



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 7, 2019

COUNCIL DISTRICT: 3

SUBJECT: FILE NO. SP18-001 & T18-001: DEVELOPMENT PROJECT, CONSISTING OF A VESTING TENTATIVE SUBDIVISION MAP AND SPECIAL USE PERMIT, WHICH WOULD ALLOW THE DEMOLITION OF THE EXISTING ON-SITE BUILDINGS, THE REMOVAL OF ONE (1) ORDINANCE SIZE TREE, MERGING OF TWO PARCELS INTO ONE PARCEL AND THE CONSTRUCTION OF A 27-STORY, HIGH-RISE TOWER COMPRISED OF ONE OF THE FOLLOWING OPTIONS: OPTION 1: A MIXED-USE DEVELOPMENT OF NO MORE THAN 295 CONDOMINIUM UNITS INCLUDING A MAXIMUM OF 290 RESIDENTIAL CONDOMINIUM UNITS AND A MAXIMUM OF FIVE (5) COMMERCIAL CONDOMINIUM UNITS; OR OPTION 2: A CO-LIVING FACILITY OF NO MORE THAN SIX (6) CONDOMINIUM UNITS INCLUDING A RESIDENTIAL CONDOMINIUM UNIT FOR A CO-LIVING FACILITY WITH A MAXIMUM OF 793 BEDROOMS AND A MAXIMUM OF FIVE (5) COMMERCIAL CONDOMINIUM UNITS. THE DEVELOPMENT PROJECT WOULD BE LOCATED ON AN APPROXIMATELY 0.4-GROSS ACRE SITE AT 600 SOUTH 1ST STREET ON THE SOUTHEAST CORNER OF SOUTH 1ST STREET AND EAST REED STREET

RECOMMENDATION

The Planning Commission voted 4-2-1 (Allen and Griswold opposed, Ballard absent) to recommend that the City Council take all of the following actions:

1. Adopt a resolution certifying the Supplemental Environmental Impact Report to the Downtown Strategy 2040 Environmental Impact Report (Resolution 78942) and associated Mitigation Monitoring and Reporting Plan for the Garden Gate Tower Project in accordance with CEQA, as amended.
2. Adopt a resolution adopting the Vesting Tentative Subdivision Map to merge two parcels into one parcel and to re-subdivide the parcel pursuant to either of the following options: Option 1: One parcel re-subdivided into no more than 295 condominium units including a maximum of 290 residential condominium units and a maximum of five commercial condominium units; OR

- Option 2: One parcel re-subdivided into no more than six condominium units including one residential condominium unit and a maximum of five commercial condominium units.
3. Adopt a resolution adopting a Special Use Permit, subject to conditions, to allow the demolition of existing on-site buildings, the removal one non-ordinance size tree, and the construction of a 27-story, high-rise tower on an approximately 0.4-gross acre site located at the southeast corner of South First Street and East Reed Street, comprised of the following options:
Option 1: A mixed-use development of no more than 295 condominium units including a maximum of 290 residential condominium units and a maximum of five commercial condominium units; OR
Option 2: A co-living facility of no more than six condominium units including a residential condominium unit for a Co-Living Facility with a maximum of 793 Bedrooms and a maximum of five commercial condominium units.
4. Direct Staff to file a Notice of Determination pursuant to Section 15094 of the State CEQA Guidelines.

OUTCOME

If the City Council approves all the actions listed above, the applicant will be able to demolish the existing on-site buildings, remove one ordinance size tree, merge two parcels into one parcel, and construct a 27-story, high-rise tower comprised of one of the following options:

- Option 1: A mixed-use development of no more than 295 condominium units including a maximum of 290 residential condominium units and a maximum of five commercial condominium units; or
Option 2: A co-living facility of no more than six condominium units including a residential condominium unit for a Co-Living Facility with a maximum of 793 Bedrooms and a maximum of five commercial condominium units.

BACKGROUND

On October 23, 2019, the Planning Commission held a Public Hearing to consider the adequacy of the Supplemental Environmental Impact Report (SEIR), Vesting Tentative Map, and Special Use Permit.

Staff Presentation

Staff provided an overview of the proposed project and its conformance General Plan designation and policies and Downtown Zoning District.

Staff noted, the addition of a Condition of Approval to the Special Use Permit resolution to include the Downtown Financing Plans condition to require the project to fully participate in and pay any charges, fees, assessments, or taxes in any City Council approved financing plans applicable to Downtown.

Public Hearing

The applicant, Mark Tersini, representing KT Urban, noted the property owners are now Garden Gate LLC and acknowledged the project team's intent to maintain both project options in the approval in order to provide the greatest amount of development flexibility. The project's architect, Nathan Miller, highlighted the project's features, emphasizing both options pedestrian presence and entrance along East Reed Street and highlighting Option 1's residential condominium floor plan concept and Option 2's co-living floor plan concept. He highlighted the building's design which would include balconies to break up the façade in both options.

John Mitchell, a board member of the Preservation Action Council of San José (PACSJ), stated the project's building design is attractive and housing would be a good use for the site. However, he recognized the historic significance of the four-unit Pallesen Apartment Building which is proposed for demolition and expressed his disappointment that the building would not be relocated. He requested additional time be provided to secure a new location for the Pallesen Apartment Building and noted the possibility of relocation of the structure to a city-owned property on South Fourth Street and East Reed.

Mike Sodergren, Vice President of PACSJ, noted the demolition of the Pallesen Apartment Building and relocation of the City Center Motel sign would contribute to an unnecessary loss of historic resources and result in a loss of the City's sense of place. He requested that if the proposed project is built, the Pallesen Apartment Building should be relocated rather than demolished and the City Center Motel Sign should be kept in its current state or relinquished to PACSJ or a historic society and not relocated off street level. Mr. Sodergren also noted the concept of project options was odd.

The applicant, Mark Tersini, responded to the PACSJ comments. He stated that over the last two years while the project was under review, the project team has diligently pursued a new location for the Pallesen Apartment Building including advertising its relocation in the *Mercury News*. He stated that he received over 20 inquiries about relocation of the building by interested parties, but none desired to relocate because, in his opinion, the parties did not want to comply with tenant relocation requirements. Additionally, he noted the logistical issues with sites located on the other side of I-280, since the building would be too large to be moved under the freeway overpasses. To date, no location has been secured. However, Mr. Tersini indicated the project team would welcome the opportunity to move the building if a site is readily available.

Regarding the City Center Motel Sign, Mr. Tersini said that the sign is appropriate above the rooftop swimming pool as it depicts a diving lady (“Diving Lady Sign”) and would be a nice amenity and design feature for the future project and would also be visible from I-280; however, he would be open to a different location if required. Finally, the applicant reiterated the project team’s desire to have flexibility with the project options to respond to the development financing market.

Planning Commission Discussion and Staff Response

The Commission asked clarifying questions to the applicant regarding the size of the Pallesen Apartment Building and relocation feasibility. Staff and the applicant noted the Pallesen Building is 2,400 square feet and an approximately 5,000 square foot lot would be needed to accommodate the relocated building. The applicant stated he would be willing to relocate the building if the opportunity arose and had considered purchasing a receiver site. The applicant noted that the Pallesen Apartments Building would be subject to the Ellis Act rent control ordinance and this has made some interested parties wary of the building but could be a great opportunity for affordable housing project. Commissioner Yesney noted that the project includes an Environmental Impact Report (EIR) with a statement of overriding considerations for the demolition of the historic Pallesen Apartment Building and a recommendation of approval would not guarantee relocation of the building.

Commissioner Allen asked how the revenue projections for the two options would play into the decision on which option would ultimately be constructed. The applicant noted that revenue projections factor heavily into the ultimate built project. An additional factor for Option 2: Co-living, is that this use has not been built in San José at the proposed project’s scale and therefore financiers would be reluctant to be the first to build a co-living project of this magnitude. Commissioner Oliverio noted the project would meet the General Plan’s goals for density and housing and made a motion to recommend approval to City Council.

Commissioner Allen noted his unease with approving a project with two options that would allow the developer to choose either use option without further planning review.

Commissioner Griswold noted her unease with the approval of the demolition of the historic buildings and urged the applicant to secure a relocation site for the Pallesen Apartment Building which is eligible for the National Register.

Commissioner Oliverio reiterated the project, as recommended, would be subject to mitigation measures requiring the developer to advertise the Pallesen Apartment Building for relocation for a minimum of 60 days prior to demolition and that the SEIR will have analyzed the loss of the historic structure. He noted City Council could impose further conditions or refine the project should they choose.

Commissioner Bonilla indicated support of moving the project to City Council for final review. He noted the applicant’s over two-year effort to try and find a relocation site for the historic structure.

Commissioner Yesney noted the historic analysis in the environmental document is sufficient and a decision to save the historic building could be made by Council.

Commissioner Caballero requested clarification on the project's housing affordability. Staff stated the project would be subject to the City's Inclusionary Housing Ordinance and the Ellis Act.

Commissioner Oliverio made a motion to recommend to the City Council the certification of the SEIR for the "Garden Gate Tower Project" project, the resolutions approving the Vesting Tentative Subdivision Map and Special Use Permit, and to direct staff to file a Notice of Determination as described in the attached staff report and as recommended by staff with the correction to add the Downtown Financing Plans Condition of Approval number 9 to the Special Use Permit resolution.

Letter from Preservation Action Council of San José to Planning Commission, October 23, 2019

Planning Commission received a letter from PACSJ during the Planning Commission meeting on October 23, 2019, requesting denial of the project due to the loss of historic resources on-site, specifically the Pallesen Apartment Building and City Center Motel Diving Lady Sign. The letter noted that the mitigation measure incorporated in the SEIR to make the Pallesen Apartment Building available for relocation for 60 days prior to demolition, would be inadequate for the significant impact that the demolition would have. PACSJ requested further information regarding any additional sites for relocation. No comments were previously received from PACSJ on the draft SEIR during the public comment period.

As stated in the Draft SEIR, the project would result in significant unavoidable impacts to the on-site cultural resources including the City Center Motel Sign and Pallesen Apartment Building and the project would result in significant adverse changes to the adjacent South First Street Arts District (SOFA). The mitigation measure, MM CUL-1, to make the Pallesen Apartment building available for relocation and requiring documentation of the structure prior to demolition, could help to reduce the impact of demolition; however, even with incorporation of this mitigation measure the impact would still be significant and unavoidable. Therefore, a Statement of Overriding Considerations is required as part of the project review.

The City Center Motel Diving Lady Sign was determined to be a historic resource eligible for National and State historic registries as a distinctive example of roadside vernacular. Although the sign is maintained, its relocation to the roof would alter much of the sign's significance associated with roadside vernacular architecture and would result in a significant and unavoidable impact. The SEIR has included a mitigation measure, MM CUL-3, to prepare a relocation plan to protect the sign during its relocation; however, even with the incorporation of this mitigation measure, the impact would still be significant and unavoidable. Therefore, a Statement of Overriding Considerations is required as part of the project review.

Finally, to date, no relocation site for the Pallesen Apartment Building has been secured. The SEIR has considered the opportunity for the relocation of the Pallesen Apartment Building and included mitigation measure MM CUL-1, so that if a site is obtained for relocation, this SEIR would have measures to ensure the building is protected during the relocation.

ANALYSIS

Analysis of the proposed CEQA clearance, Vesting Tentative Subdivision Map, and Special Use Permit, including conformance with the General Plan, and City Council policies are contained in the attached Planning Commission staff report.

CONCLUSION

The attached Planning Commission staff report analyzed and found the Tentative Map and Special Use Permit are in conformance with the Envision San José 2040 General Plan, City Council policies, the San José Municipal Code, design guidelines, and the California Environmental Quality Act.

EVALUATION AND FOLLOW-UP

Should the City Council certify the SEIR with associated MMRP and approve the Vesting Tentative Subdivision Map and Special Use Permit, the project site would be approved to demolish the existing on-site buildings and relocate the historic sign, remove one (1) ordinance size tree, merge two parcels into one parcel, and construct a 27-story, high-rise tower comprised of one of the following options:

Option 1: A mixed-use development of no more than 295 condominium units including a maximum of 290 residential condominium units and a maximum of five (5) commercial condominium units; or

Option 2: A co-living facility of no more than six (6) condominium units including a residential condominium unit for a Co-Living Facility with a maximum of 793 Bedrooms and a maximum of five (5) commercial condominium units.

CLIMATE SMART SAN JOSÉ

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals. The project would increase the density of the site and facilitate the transit options other than single-occupancy, gas-powered vehicles as a residential project in Downtown.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy, whereby, the project is considered a large development proposal. Following City Council Policy 6-30, the applicant posted the on-site sign to inform the neighborhood of the proposed project. Two community meeting were held to discuss the project on April 30, 2018 and April 8, 2019. Comments received during the community meeting and project review are further discussed in the attached Planning Commission Staff Report. Both community meetings were coordinated with Council District Office 3 and Council District staff attended both community meetings.

Staff contact information has been available on the community meeting notices and on the project webpage. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

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

CEQA

The City of San José, as the lead agency for the project, prepared a Draft Supplemental Environmental Impact Report (Draft SEIR) to the Downtown Strategy 2040 Environmental Impact Report (Resolution 78942), which was circulated for public review and comment from July 15, 2019 through August 29, 2019. A First Amendment to the DEIR was prepared to provide responses to public comments submitted during the public circulation period and revisions to the text of the DEIR. The First Amendment together with the DEIR constitute the Final Supplemental Environmental Impact Report (FSEIR) for the project. The following discussion outlines the environmental impacts discussed in the Draft SEIR.

Identified Significant Unavoidable Impacts

The Draft SEIR found that the project would result in significant unavoidable impacts to the on-site cultural resources including the City Center Motel Sign and Pallesen Apartment Building and the project would result in significant adverse changes to the adjacent South First Street Arts District (SOFA). Therefore, a Statement of Overriding Considerations is required.

The DEIR identified impacts resulting from the project to Biological Resources, Hazards and Hazardous Materials, and Noise. With implementation of the mitigation measures specified in the Mitigation Monitoring and Reporting Program prepared for the project, impacts to these resources are reduced to less than significant levels.

Environmental Impacts and Mitigation Measures

As part of the certification of the FEIR, the City Council would need to approve a related Mitigation Monitoring and Reporting Program (MMRP) for the project. The following mitigation measures apply to the proposed project as further explained in the Draft SEIR and MMRP:

- **Biological Resources:** If construction activities start during the migratory bird breeding season (February through August, inclusive), pre-construction surveys for nesting raptors or other migratory birds are required to reduce the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment impacts to less than significant levels.
- **Cultural Resources:** Prior to the issuance of any grading, demolition or building permits, the Pallesen Apartment building shall be documented in accordance with the Level III Historic American Building Survey (HABS). Additionally, the applicant shall be required to advertise the availability of the Pallesen Apartment Building for relocation for a minimum period of 60 days. If the building is relocated, the City must determine the receiver site is suitable and a structural engineer should be engaged to determine the appropriate reinforcement needed during the building's move. The relocated building should then be repaired and restored. If the Building cannot be relocated, the structure should be made available for salvage for the reuse of historic building materials. A Preservation Plan should be submitted to the City for the Pallesen Building's Façade reuse in the project and a Relocation Plan should be prepared and submitted for the City Center Sign. A qualified archeologist would be required to conduct a field inventory of the project site and submit a report outlining the results and recommendations; the project would be required to implement the recommendations of the report. If prehistoric or historic resources are encountered, all activity should cease and the archaeologist should evaluate the find(s) and provide appropriate recommendations regarding the disposition of the finds.
- **Hazardous Materials:** After demolition of the existing buildings, but prior to the issuance of grading permits, the applicant will be required to conduct soil sampling and prepare a Site Groundwater Management Plan. If contaminated soils are found on site above established thresholds, the applicant must enter into the Santa Clara County Department of Environmental Health's Voluntary Cleanup Program for remediation of contaminated soil. Prior to the start of construction, the applicant should obtain a discharge permit to dispose of the water collected during the dewatering process.
- **Noise:** Prior to the issuance of any grading permits, the applicant shall submit a construction plan, vibration monitoring plan, and schedule that will identify potential construction hours, equipment, and activities. The Construction Vibration Monitoring Plan should document existing conditions, conditions during construction and after construction. The Plan should identify the sensitivity of on and off site structures, perform a survey for each structure within 50 feet of the construction's activities and develop a monitoring and construction contingency plan. A report summarizing the result of the vibration monitoring process shall be submitted after the completion of each substantial phase of construction, as identified in the Monitoring Plan.

CEQA Alternatives

As required under CEQA, the Draft SEIR evaluated the No-Project alternative, a Pallesen Apartments Building Relocation alternative, and a Historic Structure Preservation alternative. Most of the environmental impacts of the project involved cultural resources (historic buildings); therefore, the alternatives were focused on exploring alternatives that would reduce these impacts. These alternatives are summarized as follows:

- No Project – No Development Alternative: The No Project – No Development Alternative assumes no redevelopment of the project site and would result in the retention of the existing buildings. There would be no construction with the No Project – No Development Alternative and therefore, would not result in any environmental impacts or mitigation measures.
- Pallesen Apartments Building Relocation Alternative – This alternative would be the same as the project with the exception that the Pallesen Apartments Building would be relocated off-site to another location within Downtown San José and the building would be preserved and used as an apartment building, similar to its current use. Under this alternative, the project would avoid the significant and unavoidable impact to the Pallesen Apartments Building but the impacts to the other historic resources, the Pallesen Building and City Center Sign would remain the same. This alternative would meet all the project objectives for both options.
- Historic Structure Preservation – This alternative would maintain all three historic structures on-site in their current locations. The project would be a residential development designed around these structures. Under this alternative, the project would have approximately 5,000 square feet of development area and the site would be able to support a narrow building with a north-south orientation. The building would be three stories in height and would have approximately 1,500 square feet of retail with a total of three residential units and 8 parking spaces. 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 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. Under this alternative the impacts on historical resources would be less than significant. The alternative would not fully meet the project's objectives to provide high-density development and maximize the use of an infill site.

Circulation and Public Comments

The DEIR was circulated for a 45-day period from July 15, 2019 through August 29, 2019. The City received six written comment letters during the public comment period. Comments were submitted by three individuals and two agencies and organizations, as shown below:

- Bay Area Quality Management District
- Santa Clara Water District
- Kitty Moore, Community Member
- Aurelia Sanchez, Community Member
- Develin Creighton, Community Member

Issues raised in these comment letters include the following:

- Clarification on the Cortese List and Hazards and Hazardous Materials Section
- Air Quality: Consistency with the 2017 State Scoping Plan and Green Building Code Standards
- Parking and Circulation
- Request for one project rather than two options
- Construction Hours and Practices

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

<http://www.sanjoseca.gov/index.aspx?nid=6073>.

SEIR Recirculation Unnecessary

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

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft SEIR for the project includes written responses to all comments received during the public review period for the Draft SEIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft SEIR address significant environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the Draft SEIR and, in some cases, correct or update information in the DEIR. No significant new information has been added to the EIR since publication of the Draft SEIR; therefore, it does not need to be recirculated.

/s/

ROSALYNN HUGHEY, SECRETARY
Planning Commission

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

Attachments: Planning Commission Staff Report
PACSJ Letter dated October 23, 2019