RD:VMT:JMD
11/6/2019

RESOLUTION NO._____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING GARDEN GATE TOWER SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT TO THE DOWNTOWN STRATEGY 2040 ENVIRONMENTAL IMPACT REPORT (SCH # 2018042072) AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES AND ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED

WHEREAS, the proposed Garden Gate Tower includes the development of a high-rise residential tower with ground floor neighborhood-oriented retail with two use and subdivision options proposed: (1) Option 1: Mixed Use Building and (2) Option 2: Mixed-Use Co-Living Facility. Option 1: Mixed Use Building of a total of no more than 295 condominium units including 290 residential condominium units and approximately 5,000 square feet total of non-residential uses divided into a maximum of five (5) commercial condominium units; or Option 2: Mixed-Use Co-Living Facility of a total of no more than six condominium units including one residential condominium unit of no more than 793 Bedrooms and approximately 5,422 square feet total of non-residential uses divided into no more than five (5) commercial condominium units. Both options propose a development of a 27-floor building with a maximum height of approximately 283 feet. The buildings would have a similar footprint and design with the exception of some minor differences in the ground floor layout. Both options would also include the demolition of an existing two-story residential building (on the City's Historic Resources Inventory), façade treatment to an existing single-story brick office building, and relocation of an on-site neon sign to the roof of the proposed development. The project is located on a 0.42-acre project site located at the intersection of South First Street and East Reed Street, at 600 South First Street (APNs: 472-26-090 and 472-26-089) in downtown San José; and

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

WHEREAS, the City of San José ("City") prepared, completed, and adopted in accordance with CEQA the Final Program Environmental Impact Report for the Downtown Strategy 2040 ("Downtown Strategy FPEIR"), which updated the Downtown Strategy 2000 Final Environmental Impact Report to be consistent with the Envision San José 2040 General Plan including an increase in the amount of new commercial office and residential development capacity and revised development phasing to extend the horizon (buildout) year to 2040; and

WHEREAS, in connection with the adoption of a resolution approving said Downtown Strategy 2040 Plan (Planning File No. PP15-102), the City Council adopted Resolution No. 78942 on December 18, 2018 setting forth certain findings pertaining to the Downtown Strategy FPEIR and adopting a mitigation monitoring and reporting program, all pursuant to the provisions of CEQA; and

WHEREAS, the proposed Project was evaluated and analyzed under the Downtown Strategy FPEIR and it was determined a supplemental environmental report to the Downtown Strategy FEIR was required as further explained in the initial study and FSEIR, as defined below, for the Project; and

WHEREAS, the City is the lead agency for the Project, and has prepared a Final Supplemental Environmental Impact Report to the Downtown Strategy FEIR for the Project pursuant to and in accordance with CEQA, which the Final Supplemental Environmental Impact Report is comprised of the Draft Supplemental Environmental

Impact Report for the Project (the "Draft SEIR"), together with the First Amendment to the Draft SEIR (collectively, all of said documents are referred to herein as the "FSEIR"); and

WHEREAS, on October 23, 2019, the Planning Commission of the City of San José reviewed the FSEIR prepared for Garden Gate Tower, and recommended to the City Council that it find the environmental clearance for the proposed Project was completed in accordance with the requirements of CEQA and further recommended the City Council to adopt this Resolution; and

WHEREAS, CEQA requires that, in connection with the approval of a project for which an environmental impact report has been prepared which identifies one or more significant environmental effects of the project, the decision-making body of a public agency make certain findings regarding those effects and adopt a mitigation or monitoring program and a statement of overriding considerations for any impact that may not be reduced to a less than significant level.

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

1. That the above recitals are true and correct; and

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

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

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

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

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

GARDEN GATE TOWER
SIGNIFICANT ENVIRONMENTAL IMPACTS

Cultural Resources

Impact: **Impact CUL-1:** The demolition of the Pallesen Apartments Building (8 East Reed Street), a National Register of Historic Places (NRHP), California Register of Historic Resources (CRHR), and local eligible structure, would be a significant impact.

Mitigation: **MM CUL-1: Pallesen Apartments Building Demolition**
Prior to issuance of any grading, demolition, or building permits or any other approval that would allow disturbance of the project site, the applicant shall

prepare and submit, to the satisfaction of the Director of Planning, Building and Code Enforcement in coordination with the City's Historic Preservation Officer, a historic preservation plan demonstrating that the following actions have been satisfied.

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

A. Drawings – Prepare sketch floor plans.

B. Photographs – Digital photographic documentation of the interior, exterior, and setting of the buildings in compliance with the National Register Photo Policy Fact Sheet. Photos must have a permanency rating of approximately 75 years.

C. Written Data – HABS written documentation in short form.

An architectural historian meeting the Secretary of the Interior's Professional Qualification Standards shall oversee the preparation of the sketch plans, photographs and written data. Department of Parks and Recreation 523 forms prepared for the project (included in Appendix A of Appendix F of the SEIR) can be used to fulfill the requirements for the written data report.

The required documentation shall be filed with the San José Library's California Room and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System. All documentation shall be submitted on archival paper and must first be reviewed and approved by the City's Historic Preservation Officer.

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

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

1. The Director of Planning or Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is suitable for the building.

2. Prior to relocation, the project applicant or third party shall hire a historic preservation architect and a structural engineer to undertake an existing condition study that establishes the baseline condition of the building prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to the structure being moved. Documentation already completed shall be used to the extent possible to avoid repetition in work.

3. To protect the building during relocation, the project applicant or third party shall engage a building mover who has experience moving similar historic structures. A structural engineer shall also be engaged to determine if the building needs to be reinforced/stabilized before the move.

4. Once moved, the building shall be repaired and restored, as needed, by the project applicant or third party in conformance with the *Secretary of the Interior's Standards for the Treatment of Historic Properties.* In particular, the character-defining features shall be restored in a manner that preserves the integrity of the features for the long-term preservation of these features.

Upon completion of the repairs, a qualified architectural historian shall document and confirm that renovations of the structure were completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and that all character-defining features were preserved. The project applicant shall submit a memo report to the City's Historic Preservation Officer documenting the relocation.

Salvage: If the applicant and/or no third party agrees to relocate the structure, the structure shall be made available for salvage to salvage

companies facilitating the reuse of historic building materials. The time frame available for salvage shall be established by the City's Historic Preservation Officer. The project applicant must provide evidence to the City's Historic Preservation Officer that this condition has been met prior to the issuance of demolition permits.

Finding: Demolition of the Pallesen Apartments Building would result in the demolition of a NRHP, CRHR, and local eligible structure, which is a significant and unavoidable impact. **(Significant Unavoidable Impact)**

Facts in Support of Finding: According to Public Resources Code §15064.5(b), a project would have a significant effect on an historic resource if it would "cause a substantial adverse change in the significance" of that resource. Specifically, "[s]ubstantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired."

The Pallesen Apartments Building, located on the Project site, was identified as an eligible structure under the NRHP, CPHR, and the City of San José, and is thus a historical resource under CEQA. The Pallesen Apartments Building was found to be significant for its architecture by an important regional architectural firm, Wolfe & McKenzie. Its façade exemplifies Mission architecture, which was popular in California from about 1890 through 1920. It exhibits character-defining features of the style, is in a high state of preservation, and is a rare example of its kind in the City and Downtown. The Project is proposing the demolition of the Pallesen Apartments Building. Mitigation Measure MM CUL-1 outlines the appropriate measures to help reduce the impact of demolition of the Pallesen Apartments Building which include the documentation of the structure and advertising for the relocation and salvage of the building by the applicant and/or a third party. However, even with the incorporation of this mitigation measure, this would be a significant and unavoidable impact.

Impact: **Impact CUL-2:** Partial demolition of the Pallesen Building (618 South First Street) will compromise the integrity of the building as an individual structure and therefore diminish its eligibility as a historic resource.

Mitigation: MM CUL-2: Historic Resources – Pallesen Building Façade Preservation

The project applicant shall retain a historic consultant to prepare a Preservation Plan on the retention of the Pallesen Building façade, which includes the street facing wall and the complete storefront assembly. The Preservation Plan shall include:

- Existing conditions study which establishes the baseline conditions of the building. Documentation shall include written descriptions and visual illustrations, including those physical characteristics of the resources that convey its historic significance (Retention of the original character-defining features).

- Structural engineering plans to show how the structural integrity of the building will be maintained during the move and how the façade will be seismically reinforced.

- Protective fencing and other methods shall be used to protect the building from further damage and deterioration during the process.

- If historic preservation architect or structural engineer observes any new damage after relocation of the structure an assessment shall be made of the severity of such damage and repairs taken if necessary. This assessment shall be provided within five (5) business days after discovery of the damage.

The Preservation Plan shall be submitted to the City's Historic Preservation Officer prior to issuance of any demolition or grading permits, whichever comes first.

Finding: The Pallesen Building is listed as a Structure of Merit in the City of San José Historic Resources Inventory. The project proposes to retain the façade of the Pallesen Building keeping in place its character-defining features, stabilizing the complete brick, tile, glass, parapet, and metal storefront assembly, and shifting it a few feet to the north and four feet further away from the street to accommodate the tower development including the driveway for the on-site parking facility under Option 1 and Option 2. Implementation of Mitigation Measure MM CUL-2 and the Preservation Plan would lessen the impact on the building itself and also the surrounding historic environment and result in a less than significant impact. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: The retention of the Pallesen Building façade would result in a significant impact. CEQA Guidelines section 15064.5(b)(2)(B) states "the significance of an historical resource is materially impaired when a project demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources." Although retaining the façade storefront assembly and shifting its location will help to preserve the building and its most important character-defining architectural features and details, this retention will compromise the integrity of the structure, lessen its significance, and impair its future eligibility. This preservation of the Pallesen Building façade would compromise the integrity of the building and thus diminish its eligibility as a historic resource on its own.

Mitigation Measure MM CUL-2 outlines the appropriate measures to help reduce the impact of the façade preservation and demolition of the remaining portions of the Pallesen Building. The brick facade would be incorporated into the building design at ground level. Because the building lacks any association with significant events, people, or architectural characteristics, and does not represent an important source of information about historic period construction materials or technologies potential impacts are considered less than significant with the incorporation of Mitigation Measure MM CUL-2.

Impact: **Impact CUL-3:** The relocation of the City Center Motel Sign to the outdoor rooftop terrace will reduce the historic integrity and eligibility of the sign.

Mitigation: **MM CUL-3: Historic Resources – City Center Motel Sign Preservation** The project applicant shall, in coordination with the City's Historic Preservation Officer, prepare a Relocation Plan that provides details regarding the relocation site, procedures and method for relocation, and maintenance plan for the sign. The Relocation Plan shall be submitted to the City's Historic Preservation for review and approval prior to issuance of any demolition or grading permits, whichever comes first.

Finding: The City Center Motel sign was determined to qualify as a historical resource under CEQA and eligible for listing in the NRHP and CRHP as a distinctive example of Roadside Vernacular architecture. The City Center Motel sign retains integrity of Design because the decorative features of the sign's original roadside vernacular design remains. Even with implementation of MM CUL-3 and the Relocation Plan, the project is proposing to relocate the City Center Motel to the outdoor rooftop terrace of

the new building which will reduce the integrity of the resource resulting in a significant and unavoidable impact. **(Significant Unavoidable Impact)**

Facts in Support of Finding: The project proposes to incorporate the sign into the project plans in the outdoor rooftop terrace. Removing the neon sign from its location along the roadside and placing it within a highly elevated location will lessen the integrity of the resource since much of its significance is associated with roadside vernacular architecture. Mitigation Measure MM CUL-3 outlines the appropriate measures to reduce the impact by relocation of the sign through the preparation and implementation of a relocation plan. However, as the project is not proposing to retain or relocate the sign along the roadside, this would be a significant and unavoidable impact.

Impact: **Impact CUL-4:** The addition of a modern high-rise building would result in significant adverse changes to adjacent and nearby historic resources and the historic character and eligibility of the SoFA District itself. Therefore, this is considered a significant historic resources impact under CEQA.

Mitigation: None

Finding: There are no feasible mitigation measures absent a redesign of the project consistent with the Historic Structure Preservation Alternative that could reduce the impact of the proposed project, and as such, this would be a significant and unavoidable impact. **(Significant Unavoidable Impact)**

Facts in Support of Finding: The project site is located at the southern edge of the SoFA District. Although the SoFA District is not formally designated as a historic district, the neighborhood represents one of the last areas of the City's historic commercial core. The addition of a modern high-rise building with a glass facade, as proposed with this project, would result in significant adverse changes to adjacent and nearby historic resources and the historic character and eligibility of the SoFA District itself. Furthermore, the project was not found to be in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties due to the incompatibility of the parking driveway design and ground floor corner design along South First Street specifically as it relates to materials, scale, and proportions.

Therefore, the project's impact to the SoFA District is considered a significant historic resources impact under CEQA. There are no feasible mitigation measures that could reduce the impact of the proposed high-rise building absent a redesign of the project consistent with the Historic

Structure Preservation Alternative, and as such, this would be a significant and unavoidable impact.

Impact: **Impact CUL-5:** The addition of a modern high-rise building would result in significant adverse changes to adjacent and nearby historic resources and the historic character and eligibility of the First Street Commercial historic core. Therefore, this is considered a significant historic resources impact under CEQA.

Mitigation: None

Finding: There are no feasible mitigation measures that could reduce the impact of a high-rise on the site absent a redesign of the project consistent with the Historic Structure Preservation Alternative, and as such, this would be a significant and unavoidable impact. **(Significant Unavoidable Impact)**

Facts in Support of Finding: The project would not meet the Secretary of the Interior's Standards for the Treatment of Historic Properties for new related construction with the First Street Commercial historic core environment. Under Option 1 and Option 2, the intrusion of a wide driveway along South First Street and wide expanses of glass walls along the pedestrian level of South First Street would be incompatible with the historic character of First Street commercial historic core of the City. Implementation of the project would construct a new high-rise tower on the historic environment onsite and offsite with the glass walls.

Therefore, the project's impact to the First Street commercial historic core is considered a significant historic resources impact under CEQA. There are no feasible mitigation measures that could reduce the impact of the increased urbanization of this site, and as such, this would be a significant and unavoidable impact.

Impact: **Impact CUL-6:** The loss of all as yet unknown subsurface prehistoric or historic resources on the project site during construction activities would be a significant impact.

Mitigation: **MM CUL-6.1: Subsurface Cultural Resources – Field Inventory**
The applicant shall retain a qualified archaeologist that meets the *Secretary of the Interior's Qualifications for Archaeology.* Before ground disturbing activities are initiated, including the issuance of any grading or building

permits, the qualified archaeologist shall conduct a field inventory of the affected parcels. If the field inventory results in the discovery of cultural materials, further action is required to identify, treat, evaluate, and/or mitigate these finds and additional recommendations (e.g., archaeological monitoring, subsurface testing, etc.) may be offered as appropriate. A report outlining the results of the field survey and appropriate implementation procedures for assessing discovered cultural materials shall be submitted to the Director of Planning or Director's designee prior to issuance of any grading or building permits.

MM CUL-6.2: Subsurface Cultural Resources – Subsurface Testing
Following demolition of the structures on the site and prior to issuance of any grading permits, the qualified archaeologist shall complete subsurface testing for archaeological resources on-site. A report outlining the results of the subsurface testing and further recommendations, such as the preparation of an archaeological resources treatment plan, shall be submitted to the Director of Planning or Director's designee.

MM CUL-6.3: Subsurface Cultural Resources – Archaeological Resources Treatment Plan
If subsurface testing revealed the presence of cultural resources, the qualified archeologist shall prepare an archaeological resources treatment plan prior to the issuance of any grading permits. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.

- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).

- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).

- Detailed field strategy used to record, recover, or avoid the finds and address research goals.

- Analytical methods.

- Report structure and outline of document contents.
- Disposition of the artifacts.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc.

The treatment plan shall be prepared and submitted to the Director of Planning or Director's designee for review and approval prior to the issuance of any grading permits.

MM CUL 6-4: Subsurface Cultural Resources – Construction Protocol
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 a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. The qualified archaeologist shall have authority to halt construction activities temporarily in the immediate vicinity of an unanticipated find. If, for any reasons, the qualified archaeologist is not present but construction crews encounter a cultural resource, all work shall stop temporarily within 50 feet of the find until a qualified archaeologist has been contacted to determine the proper course of action. If the find(s) do not meet the definition of a historical or archaeological resources, no further study or protection is necessary prior to project implementation.

If the find(s) does meet the definition of a historical or archaeological resource, the find(s) and the area around the find shall be avoided by project activities and an Archaeological Treatment Plan as described in Mitigation Measure CUL-6.3 shall be implemented. If avoidance is not feasible, adverse effects to such resources shall be mitigated in accordance with the recommendations of the archaeologist. Recommendations may include, but are not limited to: collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of Planning, Building and Code Enforcement and the Northwest Information Center.

The project archaeologist shall ensure that project personnel do not collect or move any cultural material, and that fill soils to be used for construction purposes do not contain any archaeological materials. The project

archeologist shall be present during all subsurface excavation and grading activities.

Finding: Implementation of Mitigation Measures MM CUL-6.1 to MM CUL-6.4 (i.e., field inventory, subsurface testing, archaeological resources treatment plan, construction protocol) would reduce potential impacts on known and unknown buried historic artifacts located on the project site to a less than significant level. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: The mitigation measures will require the review and evaluation of unknown subsurface prehistoric or historic resources, consistent with State regulations and local policies. Implementation of Mitigation Measures MM CUL-6.1 and MM CUL-6.3 requires conducting a field inventory, subsurface testing, and development of an archaeological resources treatment plan. The treatment plan will make provisions for adequately recovering scientifically consequential information from and about the historic or prehistoric resources. Additionally, the treatment plan will utilize data recovery methods to reduce impacts on subsurface resources and be prepared prior to the start of ground distance activities.

Implementation of Mitigation Measures MM CUL-6.4 will protect prehistoric or historic resources and Native American remains which are encountered during excavation and/or grading.

Biological Resources

Impact: **Impact BIO-1:** Development of the project would impact nesting raptors and other migratory breeding birds, if present on-site or in the immediate vicinity.

Mitigation: **MM BIO-1.1:** The project applicant shall schedule ground disturbance activities such as demolition and construction between September 1st and January 31st (inclusive) to avoid the nesting season. If construction cannot be scheduled to occur outside the nesting season, preconstruction surveys for nesting raptors and other migratory breeding birds (including yellow warblers) shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during project implementation on-site and within 250 feet of the site. Between February 1st and April 30th (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to initiation of construction activities (including any ground-disturbing activities) or tree relocation or removal. Between May 1st and August 31st (inclusive), pre-construction surveys shall be conducted no more than 30

days prior to initiation of these activities. During the surveys, the qualified ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent (within 250 feet) to the construction area for nests.

MM BIO-1.2: If an active nest is found in or close enough to the construction area to be disturbed by these activities, the qualified ornithologist shall, in consultation with the California Department of Fish and Wildlife (CDFW), designate a construction-free buffer zone (typically 250 feet for raptors and 100 feet for other birds) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified ornithologist has determined that the young birds have fledged.

MM BIO-1.3: The project applicant shall submit a report prepared by a qualified ornithologist indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning or Director's designee prior to any tree removal, or issuance of any grading permit or demolition permits whichever occurs first.

Finding: Implementation of Mitigation Measure MM BIO-1.1, MM BIO-1.2, and MM BIO-1.3 would reduce impacts to nesting raptors and other migratory birds to less than significant levels. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: Conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests will ensure that raptor or migratory bird nests are not disturbed during project construction, under the Migratory Bird Treaty Act and California Fish and Game Code. The size of the buffer zones will be determined by consultation between the qualified ornithologist and the California Department of Fish and Wildlife and based on scientific evidence and best management practices. Compliance with Mitigation Measure MM BIO-1.1 through MM BIO-1.3 will avoid impacts to nesting birds.

Hazards and Hazardous Materials

Impact: **Impact HAZ-1:** Project implementation may encounter soil and groundwater that exceed environmental screening levels during construction activities that could expose construction workers, neighboring uses, and the environment to hazardous materials.

Mitigation: **MM HAZ-1:** The project applicant shall retain a qualified consultant to conduct focused sampling and analysis for contamination of soil, soil vapor, and/or groundwater on-site prior to issuance of any grading permit.

Sampling on the site shall be under the regulatory oversight from SCCDEHs Voluntary Cleanup Program to address soil and groundwater contamination discovered on the property. Removal and off-site disposal of the soil at appropriate landfills during construction of the underground parking lot will likely constitute the mitigation required; however, the SCCDEH will approve the proposed mitigation, or if additional groundwater sampling and mitigation is necessary. Based on results of the contamination levels at the site, the project applicant shall prepare, under the guidance of SCCDEH, a Site and Groundwater Management Plan (SGMP) or equivalent report. The SGMP shall provide recommended measures to remediate the long-term environmental or health and safety risks caused by the presence of hazardous materials and contaminants at the site. The SGMP will also contain contingency plans to be implemented during soil excavation if unanticipated hazardous materials (e.g., former underground storage tanks) are encountered. A Health and Safety Plan (HSP) shall be prepared by the project applicant and each contractor as part of the SGMP that will outline proper soil and groundwater handling procedures and health and safety requirements to minimize worker and public exposure to hazardous materials during construction. The project applicant shall submit the SGMP and HSP to the SCCDEH for approval.

The project applicant shall provide all documentation showing submittal of the SGMP and HSPs with the SCCDEH to the Director of Planning or Director's designee and the Municipal Compliance Officer in the Environmental Services Department prior to issuance of any grading permits.

Finding: Implementation of MM HAZ-1 would ensure that hazardous substances on-site would not result in a significant hazard to construction workers, future users of the site, or the environment. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: The site was used historically as various restaurants, commercial stores (i.e., print shop, rubber stamp shops, auto and body shop, carpet service), and various residential from the 1920s until early 2000s. The Phase I ESA identified recognized environmental conditions (RECs) directly associated to the project site, specifically related to previously documented petroleum hydrocarbon contamination at adjacent and upgradient properties. Hazardous materials and petroleum hydrocarbon contamination were considered likely to be present and a Phase II ESA was recommended. The Phase II ESA collected and tested soil and groundwater samples at the project site. The soil and groundwater

analysis found contamination from hazardous materials and petroleum hydrocarbons detected at concentrations that exceed construction work safety and residential and commercial/industrial environmental screening levels (ESLs). The Phase II ESA recommended that a Soil and Groundwater Management Plan (SGMP) and a health and safety plan (HASP), be required prior to construction.

Implementation of MM HAZ-1 would ensure that hazardous substances on-site would not result in a significant hazard to construction workers, future users of the site, or the environment. These measures will be implemented by the applicant with the oversight of the Santa Clara County Department of Environmental Health (SCCDEH), or equivalent regulatory agency, to minimize worker and public exposure to hazardous materials during construction.

Impact: **Impact HAZ-2:** Project implementation is expected to encounter groundwater during construction that would require dewatering as part of the construction of the underground parking garage. The groundwater is anticipated to contain hazardous materials and petroleum hydrocarbon contamination.

Mitigation: **MM HAZ-2:** The project applicant shall obtain a discharge permit from the appropriate regulatory agency to dispose of the water collected during the dewatering process. For short-term discharge (less than 1-year), a discharge permit shall be obtained from the City of San José's Watershed Protection Division and the water discharged to the sanitary sewer. For long term discharge (greater than 1-year), the project applicant shall obtain a National Pollutant Discharge Elimination System (NPDES) permit from the California Regional Water Quality Control Board for discharge to the storm system. Both discharge permits require applications and pre-testing of the water to determine if the water meets the respective City or Regional Water Quality Control Board (RWQCB) pollutant discharge limits. The water shall be analyzed by a State-certified laboratory for the suspected pollutants prior to discharge. Water that exceeds discharge limits shall be treated to reduce pollutant concentrations to acceptable levels prior to discharge. Based on the results of the analytical testing, the project applicant shall work with the RWQCB and the local wastewater treatment plant to determine appropriate disposal options.

A copy of the discharge permit or NPDES permit, whichever is applicable, shall be submitted to the Director of Planning or Director's designee prior to the issuance of any grading permit.

Finding: Implementation of MM HAZ-2 would ensure that groundwater discharged from the site meets Regional Water Control Board pollutant discharge limits or will be treated to reduce water pollutant levels below these limits prior to disposal. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: The project proposes four levels of underground parking to a depth of 50 plus feet below ground surface. The depth to groundwater is estimated at 13 feet below ground surface. As such, dewatering activities will be required during construction of the underground parking area. Compliance with the measures outlined in MM HAZ-2 will ensure discharged water meets RWQCB standards at time of disposal to ensure protection of the environment and construction workers/occupants on the project site.

Noise

Impact: **Impact NOI-1:** Construction of the proposed project would last more than 12 months and would result in potential construction noise impacts in the vicinity of sensitive residential land uses.

Mitigation: **MM NOI-1:** The project applicant shall retain a qualified professional to prepare a construction noise logistics plan during all phases of construction on the project site. The plan shall specify hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who shall respond to neighborhood complaints. All measures from this plan shall be included on all approved grading and building permit plans. Measures to be included in the plan shall include, but are not limited to, the following:

- Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists;
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment;
- Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from adjacent land uses;
- Locate staging areas and construction material areas as far away as possible from adjacent land uses;

- Prohibit all unnecessary idling of internal combustion engines;
- If impact pile driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced.
- If impact pile driving is proposed, temporary noise control blanket barriers shall shroud pile drivers or be erected in a manner to shield the adjacent land uses. Such noise control blanket barriers can be rented and quickly erected.
- If impact pile driving is proposed, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile. Notify all adjacent land uses of the construction schedule in writing;
- Designate a "disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule

The project applicant shall ensure that all construction crews shall adhere to the Construction Noise Logistics Plan to reduce construction noise levels emanating from the site and minimize disruption and annoyance at existing noise-sensitive receptors in the project vicinity. The construction noise logistics plan shall be reviewed and approved by the Director of Planning or Director's designee prior to issuance of any grading permit and/or building permits.

Finding: With the implementation MM NOI-1, would further minimize impacts from construction noise as it requires best practices such as placing stationary noise sources away from receptors, use of temporary barriers, requiring construction equipment to be equipped with properly operating and maintained mufflers and other state required noise attenuation devices. Thus, with mitigation, a less than significant noise impact would result from construction activities. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: Construction of the project would occur over approximately 26 months under both Option 1 and Option 2, as both options would have similar building footprint and designs, with the exception of some minor differences in the ground floor layout. The potential for construction-related noise to affect nearby residential sensitive receptors would depend on the location and proximity of construction activities to these receptors. Construction would occur throughout the project site and would not be concentrated or confined in the area directly adjacent to sensitive receptors under both options. Therefore, construction noise would be acoustically dispersed throughout the project site and not concentrated in one area near adjacent sensitive uses.

The project is proposing construction on Saturdays between 7:00 a.m. and 7:00 p.m. as well as one 24-hour construction day during the foundation concrete pour under both options. Furthermore, the project anticipates a 26-month construction period under both options. Therefore, per the requirements of General Plan Policy EC-1.7 and consistent with the Downtown Strategy FEIR, Mitigation Measure NOI-1 would be implemented to require a construction noise logistics plan that would incorporate best management practices during construction.

Cumulative Impacts

Impact: **Impact CUL(C)-1:** Demolition of the Pallesen Apartment and Pallesen Building, and relocation of the City Center Motel sign would result in a cumulatively considerable contribution to adverse impacts on historic resources.

Mitigation: **MM CUL(C)–1:** The project applicant shall implement MM CUL-1 through CUL-4.

Finding: Mitigation Measures MM CUL-1 through MM-CUL-4 would mitigate some of the loss of historic resources; however, impacts related to the cumulative loss of historic buildings and change in the character of the historic areas would remain significant and unavoidable. **(Significant and Unavoidable Impact)**

Facts in Support of Finding: As explained in the facts supporting the findings for MM CUL-1 through MM CUL-4, the project would not meet the Secretary of the Interior's Standards for the Treatment of Historic Properties for new related construction as it would demolish on-site historic resources, would result in

significant adverse changes to adjacent and nearby historic resources, and would threaten the historic character and eligibility the SoFa and First Street Commercial historic core environment. Therefore, the project's cumulative impact is considered a significant historic resources impact under CEQA. There are no feasible mitigation measures that could reduce the impact of the proposed project on this site absent a redesign of the project consistent with the Historic Structure Preservation Alternative, and as such, this would be a significant and unavoidable impact.

FINDINGS CONCERNING ALTERNATIVES

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

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

1. No Project Alternative
2. Pallesen Apartments Relocation Alternative
3. Historic Structure Preservation Alternative

1. No Project Alternative

A. **Description of Alternative:** The No Project Alternative would retain the existing buildings and continue the current operations. No development under Option 1 or Option 2 would occur. If the project site were to remain as is, with the retention of all the on-site structures.

B. **Comparison of Environmental Impacts:** Under the No Project Alternative, the Project site would remain as it is and all of the environmental impacts anticipated to occur under the proposed project; including the demolition of the Pallesen Apartments Building, reuse of the façade of the Pallesen Building into the project, and relocation of the City Center Motel sign would be avoided.

C. **Finding:** The No Project Alternative would avoid the significant impacts identified in this FSEIR. The No Project Alternative would not, however, allow for new high-density mixed-use development to be constructed on the project site consistent with the Envision San José 2040 General Plan and the Downtown Strategy 2040 Plan nor would it meet any of the project objectives. Therefore, this alternative is rejected.

2. Pallesen Apartments Relocation Alternative

A. **Description of Alternative:** Under the Pallesen Apartments Relocation Alternative, the project would be the same as the proposed project with the exception that the Pallesen Apartments Building would be relocated off-site. The Pallesen Apartments would be moved to another location within the Downtown San José area and would be preserved and used as an apartment building similar to its current use. Under this alternative the Pallesen Building would be demolished (with façade preservation) and the City Center Motel sign would be relocated to the roof of the proposed building. This alternative would be the same for Option 1 and Option 2.

The number of available locations that can receive a historic building are limited. There are several factors when proposing to relocate a historic building such as the Pallesen Apartments including availability of a vacant site in the vicinity of the existing building; adequacy of the receiver site for the relocated building in terms of size, historic setting, and land use restrictions (zoning and General Plan); and a location that does not require relocation of the structure beneath freeway overpasses such as those for I-280 and State Route 87.

B. **Comparison of Environmental Impacts:** The Pallesen Apartments Relocation Alternative would avoid the significant and unavoidable impact associated with the demolition and removal of the Pallesen Apartments. However, impacts related to the Pallesen Building and the City Center Motel sign would remain the same as the Project. This alternative would meet all of the project objectives for both Option 1 and Option 2.

C. **Finding:** Under the Pallesen Apartments Relocation Alternative, locating a potential site in the downtown area is possible and Pallesen Apartments could be relocated even with all of its physical constraints. The implementation of the conditions of approval would ensure the physical impacts associated with the relocation of the building would be minimized and that the important historical elements of the building would be

documented and preserved for future research. The Pallesen Apartments Relocation Alternative would avoid the significant and unavoidable impact associated with the demolition and removal of the Pallesen Apartments. However, due to the lack of a suitable relocation site, this alternative is rejected.

3. Historic Structure Preservation Alternative

A. **Description of Alternative:** Under the Historic Structure Preservation Alternative, all three structures would remain on the project site, the Pallesen Apartments, Pallesen Building, and City Center Motel sign. Each of these structures would remain in its current location, and buildings would retain their current use. The proposed project would be a residential development designed around these structures. Under this alternative, approximately 5,000 square feet of development area would be available for the site. The site could support a narrow building with a north-south orientation. The building would be three stories in height. The ground floor would have a small amount of retail area of approximately 1,500 square feet, a building lobby, and some mechanical and maintenance areas. The second and third floors would have approximately six residential units each for a total of 12 units. This design would allow for approximately one row of off-street parking consisting of about eight parking spaces.

B. **Comparison of Environmental Impacts:** By preserving the onsite historic structures, this alternative would avoid potential impacts on historic resources, because the existing buildings would continue in their current use in their original location. The existing four residential units in the Pallesen Apartments building would remain. The Center City Motel sign would remain in its original location as well. By retaining the buildings, the project would also have an incrementally reduced impact on the increased urbanization and removal of historic structures in the SoFA and First Street Commercial historic core areas.

C. **Finding:** Under this alternative, potential impacts associated with the removal of the Pallesen Apartments, Pallesen Building, and City Center Motel sign for both Option 1 and Option 2 would be avoided and potential impacts on historical resources would be less than significant. The proposed project had less than significant impacts on construction air quality, construction noise, traffic, and energy use. However, the Historic Structure Preservation Alternative with a reduced footprint and fewer units would have incrementally reduced impacts in all these areas.

This alternative would not fully meet the following project objectives:

- Provide a development that implements the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 Plan by locating high-density development on infill sites in downtown San José to foster transit use, improving the efficiency of urban services, strengthening downtown as a regional job destination.
- Promote and prioritize development that serves the needs of the entire City and valley.
- Maximize use of an infill site by providing retail and residences in an area served by various modes of public transportation; thereby reducing vehicle miles traveled and lowering overall greenhouse gas emissions.
- Efficient use of an underutilized site with new structures that will provide housing units in downtown San José.
- Construct a high-quality development that is marketable and produces a reasonable return on investment for the Project Sponsor and its investors and is able to attract investment capital and construction financing.

As the alternative does not meet most key project objectives, this alternative is rejected.

MITIGATION MONITORING AND REPORTING PROGRAM

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

STATEMENT OF OVERRIDING CONSIDERATIONS

A. **Significant Unavoidable Impacts**. With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the Project will result a significant unmitigated or

unavoidable impacts, as set forth above, associated with aesthetics, air quality, noise, and transportation.

B. **Overriding Considerations**. The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the Project are acceptable in light of the economic, legal, environmental, social, technological or other considerations noted below, because the benefits of the Project outweigh its significant adverse environmental impact of the Project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent basis for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan and the San José Commercial Design Guidelines.

C. **Benefits of the Project**. The City Council has considered the public record of proceedings on the proposed Project and other written materials presented to the City as well as oral and written testimony at all public hearings related to the Project, and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:

- **Develop Residences that are Accessible to Transit, Activities, Services, and Jobs in the Downtown Core.** The Project includes ground floor commercial and high-density residential uses that are within walking and biking distance of existing and planned transit stops, retail, entertainment, and educational institutions such a San José State University within the Downtown Core, an area with low residential per-capita Vehicle Miles Traveled (VMT) compared with the City as a whole. The Project would increase the number of residents that would utilize existing and proposed commercial and retail spaces in the area and will increase transit ridership in the Downtown, resulting in lower residential per-capita VMT than an equivalent size residential project in other areas of San José.
- **Envision San José 2040 General Plan Strategies, Goals, and Policies.**
    - Major Strategy #3 Focused Growth: The Project site is located within an identified Growth Area (Downtown), as specified in the

Envision San José 2040 General Plan. The Project proposes to significantly intensify the site with high density, high-rise housing with pedestrian-friendly designs and located in proximity to a variety of services, employment centers, educational institutions, and transit. Planning such sites for higher density residential development enables the City to provide housing growth capacity consistent with demographic trends and the community objectives of the Envision San José 2040 General Plan.

- Major Strategy #9 Destination Downtown: The Project would increase the number of residents living Downtown, residents that will partake in the activities and contribute to business growth in the Downtown area by increasing the customer base for downtown businesses. The Project also introduces active commercial uses at the ground floor, consistent with the rhythm and activities of Downtown Core and the SoFa district. In addition, the Project serves as a catalyst to the neighborhood of South First Street, and forms a connection between the Downtown and neighborhoods south of I-280 by providing active ground floor retail at the corner of South First Street and East Reed Street.
- Land Use Goal LU-3 and Transportation Policy TR-4.1: The Project encourages the use of alternative transportation options through its proximity to public transit, the inclusion of bicycle parking for residents and commercial uses, and implementation of unbundled residential parking. The project will also install widen public sidewalks along the project frontages on 1st Street and Reed Street to allow for a more pedestrian oriented development.
- Community Design Goal CD-6: The Project incorporates a unique design that will contribute to the Downtown streetscape and skyline. The roofline is distinctive in its use of a butterfly, roofline canopy and outdoor roof deck amenity space. The mix of materials on the ground floor breaks up the building's façades along First Street and Reed and creates a warm feeling, inviting pedestrians and bicyclists.

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

LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at the City's Department of Planning, Building and Code Enforcement, City Hall, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113. The City Council hereby designates the City's Director of Planning, Building, and Code Enforcement at his office at 200 East Santa Clara Street, San José California 95113, as the custodian of documents and records of proceedings on which this decision is based.

ADOPTED this ___ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

_____
SAM LICCARDO
Mayor

ATTEST:

_____
TONI J. TABER, CMC
City Clerk

Exhibit A

MITIGATION MONITORING AND REPORTING PROGRAM

Garden Gate Tower
File No. SP18-001 and T18-001
September 2019

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

PREFACE

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

The Supplemental Environmental Impact Report prepared for the Garden Gate Tower Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

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

I, MARK TERSINI, the applicant, on the behalf of GARDEN GATE TOWER LLC., hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of an Supplemental Environmental Impact Report for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level, where feasible.

Project Applicant's Signature Mark E. Tersini

Date 9/20/19

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
CULTURAL RESOURCES					
Impact CUL-1: The demolition of the Pallesen Apartments, a National Register of Historic Places (NRHP), California Register of Historic Resources (CRHR), and local eligible structure, would be a significant impact.					
MM-CUL-1: Historic Resources – Pallesen Apartments Demolition Prior to issuance of any grading, demolition, or building permits or any other approval that would allow disturbance of the project site, the project applicant shall prepare and submit, to the satisfaction of the Director of Planning or Director's designee in coordination with the City's Historic Preservation Officer, a historic preservation plan demonstrating that the following actions have been satisfied.	Prepare and submit a Historic Preservation Plan.	Prior to issuance of any grading, demolition, or building permits.	Director of Planning, Building and Code Enforcement (PBCE) and City's Historic Preservation Officer	Approve and ensure compliance with the Historic Preservation Plan.	Prior to issuance of any grading, demolition, or building permits.
Documentation: The structure shall be documented in accordance with the guidelines established for the Level III Historic American Building Survey (HABS) consistent with the *Secretary of the Interior's Standards for Architectural and Engineering Documentation* and shall consist of the following components: A. Drawings – Prepare sketch floor plans. B. Photographs – Digital photographic documentation of the interior, exterior, and setting of the buildings in compliance with the National Register Photo	Implement documentation of the Pallesen Apartments in accordance with the guidelines established for HABS consistent with the Secretary of the Interior's Standards for Architectural and Engineering Documentation.	Prior to issuance of any grading, demolition, or building permits.	City's Historic Preservation Officer	Review all required documentation.	Prior to filing with the San José Library's California Room and the Northwest Information Center at Sonoma State University.

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Policy Fact Sheet. Photos must have a permanency rating of approximately 75 years. C. Written Data – HABS written documentation in short form. An architectural historian meeting the Secretary of the Interior's Professional Qualification Standards shall oversee the preparation of the sketch plans, photographs, and written data. The Department of Parks and Recreation 523 forms prepared for the project (included in Appendix A of Appendix F of the SEIR) can be used to fulfill the requirements for the written data report. The required documentation shall be filed with the San José Library's California Room and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System. All documentation shall be submitted on archival paper and must first be reviewed and approved by the City's Historic Preservation Officer. <u>Relocation by the Applicant and/or a Third Party:</u> Prior to issuance of any demolition permits, the project applicant, or an interested third party, shall be required to advertise the availability of the structure for relocation for a period of no less than 60 days. The	Evidence of advertisement for building relocation	Prior to issuance of any demolition permits.	Director of PBCE and City's Historic Preservation Officer	Receive evidence of advertisement for building relocation	Prior to issuance of any demolition permits.

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advertisements must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The project applicant shall provide evidence (i.e., receipts, date and time stamped photographs, etc.) to the City's Historic Preservation Officer that this condition has been met prior to the issuance of demolition permits.					
If the project applicant or third party agrees to relocate the structure, the followingmeasures must be followed: 1. The Director of Planning or Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is suitable for the building.	Consultation with Director of PBCE and City's Historic Preservation Officer	Prior to issuance of any demolition permits	Director of PBCE and City's Historic Preservation Officer	Receive documentation of suitable receiver site	Prior to issuance of any demolition permits
2. Prior to relocation, the project applicant or third party shall hire a historic preservation architect and a structural engineer to undertake an existing condition study that establishes the baseline condition of the building prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be	Consultation with Director of PBCE and City's Historic Preservation Officer	Prior to issuance of any demolition permits	Director of PBCE and City's Historic Preservation Officer	Receive Existing Condition Study	Prior to issuance of any demolition permits

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reviewed and approved by the City's Historic Preservation Officer prior to the structure being moved. Documentation already completed shall be used to the extent possible to avoid repetition in work.					
3. To protect the building during relocation, the project applicant or third party shall engage a building mover who has experience moving similar historic structures. A structural engineer shall also be engaged to determine if the building needs to be reinforced/stabilized before the move.	Consultation with Director of PBCE and City's Historic Preservation Officer	Prior to issuance of any demolition permits	Director of PBCE and City's Historic Preservation Officer	Receive engagement letter from mover and structural engineer.	Prior to issuance of any demolition permits
4. Once moved, the building shall be repaired and restored, as needed, by the project applicant or third party in conformance with the *Secretary of the Interior's Standards for the Treatment of Historic Properties.* In particular, the character-defining features shall be restored in a manner that preserves the integrity of the features for the long-term preservation of these features. Upon completion of the repairs, a qualified architectural historian shall document and confirm that renovations of the structure were completed in conformance with the Secretary of the Interior's Standards for the Treatment of	Consultation with Director of PBCE and City's Historic Preservation Officer	Prior to issuance of any demolition permits	Director of PBCE and City's Historic Preservation Officer	Receive Memo Report.	Prior to issuance of any demolition permits

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Historic Properties and that all character-defining features were preserved. The project applicant shall submit a memo report to the City's Historic Preservation Officer documenting the relocation. Salvage: If the project applicant and/or no third party agrees to relocate the structure, the structure shall be made available for salvage to salvage companies facilitating the reuse ofhistoric building materials. The time frame available for salvage shall beestablished by the City's Historic Preservation Officer. The project applicant must provide evidence to the City's Historic Preservation Officer that this condition has been met prior to the issuance of demolition permits.	Evidence of advertisement for building salvage	Prior to issuance of any demolition permits.	City's Historic Preservation Officer	Receive evidence of advertisement for building salvage	Prior to issuance of any demolition permits.
Impact CUL-2: Partial demolition of the Pallesen Building will compromise the integrity of the building as an individual structure and therefore diminish its eligibility as a historic resource.					
MM CUL-2: Historic Resources – Pallesen Building Façade Preservation The project applicant shall retain a historic consultant to prepare a Preservation Plan on the retention of the Pallesen Building façade, which includes the street facing wall and the complete storefront assembly. The Preservation Plan shall include:	Prepare and submit a Preservation Plan	Prior to issuance of any demolition or grading permits, whichever comes first	City's Historic Preservation Officer	Approve and ensure compliance with the Preservation Plan	Prior to issuance of any demolition or grading permits, whichever comes first

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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• Existing conditions study which establishes the baseline conditions of the building. Documentation shall include written descriptions and visual illustrations, including those physical characteristics of the resources that convey its historic significance (Retention of the original character defining features) • Structural engineering plans to show how the structural integrity of the building will be maintained during the move and how the façade will be seismically reinforced. • Protective fencing and other methods shall be used to protect the building from further damage and deterioration during the process. • If historic preservation architect or structural engineer observes any new damage after relocation of the structure, an assessment shall be made of the severity of such damage and repairs taken if necessary. This assessment shall be provided within 5 business days after discovery of the damage. The Preservation Plan shall be submitted to the City's Historic Preservation Officer prior to issuance of any demolition or grading permits, whichever comes first.					

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Impact CUL-3: The relocation of the City Center Motel Sign to the outdoor rooftop terrace will reduce the integrity and historic eligibility of the sign.					
MM CUL-3: Historic Resources – City Center Motel Sign Preservation The project applicant shall, in coordination with the City's Historic Preservation Officer, prepare a Relocation Plan that provides details regarding the relocation site, procedures and method for relocation, and maintenance plan for the sign. The Relocation Plan shall be submitted to the City's Historic Preservation for review and approval prior to issuance of any demolition or grading permits, whichever comes first.	Prepare and submit a Relocation Plan	Prior to issuance of any demolition or grading permits, whichever comes first	City's Historic Preservation Officer	Approve and ensure compliance with the Relocation Plan	Prior to issuance of any demolition or grading permits, whichever comes first
Impact CUL-6: The loss of all as yet unknown subsurface prehistoric or historic resources on the project site during construction activities would be a significant impact.					
MM CUL-6.1: Subsurface Cultural Resources – Field Inventory The project applicant shall retain a qualified archaeologist that meets the *Secretary of the Interior's Qualifications for Archaeology*. Before ground disturbing activities are initiated, including the issuance of any grading or building permits, the qualified archaeologist shall conduct a field inventory of the affected parcels. If the field inventory results in the discovery of cultural materials, further action is required to identify, treat, evaluate, and/or mitigate these finds and additional recommendations (e.g., archaeological monitoring, subsurface testing, etc.) may be offered as appropriate. A report outlining the	Retain a qualified archaeologist that meets the *Secretary of the Interior's Qualifications for Archaeology* and submit a report outlining the results of the field survey.	Before ground disturbing activities are initiated.	Supervising Environmental Planner of PBCE	Review and approve the report outlining the results of the field survey.	Prior to issuance of any grading or building permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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results of the field survey and appropriate implementation procedures for assessing discovered cultural materials shall be submitted to the Director of Planning or Director's designee prior to issuance of any grading or building permits.					
MM CUL-6.2: Subsurface Cultural Resources – Subsurface Testing Following demolition of the structures on the site and prior to issuance of any grading permits, the qualified archaeologist shall complete subsurface testing for archaeological resources on-site. A report outlining the results of the subsurface testing and further recommendations, such as the preparation of an archaeological resources treatment plan, shall be submitted to the Director of Planning or Director's designee.	Submit a report outlining the results of the subsurface testing prepared by a qualified archeologist.	Following demolition of the structures on the site and prior to issuance of any grading permits.	Supervising Environmental Planner of PBCE	Review and approve the report outlining the results of the subsurface testing.	Prior to issuance of any grading permits.
MM CUL-6.3: Subsurface Cultural Resources – Archaeological Resources Treatment Plan If subsurface testing revealed the presence of cultural resources, the qualified archeologist shall prepare an archaeological resources treatment plan prior to issuance of any grading permits. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. The treatment plan shall contain, at a minimum:	Prepare and submit an archaeological resources treatment plan prepared by a qualified archeologist.	Prior to issuance of any grading permits	Supervising Environmental Planner of PBCE	Review and ensure compliance with the archaeological resources treatment.	Prior to issuance of any grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
• Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations. • Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found). • Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information). • Detailed field strategy used to record, recover, or avoid the finds and address research goals. • Analytical methods. • Report structure and outline of document contents. • Disposition of the artifacts. • Appendices: all site records, correspondence, and consultation with Native Americans, etc. The treatment plan shall be prepared and submitted to the Director of Planning or Director's designee for review and approval prior to the issuance of any grading permits.					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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MM CUL-6.4: Subsurface Cultural Resources – Construction Protocol 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 a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. The qualified archaeologist shall have authority to halt construction activities temporarily in the immediate vicinity of an unanticipated find. If, for any reasons, the qualified archaeologist is not present but construction crews encounter a cultural resource, all work shall stop temporarily within 50 feet of the find until a qualified archaeologist has been contacted to determine the proper course of action. If the finds do not meet the definition of a historical or archaeological resources, no further study or protection is necessary prior to project implementation. If the find(s) does meet the definition of a historical or archaeological resource, the find(s) and the area around	If prehistoric or historic resources are encountered during excavation and/or grading of the site, cease all activity within a 50-foot radius of the find. Prepare a report of findings documenting any data recovery.	During excavation and/or grading of the site.	Director of PBCE and Supervising Environmental Planner of PBCE	Receive a report of findings documenting any data recovery.	During excavation and/or grading of the site.

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the find shall be avoided by project activities and an Archeological Resources Treatment Plan as described in Mitigation Measure CUL-6.3 shall be implemented. If avoidance is not feasible, adverse effects to such resources shall be mitigated in accordance with the recommendations of the archaeologist. Recommendations may include, but are not limited to, collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of Planning, Building and Code Enforcement and the Northwest Information Center. The project archaeologist shall ensure that project personnel do not collect or move any cultural material, and that fill soils to be used for construction purposes do not contain any archaeological materials. The project archeologist shall be present during all subsurface excavation and grading activities.					
Impact CUL(C)-1: Demolition of the Pallesen Apartment and Pallesen Building, and relocation of the City Center Motel sign would result in a cumulatively considerable contribution to adverse impacts on historic resources.					
MM CUL(C)-1: The project applicant shall implement MM CUL-1 through CUL-3.	See MM CUL-1 through CUL-3				

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BIOLOGICAL RESOURCES					
Impact BIO-1: Development of the proposed project would impact nesting raptors and other migratory breeding birds, if present on-site or in the immediate vicinity.					
MM BIO-1.1: The project applicant shall schedule ground disturbance activities such as demolition, construction, and tree removal between September 1st and January 31st (inclusive) to avoid the nesting season. If construction cannot be scheduled to occur outside the nesting season, pre-construction surveys for nesting raptors and other migratory breeding birds (including yellow warblers) shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during project implementation on-site and within 250 feet of the site. Between February 1st and April 1st (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to initiation of construction activities (including any ground-disturbing activities) or tree relocation or removal. Between May 1st and August 31st (inclusive), pre-construction surveys shall be conducted no more than 30 days prior to initiation of these activities. During the surveys, the qualified surveying ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent (within 250 feet) to the construction area for nests.	Avoid demolition and construction activities during the nesting season. If construction activities cannot be scheduled outside of the nesting season, a qualified ornithologist shall conduct all pre-construction surveys.	Prior to any ground disturbance activities	Supervising Environmental Planner of PBCE	Confirm if pre-construction nesting surveys are required and, if required, review the report indicating the results of the survey.	Prior to issuance of any demolition, grading, or tree removal permits.

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MM BIO-1.2: If an active nest is found in or close enough to the construction area to be disturbed by these activities, the qualified ornithologist shall, in consultation with the California Department of Fish and Wildlife (CDFW), designate a construction-free buffer zone (typically 250 feet for raptors and 100 feet for other birds) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified ornithologist has determined that the young birds have fledged.	Consult with CDFW to designate a construction-free buffer zone around the nest.	Pre-construction and during construction.	Supervising Environmental Planner of PBCE	Confirm and ensure compliance with the designation of a construction-free buffer zone around the nest.	Prior to issuance of any demolition, grading, or tree removal permits.
MM BIO-1.3: The project applicant shall submit a report prepared by a qualified ornithologist indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning or Director's designee prior to any tree removal, or issuance of any grading permit or demolition permits whichever occurs first.	Submit report indicating the results of the survey and any designated buffer zones.	Prior to any tree removal, or to issuance of any grading permit or demolition permits.	Supervising Environmental Planner of PBCE	Receive report indicating the results of the survey and any designated buffer zones.	Prior to issuance of any demolition, grading or tree removal permits, whichever occurs first.

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HAZARD AND HAZARDOUS MATERIALS					
Impact HAZ-1: Project implementation may encounter soil and groundwater that exceed environmental screening levels during construction activities that could expose construction workers, neighboring uses, and the environment to hazardous materials.					
MM HAZ-1: The project applicant shall retain a qualified consultant to conduct focused sampling and analysis for contamination of soil, soil vapor, and/or groundwater on-site prior to issuance of any grading permit. Sampling on the site shall be under the regulatory oversight from the Santa Clara County Department of Environmental Health's (SCCDEHs) Voluntary Cleanup Program to address soil and groundwater contamination discovered on the property. Removal and off-site disposal of the soil at appropriate landfills during construction of the underground parking lot will likely constitute the mitigation required; however the SCCDEH will approve the proposed mitigation, or if additional groundwater sampling and mitigation is necessary. Based on results of the contamination levels at the site, the project applicant shall prepare, under the guidance of SCCDEH, a Site and Groundwater Management Plan (SGMP) or equivalent report. The SGMP shall include recommended measures to remediate the long-term environmental or health and safety risks caused by the presence of hazardous materials and contaminants at the site. The SGMP shall also contain contingency plans to be implemented during soil excavation if	Prepare a SGMP or equivalent report and contingency plans (i.e., HSP) if unanticipated hazardous materials are encountered during soil excavation.	Prior to issuance of any grading permits.	SCCDEH and Supervising Environmental Planner of PBCE	Receive SGMP or equivalent report, contingency plans (i.e. HSP), and all documentation showing implementation of mitigation with the SCCDEH.	Prior to issuance of any grading permits.

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unanticipated hazardous materials (e.g., former underground storage tanks) are encountered. A Health and Safety Plan (HSP) shall be prepared by the project applicant and each contractor as part of the SGMP that will outline proper soil and groundwater handling procedures and health and safety requirements to minimize worker and public exposure to hazardous materials during construction. The project applicant shall submit the SGMP and HSP to the SCCDEH for approval.. The project applicant shall provide all documentation showing submittal of the SGMP and HSPs with the SCCDEH to the Director of Planning or Director's designee and the Municipal Compliance Officer in the Environmental Services Department prior to issuance of any grading permits.					

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Impact HAZ-2: Project implementation is expected to encounter groundwater during construction that would require dewatering as part of the construction of the underground parking garage. The groundwater is anticipated to contain hazardous materials and petroleum hydrocarbon contamination.					
MM HAZ-2: The project applicant shall obtain a discharge permit from the appropriate regulatory agency to dispose of the water collected during the dewatering process. For short-term discharge (less than 1 year), a discharge permit shall be obtained from the City of San Jose's Watershed Protection Division and the water discharged to the sanitary sewer. For long term discharge (greater than 1 year), the project applicant shall obtain a National Pollutant Discharge Elimination System (NPDES) permit from the California Regional Water Quality Control Board for discharge to the storm system. Both discharge permits require applications and pre-testing of the water to determine if the water meets the respective City or Regional Water Quality Control Board (RWQCB) pollutant discharge limits. The water shall be analyzed by a State-certified laboratory for the suspected pollutants prior to discharge. Water that exceeds discharge limits shall be treated to reduce pollutant concentrations to acceptable levels prior to discharge. Based on the results of the analytical testing, the project applicant shall work with the RWQCB and the local wastewater treatment plant to determine appropriate disposal options.	Obtain a discharge permit from the appropriate regulatory agency.	Prior to the start of construction.	City of San Jose's Watershed Protection Division or California Regional Water Quality Control Board and Supervising Environmental Planner of PBCE	Receive a copy of the discharge permit or NPDES permit.	Prior to the issuance of any grading permit.

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A copy of the discharge permit or NPDES permit, whichever is applicable, shall be submitted to the Director of Planning or Director's designee prior to the issuance of any grading permit.					
NOISE					
Impact NOI-1: Construction of the proposed project would last more than 12 months and would result in potential construction noise impacts in the vicinity of sensitive residential land uses.					
MM NOI-1: The project applicant shall retain a qualified professional to prepare a Construction Noise Logistics Plan. The Construction Noise Logistics Plan shall specify 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. All measures from this plan shall be included on approved grading and building plans. Measures to be included in the plan shall include, but are not limited to, the following: • Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists; • Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment;	Retain a qualified professional to prepare a Construction Noise Logistics Plan.	Prior to issuance of any grading permit and/or building permits.	Supervising Environmental Planner of PBCE	Review and approval of the Construction Noise Logistics.	Prior to issuance of any grading permit and/or building permits.

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• Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from adjacent land uses; • Locate staging areas and construction material areas as far away as possible from adjacent land uses; • Prohibit all unnecessary idling of internal combustion engines; • If impact pile driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced. • If impact pile driving is proposed, temporary noise control blanket barriers shall shroud pile drivers or be erected in a manner to shield the adjacent land uses. Such noise control blanket barriers can be rented and quickly erected. • If impact pile driving is proposed, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required					

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to seat the pile. Notify all adjacent land uses of the construction schedule in writing; • Designate a "disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule. The project applicant shall ensure that all construction crews adhere to the Construction Noise Logistics Plan to reduce construction noise levels emanating from the site and minimize disruption and annoyance at existing noise-sensitive receptors in the project vicinity. The construction noise logistics plan shall be reviewed and approved by Director of Planning or Director's designee prior to issuance of any grading permit and/or building permits.					

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Impact NOI-2: Adjacent buildings including historical structures could be exposed to groundborne vibration in excess of City standards during project construction.					
MM NOI-2.1: The project applicant shall prepare and implement a Construction Vibration Monitoring Plan to document conditions prior to, during, and after vibration generating construction activities. The vibration monitoring plan shall address vibration impacts to sensitive historic structures of 0.08 in/sec PPV and all normal conventional construction structures of 0.20 in/sec PPV. All tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry accepted standard methods. The Construction Vibration Monitoring Plan shall include, but is not limited to, the following tasks: • Identification of the sensitivity of on- and off-site structures to groundborne vibration. Vibration limits shall be applied to all vibration sensitive structures located on or within 50 feet of the project site. • Performance of a photo survey, elevation survey, and crack monitoring survey for each structure within 50 feet of construction activities identified as sources of high vibration levels. Surveys shall be performed prior to any construction activity, in regular intervals during	Prepare, submit, and implement a Construction Vibration Monitoring Plan.	Prior to, during, and after vibration generating construction activities.	Supervising Environmental Planner of PBCE	Review and approve the Construction Vibration Monitoring Plan.	Prior to issuance of any grading permits.

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construction and after project completion and shall include internal and external crack monitoring in structures, settlement, and distress and shall document the condition of foundations, walls, and other structural elements in the interior and exterior of said structures. • Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approach the limits. • At a minimum, vibration monitoring shall be conducted during pavement removal, building demolition, and drilling activities. Monitoring results may indicate the need for more or less intensive measurements. • If vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures. • Designate a person responsible for registering and investigating claims of excessive vibration.					

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The contact information of such person shall be clearly posted on the construction site. • Conduct post-survey on structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. The Construction Vibration Monitoring Plan shall be reviewed and approved by the Director of Planning or Director's designee prior to issuance of any grading, demolition, or building permit (whichever occurs first). **MM NOI 2.2:** The project applicant shall submit the report summarizing the result of the vibration monitoring process during all demolition and construction phases to the Director of Planning or Director's designee no later than a week after substantial completion of each phase identified in the project schedule of the Construction Vibration Monitoring Plan. The report shall include, but is not limited to, a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. An explanation of all events that exceeded vibration limits shall be included together with proper documentation supporting any such claims.					