shown on the plans accompanying this application

   ☑ does not contain existing active or deactivated water wells.

4. In conformance with Section 65962.5 of the California Government Code, and as owner(s) of the property referenced below, I(we) hereby certify that I(we) have reviewed the list of Hazardous Waste and Substance Sites within the City of San Jose, as compiled by the State Office of Planning and Research.
   The property which is the subject of the above-referenced application is ☐ is not ☑ included on said list.

   If included on the List, the listed item reads as follows:

   _____

   _____

   _____

THE UNDERSIGNED HEREBY DECLARE THAT THEY UNDERSTAND THE FOLLOWING APPLIES TO THEIR PROJECT:

5. **Notice to Applicants regarding effect of Wastewater treatment capacity on land development approvals.** Part 2.75 of Chapter 15.12 of the San Jose Municipal Codes requires that an applicant acknowledge the effect of Wastewater treatment capacity on Land development approvals at the time of application. As owner(s) of the property subject to this development application, I(we) hereby acknowledge the requirements of the Municipal Code, as stated below, and understand that these requirements will apply to the development permit for which I(we) am(are) applying.

   Pursuant to Part 2.75 of Chapter 15.12 of the San Jose Municipal Code, no vested right to a building permit shall accrue as the result of the granting of any land development approvals and applications when and if the City Manager makes a determination that the cumulative sewage treatment demand on San Jose-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of the San Jose-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approving authority.

RPR0152 N3, LLC PRINT NAME OF PROPERTY OWNER	DAYTIME TELEPHONE: (408) 892-1896	FAX TELEPHONE: ( )	
152 N 3rd St. #900 ADDRESS	CITY San Jose	STATE CA	ZIP CODE 95112
NAME OF FIRM, IF APPLICABLE RPRO 152 N3, LLC	TITLE OR OTHER OFFICIAL CAPACITY*		
SIGNATURE (PRINT NAME IF DIFFERENT THAN THE ABOVE PROPERTY OWNER) BRENT LEE		DATE 7/27/17	

*Please state if you are a partner, president, vice-president, etc.....

IF THERE ARE ADDITIONAL PROPERTY OWNERS, PLEASE USE THE FOLLOWING PAGE TO PROVIDE THE ABOVE INFORMATION.

This application is accepted by APPOINTMENT ONLY. To arrange an appointment, please visit the Planning Division's website: http://www.sanjoseca.gov/index.aspx?nid=1725. For assistance, call (408) 535-3555.

INDEMNIFICATION AGREEMENT
FOR DEVELOPMENT APPLICATIONS

Applicant submitted an application to the City of San José Planning Division on July 31, 2017 for the following development approval(s):
— Site Development Permit
— Tentative Map
— Rezoning
(the "Project"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Applicant hereby expressly agrees in connection with the processing of Applicant's Project application(s) to each and every one of the following terms and conditions:

1. Applicant agrees, as part of and in connection with each and any of the application(s), to defend, indemnify, and hold harmless the City of San José ("City") and its officers, contractors, consultants, attorneys, employees and agents from any and all claim(s), action(s), or proceeding(s) (collectively referred to as "proceeding") brought against City or its officers, contractors, consultants, attorneys, employees, or agents to challenge, attack, set aside, void, or annul:

   a. Any approvals issued in connection with any of the above described application(s) by City; and/or
   b. Any action taken to provide related environmental clearance under the California Environmental Quality Act of 1970, as amended ("CEQA") by City's advisory agencies, boards or commissions; appeals boards or commissions; Planning Commission, or City Council.

Applicant's indemnification is intended to include, but not be limited to, damages, fees and/or costs awarded against or incurred by City, if any, and costs of suit, claim or litigation, including without limitation attorneys' fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by Applicant, City, and/or parties initiating or involved in such proceeding.

2. Applicant agrees to indemnify City for all of City's costs, fees, and damages incurred in enforcing the indemnification provisions of this Agreement.

3. Applicant agrees to defend, indemnify and hold harmless City, its officers, contractors, consultants, attorneys, employees and agents from and for all costs and fees incurred in additional investigation or study of, or for supplementing, redrafting, revising, or amending, any document (such as an environmental impact report, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if Applicant desires to pursue such City approvals and/or clearances, after initiation of the proceeding and that are conditioned on the approval of these documents.

4. In the event that Applicant is required to defend City in connection with such proceeding, City shall have and retain the right to approve:

   a. The counsel to so defend City; and
   b. All significant decisions concerning the manner in which the defense is conducted; and
   c. Any and all settlements, which approval shall not be unreasonably withheld.

City shall also have and retain the right to not participate in the defense, except that City agrees to reasonably cooperate with Applicant in the defense of the proceeding. If City chooses to have counsel of its own defend any proceeding where Applicant has already retained counsel to defend City in such matters, the fees and expenses of the additional counsel selected by City shall be paid by City. Notwithstanding the immediately preceding sentence, if City's Attorney's Office participates in the defense, all City Attorney fees and costs shall be paid by Applicant.

5. Applicant's defense and indemnification of City set forth herein shall remain in full force and effect throughout all stages of litigation including any and all appeals of any lower court judgments rendered in the proceeding.

After review and consideration of all of the foregoing terms and conditions, Applicant, by its signature below, hereby agrees to be bound by and to fully and timely comply with all of the foregoing terms and conditions.

APPLICANT:

By: [signature] (Signature) Date: 7/27/17

BRENT LEE (Print) Its: Managing Member (Title, if any)

RPR0152N3, LLC

Attachment 4

Fwd: NO NEW TIA & MEETING REQUEST: 4th St. and St. John Housing Project

Nusbaum, Jenny

Fri 9/15/2017 8:32 AM

To Chundur, Dipa <Dipa.Chundur@sanjoseca.gov>; Walsh, Susan <Susan.Walsh@sanjoseca.gov>; Hart, Jared <Jared.Hart@sanjoseca.gov>; Vacca, Kimberly <kimberly.vacca@sanjoseca.gov>;

-- Jenny

Begin forwarded message:

From: Erik Schoennauer <es@stanfordalumni.org>
Date: September 15, 2017 at 8:23:42 AM PDT
To: "Thomas, Ned" <ned.thomas@sanjoseca.gov>
Cc: "Hughey, Rosalynn" <Rosalynn.Hughey@sanjoseca.gov>, "McHarris, Steve" <Steve.McHarris@sanjoseca.gov>, "Mack, Karen" <Karen.Mack@sanjoseca.gov>, "Nusbaum, Jenny" <Jenny.Nusbaum@sanjoseca.gov>
Subject: NO NEW TIA & MEETING REQUEST: 4th St. and St. John Housing Project

Hello, Ned.

We would like to meet with Staff at the soonest possible moment. We have finished analyzing Planning's Comment Letter and it is very concerning, inaccurate and unhelpful.

First of all, our project is rental housing designed to accommodate students. Just like "The Graduate" at 2nd & San Carlos. To appease Staff, we are revising our internal floor plans and reducing our parking count to more consistently reflect the student housing style of the units. There is no need for a new TIA.

Second, we don't understand Staff's comment that "student housing" is not a permitted use in the DC zoning district. You just approved The Graduate's Site Permit on March 22nd in the DC zoning district. Our project is the same use and design concept as The Graduate. Rental housing designed for students is just another category of housing.

Third, Staff's position in the letter against highrise development is confusing. If Staff didn't support highrise at this location, you should have told us months ago, when we all met about the process and timeline to move forward. What is the point of the Department's idea to expand the Downtown Boundary at this location, if you weren't going to support Downtown-scale development?

And, the Staff Comment letter is inaccurate in its characterization of the adjacent properties on 5th Street as "single-family". Just about all (if not all) of the properties on the west side of 5th Street are now multi-unit structures, including the planned 4-story, 28-unit building planned on the vacant lot behind our property.

Let's please meet at the soonest possible moment to talk through all of these issues and stay on track for our timeline.

Thanks much,
ERIK

On Thu, Sep 14, 2017 at 8:06 PM, Thomas, Ned <ned.thomas@sanjoseca.gov> wrote:

Hello Erik:

Staff from Planning and Transportation met internally this afternoon to coordinate our on-going review of the proposed high-rise housing project at 4th and St. John Streets in downtown San Jose. The project manager, Rick Smeaton, will send you an email tomorrow or early next week with a bulleted list of items needed to continue our review of this project.

One of the items discussed in the meeting was the need for revised traffic analysis, and if my understanding is correct, DOT staff has already spoken with the traffic consultant. This email is intended as a heads-up to you about what is needed and why.

DOT staff completed one full review of the traffic report submitted with your application and concluded that the trip generation assumptions are not in alignment with the project description. As noted in the 30-day letter from Planning, "student housing" is not an identified use in the San Jose zoning ordinance, and dormitories occupied exclusively by students are not a permitted or a special use in the DC zoning district. Thus, the traffic consultant has been asked to re-evaluate trip generation and apply the rate for standard multi-family units rather than a student population. We note that parking analysis for the proposed project reflects standard multi-family units rather than student parking ratios, and the analysis needs to be consistent with the project description. Noise and air quality will also need to re-evaluated based on the new traffic analysis.

We are working under extremely tight timelines to complete the CEQA review for this project within the 2017 General Plan amendment cycle. We appreciate your continue cooperation and will continue to coordinate closely with the CEQA consultants.

Thank you,

Ned

Ned Thomas, AICP

Division Manager – CEQA & Development Review

Department of Planning, Building, and Code Enforcement

City of San Jose | 200 East Santa Clara Street

San Jose, CA 95113

Phone: 408.793.5302

Attachment 5

Re: H17-042 (4th & St John) Timeline and Resubmittals

Anthony Ho <anthonyslho@gmail.com>

Sat 10/14/2017 4:40 AM

Deleted Items

To: Thomas, Ned <ned.thomas@sanjoseca.gov>;

Cc: Erik Schoennauer <es@stanfordalumni.org>; Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Anthony Ho <Anthony@lpmd-architects.com>; Brent Lee <BrentLee95070@gmail.com>; Ann Marie LaRocco Joel <annmarie@annmariejoel.com>; McHarris, Steve <Steve.McHarris@sanjoseca.gov>; Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>; Smeaton, Rick <rick.smeaton@sanjoseca.gov>; Farmer, Stefanie <stefanie.farmer@sanjoseca.gov>; Lipoma, Emily <emily.lipoma@sanjoseca.gov>; Walsh, Susan <Susan.Walsh@sanjoseca.gov>; Chundur, Dipa <Dipa.Chundur@sanjoseca.gov>; Hart, Jared <Jared.Hart@sanjoseca.gov>; Vacca, Kimberly <kimberly.vacca@sanjoseca.gov>; Mack, Karen <Karen.Mack@sanjoseca.gov>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Weerakoon, Ru <Ru.Weerakoon@sanjoseca.gov>;

Yes I noticed that, Ned. Thank you for your clarification. Have a nice weekend.

Regards,
Anthony Ho
Principal

LPMD Architects

1288 Kifer Rd. Suite 206
Sunnyvale, CA 94086
Tel: (408) 859-2845
Anthony@LPMD-architects.com
http://www.LPMD-architects.com

On Sat, Oct 14, 2017 at 4:38 AM, Thomas, Ned <ned.thomas@sanjoseca.gov> wrote:

All:

An important correction is needed in the last paragraph of my recent email. The needed language was inadvertently deleted as I was editing the email. My apologies for any confusion. That last paragraph should read:

You stated that you will get back to us on the offer to move forward with the GP Amendment only. If you decide to move forward with the GP Amendment only, the CEQA consultant will need to prepare and submit a revised Initial Study/Negative Declaration with all references to a specific project on the subject site stripped from the document. The revised document will need to be submitted to the Planning Department by COB on Tuesday, October 17th. Please do not delay. The 20-day public comment period needs to start no later than October 24th so that staff will have adequate time at the end of the review period to prepare responses to comments received and circulate them to the Planning Commission. This is an unusually tight timeline, but again, we are willing to work with you if you agree to submit the information we need in a timely manner.

There is also a minor typo in the fifth paragraph. It meaning is still there, but the correction make is more clear, as follows:

As you well know, the Downtown Strategy Plan Update and EIR was delayed to address, among other issues, changes to the scope of the project from the General Plan Four-Year Review and a desire to align the EIR with the City's forthcoming transition to a Vehicle Miles Traveled (VMT) Transportation Policy. Replacement of the current LOS Policy with VMT will likely avoid the imposition of a traffic impact fees on new private development in the Downtown. The City's goal is to prepare a comprehensive, effective, and up-to-date Downtown Strategy Update and EIR. You chose to move forward on your own, based on the needs of your project and a hopeful desire to take advantage of a City subsidy for new development in the downtown. These needs and objectives created the current time dilemma for your project because they are not aligned with the City's goals for the Downtown EIR, as stated.

This is what happens when you compose email messages late at night. I wanted to make sure to get this message to Erik in response to his email comments.

Thank you,

Ned

Ned Thomas, AICP

Division Manager – CEQA & Development Review | PBCE

Phone: 408.793.5302

From: Thomas, Ned
Sent: Saturday, October 14, 2017 12:55 AM
To: 'Erik Schoennauer' <es@stanfordalumni.org>
Cc: Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Anthony Ho <Anthony@lpmd-architects.com>; Brent Lee <BrentLee95070@gmail.com>; Ann Marie LaRocco Joel <annmarie@annmariejoel.com>; McHarris, Steve <Steve.McHarris@sanjoseca.gov>; Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>; Smeaton, Rick <rick.smeaton@sanjoseca.gov>; Farmer, Stefanie <stefanie.farmer@sanjoseca.gov>; Lipoma, Emily <emily.lipoma@sanjoseca.gov>; Walsh, Susan <Susan.Walsh@sanjoseca.gov>; Chundur, Dipa <Dipa.Chundur@sanjoseca.gov>; Hart, Jared <Jared.Hart@sanjoseca.gov>; Vacca, Kimberly <kimberly.vacca@sanjoseca.gov>; Mack, Karen <Karen.Mack@sanjoseca.gov>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Weerakoon, Ru <Ru.Weerakoon@sanjoseca.gov>
Subject: RE: H17-042 (4th & St John) Timeline and Resubmittals

Good evening, Erik.

When we initially met with you and representatives from The Dinerstein Company on May 31st, Planning staff agreed to work toward the November 15th Planning Commission hearing based on the General Plan amendment needed for your project. Everyone in the room,

including you, acknowledged that the timeline for processing a multi-faceted project (GPA, Zoning, Site Development Permit, T-map) was exceedingly tight and that the submittal of high quality plans requiring minimal revisions would be crucial to meeting our targets.

As noted in my previous email, Planning subsequently expanded the scope of our contract planner so that he could dedicate a portion of his time *exclusively* to your project, and we also assigned a staff planner to provide continuity and quick responses to meeting requests and questions. Our CEQA team was put on notice to prioritize your project. Nothing changed in our commitment to review this project as expeditiously as possible, and staff is not the least surprised by the timeline.

What has changed from our original agreement is the late submittal of fully revised plans less than one month before the desired hearing with an expectation for full staff review and preparation for a public hearing. We have consistently advised you that adequate time would be needed to for Planning and other city departments to review your project, coordinate our comments, and prepare for a hearing. Today, at roughly 4:00 p.m., your team submitted a fully revised set of plans for staff review. There is simply not enough time for staff to fully review your plans, work with you to resolve any issues, coordinate among departments, prepare comments and conditions, write staff reports and resolutions, circulate documents for legal review, prepare and post required notices, and complete a myriad of other tasks. Our review process is deliberate and thorough to ensure that recommendations made to the Planning Commission and Council are legally sound and defensible. A headlong scramble toward the finish line was never part of any agreement with you related to this project.

The revised Initial Study and technical documents for environmental review under CEQA have been circulated to other departments for review and comment. Staff's first-round comments were provided to you in the 30-day letter on August 31, 2017. Your revised documents in response to those comments were submitted on Friday, October 6, at 4:30 p.m. We appreciate that the CEQA consultant who prepared the original documents has significant experience in the field.

As you well know, the Downtown Strategy Plan Update and EIR was delayed to address, among other issues, changes to the scope of the project from the General Plan Four-Year Review and a desire to align the EIR with the City's forthcoming transition to a Vehicle Miles Traveled (VMT) Transportation Policy. Replacement of the current LOS Policy with VMT will likely avoid the imposition of a traffic impact fees on new private development in the Downtown. The City's goal is to prepare a comprehensive, effective, and up-to-date Downtown Strategy Update and EIR. You chose to move forward on your own, based on the needs of your project and a hopeful desire to take advantage of a City subsidy for new development in the downtown. The objectives created the current time dilemma for your project because they are not aligned with the City's goal, as stated.

The City is willing to move forward with your General Plan Amendment application to the November 15th PC meeting, provided the other project-specific applications are withdrawn and the CEQA Initial Study is revised to reflect the new limited scope of a new "GPA only" project. As Jenny Nusbaum and I discussed with you by phone this afternoon, this is now the only path forward for consideration of the proposed GP Amendment this year. If you do not wish to withdraw your other development applications and proceed with the full package, the environmental review of your project will likely require up to a year due to potentially significant impacts identified in technical documents prepared for your project under CEQA.

You stated that you will get back to us on the offer to move forward with the GP Amendment only. If you decide to move forward with the GP Amendment only, the CEQA consultant will need to prepare and submit a revised Initial Study/Negative Declaration with all references to a specific project on the subject site to the Planning Department by COB on Tuesday, October 17th. Please do not delay. The 20-day public comment period needs to start no later than October 24th so that staff will have adequate time at the end of the review period to prepare responses to comments received and circulate them to the Planning Commission. This is an unusually tight timeline, but again, we are willing to work with you if you agree to submit the information we need in a timely manner.

Thank you,

Ned Thomas

Ned Thomas, AICP

Division Manager – CEQA & Development Review

Department of Planning, Building, and Code Enforcement

City of San Jose | 200 East Santa Clara Street

San Jose, CA 95113

Phone: 408.793.5302

From: Erik Schoennauer [mailto:es@stanfordalumni.org]
Sent: Friday, October 13, 2017 8:55 AM
To: Thomas, Ned <ned.thomas@sanjoseca.gov>; McHarris, Steve <Steve.McHarris@sanjoseca.gov>
Cc: Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Anthony Ho <Anthony@lpmd-architects.com>; Brent Lee <BrentLee95070@gmail.com>; Ann Marie LaRocco Joel <annmarie@annmariejoel.com>
Subject: Re: H17-042 (4th & St John) Timeline and Resubmittals

Good morning, Ned and Steve.

We don't understand what changed at the Planning Department. When we all met at the very beginning of the process in July, the Department committed to a very condensed timeline. Everybody knew back in July that the General Plan Hearing date was a fixed date in November. So, we don't understand why now the Staff is surprised and concerned about the timeline.

The CEQA study in your hands now was already reviewed by Staff once. This revised version includes revisions based upon Staff' first-round comments. The CEQA Study is prepared by a CEQA consultant that probably has more experience than the entire City CEQA team. So, I feel confident that the Study meets all the requirements of CEQA.

After we have spent over $400,000 to get to this point in the process, it does not seem reasonable to just say we have to wait an entire year before the City Council can hear our project.

(Please remember, we are only in this time dilemma because the Planning Department has been unable over the past 3 years to complete the Downtown Strategy Plan and EIR. We were force to move forward on our own, or wait indefinitely.)

To try and salvage our project timeline, would it help Staff if we set aside the Site Development Permit and Rezoning for now, and only move forward in November with the General Plan changes. We can then allow Staff more time to review and process the Site Permit and Zoning, and bring them to Council in early 2018. (It's the General Plan hearing we need to get under our belt.

Please let us know if you can help us achieve this compromise approach.

And, please call or email me the essence of the second historic report. I am available by phone 24/7.

Thanks much,

ERIK

On Thu, Oct 12, 2017 at 8:52 PM, Thomas, Ned <ned.thomas@sanjoseca.gov> wrote:

Thank you, Erik.

Yes, we have all been working toward the November 15th Planning Commission hearing based on the General Plan amendment needed for your project.

To this end, Planning expanded the scope of our contract planner so that he could dedicate a portion of his time *exclusively* to your project. We also assigned a staff planner to provide continuity and quick responses to meeting requests and questions, and our CEQA team was put on notice to prioritize your project. Nothing has changed in our commitment to review this project as expeditiously as possible and prepare it for hearing with thorough analysis and solid recommendations.

Your original project application and plans were submitted to the City on July 31, 2017. These documents were processed without delay and circulated to other City departments for review and comment. You received a 30-day comment letter on August 31, 2017, including feedback from Housing, Fire, Building, and Planning. You also receive an Initial Memo from Public Works on August 31, 2017. We subsequently met with your team on September 19th to discuss these comments, and staff followed up with you by email to clarify our comments at the meeting and to identify specific information needs. Again, this timeline is consistent with our commitment to review your project with an eye toward the November 15th hearing date. DOT staff set aside other projects to work with your consultants to address significant issues related to traffic analysis and parking.

Tomorrow, October 13th, you will submit a set of fully revised project plans. This will be the first opportunity for Planning staff as well as staff from other reviewing departments to see these plans in any detail. While the Project

Manager and I saw the revised elevations presented at the SJDA Design Review Committee on September 27th, the City's review of proposed development projects involves staff from various departments for review of critical issues from circulation and fire safety to storm water control. Your proposed project also requires environmental review under CEQA, and we acknowledge the revised technical studies that we receive last Friday at approximately 4:30 p.m. As I have mentioned to you in several previous email messages, a complete and thorough review of proposed projects by City staff from various departments requires adequate time for internal circulation and coordination.

Your new timeline, based on a resubmittal of fully revised plans tomorrow, gives City staff roughly 23 days before the desired hearing date. CEQA and public hearing items have posting requirements well in advance of the meeting date, so the time available for staff review is further reduced. Under these circumstances, I do not see a path forward for the proposed project this year. We have done our best, as outlined above, to meet our commitment to you for timely, even accelerated, processing. But submittal of fully revised plans less than one month prior to the hearing date does not allow adequate time to review fully revised plans, address any outstanding issues, complete required environmental review, and prepare and circulate public hearing documents.

As noted in my previous email, I will discuss the status of your project with Rosalynn and Steve, and we will then follow up with you. We also need to discuss with you the findings of the supplemental historic report prepared by the City's consultant.

Thank you,

Ned Thomas

Ned Thomas, AICP

Division Manager – CEQA & Development Review

Department of Planning, Building, and Code Enforcement

City of San Jose | 200 East Santa Clara Street

San Jose, CA 95113

Phone: 408.793.5302

Attachment 6

THE SCHOENNAUER COMPANY

October 24, 2017

Stefanie Farmer
Department of Planning, Building & Code Enforcement
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

Dear Ms. Farmer:

On behalf of my client and the applicant, RPRO152N3, LLC (Brent Lee), this letter serves to withdraw the following applications:

1) H17-042 – Site Development Permit at the northeast corner of N. Fourth St. & St. John St.

2) T17-031 – Tentative Map at the northeast corner of N. Fourth St. & St. John St.

Please let us know if you need anything further from our team to complete the withdraw process.

Thank you for all of your efforts on this matter.

Sincerely,

Erik E. Schoennauer

ERIK E. SCHOENNAUER

Cc: Brent Lee

Attachment 7

Thomas, Ned

From: Thomas, Ned
Sent: Wednesday, October 04, 2017 8:55 PM
To: Smeaton, Rick
Cc: Farmer, Stefanie
Subject: RE: 4th & St. John Project

Hi Rick:

I discussed this with Steve this morning, and we think it would be best to move forward with whatever Erik submits as revised plans for the project. Although the taller element of the building should be at the corner, they have designed it differently, and you can note this in the staff report. I agree with you that any massing of such a large building at this location is going to have impacts on the neighbors.

Yes, this will be precedent-setting. This can also be noted in the staff report. As Erik and others have noted, the City has not provided specific design guidelines for a "transition zone," so we may get stuck with a tall building on the edge. Perhaps the Planning Commission will make this part of the recommendation. We can certainly suggest it.

Thanks,

Ned

From: Smeaton, Rick
Sent: Tuesday, October 03, 2017 3:21 PM
To: Thomas, Ned <ned.thomas@sanjoseca.gov>
Cc: Farmer, Stefanie <stefanie.farmer@sanjoseca.gov>
Subject: 4th & St. John Project

Ned,

I wanted to check with you to see if the powers that be had any thoughts on the proposed 20-story building? I wanted to get back to Erik if they felt that this was still too tall before he resubmits his "we're taking this to PC" plans.

I don't know that moving the massing on the site really does anything to mitigate the impact on the neighbors. Also, would the city be setting a precedent by allowing the transition between downtown and an adjoining neighborhood take place all on one small lot?

Let me know.

Thanks,

Rick Smeaton
Contract Planner
City of San Jose

Attachment 8

RE: Policy Mtg

Mendrin, Shaunn

Tue 12/13/2016 10 08 AM

Deleted Items

To: Vacca, Kimberly <kimberly.vacca@sanjoseca.gov>;

I can add it on. I would hope the answer is to leave it RN....

-Shaunn

From: Vacca, Kimberly
Sent: Tuesday, December 13, 2016 9:52 AM
To: Mendrin, Shaunn <shaunn.mendrin@sanjoseca.gov>
Subject: Policy Mtg

Hi Shaunn,

Can I add an item to the policy meeting today? If it's too late, I understand.

File No. GP16-013: GPA from RN to Transit Residential on N. 4th Street. There is a Victorian home on one of the parcels which qualifies as a Structure of Merit. Would we be supportive of the change to Transit Residential for this property or should we recommend that the parcel remains RN to preserve the home on site?

Thanks!

Kimberly Vacca
Long Range Planner | Planning Division | City of San José
200 East Santa Clara Street, T3, San Jose, CA 95113
tel: (408) 535-1241

General Plan 4-Year Review: [www.sanjoseca.gov/GeneralPlanReview]www.sanjoseca.gov/GeneralPlanReview
General Plan Annual Review: http://www.sanjoseca.gov/index.aspx?nid=3933

Attachment 9

Thomas, Ned

From: Thomas, Ned
Sent: Tuesday, October 10, 2017 11:10 PM
To: Walsh, Susan
Cc: Chundur, Dipa; Smeaton, Rick; Farmer, Stefanie; Vacca, Kimberly; Hart, Jared; Lipoma, Emily; Nusbaum, Jenny
Subject: RE: FYI: Update on review of report we received this morning and discussed at our 1pm meeting

Hi Susan:

Thank you very much for the detailed follow up. I greatly appreciate your review of the report.

I have copied Rick Smeaton and Stefanie Farmer on my response so that they are aware of your findings. I have also copied Kim, Jared, and Emily so that they are in the loop.

Once the report is finalized, we will need to deliver the news to the applicant, Erik Schoennauer. I will need to prep Steve and Rosalynn so that they are fully aware of the situation. We will continue our review of the project until directed otherwise by upper management.

Thank you,

Ned

Ned Thomas, AICP
Division Manager – CEQA & Development Review | PBCE
Phone: 408.793.5302

From: Walsh, Susan
Sent: Tuesday, October 10, 2017 5:52 PM
To: Thomas, Ned <ned.thomas@sanjoseca.gov>
Cc: Chundur, Dipa <Dipa.Chundur@sanjoseca.gov>
Subject: FYI: Update on review of report we received this morning and discussed at our 1pm meeting

After reviewing and discussing the report with the consultant I agree with their conclusion that the 2 residences are Eligible for the California Register and that proposed demolition would be a potentially significant impact that will require an EIR.

I have several minor edits to the report and it will need to be revised to make it a valid report (and not just a peer review document) so we can use it for the EIR and the consultant said they will do that for us. There will also be some additional analysis of 6 surrounding historic structures within 150-200 ft. to see if they will need to be monitored for potential cracks during pile driving/construction.

Attachment 10

Farmer, Stefanie

From: Walsh, Susan
Sent: Thursday, October 19, 2017 3:30 PM
To: Thomas, Ned
Cc: Nusbaum, Jenny; Chundur, Dipa; Farmer, Stefanie; Smeaton, Rick; Todorov, Vera; Phan, Johnny; McHarris, Steve; Weerakoon, Ru; Vacca, Kimberly; Hart, Jared
Subject: RE:

Ned,

I'm working with Franklin this afternoon and we have discussed this in detail and he's preparing the updated historic report. We are both busy getting ready for tonight's Community Meeting for the Greater Gardner Conservation Area, however, we hope to have something by tomorrow.

Susan

From: Thomas, Ned
Sent: Wednesday, October 18, 2017 11:32 AM
To: Walsh, Susan <Susan.Walsh@sanjoseca.gov>
Cc: Nusbaum, Jenny <Jenny.Nusbaum@sanjoseca.gov>; Chundur, Dipa <Dipa.Chundur@sanjoseca.gov>; Farmer, Stefanie <stefanie.farmer@sanjoseca.gov>; Smeaton, Rick <rick.smeaton@sanjoseca.gov>; Todorov, Vera <vera.todorov@sanjoseca.gov>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; McHarris, Steve <Steve.McHarris@sanjoseca.gov>; Weerakoon, Ru <Ru.Weerakoon@sanjoseca.gov>; Vacca, Kimberly <kimberly.vacca@sanjoseca.gov>; Hart, Jared <Jared.Hart@sanjoseca.gov>
Subject:

Hi Susan:

This email is to follow up on the voice mail I left for you earlier today.

I gave detailed instructions to Rick and Stefanie regarding additional work that needs to be done by Franklin Maggi on the supplemental historic report for Erik's 4th and St. John housing project. Vera, Ru, and I met with Erik and his attorney on Monday afternoon, and we agreed to let them delay withdrawal of their Site Dev Permit and T-map until next Tues. so that this additional work can be billed to the project as is. Below are the detsils.

Time is very short, so we cannot delay in asking Franklin to complete this additional work as it is critical that it be added to his supplemental report. Please contact Vera or Stefanie if you have any questions about timing or scope of the work to be done.

Please get the ball rolling on the following ASAP:

1. Please ask Franklin Maggi to review and comment on the Historic Report that was completed for the previous parking lot project on the subject site (2002?). This is very important as this previous report will corroborate and strengthen the findings of significant impacts to the historic homes in the current report. We need to show that two separate consultants came to similar conclusions on at least on of the houses or both. This will demonstrate that the Historic Report submitted by the applicant is the outlier.

- The GP Amendment will include: 1) expanding the GP boundary for Downtown to include the project site; 2) changing the Downtown Growth Area boundary to include the project site, and; 3) changing the GP designation for the project site from Residential Neighborhood to Downtown.
- The rezoning will involve changing from Commercial General to Downtown.

- The deadlines for GPA/CEQA submittals were November 2016 and March 2017, respectively. To meet the applicant's desired timeline, applications for the zone change, site development permit and tentative map must be submitted ASAP. [After the meeting, staff determined that submittal of application materials after July 14, 2017, will make it nearly impossible to complete the required review of documents and meet the desired timeline].
- Staff makes no guarantee that entitlements can be processed for 2017 GPA Public Hearings.
- A Focused EIR is the appropriate CEQA document for the proposed project.
  - The CEQA Project Manager will be Dipa Chundur, with Stefanie Farmer as back-up.
  - Using an addendum to existing Downtown EIR is not possible since proposed project site is not within Downtown boundary as set by the.
  - An Initial Study needs to be submitted ASAP. Deadline for GPA CEQA was March.
  - Based on the information provided in the IS, an MND may be considered but creates risk of challenge for piecemealing since subject site was already included in NOP circulated for Downtown Strategy EIR. If MND is used, applicant must acknowledge and accept this risk.
  - The EIR may require cumulative traffic analysis for surrounding projects.
  - The EIR may be used to address restoration of the Victorian houses, which was required as a condition of approval for a previous Special Use Permit at this site.
- The historic report and HLC review, if needed, will be coordinated by Susan Walsh. Peer review will be required for the historic report already submitted by the applicant in violation of the firewall. The applicant will cover costs of the peer review. The historic report needs to analyze the impacts on adjacent single-family homes to the east of the project site. Shade studies may be required.
- The proposed project will be a 25-story high-rise building (285 feet in total height) with 324 units (student housing) and 8,409 square feet of commercial uses on the ground floor.

###

Attachment 11

SITE DEVELOPMENT PERMIT

FOR

STUDENT HOUSING

NORTH FOURTH STREET AND SAINT JOHN STREET

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2.0	LAND USE PLAN	7.2	PERSPECTIVE RENDERINGS OF REAR (VIEW FROM 5TH & ST. JAMES)	L2	LANDSCAPE PLAN - PARTIAL STREETSCAPE @ INTERSECTION
3.0	SITE PLAN	7.3	PERSPECTIVE RENDERING OF RETAIL FRONTAGE	L3	LANDSCAPE PLAN - SW PODIUM COURTYARD
CIVIL		7.4	PERSPECTIVE RENDERING OF FOURTH FLOOR POOL DECK	L4	LANDSCAPE PLAN - NE PODIUM COURTYARD
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		9.23	SHADOW STUDY	L13	PLANTING DETAILS
		9.24	HEIGHT OF NEIGHBORING PROPERTIES	SP1	PHOTOMETRIC STUDY

PROJECT INFORMATION

ASSESSOR'S PARCEL NUMBER	467-20-019 020 021 022,023,043
PROJECT ADDRESS/LOCATION	130-152 NORTH FOURTH STREET
PRIOR APPROVALS	SPC2-043 GP16-013 (PENDING)
EXISTING GENERAL PLAN DESIGNATION	TRANSIT RESIDENTIAL, RESIDENTIAL NEIGHBORHOOD (DOWNTOWN PENDING)
EXISTING ZONING DESIGNATION	COMMERCIAL GENERAL (DOWNTOWN COMMERCIAL PENDING)
PROPOSED USE	HIGH DENSITY STUDENT HOUSING & RETAIL
GROSS SITE AREA RIGHT-OF-WAY DEDICATION NET SITE AREA	±0.98 AC ±0.00 AC ±0.98 AC
PROPOSED SITE COVERAGE BUILDINGS PRIVATE CIRCULATION LANDSCAPE/HARDSCAPE.	±34,084 SF (80%) ±486 SF (1%) ±8,200 SF (19%) ±42,770 SF (100%)
PROPOSED DENSITY.	150 DU 0.98 AC (NET) 153 DU / AC APPROX. 7,286 SF RETAIL
PROPOSED HEIGHT.	20 STORIES, 211'-4" TO PLATE OF TOP FLOOR 224'-6" TO TOP OF ARCHITECTURAL FEATURES
REQUIRED PARKING (UNDER DC DESIGNATION)	1 SPACES / UNIT 1 SPACES x 153 UNITS = 153 SPACES NO RETAIL PARKING REQUIRED 127 SPACES COMMERCIAL PARKING FOR 152 N THIRD STREET
PROPOSED PARKING	277 SPACES

PROJECT INFORMATION

SITE DEVELOPMENT PERMIT TO ALLOW FOR THE CONSTRUCTION OF A 20-STORY BUILDING CONTAINING UP TO 150 STUDENT HOUSING UNITS AND UP TO 7,286 SF OF RETAIL ON A ±0.98 ACRE SITE IN THE DOWNTOWN AREA. PERMIT WILL ALSO ALLOW FOR THE DEMOLITION OF ±2,200 SF OF EXISTING BUILDINGS AND THE REMOVAL OF 8 ORDINANCE SIZED TREES.

HMH

STUDENT HOUSING
N FOURTH STREET & SAINT JOHN STREET
San Jose - California

H17-_____

Date: 11/13/2017
Scale: As shown
Revisions:
Drawing title: TITLE SHEET
Sheet No: 1.0

LPMD Architects
1298 Kifer Road, Suite 208
Sunnyvale, CA 94086
Telephone 408-982-0280
Fax 408-982-0281

FW: Public Review Draft ND: Fourth and St. John General Plan Amendment and Rezoning

Mathur, Krinjal

Mon 10/30/2017 9:10 AM

To:Chundur, Dipa <Dipa.Chundur@sanjoseca.gov>;

Krinjal Mathur
Planner | City of San José
Planning, Building & Code Enforcement
krinjal.mathur@sanjoseca.gov
408.535.7874

From: Val Lopez [mailto:vlopez@amahmutsun.org]
Sent: Friday, October 27, 2017 7:53 PM
To: Mathur, Krinjal <krinjal.mathur@sanjoseca.gov>
Subject: Re: Public Review Draft ND: Fourth and St. John General Plan Amendment and Rezoning

this project is outside our traditional tribal territory, we have no comment.

Valentin Lopez, Chairman
Amah Mutsun Tribal Band

On Tue, Oct 24, 2017 at 10:13 AM, Mathur, Krinjal <krinjal.mathur@sanjoseca.gov> wrote:

> **PUBLIC NOTICE**
> **INTENT TO ADOPT**
> **A NEGATIVE DECLARATION**
> **CITY OF SAN JOSÉ, CALIFORNIA**
>
> **Project Name: Fourth and St. John General Plan Amendment and Rezoning**
>
> **Planning File Nos.:** GP16-013 & C17-032
>
> **Description:** The project proposes a General Plan Amendment to include the project site within the Downtown Growth Area and to change the General Plan Land Use Designation from Residential Neighborhood and Transit Residential to Downtown. The project also proposes a conventional rezoning of the site from CG Commercial General Zoning District to the Downtown Primary Commercial Zoning District.
>
> **Location:** Northeast corner of Fourth Street and St. John Street in San José
>
> **Assessor's Parcel No.:** 467-20-019, 020, 021, 022, and 040 **Council District:** 3
>
> **Applicant Contact Information:** Brent Lee, 152 N. 3rd Street, Suite M, San José, CA 95112

The City has performed environmental review on the project. Environmental review examines the nature and extent of any adverse effects on the environment that could occur if a project is approved and implemented. Based on the review, the City has prepared a draft Negative Declaration (ND) for this project. An ND is a statement by the City that the project will not have a significant effect on the environment.

The public is welcome to review and comment on the draft Negative Declaration. The public comment period for this draft Negative Declaration begins on **October 24, 2017, and ends on November 13, 2017**.

The draft Negative Declaration, initial study, and reference documents are available online at: http://www.sanjoseca.gov/index.aspx?NID=5720 . The documents are also available for review from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, located at City Hall, 200 East Santa Clara Street; and at the Dr. Martin Luther King, Jr. Main Library, located at 150 E. San Fernando Street.

For additional information, please contact Dipa Chundur at (408) 535-7688, or by e-mail at dipa.chundur@sanjoseca.gov

Krinjal Mathur
Planner | City of San José
Planning, Building & Code Enforcement
krinjal.mathur@sanjoseca.gov
408.535.7874

RE: Public Review Draft ND: Fourth and St. John General Plan Amendment and Rezoning

Talbo, Dorothy <dorothy.e.talbo@rda.sccgov.org>

Tue 10/24/2017 4:47 PM

To: Mathur, Krinjal <krinjal.mathur@sanjoseca.gov>;

Cc: Chundur, Dipa <Dipa.Chundur@sanjoseca.gov>;

Thank you for sending this. I have reviewed the Intent to Adopt and the County will not be submitting comments for this project.

Thank you,
Ellen Talbo
County Transportation Planner
County of Santa Clara
Roads and Airports
408-573-2482

From: Mathur, Krinjal [mailto:krinjal.mathur@sanjoseca.gov]
Sent: Tuesday, October 24, 2017 10:14 AM
To: Mathur, Krinjal <krinjal.mathur@sanjoseca.gov>
Cc: Chundur, Dipa <Dipa.Chundur@sanjoseca.gov>
Subject: Public Review Draft ND: Fourth and St. John General Plan Amendment and Rezoning

PUBLIC NOTICE
INTENT TO ADOPT
A NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA

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Applicant Contact Information: Brent Lee, 152 N. 3rd Street, Suite M, San José, CA 95112

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For additional information, please contact Dipa Chundur at (408) 535-7688, or by e-mail at dipa.chundur@sanjoseca.gov

Krinjal Mathur
Planner | City of San José
Planning, Building & Code Enforcement
krinjal.mathur@sanjoseca.gov
408.535.7874

5750 Almaden Expressway, San Jose, CA 95118-3614 | (408) 265-2600 | www.valleywater.org

Santa Clara Valley Water District

File: 33657
Guadalupe River

November 13, 2017

Ms. Dipa Chundur
Department of Planning, Building & Code Enforcement
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

Subject: Negative Declaration & Initial Study for Fourth and St. John General Plan Amendment & Rezoning

Dear Ms. Chundur:

The Santa Clara Valley Water District (District) has reviewed the Negative Declaration & Initial Study for Fourth and St. John General Plan Amendment & Rezoning, received by the District on October 24, 2017.

The District does not have any land rights or facilities located within the project area; therefore, a District permit is not required for the construction of the proposed project. However, the District does have the following the comments regarding the Negative Declaration and Initial Study:

1. The Initial Study notes on page 49 that the site is not subject to flooding from failure of a dam. District's maps show the site would in fact be subject to flooding from either the failure of Leniham Dam on Lexington Reservoir or Anderson Dam. Additionally, the document notes this impact is not significant since the site is not within a FEMA flood hazard zone. FEMA flood mapping is related to riverine flooding and does not map flooding that may occur due to failure of a dam.
2. The Initial Study notes on page 49 there are no impacts associated with flooding, and that the site is located within a Zone D on FEMA maps. Please note that a zone D designation is defined by FEMA as "areas in which flood hazards are undetermined, but possible," not that flooding cannot occur.
3. The proposed general plan amendment and rezoning would allow up to 728 residences at the site. The document notes that the project would incrementally increase water demands, but doesn't state that a Water Supply Assessment (WSA) as required by SB 610, was completed to justify that the project will have no significant impacts on water supplies.

Reference District File No. 33657 on further correspondence regarding this project. If you have any questions or need further information, you can reach me at (408) 630-2322.

Sincerely,

Colleen Haggerty, P.E.
Associate Civil Engineer
Community Projects Review Unit

cc: U. Chatwani, C. Haggerty, T. Hemmeter, M. Martin, File

VTA Comments on Fourth and St. John GPA [SJ1716]

Molseed, Roy <Roy.Molseed@VTA.ORG>

Mon 11/13/2017 4:52 PM

To: Chundur, Dipa <Dipa.Chundur@sanjoseca.gov>;

Cc: Liw, Michael <Michael.Liw@sanjoseca.gov>;

3 attachments (833 KB)

SJ1716_FourthStJohn_InitStudy_11-13-17.pdf; VTA Comments on Revised TIA Notification & Workscope for N. 4th Street/E. St. John St [SJ1716]; Development Review Program Contact List 8-17-17.pdf;

Dipa,

Attached are VTA's comments on the Initial Study for the Fourth and St. John General Plan Amendment. Also included is a previous email referenced in the comment letter.

For staff reference, we have also included the attached VTA Contact List for any questions regarding these comments. This Contact List is not intended to constitute public comment or be included in the CEQA comment record for this project.

Thanks for the opportunity to review. Please contact me if any questions.

Roy Molseed
Senior Environmental Planner

Santa Clara Valley Transportation Authority
3331 North First Street, Building B-2
San Jose, CA 95134-1927
Phone **408-321-5784**

Santa Clara Valley Transportation Authority

Solutions that move you

Conserve paper. Think before you print.

Santa Clara Valley Transportation Authority

November 13, 2017

City of San Jose
Department of Planning and Building
200 East Santa Clara Street
San Jose, CA 95113

Attention: Dipa Chundur

Subject: City File No. GP16-013 / Fourth and St. John General Plan Amendment

Dear Ms. Chundur:

Santa Clara Valley Transportation Authority (VTA) has reviewed the Initial Study for the proposed General Plan Amendment in connection with the Fourth and St. John General Plan Amendment and Rezoning project, and the Long Range Transportation Impact Analysis (TIA) for the proposed City of San Jose 2017 General Plan Amendments in connection with ten parcels within the City of San Jose. VTA acknowledges that the Initial Study and Long Range TIA provide an updated project description which reflects 337 residential units and 8,800 square feet of retail. VTA notes the updated project description and reiterates our comments provided on April 28, 2017 (see attached).

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

Roy Molseed
Senior Environmental Planner

cc: Michael Liw, San Jose Development Services

SJ1716

VTA Comments on Revised TIA Notification & Workscope for N. 4th Street/E. St. John St [SJ1716]

Cerezo, Melissa <Melissa.Cerezo@vta.org>

Fri 4/28/2017 2:17 PM

To: Lee, Eric <Eric.Lee@sanjoseca.gov>;

Cc: Dyke, Joseph <Joseph.Dyke@sanjoseca.gov>; Molseed, Roy <Roy.Molseed@VTA.ORG>;

1 attachments (335 KB)

Development Review Program Contact List 3-24-17.pdf;

Eric,

VTA has reviewed the revised Transportation Impact Analysis (TIA) Notification and Workscope for 324 residential units and 8,409 square feet of retail at the northeast corner of N.4th and E. St. John Streets.

Land Use

VTA supports the proposed land use intensification of this site, located within short walking distance from VTA St. James Light Rail station, VTA 522 Blue (Rapid) and Route 22 (along Santa Clara Street), as well as future VTA BART Silicon Valley downtown station options. Additionally, by increasing the number of residences in close proximity to the numerous shops, restaurants, services and work sites in Downtown San Jose, the project will increase opportunities for daily tasks to be accomplished by walking and biking, thereby incrementally reducing automobile trips and greenhouse gas emissions. This location is identified as a Regional Core in VTA's Community Design & Transportation (CDT) Program Cores, Corridors and Station Areas framework, which shows VTA and local jurisdiction priorities for supporting concentrated development in the County. The CDT Program was developed through an extensive community outreach strategy in partnership with VTA Member Agencies, and was endorsed by all 15 Santa Clara County cities and the County.

Transportation Impact Analysis (TIA) Report

The October 2014 version of the VTA TIA Guidelines, which can be found at http://www.vta.org/cmp/tia-guidelines, include updated procedures for documenting auto trip reductions, analyzing non-auto modes, and evaluating mitigation measures and improvements to address project impacts and effects on the transportation system. For any questions about the updated TIA Guidelines, please contact Robert Swierk of the VTA Planning and Program Development Division at 408-321-5949 or Robert.Swierk@vta.org.

Pedestrian and Bicycle Accommodations

VTA requests that the TIA analysis of Pedestrian and Bicycle Accommodations consider the completeness of the pedestrian and bicycle network on roadways and intersections adjacent to and nearby the project site.

The existing project frontages along N. 4th and E. St. John Streets contain sidewalks with no street trees between pedestrians and automobiles. VTA recommends that the project frontages be improved with sidewalks containing street trees between pedestrians and automobiles in order to encourage greater trips by walking, and access to transit. Resources on pedestrian quality of service, such as the Highway Capacity Manual 2010 Pedestrian Level of Service methodology, indicate that a buffer containing landscaping elements, such as closely planted street trees, improve pedestrian perceptions of comfort and safety on a roadway. VTA recommends that the City include such improvements as Conditions of Approval.

VTA supports bicycling as an important transportation mode and thus recommends inclusion of conveniently located bicycle parking for the project. Given the target audience of this development, VTA recommends that the City require bicycle

parking at an amount above and beyond the City of San José bicycle parking standards as a Condition of Approval for the project. VTA notes that the City of San Jose approved a 260-unit student housing development on March 22, 2017 (The Graduate project), which will provide 2.2 bicycle parking spaces per unit, exceeding the City's requirement of 0.25 bicycle spaces per unit for such residential development. VTA recommends that the proposed project apply similar bicycle parking rates as The Graduate. Additionally, VTA also recommends that a bicycle parking reservation system be created to allow some flexibility for units that may have higher bicycle parking rates. Bicycle parking facilities can include bicycle lockers or secure indoor parking for all-day storage and bicycle racks for short-term parking. VTA's Bicycle Technical Guidelines provide guidance for estimating supply, siting and design for bicycle parking facilities. This document may be downloaded from www.vta.org/bikeprogram.

Transportation Demand Management (TDM) and Trip Reduction

In order to reduce the number of single occupant vehicle trips generated by the project, VTA recommends that the City and project sponsor consider a comprehensive Transportation Demand Management (TDM) program for this project. VTA notes that such programs can be more effective when they include a vehicle trip reduction target, third-party monitoring of trip generation upon project completion and a Lead Agency enforcement/penalty structure.

Effective TDM programs that may be applicable to the project include:

* Parking pricing and parking cash-out programs
* Transit fare incentives such as free or discounted transit passes on a continuing basis
* Bicycle lockers and bicycle racks
* Preferentially located carpool parking
* Parking for car-sharing vehicles

Intersection and Freeway Analysis & Mitigation Measures

Based on the project's location, there may be impacts to one or more intersections and/or freeway segments. If the intersection and freeway analyses indicates significant impacts based on Congestion Management Program (CMP) criteria, VTA suggests early coordination with the appropriate agencies in identifying potential mitigation measures and opportunities for voluntary contributions to regional transportation improvements in or near the impacted facility in the latest Valley Transportation Plan (VTP).

We appreciate the opportunity to comment. For staff reference, we have also included the attached VTA Contact List for any questions regarding these comments.

Thank you,
Melissa

Melissa R. Cerezo, AICP
Senior Transportation Planner

Santa Clara Valley Transportation Authority
3331 North First Street, Building B
San Jose, CA 95134-1927
Phone **408-321-7572**

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