

Appendix A - Initial Study

The Mark Residential

SP20-021



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SECTION 1.0 INTRODUCTION AND PURPOSE

1.1 PURPOSE OF THE INITIAL STUDY

This Initial Study has been prepared by the City of San José as the Lead Agency, in conformance with the California Environmental Quality Act (CEQA), the CEQA Guidelines (Title 14, California Code of Regulations §15000 et seq.), and the regulation and policies of the City of San José.

1.1.1 Downtown Strategy 2040

On December 18, 2018, the City Council certified the Downtown Strategy 2040 Final Environmental Impact Report (FEIR) (Resolution No. 78942) and adopted the Downtown Strategy 2040 which provides a vision for future housing, office, commercial, and hotel development within the Downtown area. The Downtown Strategy 2040 is an update and replacement of the *Strategy 2000: San José Greater Downtown Strategy for Development* (Strategy 2000) adopted by the City Council in 2005. The new Downtown Strategy 2040 was necessary to: (i) respond to changed circumstances and conditions; and (ii) increase the Downtown development capacity to year 2040 consistent with the General Plan. For purposes of this new Strategy, the primary action is to increase the development capacity within the Downtown boundary, as defined in the General Plan, by transferring 4,000 dwelling units and 10,000 jobs from later horizon General Plan growth areas to Downtown capacity available now. The Downtown Strategy 2040 has a development capacity of 14,360 residential units, 14.2 million square feet of office uses, 1.4 million square feet of retail uses, and 3,600 hotel rooms. The Downtown Strategy 2040 FEIR provides project-level clearance for impacts related to vehicle miles traveled (VMT), traffic noise, and operational emissions of criteria pollutants associated with Downtown development. All other environmental impacts were evaluated at a program level.

The Downtown Strategy 2040 FEIR analysis assumed that project-level, site-specific environmental issues for a given parcel proposed for redevelopment would require additional review. This Initial Study provides that subsequent project-level environmental review. Since this Initial Study tiers from the Downtown Strategy 2040 FEIR, references to the “approved project” within this document refers to the Downtown Strategy 2040 FEIR.

This Initial Study and all documents referenced in it are available for public review in the Department of Planning, Building and Code Enforcement at San José City Hall, 200 East Santa Clara Street, 3rd floor, during normal business hours. The Initial Study and all documents are also available for review on the City of San José’s website: <https://www.sanjoseca.gov/?navid=2719>.

1.2 NOTICE OF DETERMINATION

If the project is approved, the City will file a Notice of Determination (NOD), which will be available for public inspection and posted within 24 hours of receipt at the County Clerk’s Office for 30 days. The filing of the NOD starts a 30-day statute of limitations on court challenges to the approval under CEQA (CEQA Guidelines Section 15075(g)).

SECTION 2.0 PROJECT INFORMATION

2.1 PROJECT TITLE

The Mark Residential Project

2.2 LEAD AGENCY CONTACT

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2.3 PROJECT APPLICANT

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2.4 PROJECT LOCATION

The 0.45-acre project site is comprised of two parcels located at 459, 465-469, and 475 South Fourth Street South Fourth Street in downtown San José.

Figure 2.4-1 Regional Map
Figure 2.4-2 Vicinity Map
Figure 2.4-3 Aerial Photograph and Surrounding Land Uses

2.5 ASSESSOR'S PARCEL NUMBERS

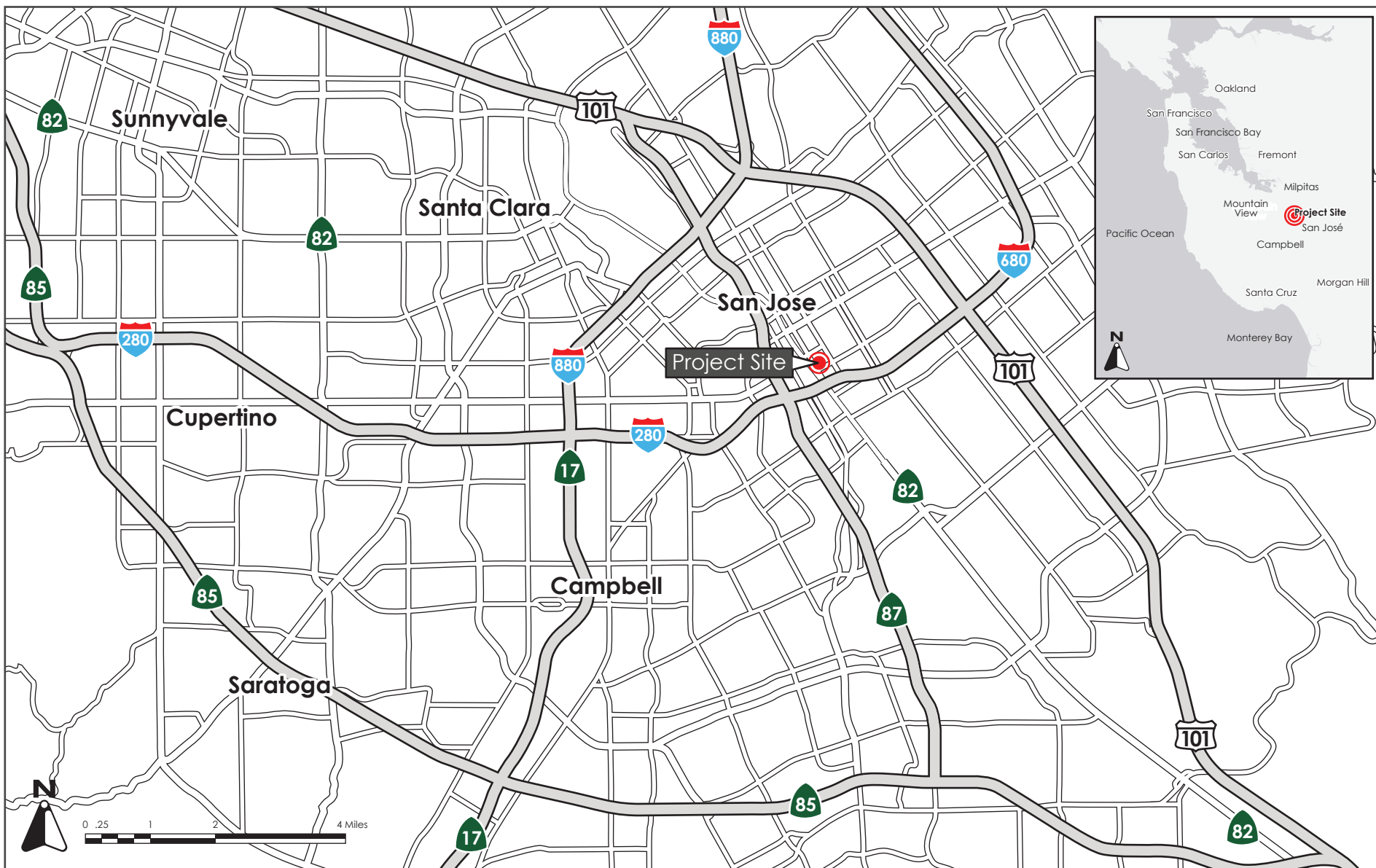
467-47-057
467-47-092

2.6 GENERAL PLAN DESIGNATION AND ZONING DISTRICT

The proposed project is designated Downtown under the General Plan and is zoned CG – Commercial General.

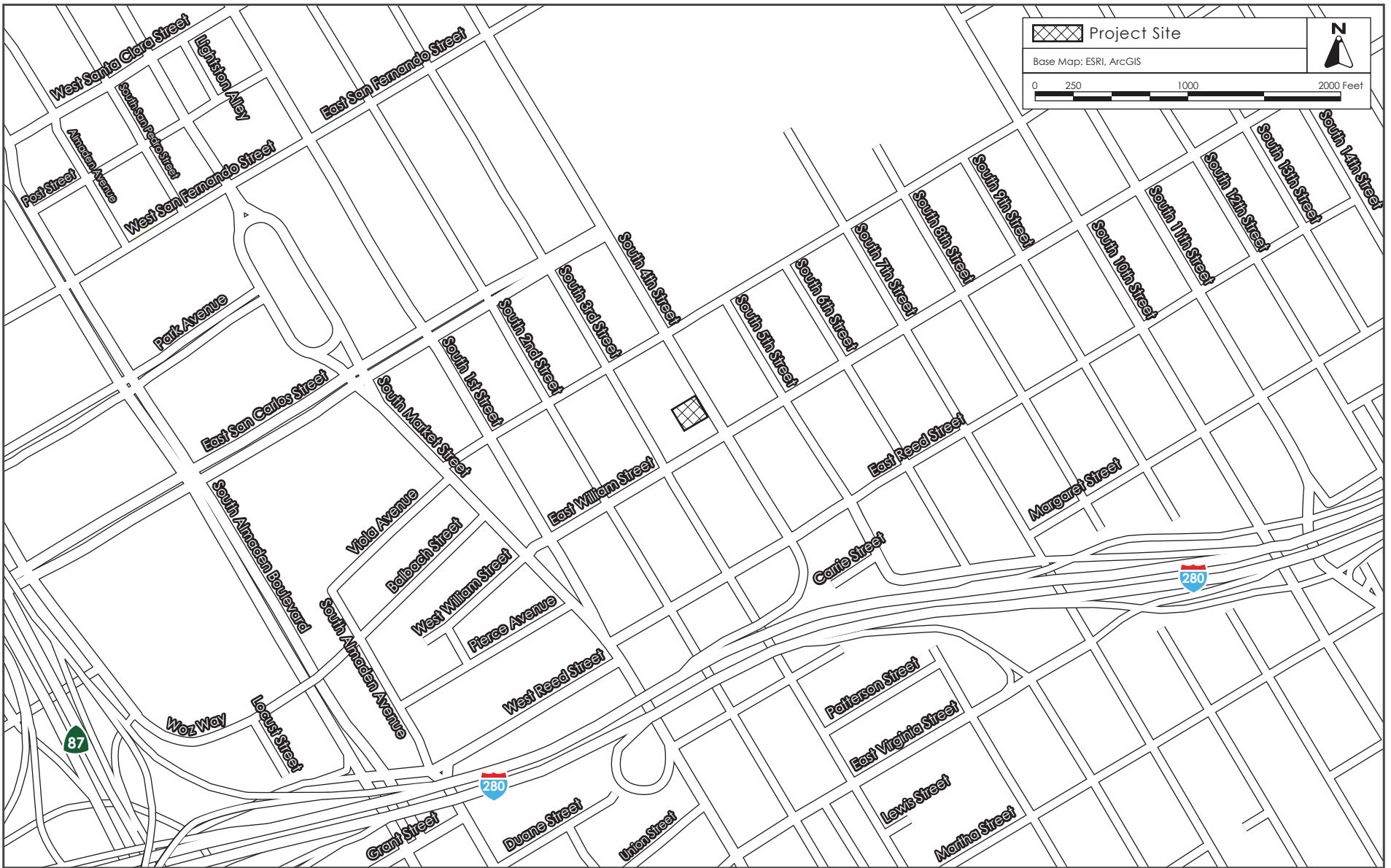
2.7 PROJECT-RELATED APPROVALS, AGREEMENTS, AND PERMITS

- Tentative Map
- Demolition, Grading, and Building Permit(s)
- Site Development Permit
- Special Use Permit
- Department of Public Works Clearances



REGIONAL MAP

FIGURE 2.4-1



VICINITY MAP

FIGURE 2.4-2



AERIAL PHOTOGRAPH AND SURROUNDING LAND USES

FIGURE 2.4-3

SECTION 3.0 PROJECT DESCRIPTION

3.1 PROJECT LOCATION

The approximately 0.45-acre site is comprised of two parcels (APNs 467-47-057 and -092) located at 459, 465-469, and 475 South Fourth Street in downtown San José. The project site is developed with 16 dwelling units comprised of two apartment buildings and a single-family residence (totaling 16,883 square feet of residential square footage). Vehicular access to the project site is currently provided via two driveways along South Fourth Street.

3.2 PROJECT DESCRIPTION

As proposed, the project would demolish all three residential buildings and construct a 23-story tower with up to 240 dwelling units (refer to Figures 3.2-1 and 3.2-2). The building would have a maximum height of approximately 274 feet to the top of the structure with a floor area ratio (FAR) of 18.0.

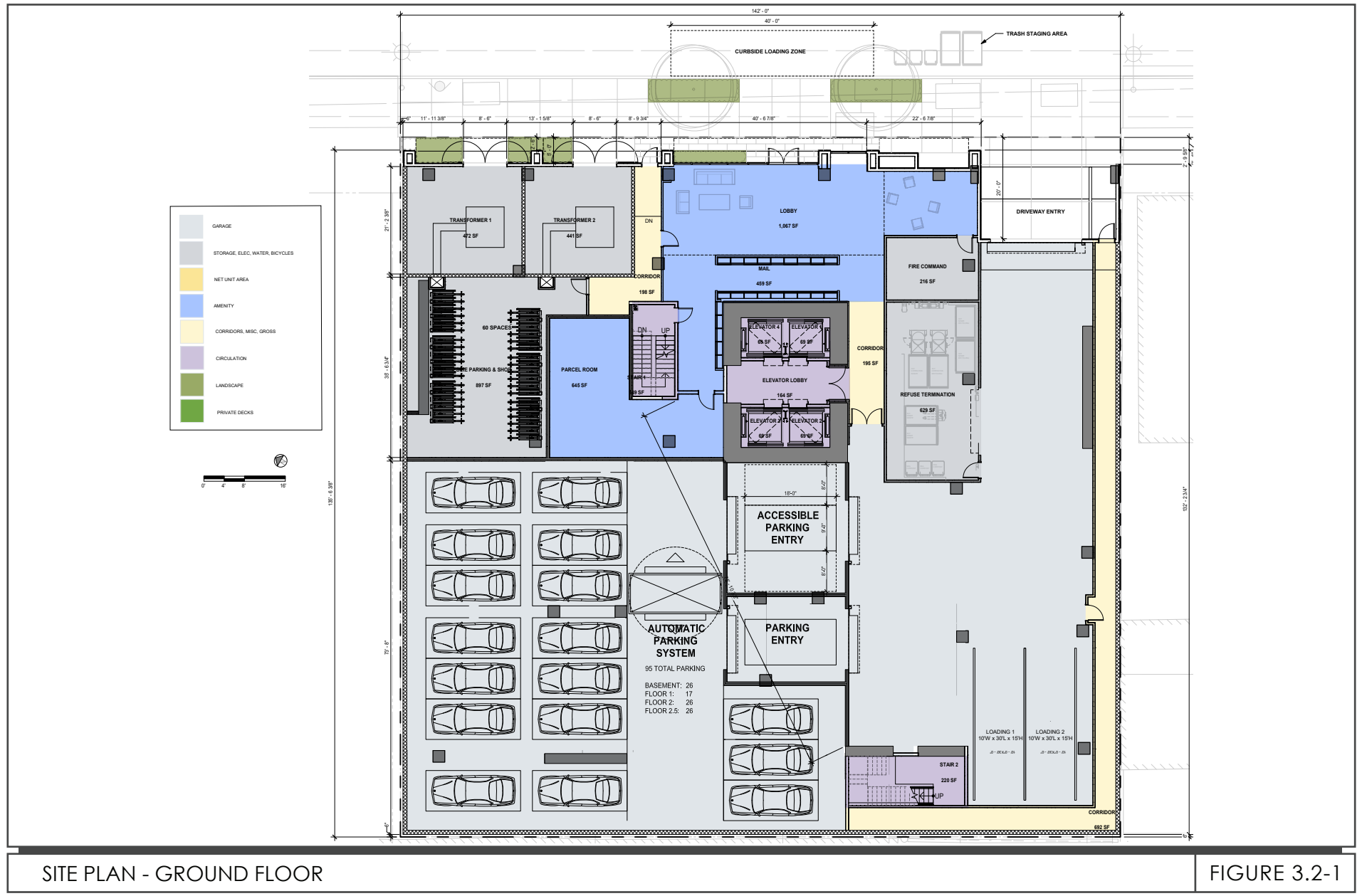
Amenity space for residents is proposed on the third floor and on the roof. Proposed amenities on the third floor would include fitness space, study lounges/rooms, and three courtyards. The project proposes a deck and lounge on the roof (refer to Figure 3.2-3).

The intent of the building is to provide student housing for San José State University (SJSU). The 240 dwelling units would have a total of 750 beds. By law there cannot, however, be restrictions on who may occupy the building. As such, the building may be rented by unit or by bed. The analysis in this document assumes standard occupancy for high-rise apartments. The development shall comply with all applicable Fair Housing laws, regulations, and requirements. Refer to Figure 3.2-4 for a typical residential floor plan.

3.2.1 Site Access, Parking and Circulation

As proposed, the project proposes to remove all existing driveways and construct one 20-foot wide City standard driveway on South Fourth Street which would provide access to the parking garage inside the building. The South Fourth Street driveway would allow right in/right out movements only. The garage entrance gate would be a minimum of 50 feet behind the back of sidewalk to minimize vehicle queuing on the public sidewalk. Parking would be accommodated in a triple-high stacker spanning from the basement to the second floor which would provide up to 95 parking spaces. The proposed project would be required to provide a total of 192 off-street parking spaces. The City will allow the project to supplement its proposed on-site parking with off-site parking to meet its required 192 off-street parking space requirement. The project proposes up to 172 parking spaces off-site within the garage located at 88 East San Fernando Street. The project proposes 60 bicycle parking spaces.

Additionally, the project proposes two loading spaces within the ground floor of the parking garage consistent with the City's off-street loading standards. The loading docks would be located at the end of the garage drive aisle.



SITE PLAN - GROUND FLOOR

FIGURE 3.2-1

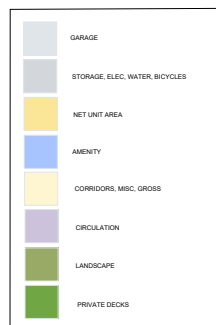
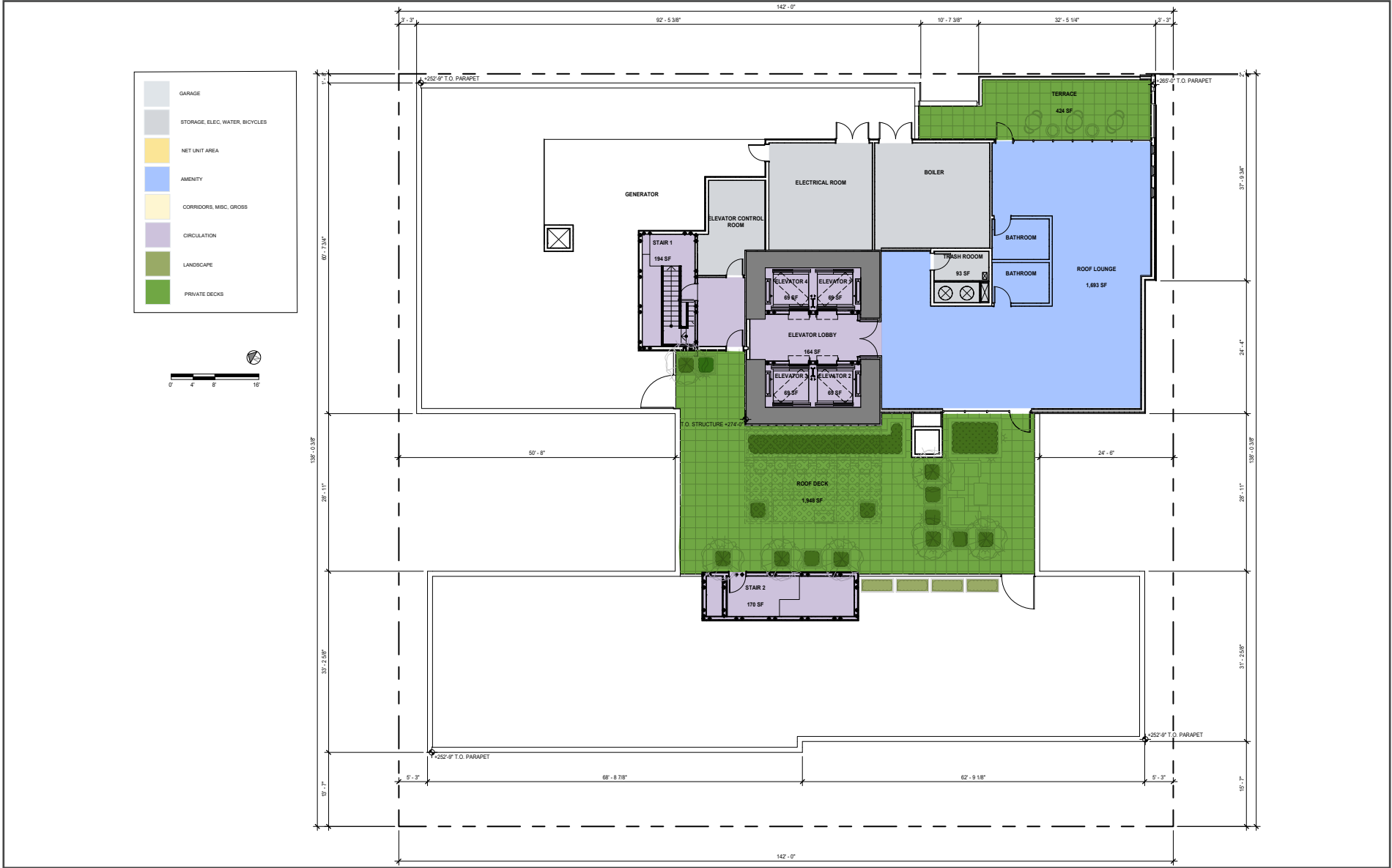
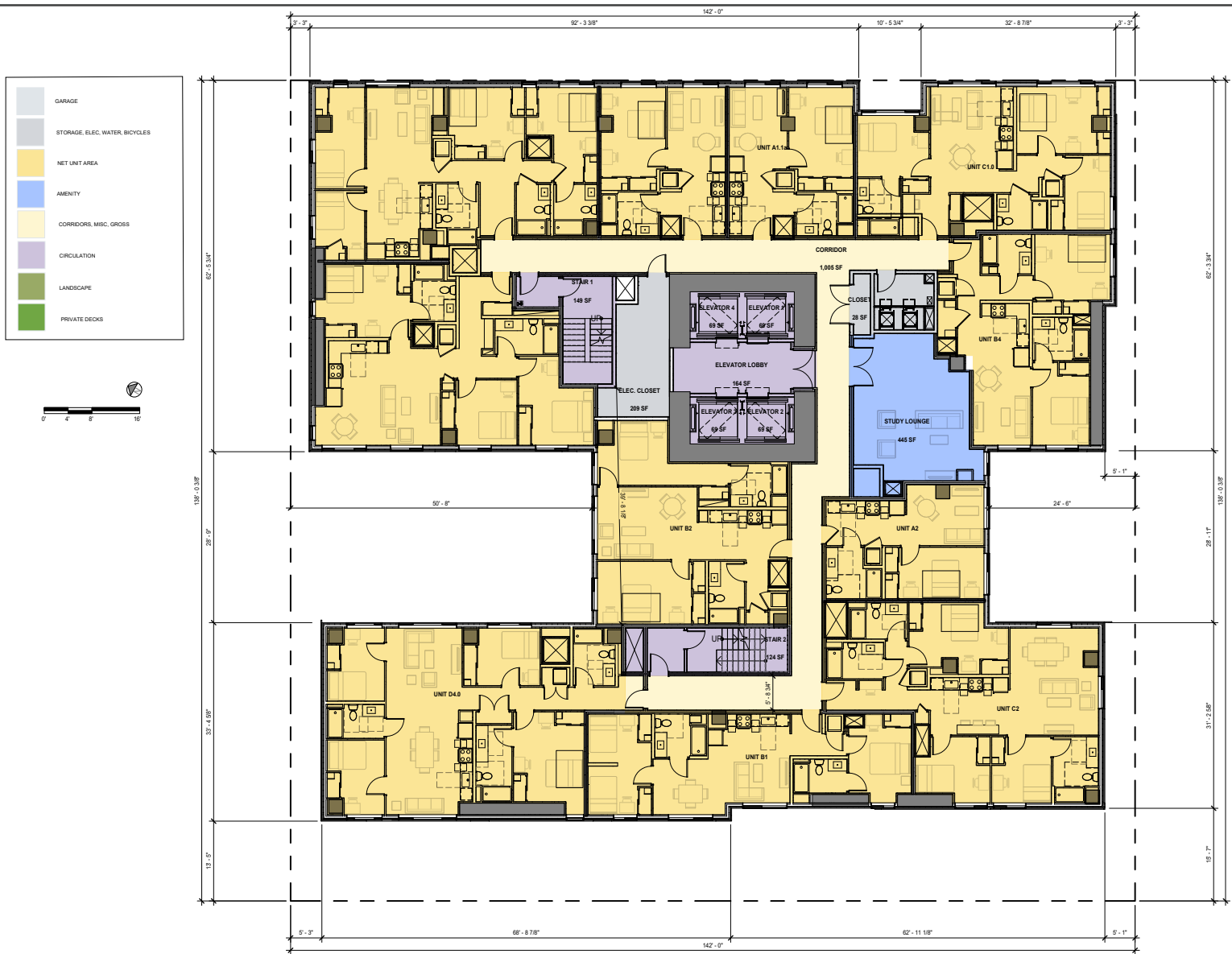


FIGURE 3.2-2



ROOF PLAN

FIGURE 3.2-3



TYPICAL RESIDENTIAL FLOOR PLAN

FIGURE 3.2-4

3.2.2 Mechanical Equipment

Based on the project plan set, a fire pump room, electrical room, and a water utility and storm water treatment room would be located in the basement. Transformer and trash collection rooms are proposed the ground floor and the electrical, boiler, and generator rooms are proposed on the lower roof. Refer to Figures 3.2-1, 3.2-3, and 3.2-5 for the locations of the mechanical equipment.

3.2.3 Green Building Measures

The proposed project would be required to be built in accordance to the California Building Code (CALGreen), which includes design provisions intended to minimize wasteful energy consumption. The project would be designed and constructed in compliance with City of San José Council Policy 6-32 and the City's Green Building Ordinance.

3.2.4 Transporation Demand Management Program

The applicant proposes the following measures as part of the transportation demand management (TDM) program for the proposed project¹:

- Public Information Elements
- Unbundled Parking

3.2.5 Construction

Construction of the proposed project is estimated to begin in June 2021 for a period of 24 months.

3.2.6 Envision San José 2040 General Plan and Zoning Designation

The site is designated Downtown under the City's General Plan and has a zoning designation of CG – Commercial General. The Downtown designation includes office, retail, service, residential, and entertainment uses in the Downtown. All developments within this designation should enhance the “complete community” in downtown, support pedestrian and bicycle circulation, and increase transit ridership. Residential development within the Downtown designation should incorporate ground floor commercial uses. Under this designation, projects can have a maximum FAR of 30.0 and up to 800 dwelling units per acre.

The CG zoning district is intended to serve the needs of the general population. This district allows for a full range of retail and commercial uses with a local or regional market. Development is expected to be auto-accommodating and includes larger commercial centers as well as regional malls.

Since the project proposes a deck and lounge on the roof and is located within 150 feet of residentially zoned property, the project would require a Special Use Permit (refer to *Section 20.40.520 Outdoor uses within 150 feet of residentially zoned property* of the City's Municipal Code).

¹ Hexagon Transportation Consultants, Inc. *The Mark Residential Tower Transportation Demand Management Plan*. October 28, 2020.



SECTION 4.0 ENVIRONMENTAL SETTING, CHECKLIST, AND IMPACT DISCUSSION

This section presents the discussion of impacts related to the following environmental subjects in their respective subsections:

4.1	Aesthetics	4.12	Mineral Resources
4.2	Agriculture and Forestry Resources	4.13	Noise
4.3	Air Quality	4.14	Population and Housing
4.4	Biological Resources	4.15	Public Services
4.5	Cultural Resources	4.16	Recreation
4.6	Energy	4.17	Transportation
4.7	Geology and Soils	4.18	Tribal Cultural Resources
4.8	Greenhouse Gas Emissions	4.19	Utilities and Service Systems
4.9	Hazards and Hazardous Materials	4.20	Wildfire
4.10	Hydrology and Water Quality	4.21	Mandatory Findings of Significance
4.11	Land Use and Planning		

The discussion for each environmental subject includes the following subsections:

- **Environmental Setting** – This subsection 1) provides a brief overview of relevant plans, policies, and regulations that compose the regulatory framework for the project and 2) describes the existing, physical environmental conditions at the project site and in the surrounding area, as relevant.
- **Impact Discussion** – This subsection 1) includes the recommended checklist questions from Appendix G of the CEQA Guidelines to assess impacts and 2) discusses the project’s impact on the environmental subject as related to the checklist questions.
- **Impact Conclusions** – Because the analysis in this Initial Study tiers from the Downtown Strategy 2040 FEIR, the level of impact in the project-specific analysis is presented as it relates to the findings of the Downtown Strategy 2040 FEIR. For example, if the conclusion is “Same Impact as Approved Project/Less Than Significant Impact” the project level impact was found to be less than significant consistent with the finding in the Downtown Strategy 2040 FEIR.

For resource areas where significant impacts were identified, the detailed evaluation of those resource areas are included in the SEIR to the Downtown Strategy 2040 FEIR prepared for this project. This Initial Study is included as Appendix A to that SEIR.

4.1 AESTHETICS

4.1.1 Environmental Setting

4.1.1.1 *Regulatory Framework*

State

Senate Bill 743

Senate Bill (SB) 743 was adopted in 2013 and requires lead agencies to use alternatives to level of service (LOS) for evaluating transportation impacts, specifically vehicle miles traveled (VMT). SB 743 also included changes to CEQA that apply to transit-oriented developments, as related to aesthetics and parking impacts. Under SB 743, a project's aesthetic impacts will no longer be considered significant impacts on the environment if:

- The project is a residential, mixed-use residential, or employment center project, and
- The project is located on an infill site within a transit priority area.²

SB 743 also clarifies that local governments retain their ability to regulate a project's aesthetics impacts outside of the CEQA process.

Streets and Highway Code Sections 260 through 263

The California Scenic Highway Program (Streets and Highway Code, Sections 260 through 263) is managed by the California Department of Transportation (Caltrans). The program is intended to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. There are no state-designated scenic highways in San José. Interstate 280 from the San Mateo County line to State Route (SR) 17, which includes segments in San José, is an eligible, but not officially designated, State Scenic Highway.³

In Santa Clara County, the one state-designated scenic highway is SR 9 from the Santa Cruz County line to the Los Gatos City Limit. Eligible State Scenic Highways (not officially designated) include: SR 17 from the Santa Cruz County line to SR 9, SR 35 from Santa Cruz County line to SR 9, Interstate 280 from the San Mateo County line to SR 17, and the entire length of SR 152 within the County.

² An "infill site" is defined as "a lot located within an urban area that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses." A "transit priority area" is defined as "an area within 0.5 mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations." A "major transit stop" means "a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods." Source: Office of Planning and Research. "Changes to CEQA for Transit Oriented Development – FAQ." October 14, 2014. Accessed May 26, 2020. <http://www.opr.ca.gov/ceqa/updates/sb-743/transit-oriented.html>.

³ California Department of Transportation. "Scenic Highways." Accessed May 26, 2020. <https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways>.

City of San José

Municipal Code

The City's Municipal Code includes several regulations associated with protection of the City's visual character and control of light and glare. For example, Chapter 13.32 (Tree Removal Controls) regulates the removal of trees on private property within the City, in part to promote the scenic beauty of the city.

Several sections of the Municipal Code include controls for lighting of signs and development adjacent to residential properties. These requirements call for floodlighting to have no glare and lighting facilities to be reflected away from residential use so that there will be no glare.

The City's Zoning Ordinance (Title 20 of the Municipal Code) includes design standards, maximum building height, and setback requirements.

City Design Guidelines and Design Review Process

Nearly all new private development is subject to a design review process (architecture and site planning). The design review process is used to evaluate projects for conformance with adopted design guidelines and other relevant policies and ordinances. The City prepared and adopted guidelines to assist those involved with the design, construction, review and approval of development in San José. Adopted design guidelines include: Residential, Industrial, Commercial, Downtown/Historic, and Downtown Design Guidelines.

City Council Policy 4-2: Lighting

Council Policy 4-2 requires dimmable, programmable lighting for new streetlights, which would control the amount and color of light shining on streets and sidewalks. Light is to be directed downward and outward. New and replacement streetlights should also offer the ability to change the color of the light from full spectrum (appearing white or near white) in the early evening to a monochromatic light in the later hours of the night and early morning. At a minimum, full-spectrum lights should be able to be dimmed by at least 50 percent in late night hours.

Envision San José 2040 General Plan

The 2040 General Plan identifies "gateways", freeways, and rural scenic corridors where preservation and enhancement of views of the natural and man-made environment are crucial. The segment of Bird Avenue over I-280 adjacent to the Downtown area is designated as a gateway for scenic purposes. The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to aesthetics and are applicable to the project.

General Plan Policies - Aesthetics	
CD-1.1	Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.

General Plan Policies - Aesthetics	
CD-1.9	Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas such as Downtown, Villages, Corridors, or along Main Streets, commercial and mixed-use building frontages should be placed at or near the street-facing property line with entrances directly to the public sidewalk. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street façade and pedestrian access to buildings.
CD-1.19	Encourage the location of new and relocation of existing utility structures into underground vaults or within structures to minimize their visibility and reduce their potential to detract from pedestrian activity. When above-ground or outside placement is necessary, screen utilities with art or landscaping.
CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
CD-1.24	Within new development projects, include preservation of ordinance-sized and other significant trees, particularly natives. Avoid any adverse effect on the health and longevity of such trees through design measures, construction, and best maintenance practices. When tree preservation is not feasible, include replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest.
LU-13.7	Design new development, alterations, and rehabilitation/remodels within a designated or candidate Historic District to be compatible with the character of the Historic District and conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties, appropriate State of California requirements regarding historic buildings and/or structures (including the California Historic Building Code) and to applicable historic design guidelines adopted by the City Council.
CD-6.2	Design new development with a scale, quality, and character to strengthen Downtown's status as a major urban center.
CD-6.8	Recognize Downtown as the hub of the County's transportation system and design buildings and public spaces to connect and maximize use of all types of transit. Design Downtown pedestrian and transit facilities to the highest quality standards to enhance the aesthetic environment and to promote walking, bicycling, and transit use. Design buildings to enhance the pedestrian environment by creating visual interest and by fostering active uses and avoiding prominence of vehicular parking at the street level.
CD-6.9	Design buildings with site, façade, and rooftop locations and facilities to accommodate effective signage. Encourage Downtown businesses and organizations to invest in high quality signs, especially those that enliven the pedestrian experience or enhance the Downtown skyline.
CD-6.10	Maintain Downtown design guidelines and policies adopted by the City to guide development and ensure a high standard of architectural and site design in its center.
LU-13.7	Design new development, alterations, and rehabilitation/remodels within a designated or candidate Historic District to be compatible with the character of the Historic District and

General Plan Policies - Aesthetics	
	conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties, appropriate State of California requirements regarding historic buildings and/or structures (including the California Historic Building Code) and to applicable historic design guidelines adopted by the City Council.

Downtown Design Guidelines

The 2019 Downtown Design Guidelines describe topics such as lighting, materials for construction, exterior design, massing and scale, orientation, and identity. The Downtown Design Guidelines were adopted to enhance the character of the City and encourage creativity while ensuring a reasonable degree of cohesion. Select guidelines that are relevant to the project are identified in the following.

Massing and Scale: Buildings should be compatible with the scale of development anticipated by the Downtown Strategy Plan and should be sited and designed to provide a sensitive transition to nearby, less-intensive zones.

Materials: Use the materials consistent and exceed the design and quality existing in the Downtown on facades and exterior walls of buildings to give a perception of permanence and civic pride. Use the most durable (i.e., low maintenance) materials at the public level.

Lighting: Lighting should be coordinated with the Federal Aviation Administration (FAA) and the Lick Observatory. Illuminating building features should create a sense of safe and intimate space around the precinct of the building. Provide appropriate levels of building mounted lighting on façade, in private landscaped areas, in merchandising display windows, and on signage.

Downtown Streetscape Master Plan

The Downtown Streetscape Master Plan aims to enrich the pedestrian experience in the greater downtown area and support existing and planned future developments. The Downtown Streetscape Master Plan defines an overall physical and visual image of the greater downtown area that can be achieved through a combination of high-quality materials, amenities, furnishings, and infrastructure. Implementation of the Plan ultimately helps improve pedestrian safety, walkability, and continuity.

4.1.1.2 Existing Conditions

Project Site

The 0.45-acre project site is occupied by two two-story apartment buildings and a one-story single-family residence. The single-family residence (constructed circa 1900), located at 459 South Fourth Street, is of wood frame construction. The residence has a gable roof and a porch is located on the eastern building façade. The windows located on the eastern and southern building façade are boarded up. The residence is set back from South Fourth Street by a sidewalk, a fence, and landscaping.

Located south of the single-family residence is a two-story apartment building constructed in 1939. The apartment building is of Spanish Colonial Revival architecture and consists of textured stucco

cladding and a gable roof (see Photo 1). A portico⁴ is located along the eastern building façade. Two wood doors are further set back from the portico which provide access to the apartment units. The most prominent feature of the north façade is the projecting brick chimney at the east end. The apartment building is set back from South Fourth Street by a sidewalk, street trees, on-site trees, and landscaping.

A u-shaped apartment complex, constructed in 1960, is located immediately south of the aforementioned apartment building. The two-story building is of wood-frame construction with stucco cladding and a low-pitched hipped roof⁵ (see Photo 2). A metal gate is located between both apartment buildings which provides access to the carports associated with the apartment complex at the rear. There are sliding windows and false wrought iron balcony rails fronting South Fourth Street. The building is set back from South Fourth Street by a sidewalk, a street tree, grass, and shrubs.

Surrounding Area

Development in the project area consists of residential (both single-family and multi-family residences) and commercial land uses. The buildings along South Fourth Street are set back from the roadway by sidewalks, landscaping, and/or surface lots. The project site is in proximity to SJSU, approximately 400 feet southwest. Surrounding building heights vary by land use from one to 19 stories. There is no primary architectural style in the project area.

Immediately east of the project site is South Fourth Street, a two-lane southbound arterial. Three apartment buildings and a gas station are located east of South Fourth Street. The gas station is located at the corner of the South Fourth Street and East William Street intersection and consists of a blue convenience store and two pump islands (see Photo 3). The pump islands are located at the center of the site beneath a supported white canopy. Immediately north of the gas station is a two-story u-shaped apartment building (474 South Fourth Street) with a stucco façade. The apartment building also features some brick embellishments at the base of the building (see Photo 4). The three-story apartment building to the north at 460 South Fourth Street is primarily stucco. The two-story apartment building furthest to the north (452 South Fourth Street) has a brick façade facing South Fourth Street and white stucco on other exterior surfaces.

Located south of the project site is a two-story mixed-use building (487 South Fourth Street) which consists of a barbershop on the first floor and residences above and to the rear (Photo 5). The building is stucco.

On the north side of the project site are two buildings (a single-family residence and a three-story apartment complex). The single-family residence consists of horizontal siding and a small covered porch (see Photo 6). The house is relatively small and has no distinctive architectural features. An iron mechanical gate and fence with gold embellishments is located along the street frontage. The apartment complex is comprised of two stucco buildings with aluminum frame windows. There are two walkways located on the second and third floors that connect the two buildings together. The buildings are set back by street trees along the South Fourth Street frontage. The fence on the adjacent property extends across the southernmost driveway of the apartment complex.

⁴ A portico is a porch that provides entrance to a building with a roof supported by columns

⁵ A low-pitched hipped roof is a roof that is nearly level.



Photo 1: View of the project site, looking west from South Fourth Street.



Photo 2: View of the project site, looking southwest from South Fourth Street.

PHOTOS 1 & 2



Photo 3: View of the surrounding development, looking northeast from the South Fourth Street and East William Street intersection.



Photo 4: View of the surrounding development, looking east of South Fourth Street.

PHOTOS 3 & 4



Photo 5: View of the surrounding development, looking southwest of South Fourth Street.



Photo 6: View of the surrounding development, looking west of South Fourth Street.

PHOTOS 5 & 6

A 19-story residential building with ground floor retail located approximately 682 feet northwest of the project site (File Nos. H16-036 and T16-048) is constructed and currently operational and is the tallest building in the project area. The 19-story building is primarily glass and stucco. Located west of the site are two-story multi-family residences and a youth center.

Scenic Views

Based on the City's General Plan, views of hillside areas (including the foothills of the Diablo Range and the Santa Cruz Mountains, Silver Creek Hills, and Santa Teresa Hills) and the downtown skyline are scenic features in the San José area. The project site and surrounding areas are relatively flat and prominent viewpoints, other than buildings, are limited. The project area has minimal to no scenic views of the Diablo foothills to the east, Santa Cruz Mountains to the west, Santa Teresa Hills to the south, and the Silver Creek hills to the southeast. No natural scenic resources, such as rock outcroppings, are present on-site or in the project area.

Light and Glare

Sources of light and glare are abundant in the urban environment of the project site and project area, including but not limited to street lights, parking lot lights, security lights, vehicular headlights, internal building lights, and reflective building surfaces and windows.

4.1.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Except as provided in Public Resources Code Section 21099, would the project:					
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? ⁶ If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

⁶ Public views are those that are experienced from publicly accessible vantage points.

Aesthetic values are, by their nature, subjective. Opinions as to what constitutes a degradation of visual character would differ among individuals. One of the best available means for assessing what constitutes a visually acceptable standard for new buildings are the City's design standards and implementation of those standards through the City's design process. The following discussion addresses the proposed changes to the visual setting of the project area and factors that are part of the community's assessment of the aesthetic values of a project's design, consistent with the assumptions in the Downtown Strategy 2040 FEIR. Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant aesthetics impacts, as described below.

The proposed project would meet the criteria of SB 743 because 1) the project would construct a residential project and 2) the project is located within a transit priority area⁷. Consistent with Public Resources Code Section 21099, the project would have a less than significant aesthetics impact. While the project would have a less than significant aesthetic impact, this Initial Study addresses the CEQA checklist questions for informational purposes given the size and location of the project within the downtown.

a) Would the project have a substantial adverse effect on a scenic vista?

As mentioned previously, views of the hillside areas and the downtown skyline are key scenic mentioned previously, views of the hillside areas and the downtown skyline are key scenic features in the City. Most of the City is relatively flat and prominent viewpoints, other than adjacent buildings, are limited. The project site is located within a highly urbanized area with no designated scenic resources. While construction of a 23-story residential tower would be a noticeable change to the built environment, it would not diminish scenic views or damage any scenic resources in the project area; therefore, implementation of the project would not result in a significant impact on a scenic vista. **[Same Impact as Approved Project (Less than Significant Impact)]**

b) Would the project substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

The project site is not located along a state-designated scenic highway. The nearest state-designated highway is SR 9, located more than eight miles southwest of the project site. Therefore, implementation of the proposed project would not damage any scenic resources, such as trees, rock outcroppings, and historic buildings within a state scenic highway. **[Same Impact as Approved Project (Less than Significant Impact)]**

c) In non-urbanized areas, would the project substantially degrade the existing visual character or quality of public views of the site and its surroundings? If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

⁷ Metropolitan Transportation Commission. Transit Priority Areas (2017). Accessed May 26, 2020. http://opendata.mtc.ca.gov/datasets/d97b4f72543a40b2b85d59ac085e01a0_0?geometry=-121.903%2C37.328%2C-121.862%2C37.334.

The project site is located within an urbanized area that consists of residential and commercial land uses. Although the City's Zoning Ordinance does not include regulations governing scenic quality, the proposed project would comply with Title 20 of the City's Municipal Code and would be subject to a design review process conducted as part of the development permit review process to ensure that it conforms with all adopted design guidelines and other relevant policies and ordinances. For these reasons, the proposed project would not conflict with applicable zoning and other regulations governing scenic quality. **[Same Impact as Approved Project (Less Than Significant Impact)]**

d) Would the project create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

The proposed project would construct a 23-story residential tower which would result in more visible nighttime lighting than currently exists on-site. The proposed project would include internal building lights, security lights, and external building lights.

The project would be subject to Section 20.75.360 of the City's Municipal Code which requires lighting to be directed away from any residential uses so that there will be no glare. The proposed project would be subject to the City's design review process prior to the issuance of development permits to ensure that it is consistent with General Plan policies and the City's Design Guidelines. Additionally, the 23-story residential tower would cast shadows onto existing residential and commercial development (refer to *Section 4.11 Land Use* for a discussion of the project's shade and shadow impacts). Nevertheless, compliance with the Downtown Design Guidelines, City policies, and regulations would protect the night sky and control the amount of light shining on streets, sidewalks, and residential properties. Therefore, the proposed project would not adversely affect day or nighttime views in the area from lighting. **[Same Impact as Approved Project (Less than Significant Impact)]**

4.2 AGRICULTURE AND FORESTRY RESOURCES

4.2.1 Environmental Setting

4.2.1.1 *Regulatory Framework*

State

Farmland Mapping and Monitoring Program

The California Department of Conservation's Farmland Mapping and Monitoring Program (FMMP) assesses the location, quality, and quantity of agricultural land and conversion of these lands over time. Agricultural land is rated according to soil quality and irrigation status. The best quality land is called Prime Farmland.

California Land Conservation Act

The California Land Conservation Act (Williamson Act) enables local governments to enter into contracts with private landowners to restrict parcels of land to agricultural or related open space uses. In return, landowners receive lower property tax assessments.

Fire and Resource Assessment Program

The California Department of Forestry and Fire Protection (CAL FIRE) identifies forest land, timberland, and lands zoned for timberland production that can (or do) support forestry resources.⁸

4.2.1.2 *Existing Conditions*

Based on the Santa Clara County Important Farmland Finder map⁹, the project site is designated as "urban and built-up land." Common examples of "urban and built-up land" include residential, institutional, commercial, landfill, golf course, airports, and other utility uses. The project area consists of single-family residences, commercial, and industrial land uses. There is no forest land located on or adjacent to the project site and the site is not subject to a Williamson Act contract.

⁸ Forest Land is land that can support 10 percent native tree cover and allows for management of forest resources (California Public Resources Code Section 12220(g)); Timberland is land not owned by the federal government or designated as experimental forest land that is available for, and capable of, growing trees to produce lumber and other products, including Christmas trees (California Public Resources Code Section 4526); and Timberland Production is land used for growing and harvesting timber and compatible uses (Government Code Section 51104(g)).

⁹ California Department of Conservation. *Important Farmland Finder*. Accessed August 12, 2020. <https://maps.conservation.ca.gov/DLRP/CIFF/>.

4.2.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Result in a loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would have no impact on agriculture and forestry resources, as described below.

a) Would the project convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

As mentioned previously, the project site is designated as “urban and built-up land.” The project proposes to construct a 23-story residential tower on a currently developed site and, as a result, would not convert *Prime Farmland, Unique Farmland, or Farmland of Statewide Importance* to non-agricultural uses. **[Same Impact as Approved Project (No Impact)]**

b) Would the project conflict with existing zoning for agricultural use, or a Williamson Act contract?

The project site is not subject to a Williamson Act contract. The site is located within the *DC* zoning district and would not conflict with any agricultural zoning. **[Same Impact as Approved Project (No Impact)]**

c) Would the project conflict with existing zoning for, or cause rezoning of, forest land, timberland, or timberland zoned Timberland Production?

The project site is not zoned as forest land, timberland, or timberland zoned Timberland Production. Therefore, the project would not conflict with existing zoning or cause rezoning of forest land, timberland, or timberland zoned Timberland Production. **[Same Impact as Approved Project (No Impact)]**

d) Would the project result in a loss of forest land or conversion of forest land to non-forest use?

As mentioned above, the project site is not zoned as forest land. The project site is located within an urbanized area and would not result in a loss of forest land or convert forest land to non-forest use. **[Same Impact as Approved Project (No Impact)]**

e) Would the project involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?

The proposed project would not result in the conversion of forest lands to non-agricultural or non-forest use. For these reasons, the project would not result in impacts to agricultural or forest resources. **[Same Impact as Approved Project (No Impact)]**

4.3 AIR QUALITY

The proposed project would demolish two apartment buildings and a single-family residence and construct a 23-story tower with up to 240 dwelling units.

4.3.1 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Expose sensitive receptors to substantial pollutant concentrations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Implementation of the proposed project has the potential to result in significant air quality construction impacts. The projects impacts to air quality are evaluated in the SEIR. No further analysis is provided in this Initial Study.

4.4 BIOLOGICAL RESOURCES

4.4.1 Environmental Setting

4.4.1.1 *Regulatory Framework*

Federal and State

Endangered Species Act

Individual plant and animal species listed as rare, threatened, or endangered under state and federal Endangered Species Acts are considered special-status species. Federal and state endangered species legislation has provided the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations. Permits may be required from both the USFWS and CDFW if activities associated with a proposed project would result in the take of a species listed as threatened or endangered. To “take” a listed species, as defined by the State of California, is “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill” these species. Take is more broadly defined by the federal Endangered Species Act to include harm of a listed species.

In addition to species listed under state and federal Endangered Species Acts, Sections 15380(b) and (c) of the CEQA Guidelines provide that all potential rare or sensitive species, or habitats capable of supporting rare species, must be considered as part of the environmental review process. These may include plant species listed by the California Native Plant Society and CDFW-listed Species of Special Concern.

Migratory Bird Treaty Act

The federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. Hunting and poaching are also prohibited. The taking and killing of birds resulting from an activity is not prohibited by the MBTA when the underlying purpose of that activity is not to take birds.¹⁰ Nesting birds are considered special-status species and are protected by the USFWS. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines taking as causing abandonment and/or loss of reproductive efforts through disturbance.

Sensitive Habitat Regulations

Wetland and riparian habitats are considered sensitive habitats under CEQA. They are also afforded protection under applicable federal, state, and local regulations, and are generally subject to regulation by the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), CDFW, and/or the USFWS under provisions of the federal Clean Water Act (e.g., Sections 303, 304, 404) and State of California Porter-Cologne Water Quality Control Act.

¹⁰ United States Department of the Interior. “Memorandum M-37050. The Migratory Bird Treaty Act Does Not Prohibit Incidental Take.” Accessed April 9, 2020. <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf>.

Regional

Santa Clara Valley Habitat Plan/Natural Community Conservation Plan

The Santa Clara Valley Habitat Plan/Natural Community Conservation Plan (Habitat Plan) covers approximately 520,000 acres, or approximately 62 percent of Santa Clara County. It was developed and adopted through a partnership between Santa Clara County, the Cities of San José, Morgan Hill, and Gilroy, Santa Clara Valley Water District (Valley Water), Santa Clara Valley Transportation Authority (VTA), USFWS, and CDFW. The Habitat Plan is intended to promote the recovery of endangered species and enhance ecological diversity and function, while accommodating planned growth in southern Santa Clara County. The Santa Clara Valley Habitat Agency is responsible for implementing the plan.

City of San José

Tree Removal Ordinance

The City of San José Tree Removal Controls (San José Municipal Code, Sections 13.31.010 to 13.32.100) serve to protect all trees having a trunk that measures 38 inches or more in circumference (12.1 inches in diameter) at the height of 54 inches (4.5 feet) above the natural grade of slope. The ordinance protects both native and non-native tree species. A tree removal permit is required from the City of San José for the removal of ordinance-sized trees. On private property, tree removal permits are issued by the Department of Planning, Building and Code Enforcement. Removal of or modifications to all trees on public property (e.g., street trees within a parking strip or the area between the curb and sidewalk) are handled by the City Arborist.

In addition, any tree found by the City Council to have special significance can be designated as a Heritage Tree, regardless of tree size or species. It is unlawful to vandalize, mutilate, remove, or destroy such Heritage Trees. Under the City's Tree Removal Ordinance, specific criteria or findings must be made before a permit for removal of a live or dead Heritage Tree would be granted.

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to biological resources and are applicable to the project.

General Plan Policies – Biological Resources	
ER-5.1	Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
ER-5.2	Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
MS-21.4	Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.

General Plan Policies – Biological Resources	
MS-21.5	As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse affect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
MS-21.6	As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies or guidelines.
MS-21.7	Manage infrastructure to ensure that the placement and maintenance of street trees, streetlights, signs and other infrastructure assets are integrated. Give priority to tree placement in designing or modifying streets.
IN-1.11	Locate and design utilities to avoid or minimize impacts to environmentally sensitive areas and habitats.
CD-1.24	Within new development projects, include preservation of ordinance-sized and other significant trees, particularly natives. Avoid any adverse affect on the health and longevity of such trees through design measures, construction, and best maintenance practices. When tree preservation is not feasible include replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest.

4.4.1.2 *Existing Conditions*

The project site is developed with two apartment buildings and a single-family residence. There are trees, shrubs, and other vegetation located on-site and along the South Fourth Street frontage.

Special-Status Species

Based on the Downtown Strategy 2040 FEIR, the downtown area is highly urbanized with very little undisturbed habitat. Most special-status animal species in the Bay Area use habitats that are not present on the project site including salt marsh, freshwater marsh, and serpentine grassland habitats. Since the native vegetation of the area is no long present on-site, native wildlife species have been supplanted by species that are more compatible with an urbanized area.

Trees

Trees (both native and non-native) are valuable to the human environment for the benefits they provide including resistance to global climate change (i.e., carbon dioxide absorption), protection from weather, nesting and foraging habitat for raptors and other migratory birds, and as a visual enhancement to the urban environment. A total of six trees, including four ordinance-size trees, were surveyed on-site. For the purposes of this analysis, it is assumed that all six trees (four on-site trees and two street trees) would be removed as part of the project. Table 4.4-1 lists all trees identified as part of a tree survey completed by *David J. Powers & Associates, Inc.* in July 2020. The location of the trees is shown in Figure 4.4-1.



TREE SPECIES MAP

FIGURE 4.4-1

Table 4.4-1: Trees Species Observed				
Tree No.	Scientific Name	Common Name	Circumference in Inches*	Proposed for Removal
1	<i>Platanus × acerifolia</i>	London Plane	69	x
2	<i>Platanus × acerifolia</i>	London Plane	71	x
3	<i>Washingtonia robusta</i>	Mexican Fan Palm	140	x
4	<i>Quercus wislizeni</i>	Interior Live Oak	71	x
5	<i>Cupressaceae</i>	Cypress	30	x
6	--	--	--	x
Notes: Ordinance sized trees are 38+ inches in circumference (12.1+ inches in diameter). *As measured at 54 inches (4.5 feet) above grade. Bold denotes ordinance sized trees. -- denotes trees unable to identify/measure due to the location of the trees. Tree nos. 1 and 2 are street trees. Any street tree proposed for removal is overseen by the Department of Transportation (DOT). Additionally, the tree replacement ratios do not apply to street trees.				

4.4.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife (CDFW) or United States Fish and Wildlife Service (USFWS)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFW or USFWS?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant biological resources impacts, as described below.

a) Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS?

The project site is located within an urbanized area of the City with no sensitive or natural habitats present on-site. All six trees, including four on-site trees and two street trees, would be removed as part of the project. These trees could provide nesting and/or foraging habitat for migratory birds including raptors. The following Standard Permit Conditions would be implemented by the proposed project to reduce potential impacts to special-status species.

Standard Permit Conditions:

The project would implement the following measures to avoid impacts to nesting migratory birds:

- **Avoidance:** The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 15th (inclusive), as amended.
- **Nesting Bird Surveys:** If it is not possible to schedule demolition and construction between August 16th and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st

through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 15th inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

- **Buffer Zones:** If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction. The no-disturbance buffer shall remain in place until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more then resumes during the nesting season, an additional survey shall be necessary to avoid impacts to active bird nests that may be present.
- **Reporting:** Prior to any tree removal, or approval of any grading permits (whichever occurs first), the project applicant shall submit the ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or the Director's designee, prior to issuance of any grading or building permits.

With implementation of the Standard Permit Conditions listed above, the project would not have a substantial adverse effect on any candidate, sensitive, or special-status species. **[Same Impact as Approved Project (Less than Significant Impact)]**

b) Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFW or USFWS?

The only sensitive natural communities in the vicinity of the downtown area are the Los Gatos Creek and the Guadalupe River corridors.¹¹ The closest riparian corridor to the project site is Guadalupe River, located approximately 0.5 miles west. For this reason, implementation of the proposed project would not result in a substantial adverse effect on any riparian habitat or sensitive natural community. **[Same Impact as Approved Project (Less Than Significant Impact)]**

c) Would the project have a substantial adverse effect on state or federally protected wetlands through direct removal, filling, hydrological interruption, or other means?

There are no federally protected wetlands within, or adjacent, to the project site. For this reason, the proposed project would not adversely affect protected wetlands through construction or operational activities. **[Same Impact as Approved Project (Less than Significant Impact)]**

d) Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

¹¹ City of San José. San José Downtown Strategy 2040 Final Environmental Impact Report. December 2018.

The project site is located within an urbanized area of downtown. No natural habitat exists on-site and the site is not used as a wildlife corridor by any native resident or migratory fish or wildlife species. Implementation of the proposed project would have a less than significant impact on wildlife corridors or nursery sites. **[Same Impact as Approved Project (Less than Significant Impact)]**

e) Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Trees in the area provide biological value in the form of nesting, cover, and foraging habitat for a variety of birds, mammals, and insects. All six trees surveyed would be removed as part of the project. The project would be required to conform to the following Standard Permit Conditions.

Standard Permit Conditions:

Tree Replacement. The removed trees would be replaced according to the tree replacement ratios required by the City, as provided in Table 4.4-2 below, as amended.

Table 4.4-2: Tree Replacement Ratios				
Circumference of Tree to be Removed¹	Type of Tree to be Removed²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more ³	5:1	4:1	3:1	15-gallon
19 to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon
¹ As measured 4.5 feet above ground level ² X:X = tree replacement to tree loss ratio ³ Ordinance-sized tree Notes: Trees greater than or equal to 38 inches in circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For multi-family residential, commercial, and industrial properties, a Tree Removal Permit is required for removal of trees of any size. One 24-inch box tree = two 15-gallon trees				

- In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

The species and exact number of replacement trees to be planted on a given project site would be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement. The planting and maintenance of replacement and street trees will be made conditions of development approval.

In-Lieu Mitigation. In the event the project site does not have sufficient area to accommodate the required tree mitigation, implement one or more of the following measures, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees.
- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

Tree Protection Standards. The applicant shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the grading permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

Street trees are overseen by DOT; therefore, the tree replacement ratios would not apply to the two street trees. In accordance with the Standard Permit Condition, tree replacement for the remaining trees would be implemented as shown in Table 4.4-2 above. Two trees would be replaced at a 4:1 ratio and one tree would be replaced at a 2:1 ratio with 15-gallon containers. The total number of replacement trees required to be planted would be 10. Since tree number six could not be identified due to its location, the City will require that the tree be identified and the project would be required to comply with the City's tree replacement standards prior to issuance of any tree removal permit.

With implementation of the identified Standard Permit Conditions, the proposed project would not conflict with any ordinance protecting biological resources, and would not result in a significant impact to trees and the community forest. **[Same Impact as Approved Project (Less than Significant Impact)]**

f) Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

The project site is located within the SCVHP¹² and is designated as “Urban-Suburban” land. Private development in the plan area is subject to the SCVHP if it meets the following criteria:

- The activity is subject to either ministerial or discretionary approval by the County or one of the cities;
- The activity is described in *Section 2.3.2 Urban Development* or in *Section 2.3.7 Rural Development*;¹³
- In Figure 2-5 of the SCVHP, the activity is located in an area identified as “Private Development is Covered,” or the activity is equal to or greater than two acres and;
 - The project is located in an area identified as “Rural Development Equal to or Greater than Two Acres is Covered,” or “Urban Development Equal to or Greater than Two Acres is Covered” or,
 - The activity is located in an area identified as “Rural Development is not Covered” but, based on land cover verification of the parcel (inside the Urban Service Area) or development area, the project is found to impact serpentine, wetland, stream, riparian, or pond land cover types; or the project is located in occupied or occupied nesting habitat for western burrowing owl.

The proposed project would require discretionary approval by the City and is consistent with the activity described in *Section 2.3.2* of the SCVHP; however, the project site is 0.45 acres in size (below the 2.0-acre threshold) and is not subject to any land cover fee. Consistent with the SCVHP, the project applicant shall implement the following Standard Permit Condition.

Standard Permit Condition:

- The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The SCVHP and supporting materials can be viewed at www.scv-habitatplan.org.

The project would not conflict with the provisions of the SCVHP. **[Same Impact as Approved Project (Less Than Significant Impact)]**

¹² Santa Clara Valley Habitat Agency. “GIS Data & Key Maps.” Accessed April 17, 2020. <http://www.hcpmaps.com/habitat/>.

¹³ Covered activities in urban areas include residential, commercial, and other types of urban development within the Cities of Gilroy, Morgan Hill, and San José planning limits of urban growth in areas designated for urban or rural development, including areas that are currently in the unincorporated County (i.e., in “pockets” of unincorporated land inside the cities’ urban growth boundaries).

4.5 CULTURAL RESOURCES

The approximately 0.45-acre site is currently developed with two apartment buildings and a single-family residence.

4.5.1 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Disturb any human remains, including those interred outside of dedicated cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

As proposed, the project would demolish the existing buildings and construct a 23-story residential tower. Based on the potential to impact historic structures and subsurface resources, the proposed project could result in a significant and unavoidable impact to cultural resources. The analysis of cultural resources impacts is presented in the SEIR. No further analysis will be provided in this Initial Study.

4.6 ENERGY

The following discussion is based on an Air Quality Assessment prepared by *Illingworth & Rodkin* in November 2020. A copy of this report is included as Appendix B of the SEIR.

4.6.1 Environmental Setting

4.6.1.1 *Regulatory Framework*

Federal and State

Energy Star and Fuel Efficiency

At the federal level, energy standards set by the EPA apply to numerous consumer products and appliances (e.g., the EnergyStar™ program). The EPA also sets fuel efficiency standards for automobiles and other modes of transportation.

Renewables Portfolio Standard Program

In 2002, California established its Renewables Portfolio Standard Program, with the goal of increasing the percentage of renewable energy in the state's electricity mix to 20 percent of retail sales by 2010. In 2008, Executive Order S-14-08 was signed into law, requiring retail sellers of electricity serve 33 percent of their load with renewable energy by 2020. In October 2015, Governor Brown signed SB 350 to codify California's climate and clean energy goals. A key provision of SB 350 requires retail sellers and publicly owned utilities to procure 50 percent of their electricity from renewable sources by 2030. SB 100, passed in 2018, requires 100 percent of electricity in California to be provided by 100 percent renewable and carbon-free sources by 2045.

California Building Standards Code

The Energy Efficiency Standards for Residential and Nonresidential Buildings, as specified in Title 24, Part 6 of the California Code of Regulations (Title 24), was established in 1978 in response to a legislative mandate to reduce California's energy consumption. Title 24 is updated approximately every three years.¹⁴

California Green Building Standards Code

CALGreen establishes mandatory green building standards for buildings in California. CALGreen was developed to reduce GHG emissions from buildings, promote environmentally responsible and healthier places to live and work, reduce energy and water consumption, and respond to state environmental directives. CALGreen covers five categories: planning and design, energy efficiency, water efficiency and conservation, material and resource efficiency, and indoor environmental quality.

¹⁴ California Building Standards Commission. "California Building Standards Code." Accessed April 13, 2020. <https://www.dgs.ca.gov/BSC/Codes#@ViewBag.JumpTo>.

Advanced Clean Cars Program

CARB adopted the Advanced Clean Cars program in 2012 in coordination with the EPA and National Highway Traffic Safety Administration. The program combines the control of smog-causing pollutants and GHG emissions into a single coordinated set of requirements for vehicle model years 2015 through 2025. The program promotes development of environmentally superior passenger cars and other vehicles, as well as saving the consumer money through fuel savings.¹⁵

City of San José

Climate Smart San José

Climate Smart San José is a plan to reduce air pollution, save water, and create a stronger and healthier community. The City approved goals and milestones in February 2018 to ensure the City can substantially reduce GHG emissions through reaching the following goals and milestones:

- All new residential buildings will be Zero Net Carbon Emissions (ZNE) by 2020 and all new commercial buildings will be ZNE by 2030 (Note that ZNE buildings would be all electric with a carbon-free electricity source).
- San José Clean Energy (SJCE) will provide 100-percent carbon-free base power by 2021.
- One gigawatt of solar power will be installed in San José by 2040.
- 61 percent of passenger vehicles will be powered by electricity by 2030.

Sustainable City Strategy

The Sustainable City Strategy is a statement of the City's commitment to becoming an environmentally and economically sustainable city by ensuring that development is designed and built in a manner consistent with the efficient use of resources and environmental protection. Programs promoted under this strategy include recycling, waste disposal, water conservation, transportation demand management and energy efficiency.

Municipal Code

The City's Municipal Code includes regulations associated with energy efficiency and energy use. City regulations include a Green Building Ordinance (Chapter 17.84) to foster practices to minimize the use and waste of energy, water and other resources in the City of San José, Water Efficient Landscape Standards for New and Rehabilitated Landscaping (Chapter 15.10), requirements for Transportation Demand Programs for employers with more than 100 employees (Chapter 11.105), and a Construction and Demolition Diversion Deposit Program that fosters recycling of construction and demolition materials (Chapter 9.10).

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to energy and are applicable to the project.

¹⁵ California Air Resources Board. "The Advanced Clean Cars Program." Accessed April 13, 2020. <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/about>.

General Plan Policies - Energy	
MS-1.1	Demonstrate leadership in the development and implementation of green building policies and practices. Ensure that all projects are consistent with or exceed the City's Green Building Ordinance and City Council Policies as well as State and/or regional policies which require that projects incorporate various green building principles into their design and construction.
MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation or other area functions.
MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City.
MS-6.5	Reduce the amount of waste disposed in landfills through waste prevention, reuse, and recycling of materials at venues, facilities, and special events.
MS-6.8	Maximize reuse, recycling, and composting citywide.
MS-14.1	Promote job and housing growth in areas served by public transit and that have community amenities within a 20-minute walking distance.
MS-14.2	Enhance existing neighborhoods by adding a mix of uses that facilitate biking, walking, or transit ridership through improved access to shopping, employment, community services, and gathering places.
MS-14.3	Consistent with the California Public Utilities Commission's California Long Term Energy Efficiency Strategic Plan, as revised and when technological advances make it feasible, require all new residential and commercial construction to be designed for zero net energy use.
MS-14.4	Implement the City's Green Building Policies (see Green Building Section) so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, and passive solar building design and planting of trees and other landscape materials to reduce energy consumption.
MS-14.5	Consistent with State and Federal policies and best practices, require energy efficiency audits and retrofits prior to or at the same time as consideration of solar electric improvements.
MS-19.1	Require new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the development of a fiscally and environmentally sustainable local water supply.
MS-19.4	Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.
IN-5.3	Use solid waste reduction techniques, including source reduction, reuse, recycling, source separation, composting, energy recovery and transformation of solid wastes to extend the life span of existing landfills and to reduce the need for future landfill facilities and to achieve the City's Zero Waste goals.

General Plan Policies - Energy	
PR-6.4	Consistent with the Green Vision, complete San José's trail network and where feasible develop interconnected trails with bike lanes to facilitate bicycle commuting and recreational uses.
PR-6.5	Design and maintain park and recreation facilities to minimize water, energy and chemical (e.g., pesticides and fertilizer) use. Incorporate native and/or drought-resistant vegetation and ground cover where appropriate.
LU-5.4	Require new commercial development to facilitate pedestrian and bicycle access through techniques such as minimizing building separation from public sidewalks; providing safe, accessible, convenient, and pleasant pedestrian connections, and including secure and convenient bike storage.
TR-1.4 ¹⁶	Through the entitlement process for new development fund needed transportation improvements for all modes, giving first consideration to improvement of bicycling, walking and transit facilities. Encourage investments that reduce vehicle travel demand.
TR-2.8	Require new development where feasible to provide on-site facilities such as bicycle storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.
TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute toward transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.

4.6.1.2 Existing Conditions

Total energy usage in California was approximately 7,882 trillion British thermal units (Btu) in the year 2017, the most recent year for which this data was available.¹⁷ Out of the 50 states, California is ranked second in total energy consumption and 48th in energy consumption per capita. The breakdown by sector was approximately 18 percent (1,416 trillion Btu) for residential uses, 19 percent (1,473 trillion Btu) for commercial uses, 23 percent (1,817 trillion Btu) for industrial uses, and 40 percent (3,176 trillion Btu) for transportation.¹⁸ This energy is primarily supplied in the form of natural gas, petroleum, nuclear electric power, and hydroelectric power.

Electricity

Electricity in Santa Clara County in 2018 was consumed primarily by the commercial sector (77 percent), followed by the residential sector consuming 23 percent. In 2018, a total of approximately 16,708 gigawatt hours (GWh) of electricity was consumed in Santa Clara County.¹⁹

¹⁶ TR-1.4, as shown, is modified in this list to reflect only those items relevant to the discussion of energy.

¹⁷ United States Energy Information Administration. "State Profile and Energy Estimates, 2017." Accessed April 13, 2020. <https://www.eia.gov/state/?sid=CA#tabs-2>.

¹⁸ Ibid.

¹⁹ California Energy Commission. Energy Consumption Data Management System. "Electricity Consumption by County." Accessed April 13, 2020. <http://ecdms.energy.ca.gov/electricbycounty.aspx>.

SJCE is the electricity provider for residents and businesses in the City of San José. SJCE sources the electricity and the Pacific Gas and Electric Company (PG&E) delivers it to customers over their existing utility lines. SJCE customers are automatically enrolled in the GreenSource program, which provides 80 percent GHG emission-free electricity. Customers can choose to enroll in SJCE's TotalGreen program at any time to receive 100 percent GHG emission-free electricity from entirely renewable sources.

Natural Gas

PG&E provides natural gas services to the downtown area. In 2018, approximately one percent of California's natural gas supply came from in-state production, while the remaining supply was imported from other western states and Canada.²⁰ In 2018, residential and commercial customers in California used 31 percent of the state's natural gas, power plants used 29 percent, and the industrial sector used 36 percent.²¹ Transportation accounted for one percent of natural gas use in California. In 2018, Santa Clara County used approximately 3.5 percent of the state's total consumption of natural gas.²²

Fuel for Motor Vehicles

In 2019, 15.3 billion gallons of gasoline were sold in California.²³ The average fuel economy for light-duty vehicles (autos, pickups, vans, and sport utility vehicles) in the U.S. has steadily increased from about 13.1 miles per gallon (mpg) in the mid-1970s to 25.1 mpg in 2018.²⁴ Federal fuel economy standards have changed substantially since the Energy Independence and Security Act was passed in 2007. That standard, which originally mandated a national fuel economy standard of 35 miles per gallon by the year 2020, was subsequently revised to apply to cars and light trucks model years 2011 through 2020.^{25,26}

²⁰ California Gas and Electric Utilities. 2019 *California Gas Report*. Accessed April 13, 2020.

https://www.socalgas.com/regulatory/documents/cgr/2019_CGR_Supplement_7-1-19.pdf.

²¹ U.S. EIA. "Natural Gas." Accessed April 13, 2020. https://www.eia.gov/dnav/ng/ng_sum_lsum_dcu_SCA_a.htm.

²² California Energy Commission. "Natural Gas Consumption by County." Accessed April 13, 2020.

<http://ecdms.energy.ca.gov/gasbycounty.aspx>.

²³ California Department of Tax and Fee Administration. "Net Taxable Gasoline Gallons." Accessed April 13, 2020.

<https://www.cdfta.ca.gov/taxes-and-fees/spftrpts.htm>.

²⁴ United States Environmental Protection Agency. "The 2019 EPA Automotive Trends Report: Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975." March 2020.

²⁵ United States Department of Energy. *Energy Independence & Security Act of 2007*. Accessed April 14, 2020.

<http://www.afdc.energy.gov/laws/eisa>.

²⁶ Public Law 110-140—December 19, 2007. *Energy Independence & Security Act of 2007*. Accessed April 14, 2020. <http://www.gpo.gov/fdsys/pkg/PLAW-110publ140/pdf/PLAW-110publ140.pdf>.

4.6.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as “Approved Project”	Less Impact than “Approved Project”
Would the project:					
a) Result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy, or wasteful use of energy resources, during project construction or operation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with or obstruct a State or local plan for renewable energy or energy efficiency?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Result in a substantial increase in demand upon energy resources in relation to projected supplies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in a less than significant energy impact, as described below.

-
- a) **Would the project result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?**
-

Energy Use During Construction

Construction activities would include demolition of the existing buildings, shoring, grading, excavation, below slab utilities, foundation, and building interior/exterior. The overall construction schedule and process is already designed to be efficient in order to avoid excess monetary costs. That is, equipment and fuel would not be used wastefully on the site because of the added expense associated with renting the equipment, maintaining it, and fueling it. Therefore, the opportunities for future efficiency gains during construction are limited. The proposed project does, however, include several measures that would improve the efficiency of the construction process. Implementation of the City’s Standard Permit Conditions detailed in *Section 4.1 Air Quality* of this document, would restrict equipment idling times to five minutes or less and would require the applicant to post signs on the project site reminding workers to shut off idle equipment. With implementation of the Standard Permit Conditions, energy would not be wasted or used inefficiently by construction equipment and waste from idling would be reduced. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Operational Energy Use

The project would redevelop a 0.45-acre site in the downtown area. Operation of the proposed project would consume energy (in the form of electricity and natural gas) primarily for building

heating and cooling, lighting, and water heating. The estimated annual energy use of the proposed project is shown in Table 4.6-1, below. Existing uses on-site were not accounted for as that energy usage data was not available.

Table 4.6-1: Estimated Annual Energy Use of Proposed Development			
Development	Electricity Use (kWh)	Natural Gas Use (kBtu)	Gasoline ²⁷ (gallons per year)
High-Rise Apartments - 240 units	990,804	2,073,470	68,113
Enclosed Parking with Elevator – 95 parking spaces	166,869	0	
Total:	1,157,673	2,073,470	
Source: Illingworth & Rodkin, Inc. The Mark Air Quality & Greenhouse Gas Assessment. November 24, 2020.			

The proposed project would use approximately 1,157,673 kWh of electricity and 2,073,470 kBtu of natural gas. Using the U.S. EPA fuel economy estimates (25.1 mpg), the project would result in the consumption of approximately 68,113 gallons of gasoline per year.

The proposed project would be required to be built in accordance with CALGreen requirements, which includes insulation and design provisions to minimize wasteful energy consumption. Additionally, the proposed project would be constructed in compliance with City of San José Council Policy 6-32. The project site is located approximately 0.5 miles from the San Antonio light rail transit (LRT) Station. The nearest bus stops are located along Second Street and San Salvador Street, approximately 900 feet from the site. The site's proximity to transit would incentivize the use of alternative methods of transportation to and from the site. Additionally, the proposed project would include 60 bicycle parking spaces exceeding the City's bicycle parking requirement of 60 parking spaces. In addition, the proposed project would comply with existing state energy standards. For these reasons, the project would not result in a potentially significant environmental impact due to inefficient consumption of energy during project operation. **[Same Impact as Approved Project (Less Than Significant Impact)]**

b) Would the project conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

Electricity on-site would be provided by SJCE. The project would be required to comply with the City's Green Building Ordinance and the most recent CALGreen requirements. As a result, the project would not conflict with or obstruct state or local plans for renewable energy or energy efficiency. **[Same Impact as Approved Project (Less Than Significant Impact)]**

c) Would the project result in a substantial increase in demand upon energy resources in relation to projected supplies?

²⁷1,709,637 daily VMT / 25.1 mpg = 68,113 gallons of gasoline.

Annual electricity use in California is estimated to increase approximately one percent each year through 2027.²⁸ Implementation of the project would result in an increase in annual electricity use by approximately 1,157,673 kWh and would not result in a substantial increase in demand on electrical energy resources. California uses approximately 2.36 quadrillion Btu of natural gas each year. It is assumed that energy efficiency technology and the RPS targets are likely to reduce demand for natural gas in the state in the future. In 2018, California consumed approximately 2,136,907 million cubic feet of natural gas.²⁹ Based on the relatively small increase in natural gas demand from the project (2,073,470 kBtu per year) and compared to the growth trends in natural gas supply and the existing available supply in California, the proposed project would not result in a substantial increase in natural gas demand relative to projected supplies. **[Same Impact as Approved Project (Less Than Significant Impact)]**

²⁸ California Energy Commission. "California Energy Demand Updated Forecast, 2018-2028." Accessed August 12, 2020. <https://efiling.energy.ca.gov/getdocument.aspx?tn=220615>.

²⁹ U.S. EIA. "Natural Gas." Accessed August 12, 2020. https://www.eia.gov/dnav/ng/ng_sum_lsum_dcu_SCA_a.htm.

4.7 GEOLOGY AND SOILS

The following discussion is based, in part, on a Soil Report generated from the Natural Resources Conservation Service’s website in April 2020. A copy of this report is included as Appendix F of the SEIR.

4.7.1 Environmental Setting

4.7.1.1 *Regulatory Framework*

State

Alquist-Priolo Earthquake Fault Zoning Act

The Alquist-Priolo Earthquake Fault Zoning Act was passed following the 1971 San Fernando earthquake. The act regulates development in California near known active faults due to hazards associated with surface fault ruptures. Alquist-Priolo maps are distributed to affected cities, counties, and state agencies for their use in planning and controlling new construction. Areas within an Alquist-Priolo Earthquake Fault Zone require special studies to evaluate the potential for surface rupture to ensure that no structures intended for human occupancy are constructed across an active fault.

Seismic Hazards Mapping Act

The Seismic Hazards Mapping Act (SHMA) was passed in 1990 following the 1989 Loma Prieta earthquake. The SHMA directs the California Geological Survey (CGS) to identify and map areas prone to liquefaction, earthquake-induced landslides, and amplified ground shaking. CGS has completed seismic hazard mapping for the portions of California most susceptible to liquefaction, landslides, and ground shaking, including the central San Francisco Bay Area. The SHMA requires that agencies only approve projects in seismic hazard zones following site-specific geotechnical investigations to determine if the seismic hazard is present and identify measures to reduce earthquake-related hazards.

California Building Standards Code

The CBC prescribes standards for constructing safe buildings. The CBC contains provisions for earthquake safety based on factors including occupancy type, soil and rock profile, ground strength, and distance to seismic sources. The CBC requires that a site-specific geotechnical investigation report be prepared for most development projects to evaluate seismic and geologic conditions such as surface fault ruptures, ground shaking, liquefaction, differential settlement, lateral spreading, expansive soils, and slope stability. The CBC is updated every three years.

California Division of Occupational Safety and Health Regulations

Excavation, shoring, and trenching activities during construction are subject to occupational safety standards for stabilization by the California Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) under Title 8 of the California Code of Regulations and Excavation Rules. These regulations minimize the potential for instability and collapse that could injure construction workers on the site.

Public Resources Code Section 5097.5

Paleontological resources are the fossilized remains of organisms from prehistoric environments found in geologic strata. They range from mammoth and dinosaur bones to impressions of ancient animals and plants, trace remains, and microfossils. These are valued for the information they yield about the history of the earth and its past ecological settings. California Public Resources Code Section 5097.5 specifies that unauthorized removal of a paleontological resource is a misdemeanor. Under the CEQA Guidelines, a project would have a significant impact on paleontological resources if it would disturb or destroy a unique paleontological resource or site or unique geologic feature.

City of San José

City of San José Policies

Title 24 of the San José Municipal Code includes the 2016 California Building, Plumbing, Mechanical, Electrical, Existing Building, and Historical Building Codes. Requirements for building safety and earthquake hazard reduction are also addressed in Chapter 17.40 (Dangerous Buildings) and Chapter 17.10 (Geologic Hazards Regulations) of the Municipal Code. Requirements for grading, excavation, and erosion control are included in Chapter 17.04 (Building Code, Part 6 Excavation and Grading). In accordance with the Municipal Code, the Director of Public Works must issue a Certificate of Geologic Hazard Clearance prior to the issuance of grading and building permits within defined geologic hazard zones, including State Seismic Hazard Zones for Liquefaction.

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to geologic and seismic hazards and are applicable to the project.

General Plan Policies - Geology, Soils, and Seismic Hazards	
ES-4.9	Permit development only in those areas where potential danger to the health, safety, and welfare of persons in that area can be mitigated to an acceptable level.
ES-4.10	Update, as necessary, the San José Building Code, Fire Prevention Code and Municipal Code to address geologic, fire, flooding and other hazards, and to respond to changes in applicable State Codes.
EC-3.1	Design all new or remodeled habitable structures in accordance with the most recent California Building Code and California Fire Code as amended locally and adopted by the City of San José, including provisions regarding lateral forces.
EC-3.2	Within seismic hazard zones identified under the Alquist-Priolo Fault Zoning Act, California Seismic Hazards Mapping Act and/or by the City of San José, complete geotechnical and geological investigations and approve development proposals only when the severity of seismic hazards have been evaluated and appropriate mitigation measures are provided as reviewed and approved by the City of San José Geologist. State guidelines for evaluating and mitigating seismic hazards and the City-adopted California Building Code will be followed.

General Plan Policies - Geology, Soils, and Seismic Hazards	
EC-3.3	The City of San José Building Official shall require conformance with state law regarding seismically vulnerable unreinforced masonry structures within the City.
EC-3.4	The City of San José will maintain up-to-date seismic hazard maps with assistance from the California Geological Survey (or other state agencies) under the Alquist-Priolo Earthquake Fault Zoning Act and the California Seismic Hazards Mapping Act.
EC-4.1	Design and build all new or remodeled habitable structures in accordance with the most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and storm water controls.
EC-4.2	Approve development in areas subject to soils and geologic hazards, including un-engineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on the site or on adjoining properties. The City of San José Geologist will review and approve geotechnical and geological investigation reports for projects within these areas as part of the project approval process.
EC-4.4	Require all new development to conform to the City of San José's Geologic Hazard Ordinance.
EC-4.5	Ensure that any development activity that requires grading does not impact adjacent properties, local creeks and storm drainage systems by designing and building the site to drain properly and minimize erosion. An Erosion Control Plan is required for all private development projects that have soil disturbance of one acre or more, are adjacent to a creek/river, and/or are located in hillside areas. Erosion Control Plans are also required for any grading occurring between October 15 and April 15.
EC-4.7	Consistent with the San José Geologic Hazard Ordinance, prepare geotechnical and geological investigation reports for projects in areas of known concern to address the implications of irrigated landscaping to slope stability and to determine if hazards can be adequately mitigated.

4.7.1.2 *Existing Conditions*

Regional Geology

The project site is located in the Santa Clara Valley, a relatively flat alluvial basin bounded by the Diablo Mountain Range to the east and the Santa Cruz Mountains to the west.

On-Site Geologic Conditions

Topography and Soils

The project site is underlain by the Urbanland-Elpaloalto complex with zero to two percent slopes. The soil type is characterized by moderate expansion potential and is well drained.

Groundwater

Based on the Phase I Environmental Site Assessment (ESA)³⁰ prepared for the project site, groundwater within the vicinity of the project site has been estimated at a depth of approximately 11 to 37 feet below the ground surface (bgs). Groundwater in the project area flows in a northeasterly direction. Fluctuations in the groundwater level may occur due to seasonal changes, variations in rainfall and underground drainage patterns, and other factors.

Seismicity and Seismic-Related Hazards

The San Francisco Bay Area is one of the most seismically active regions in the U.S. The significant earthquakes that occur in the Bay Area are generally associated with the crustal movements along well-defined active fault zones of the San Andreas Fault system, which regionally trend in a northwesterly direction. Faults in the region are capable of generating earthquakes of magnitude 6.7 or higher, and strong to very strong ground shaking is expected to occur at the project site during a major earthquake.

The project area is not located within the Alquist-Priolo Earthquake Fault Zone³¹ and no active faults have been mapped on-site; therefore, the risk of fault rupture is low. Faults in the region are capable of generating earthquakes of magnitude 6.7 or higher and strong to very strong ground shaking would be expected to occur at the project site during a major earthquake on one of the nearby faults. Active faults near the project site are shown in Table 4.7-1.

Table 4.7-1: Active Faults Near the Project Site	
Fault	Distance from Site
Hayward	4.4 miles east
Calaveras	8.7 miles east
Monte Vista - Shannon	7.2 miles southwest
San Andreas	11.8 miles southwest

Liquefaction

Liquefaction occurs when water-saturated soils lose structural integrity due to seismic activity. Soils that are most susceptible to liquefaction are loose to moderately dense, saturated granular soils with poor drainage. The project area is located within a potential liquefaction zone.³²

Lateral Spreading

Lateral spreading is a type of ground failure related to liquefaction. It consists of the horizontal displacement of flat-lying alluvial material toward an open area, such as a steep bank of a stream channel. Areas of San José most prone to lateral spreading include lands adjacent to Guadalupe River and Coyote Creek. Guadalupe River is located approximately 0.5 miles west of the project site and

³⁰ Partner Engineering and Science, Inc. *Phase I Environmental Site Assessment Report*. August 5, 2019.

³¹ California Department of Conservation Website. "CGS Information Warehouse: Regulatory Maps." Accessed April 20, 2020. <http://maps.conservation.ca.gov/cgs/informationwarehouse/index.html?map=regulatorymaps>.

³² Ibid.

Coyote Creek is approximately one mile east of the project site. At these distances, the potential for lateral spreading on-site is low.

Landslides

Landslides occur when the stability of a slope changes from a stable to an unstable condition. The site is not located within a Santa Clara County Landslide Hazard Zone.³³ The project area is relatively flat; therefore, the probability of landslides occurring at the site during a seismic event is low.

4.7.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:					
– Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (refer to Division of Mines and Geology Special Publication 42)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
– Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
– Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
– Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Be located on expansive soil, as defined in the current California Building Code, creating substantial direct or indirect risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

³³ County of Santa Clara. Geologic Hazards Zones, Map 20, 2012. Accessed June 8, 2020. https://www.sccgov.org/sites/dpd/DocsForms/Documents/GEO_GeohazardATLAS.pdf.

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Directly or indirectly destroy a unique paleontological resource or site or unique geological feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant geology and soils impacts, as described below.

-
- a) Would the project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault; strong seismic ground shaking; seismic-related ground failure, including liquefaction; or landslides?**
-

The project site is located within the seismically active San Francisco Bay Area which has a 72 percent probability of experiencing at least one magnitude 6.7 earthquake by 2045.³⁴ As mentioned in *Section 4.7.1.2*, no active faults have been mapped on-site and, as a result, the risk of fault rupture is low. The project site and area is relatively flat and have a low potential for lateral spreading during seismic events. Additionally, the project site is located within an area of moderate expansion potential.

Consistent with the General Plan and current standard practices in the City of San José, the project proposes to implement the following Standard Permit Condition to reduce significant seismic and seismic-related impacts.

Standard Permit Condition:

- The project site is within the State of California Seismic Hazard Zone of Required Investigation for Liquefaction. A Geotechnical Report shall be submitted, reviewed, and approved by the City Geologist prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with State of California guidelines for the preparation of seismic hazard evaluation reports (CGS Special Publication 117A,

³⁴ U.S. Geological Survey. "UCERF3: A New Earthquake Forecast for California's Complex Fault System. Fact Sheet 2015-3009." Accessed June 8, 2020. <http://pubs.usgs.gov/fs/2015/3009/pdf/fs2015-3009.pdf>.

2008, and the Southern California Earthquake Center report, SCEC, 1999). A recommended minimum depth of 50 feet should be explored and evaluated in the investigation.

- A design-level geotechnical corrective plan must be set to be approved for a grading permit, if ground improvements to mitigate settlement, liquefaction, landslides, or other geologic hazards are recommended in the geotechnical report submitted for the project.
- To avoid or minimize potential damage from seismic shaking, project construction shall use standard engineering and seismic safety design techniques. Complete building design and construction at the site in conformance with the recommendations of an approved geotechnical investigation. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on-site and off-site to the extent feasible and in compliance with the CBC.

With implementation of the above Standard Permit Condition, the proposed project would not expose people or structures to substantial adverse effects due to ground shaking; nor would the project exacerbate existing geological hazards on the project site such that it would impact (or worsen) off-site geological and soil conditions. **[Same Impact as Approved Project (Less than Significant Impact)]**

b) Would the project result in substantial soil erosion or the loss of topsoil?

Ground disturbance during construction of the project would expose soils, increasing the potential for wind and/or water erosion at the site. The proposed project would be required to implement the following Standard Permit Conditions to reduce significant soil erosion.

Standard Permit Conditions:

- All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- Ditches shall be installed to divert runoff around excavations and graded areas if necessary.

In addition to the Standard Permit Conditions, the project would be required to prepare a Storm Water Pollution Prevention Plan (SWPPP) under the National Pollution Discharge Elimination System (NPDES) General Construction Permit and the City's Municipal Code (refer to *Section 4.10, Hydrology and Water Quality*). Implementation of the Standard Permit Conditions and preparation of the SWPPP would reduce potential soil erosion impacts to a less than significant level. **[Same Impact as Approved Project (Less than Significant Impact)]**

c) Would the project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?

Geologic Hazards

Based on the California Department of Conservation Regulatory Map, the project site is located within a liquefaction zone³⁵ and the potential for lateral spreading to occur on-site is low due to the location of the site relative to local waterways. Since the soils on-site have moderate expansion potential, the proposed project would be required to use standard engineering and seismic safety design techniques during project construction. Additionally, the project would be constructed in conformance with a site-specific geotechnical investigation (refer to Standard Permit Condition above). The site is not located on soil that is or would become unstable and result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Groundwater

Groundwater on-site is estimated at a depth of approximately 11 to 37 feet bgs and the project site would be excavated to a depth of approximately 16 feet for the below-grade parking garage. Since excavation activities on-site would likely encounter groundwater, the proposed project would require dewatering during construction (refer to *Section 3.3 Hazards and Hazardous Materials* of the SEIR and *Section 4.10 Hydrology and Water Quality* of this document). Consistent with the measure identified in the Downtown Strategy 2040 FEIR and City policy, the project would implement the following Standard Permit Condition to reduce and/or avoid impacts related to groundwater.

Standard Permit Condition:

- If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.

Because the proposed project would comply with the Standard Permit Condition, the soils on-site would not become unstable as a result of the project. **[Same Impact as Approved Project (Less Than Significant Impact)]**

d) Would the project be located on expansive soil, as defined in the current California Building Code, creating substantial direct or indirect risks to life or property?

The project would be required to prepare a design-level geotechnical investigation and implement the recommendations in the investigation to avoid or minimize potential damage from seismic shaking. Although the soils on-site have moderate expansion potential, the project would implement the previously identified Standard Permit Condition and would not result in substantial direct or indirect risks to life or property. **[Same Impact as Approved Project (Less than Significant Impact)]**

³⁵ California Department of Conservation Website. "CGS Information Warehouse: Regulatory Maps." Accessed April 20, 2020. <http://maps.conservation.ca.gov/cgs/informationwarehouse/index.html?map=regulatorymaps>.

e) Would the project have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?

The project site is located within an urbanized area of San José where sewers are available to dispose of wastewater from the project site. Therefore, the site would not need to support septic tanks or alternative wastewater disposal systems. **[Same Impact as Approved Project (Less than Significant Impact)]**

f) Would the project directly or indirectly destroy a unique paleontological resource or site or unique geological feature?

Paleontological resources are the fossilized remains of organisms from prehistoric environments found in geologic strata. Most of the City is situated on alluvial fan deposits of Holocene age that have a low potential to contain significant nonrenewable paleontological resources; however, older Pleistocene sediments present at or near the ground surface at some locations have high potential to contain these resources. These older sediments, often found at depths of greater than 10 feet bgs, have yielded the fossil remains of plants and extinct terrestrial Pleistocene vertebrates.

The site would be excavated to a depth of approximately 16 feet for the below-grade parking garage which could potentially disturb unknown paleontological resources during excavation, grading and construction activities. Consistent with the Downtown Strategy 2040 FEIR, the project would comply with the following Standard Permit Condition for avoiding and reducing construction-related paleontological resources impacts.

Standard Permit Condition:

- If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

With implementation of the identified Standard Permit Condition, the proposed project would have a less than significant paleontological resources impact. **[Same Impact as Approved Project (Less Than Significant Impact)]**

4.7.2.1 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District*, 62 Cal. 4th 369 (*BIA v. BAAQMD*), effects of a project on the environment are not considered CEQA

impacts. The following discussion is included for informational purposes only because the City of San José has policies that address existing geology and soils conditions affecting a proposed project.

Policy EC-4.2 states that development is allowed in areas subject to soils and geologic hazards, including unengineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on-site or on adjoining properties. Pursuant to the Downtown Strategy 2040 FEIR, prior to issuance of site-specific grading or building permits, a design-level geotechnical investigation³⁶ shall be prepared and submitted to the City of San José Public Works department for review and confirmation that the proposed development fully complies with the CBC and all City policies and ordinances.

Additionally, Policy EC-4.4 requires all new development to conform to the City of San José's Geologic Hazard Ordinance. To ensure that proposed development sites are suitable, Action EC-4.11 requires the preparation of geotechnical and geological investigation reports for projects within areas subject to soils and geologic hazards and require review and implementation of mitigation measures as part of the project approval process.

The project site and surrounding area contain soils with moderate expansion potential. Consistent with Action EC-4.11, the project applicant would be required to submit a design-specific geotechnical report. The proposed project would be built and maintained in accordance with a design-specific geotechnical report and applicable regulations including the most recent CBC, which contains the regulations that govern the construction of structures in California. Adherence to the CBC would reduce seismic related impacts and ensure that the new development proposed within areas of geologic hazards would not be endangered by hazardous site conditions.

Because the proposed project would comply with the design-specific geotechnical report, the CBC, and regulations identified in the Downtown Strategy 2040 FEIR, the project would comply with General Plan Policies EC-4.2 and EC-4.4.

³⁶ The analysis must conform to the California Division of Mines and Geology (CDMG) recommendations presented in the "Guidelines for Evaluating Seismic Hazards in California." CDMG Special Publication 117. 1997.

4.8 GREENHOUSE GAS EMISSIONS

The following discussion is based upon a Greenhouse Gas Compliance Checklist provided by the applicant in January 2021. The report is attached in Appendix G of the SEIR.

4.8.1 Environmental Setting

4.8.1.1 *Background Information*

Gases that trap heat in the atmosphere, GHGs, regulate the earth's temperature. This phenomenon, known as the greenhouse effect, is responsible for maintaining a habitable climate. In GHG emission inventories, the weight of each gas is multiplied by its global warming potential (GWP) and is measured in units of CO₂ equivalents (CO₂e). The most common GHGs are carbon dioxide (CO₂) and water vapor but there are also several others, most importantly methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). These are released into the earth's atmosphere through a variety of natural processes and human activities. Sources of GHGs are generally as follows:

- CO₂ and N₂O are byproducts of fossil fuel combustion.
- N₂O is associated with agricultural operations such as fertilization of crops.
- CH₄ is commonly created by off-gassing from agricultural practices (e.g., keeping livestock) and landfill operations.
- Chlorofluorocarbons (CFCs) were widely used as refrigerants, propellants, and cleaning solvents, but their production has been stopped by international treaty.
- HFCs are now used as a substitute for CFCs in refrigeration and cooling.
- PFCs and SF₆ emissions are commonly created by industries such as aluminum production and semiconductor manufacturing.

An expanding body of scientific research supports the theory that global climate change is currently causing changes in weather patterns, average sea level, ocean acidification, chemical reaction rates, and precipitation rates, and that it will increasingly do so in the future. The climate and several naturally occurring resources within California are adversely affected by the global warming trend. Increased precipitation and sea level rise will increase coastal flooding, saltwater intrusion, and degradation of wetlands. Mass migration and/or loss of plant and animal species could also occur. Potential effects of global climate change that could adversely affect human health include more extreme heat waves and heat-related stress; an increase in climate-sensitive diseases; more frequent and intense natural disasters such as flooding, hurricanes and drought; and increased levels of air pollution.

4.8.1.2 *Regulatory Framework*

State

Assembly Bill 32

Under the California Global Warming Solutions Act, also known as AB 32, CARB established a statewide GHG emissions cap for 2020, adopted mandatory reporting rules for significant sources of

GHGs, and adopted a comprehensive plan, known as the Climate Change Scoping Plan, identifying how emission reductions would be achieved from significant GHG sources.

In 2016, SB 32 was signed into law, amending the California Global Warming Solution Act. SB 32, and accompanying Executive Order B-30-15, require CARB to ensure that statewide GHG emissions are reduced to 40 percent below the 1990 level by 2030. CARB updated its Climate Change Scoping Plan in December of 2017 to express the 2030 statewide target in terms of million metric tons of CO₂E (MMTCo₂e). Based on the emissions reductions directed by SB 32, the annual 2030 statewide target emissions level for California is 260 MMTCo₂e.

Senate Bill 375

SB 375, known as the Sustainable Communities Strategy and Climate Protection Act, was signed into law in September 2008. SB 375 builds upon AB 32 by requiring CARB to develop regional GHG reduction targets for automobile and light truck sectors for 2020 and 2035. The per-capita GHG emissions reduction targets for passenger vehicles in the San Francisco Bay Area include a seven percent reduction by 2020 and a 15 percent reduction by 2035.

Consistent with the requirements of SB 375, the Metropolitan Transportation Commission (MTC) partnered with the Association of Bay Area Governments (ABAG), BAAQMD, and the Bay Conservation and Development Commission to prepare the region's Sustainable Communities Strategy (SCS) as part of the Regional Transportation Plan process. The SCS is referred to as Plan Bay Area 2040. Plan Bay Area 2040 establishes a course for reducing per-capita GHG emissions through the promotion of compact, high-density, mixed-use neighborhoods near transit, particularly within identified Priority Development Areas (PDAs).

Regional

2017 Clean Air Plan

To protect the climate, the 2017 CAP (prepared by BAAQMD) includes control measures designed to reduce emissions of methane and other super-GHGs that are potent climate pollutants in the near-term, and to decrease emissions of carbon dioxide by reducing fossil fuel combustion.

CEQA Air Quality Guidelines

The BAAQMD CEQA Air Quality Guidelines are intended to serve as a guide for those who prepare or evaluate air quality impact analyses for projects and plans in the San Francisco Bay Area. The jurisdictions in the San Francisco Bay Area Air Basin utilize the thresholds and methodology for assessing GHG impacts developed by BAAQMD within the CEQA Air Quality Guidelines. The guidelines include information on legal requirements, BAAQMD rules, methods of analyzing impacts, and recommended mitigation measures.

City of San José

Climate Smart San José

Climate Smart San José is a plan to reduce air pollution, save water, and create a stronger and healthier community. The City approved goals and milestones in February 2018 to ensure the City can substantially reduce GHG emissions through reaching the following goals and milestones:

- All new residential buildings will be Zero Net Carbon Emissions (ZNE) by 2020 and all new commercial buildings will be ZNE by 2030 (Note that ZNE buildings would be all electric with a carbon-free electricity source).
- SJCE will provide 100-percent carbon-free base power by 2021.
- One gigawatt of solar power will be installed in San José by 2040.
- 61 percent of passenger vehicles will be powered by electricity by 2030.

Reach Building Code

In 2019, the San José City Council approved Ordinance No. 30311 and adopted Reach Code Ordinance (Reach Code) to reduce energy-related GHG emissions consistent with the goals of Climate Smart San José. The Reach Code applies to new construction projects in San José. It requires new residential construction to be outfitted with entirely electric fixtures. Mixed-fuel buildings (i.e., use of natural gas) are required to demonstrate increased energy efficiency through a higher Energy Design Ratings and be electrification ready. In addition, the Reach Code requires EV charging infrastructure for all building types (above current CALGreen requirements), and solar readiness for non-residential buildings.

City of San José Municipal Code

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

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

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

In October 2008, the City adopted the Private Sector Green Building Policy (6-32) that establishes baseline green building standards for private sector new construction and provides a framework for the implementation of these standards. This policy requires that applicable projects achieve minimum green building performance levels using the Council adopted standards. Future development under the proposed Downtown Strategy 2040 would be subject to this policy.

Greenhouse Gas Reduction Strategy

The Greenhouse Gas Reduction Strategy (GHGRS) is intended to meet the mandates outlined in the CEQA Air Quality Guidelines, as well as the BAAQMD requirements for Qualified GHG Reduction Strategies. The City's 2030 Greenhouse Gas Reduction Strategy (2030 GHGRS) is a comprehensive update to the City's original GHGRS and reflects the plans, policies, and codes as approved by the City Council. The strategy builds on the City's Envision San José 2040 General Plan and Climate Smart San José; these plans expanded the City's Green Vision to advance urban sustainability. Leveraging these existing plans and supporting policy and program frameworks, the 2030 GHGRS provides a set of strategies and additional actions for achieving the 2030 target.

The primary test for consistency with the City's GHGRS is conformance with the General Plan Land Use/Transportation Diagram and supporting policies. CEQA clearance for development proposals are required to address the consistency of individual projects with the goals and policies in the General Plan designed to reduce GHG emissions. Compliance with the mandatory measures and voluntary measures (if required by the City) would ensure an individual project's consistency with the GHG Reduction Strategy. Projects that are consistent with the GHGRS would have a less than significant impact related to GHG emissions through 2030.

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to greenhouse gas emissions and are applicable to the project. In addition, goals and policies throughout the 2040 General Plan encourage a reduction in vehicle miles traveled through land use, pedestrian, bicycle, and access to transit improvements, parking strategies that reduce automobile travel through parking supply and pricing management, and requirements for Transportation Demand Management programs for large employers. Additional policies have been adopted to reduce energy use (and thus emissions from fuel use). Refer to *Sections 3.1 Air Quality* (of the SEIR) and *Sections 4.6 Energy* and *4.17 Transportation* of this document for these policies.

General Plan Policies - GHG Emissions	
MS-1.1	Demonstrate leadership in the development and implementation of green building policies and practices. Ensure that all projects are consistent with or exceed the City's Green Building Ordinance and City Council Policies as well as State and/or regional policies which require that projects incorporate various green building principles into their design and construction.
MS-1.4	Foster awareness of San José's business and residential communities of the economic and environmental benefits of green building practices. Encourage design and construction of environmentally responsible commercial and residential buildings that are also operated and maintained to reduce waste, conserve water, and meet other environmental objectives.
MS-2.3	Utilize solar orientation (i.e., building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.
MS-2.6	Promote roofing design and surface treatments that reduce the heat island effect of new and existing development and support reduced energy use, reduced air pollution, and a healthy urban forest. Connect businesses and residents with cool roof rebate programs through City outreach efforts.

General Plan Policies - GHG Emissions	
MS-2.11	Require new development to incorporate green building policies, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize effectiveness of passive solar design.).
MS-5.5	Maximize recycling and composting from all residents, businesses, and institutions in the City.
MS-5.6	Enhance the construction and demolition debris recycling program to increase diversion from the building sector.
MS-14.4	Implement the City's Green Building Policies so that new construction and rehabilitation of existing buildings fully implements industry best practices, including the use of optimized energy systems, selection of materials and resources, water efficiency, sustainable site selection, passive solar building design, and planting of trees and other landscape materials to reduce energy consumption.
MS-21.1	Manage the Community Forest to achieve San José's environmental goals for water and energy conservation, wildlife habitat preservation, stormwater retention, heat reduction in urban areas, energy conservation, and the removal of carbon dioxide from the atmosphere.
TR-1.16	Develop a strategy to construct a network of public and private alternative fuel vehicle charging/fueling stations city wide. Revise parking standards to require the installation of electric charging infrastructure at new large employment sites and large, multiple family residential developments.

4.8.1.3 *Existing Conditions*

Unlike emissions of criteria and toxic air pollutants, which have regional and local impacts, emissions of GHGs have a broader, global impact. Global warming is a process whereby GHGs accumulating in the upper atmosphere contribute to an increase in the temperature of the earth and changes in weather patterns.

The project site is developed with two apartment buildings and a single-family residence. Most of the GHG emissions associated with the existing uses on-site result from the production of electricity and burning of natural gas to power household appliances and lighting, and the emissions from vehicles traveling to and from the site.

4.8.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Generate greenhouse gas (GHG) emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project, by itself, would result in a less than significant GHG emissions impacts.

-
- a) Would the project generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment?**
-

Construction Emissions

Construction activities on-site would result in temporary GHG emissions. Construction-related GHG emissions vary depending on the level of activity, length of the construction period, specific construction operations, types of equipment, and number of personnel. Neither the City of San José nor BAAQMD has established a quantitative threshold or standard for determining whether a project's construction related GHG emissions are significant. Project construction would occur over a period of approximately 24 months (519 construction workdays) and would not result in a permanent increase in emissions. The proposed project would not interfere with the implementation of AB 32 in 2020 or SB 32 in 2030. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Operational Emissions

Per CEQA Guidelines Section 15064(b), the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the Lead Agency and must be based to the extent possible on scientific and factual data. Since the project is consistent with the General Plan land use designation for the site, planned growth from build out of the Downtown Strategy 2040 FEIR, and compliance with the mandatory measures and voluntary measures required by the City, the project would result in a less than significant GHG emissions impact. **[Same Impact as Approved Project (Less Than Significant Impact)]**

-
- b) Would the project conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs?**
-

Envision San José 2040 General Plan

The project is consistent with the General Plan policies identified in *Section 4.8.1.2 Regulatory Framework* to reduce GHG emissions by:

- Constructing in accordance with CALGreen and Title 24
- Planting trees for shade
- Providing bicycle parking on-site
- Implementing a TDM plan with reduced vehicle parking

Additionally, the project site is located within the downtown area which is served by existing pedestrian, bicycle, and transit facilities with regional connections. The alternative modes of transportation available in the area would help reduce GHG emissions. The proposed project would be consistent with the City's General Plan policies intended to reduce GHG emissions. **[Same Impact as Approved Project (Less Than Significant Impact)]**

2030 San José Greenhouse Gas Reduction Strategy Compliance Checklist

BAAQMD adopted revised CEQA Air Quality Guidelines on June 2, 2010 and then adopted a modified version of the Guidelines in May 2017. The BAAQMD CEQA Air Quality Guidelines include thresholds of significance for GHG emissions. Pursuant to the latest CEQA Air Quality Guidelines, a local government may prepare a Qualified Greenhouse Gas Reduction Strategy (GHGRS) that is consistent with AB 32 goals. The City of San José adopted the updated 2030 GHGRS in 2020. If a project is consistent with the City's GHGRS, it can be presumed that the project would not have significant GHG emissions under CEQA. The proposed project's consistency with these measures is detailed below. The proposed project's consistency with these measures is detailed below and in Appendix G of the SEIR.

Table A: General Plan Consistency

1. Consistency with the Land Use/Transportation Diagram (Land use and Density)
2. Implementation of Green Building Measures (General Plan Policies: MS-2.2, MS-2.3, MS-2.7, MS-2.11, and MS-16.2)
3. Pedestrian/Bicycle Site Design Measures (General Plan Policies: CD-2.1, CD-2.5, CD-2.11, CD-3.2, CD-3.4, LU-3.5, TR-2.8, TR-7.1, and TR-8.5)
4. Water Conservation and Urban Forestry Measures (General Plan Policies: MS-3.1, MS-3.2, MS-19.4, MS-21.3, MS-26.1, and ER-8.7)

The project is consistent with the *Downtown* General Plan designation and planned growth from build out of the Downtown Strategy 2040 FEIR. Therefore, the proposed project would be consistent with criteria 1.

The proposed project would be required to comply with Policy 6-32, the City’s Green Building Ordinance, and CBC requirements as well as General Plan Action MS-2.11 which requires development to incorporate green building practices through construction, architectural design, and site design techniques. The project would be designed to achieve LEED Silver certification and would be designed to be Reach Code compliant. Additionally, the project would comply with the City’s climate action goals as set forth in Climate Smart San José. The project, as proposed, would include solar hot water or solar electrical generation. The proposed building H-shape is oriented north-south which allows for more shading opportunities along the façade. Parking is proposed within one level of below-grade parking and two levels of above-grade parking and would not include solar panels over parking areas. For these reasons, the project would be consistent with criteria 2.

As discussed in *Section 4.17 Transportation*, the proposed would not substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections). The project driveway would meet the AASHTO minimum stopping sight distance standards. The existing pedestrian and bicycle facilities provide adequate connectivity and safe routes to the surrounding destinations. The project frontage is located along the City’s Better Bikeways project which has recently been upgraded to provide bicyclists with a safer biking route. A bicycle storage room, showers, and bicycle parking (consistent with Table 20-90 of the City’s Municipal Code) is proposed as part of the project. The project proposes to reconstruct the sidewalk along its frontage on Fourth Street by planting new street trees and would comply with the City’s tree replacement policy. The proposed project would provide parking through a combination of on-site and off-site parking to comply with the City’s parking requirement. The off-site parking would be located within a parking garage at 88 San Fernando Street. This would reduce the number of parking on-site. No surface parking is proposed. The project is not considered a large employer and, as a result, would not be required to develop a transportation demand management (TDM) plan. While a TDM plan was prepared, it was not used to satisfy parking reduction requirements. Policy CD-3.4 is not applicable to the project given the configuration of the site and adjacent structures. The project would not participate in any car-share programs. The project would be consistent with criteria 3.

The project would comply with General Plan Policy MS-3.1 which requires projects to provide water-efficient landscaping. The project does not propose the use of captured rainwater, graywater, or recycled water. As mentioned above, the project would be required to comply with Policy 6-32, the City’s Green Building Ordinance, General Plan Action MS-2.11, and the most recent CBC requirements. Any tree removed as a result of the project would be required to be replaced in accordance with all applicable laws, policies or guidelines (consistent with the Downtown Strategy 2040 FEIR). The project does not propose to install rain barrels, cisterns, or other water storage and reuse facilities. For these reasons, the project would be consistent with criteria 4.

Table B: 2030 Greenhouse Gas Reduction Strategy Compliance

Table 4.8-1 below describes the project’s compliance with Table B of the 2030 GHGRS.

Table 4.8-1: Table B of GHGRS Compliance Checklist		
GHGRS Strategy and Consistency Options	Description of Project Measure	Project Conformance
Part 1: Residential Projects Only		
Zero Net Carbon Residential Construction 1. Achieve/exceed the City's Reach Code, and 2. Exclude natural gas infrastructure in new construction, or 3. Install on-site renewable energy systems or participate in a community solar program to offset 100% of the project's estimated energy demand, or 4. Participate in San José Clean Energy at the Total Green level (i.e., 100% carbon-free electricity) for electricity accounts associated with the project until which time SJCE achieves 100% carbon-free electricity for all accounts. Supports Strategies: GHGRS #1, GHGRS #2, GHGRS #3	<p>The project would comply with project consistency options 1 and 2.</p> <p>The proposed project would be required to comply with the reach code which aligns with Climate Smart San José goals. In addition, all new development (including the proposed project) would be required to be designed for energy efficiency and conservation per Climate Smart San José. The project would comply with Building Energy Efficiency Standards (Title 24), the City's REACH code, and the City's Green Building Ordinance and the most recent CALGreen requirements. The proposed project would be designed to achieve LEED Silver certification.</p>	<input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Feasible <input type="checkbox"/> Alternative Measure Proposed
Part 2: Residential and Non-Residential Projects		
Renewable Energy Development 1. Install solar panels, solar hot water, or other clean energy power generation sources on development sites, or 2. Participate in community solar programs to support development of renewable energy in the community, or 3. Participate in San José Clean Energy at the Total Green	<p>The project would comply with project consistency option 1.</p> <p>The project would include solar hot water or solar electrical generation.</p>	<input checked="" type="checkbox"/> See Part 1 (Residential projects only) <input type="checkbox"/> Proposed <input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Feasible <input type="checkbox"/> Alternative Measure Proposed

Table 4.8-1: Table B of GHGRS Compliance Checklist		
GHGRS Strategy and Consistency Options	Description of Project Measure	Project Conformance
<p>level (i.e., 100% carbon-free electricity) for electricity accounts associated with the project.</p> <p>Supports Strategies: GHGRS #1, GHGRS #3</p>		
<p>Building Retrofits – Natural Gas</p> <p>This strategy only applies to projects that include a retrofit of an existing building. If the proposed project does not include a retrofit, select “Not Applicable” in the Project Conformance column.</p> <ol style="list-style-type: none"> 1. Replace an existing natural gas appliance with an electric alternative (e.g., space heater, water heater, clothes dryer), or 2. Replace an existing natural gas appliance with a high-efficiency model <p>Supports Strategies: GHGRS #4</p>	<p>The project would not comply with any of the listed project consistency options.</p> <p>The project does not propose to retrofit an existing building.</p>	<p><input type="checkbox"/> Proposed</p> <p><input checked="" type="checkbox"/> Not Applicable</p> <p><input type="checkbox"/> Not Feasible</p> <p><input type="checkbox"/> Alternative Measure Proposed</p>
<p>Zero Waste Goal</p> <ol style="list-style-type: none"> 1. Provide space for organic waste (e.g., food scraps, yard waste) collection containers, and/or 2. Exceed the City’s construction & demolition waste diversion requirement. 	<p>The project would comply with project consistency option 1.</p> <p>As discussed in the Downtown Strategy 2040 FEIR, future projects, including the project, are required to provide on-site recycling facilities, develop a construction waste management plan, salvage at least 50 percent</p>	<p><input checked="" type="checkbox"/> Proposed</p> <p><input type="checkbox"/> Not Applicable</p> <p><input type="checkbox"/> Not Feasible</p> <p><input type="checkbox"/> Alternative Measure Proposed</p>

Table 4.8-1: Table B of GHGRS Compliance Checklist		
GHGRS Strategy and Consistency Options	Description of Project Measure	Project Conformance
Supports Strategies: GHGRS #5	of nonhazardous construction/demolition debris (by weight), and implement other waste reduction measures.	
Caltrain Modernization 1. For projects located within ½ mile of a Caltrain station, establish a program through which to provide project tenants and/or residents with free or reduced Caltrain passes or 2. Develop a program that provides project tenants and/or residents with options to reduce their vehicle miles traveled (e.g., a TDM program), which could include transit passes, bike lockers and showers, or other strategies to reduce project related VMT. Supports Strategies: GHGRS #6	<p>The project would comply with project consistency option 2.</p> <p>The site is not located within 0.5-mile of Caltrain. The project would include a bicycle storage room and showers.</p>	<input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Feasible <input type="checkbox"/> Alternative Measure Proposed
Water Conservation 1. Install high-efficiency appliances/fixtures to reduce water use, and/or include water-sensitive landscape design, and/or 2. Provide access to reclaimed water for outdoor water use on the project site	<p>The project would comply with project consistency option 1.</p> <p>As mentioned previously, the project proposes to achieve LEED Silver certification which require water efficiency. Additionally, the project would comply with the Policy 6-32 which requires that applicable projects achieve minimum green building performance levels using the Council adopted</p>	<input checked="" type="checkbox"/> Proposed <input type="checkbox"/> Not Applicable <input type="checkbox"/> Not Feasible <input type="checkbox"/> Alternative Measure Proposed

Table 4.8-1: Table B of GHGRS Compliance Checklist		
GHGRS Strategy and Consistency Options	Description of Project Measure	Project Conformance
	standards. In addition, the project would include water efficient plumbing fixtures.	

The proposed project would be mostly consistent with most applicable GHGRS strategy and consistency options intended to reduce GHG emissions. **[(Same Impact as Approved Project (Less Than Significant Impact))]**

4.9 HAZARDS AND HAZARDOUS MATERIALS

The project would demolish two apartment buildings and a single-family residence on the approximately 0.45-acre site and construct a 23-story tower with up to 240 dwelling units.

4.9.1 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, result in a safety hazard or excessive noise for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Implementation of the proposed project has the potential to result in significant hazards and hazardous materials. The project's impacts on hazardous materials is evaluated in the SEIR. No further analysis is provided in this Initial Study.

4.10 HYDROLOGY AND WATER QUALITY

4.10.1 Environmental Setting

4.10.1.1 *Regulatory Framework*

Overview

The federal Clean Water Act and California's Porter-Cologne Water Quality Control Act are the primary laws related to water quality in California. Regulations set forth by the EPA and the SWRCB have been developed to fulfill the requirements of this legislation. EPA regulations include the National Pollutant Discharge Elimination System (NPDES) permit program, which controls sources that discharge pollutants into the waters of the United States (e.g., streams, lakes, bays, etc.). These regulations are implemented at the regional level by the Regional Water Quality Control Boards (RWQCBs). The project site is within the jurisdiction of the San Francisco Bay RWQCB.

Federal and State

National Flood Insurance Program

The Federal Emergency Management Agency (FEMA) established the National Flood Insurance Program (NFIP) to reduce impacts of flooding on private and public properties. The program provides subsidized flood insurance to communities that comply with FEMA regulations protecting development in floodplains. As part of the program, FEMA publishes Flood Insurance Rate Maps (FIRMs) that identify Special Flood Hazard Areas (SFHAs). An SFHA is an area that would be inundated by the one-percent annual chance flood, which is also referred to as the base flood or 100-year flood.

Statewide Construction General Permit

The SWRCB has implemented an NPDES General Construction Permit for the State of California (Construction General Permit). For projects disturbing one acre or more of soil, a Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) must be prepared by a qualified professional prior to commencement of construction. The Construction General Permit includes requirements for training, inspections, record keeping, and, for projects of certain risk levels, monitoring. The general purpose of the requirements is to minimize the discharge of pollutants and to protect beneficial uses and receiving waters from the adverse effects of construction-related storm water discharges.

Regional

San Francisco Bay Basin Plan

The San Francisco Bay RWQCB regulates water quality in accordance with the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). The Basin Plan lists the beneficial uses that the San Francisco Bay RWQCB has identified for local aquifers, streams, marshes, rivers, and the San Francisco Bay, as well as the water quality objectives and criteria that must be met to protect these uses. The San Francisco Bay RWQCB implements the Basin Plan by issuing and enforcing waste discharge requirements, including permits for nonpoint sources such as the urban runoff

discharged by a City's stormwater drainage system. The Basin Plan also describes watershed management programs and water quality attainment strategies.

Municipal Regional Permit Provision C.3.

The San Francisco Bay RWQCB re-issued the Municipal Regional Stormwater NPDES Permit (MRP) in 2015 to regulate stormwater discharges from municipalities and local agencies (co-permittees) in Alameda, Contra Costa, San Mateo, and Santa Clara Counties, and the cities of Fairfield, Suisun City, and Vallejo.³⁷ Under Provision C.3 of the MRP, new and redevelopment projects that create or replace 10,000 square feet or more of impervious surface area are required to implement site design, source control, and Low Impact Development (LID)-based stormwater treatment controls to treat post-construction stormwater runoff. LID-based treatment controls are intended to maintain or restore the site's natural hydrologic functions, maximizing opportunities for infiltration and evapotranspiration, and using stormwater as a resource (e.g. rainwater harvesting for non-potable uses). The MRP also requires that stormwater treatment measures are properly installed, operated, and maintained.

Water Resources Protection Ordinance and District Well Ordinance

The Santa Clara Valley Water District (Valley Water) operates as the flood control agency for Santa Clara County. Their stewardship also includes creek restoration, pollution prevention efforts, and groundwater recharge. Permits for well construction and destruction work, most exploratory boring for groundwater exploration, and projects within Valley Water property or easements are required under Valley Water's Water Resources Protection Ordinance and District Well Ordinance.

City of San José

Post-Construction Urban Runoff Management (City Council Policy No. 6-29)

The City of San José's Policy No. 6-29 implements the stormwater treatment requirements of Provision C.3 of the MRP. City Council Policy No. 6-29 requires new development and redevelopment projects to implement post-construction Best Management Practices (BMPs) and Treatment Control Measures (TCMs). This policy also established specific design standards for post-construction TCMs for projects that create or replace 10,000 square feet or more of impervious surfaces.

Post-Construction Hydromodification Management (City Council Policy No. 8-14)

The City of San José's Policy No. 8-14 implements the hydromodification management requirements of Provision C.3 of the MRP. Policy No. 8-14 requires new development and redevelopment projects that create or replace one acre or more of impervious surface area, and are located within a subwatershed that is less than 65 percent impervious, to manage development-related increases in peak runoff flow, volume, and duration, where such hydromodification is likely to cause increased erosion, silt generation, or other impacts to local rivers, streams, and creeks. The policy requires these projects to be designed to control project-related hydromodification through a Hydromodification Management Plan (HMP). Projects that do not meet the minimum size threshold,

³⁷ MRP Number CAS612008

drain into tidally influenced areas or directly into the Bay, or are infill projects in subwatersheds or catchment areas that are greater than or equal to 65 percent impervious would not be subject to the HMP requirement.

Floodplain Ordinance – Municipal Code 17.08

City of San José Municipal Code 17.08 covers the requirements for building in various types of flood zones. This includes requirements for elevation, fill, flood passage, flood-proofing, maximum flow velocities, and utility placement for development within a floodplain, based on land use type.

Envision San José 2040 General Plan

The following policies in the City’s General Plan have been adopted for the purpose of reducing or avoiding impacts related to hydrology and water quality and are applicable to the project.

General Plan Policies - Hydrology and Water Quality	
EC-5.1	The City shall require evaluation of flood hazards prior to approval of development projects within a Federal Emergency Management Agency (FEMA) designated floodplain. Review new development and substantial improvements to existing structures to ensure it is designed to provide protection from flooding with a one percent annual chance of occurrence, commonly referred to as the “100-year” flood or whatever designated benchmark FEMA may adopt in the future. New development should also provide protection for less frequent flood events when required by the State.
EC-5.7	Allow new urban development only when mitigation measures are incorporated into the project design to ensure that new urban runoff does not increase flood risks elsewhere.
ER-8.1	Manage stormwater runoff in compliance with the City’s Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.
ER-8.3	Ensure that private development in San José includes adequate measures to treat stormwater runoff.
ER-8.4	Assess the potential for surface water and groundwater contamination and require appropriate preventative measures when new development is proposed in areas where storm runoff will be directed into creeks upstream from groundwater recharge facilities.
ER-8.5	Ensure that all development projects in San José maximize opportunities to filter, infiltrate, store and reuse or evaporate stormwater runoff onsite.
MS-3.5	Minimize area dedicated to surface parking to reduce rainwater that comes into contact with pollutants.
IN-1.1	Provide and maintain adequate water, wastewater, and stormwater services to areas in and currently receiving these services from the City.
IN-3.4	Maintain and implement the City’s Sanitary Sewer Level of Service Policy and Sewer Capacity Impact Analysis (SCIA) Guidelines to: <ul style="list-style-type: none"> • Prevent sanitary sewer overflows (SSOs) due to inadequate capacity so as to ensure that the City complies with all applicable requirements of the Federal Clean Water Act and State Water Board’s General Waste Discharge Requirements for Sanitary Sewer Systems and National Pollutant Discharge Elimination System permit. SSOs may

General Plan Policies - Hydrology and Water Quality	
	<p>pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.</p> <ul style="list-style-type: none"> • Maintain reasonable excess capacity in order to protect sewers from increased rate of hydrogen sulfide corrosion and minimize odor and potential maintenance problems. • Ensure adequate funding and timely completion of the most critically needed sewer capacity projects. • Promote clear guidance, consistency and predictability to developers regarding the necessary sewer improvements to support development within the City.
IN-3.7	Design new projects to minimize potential damage due to storm waters and flooding to the site and other properties.
IN-3.9	Require developers to prepare drainage plans for proposed developments that define needed drainage improvements per City standards.

4.10.1.2 Existing Conditions

Water Quality

Stormwater runoff from the project site and surrounding area is collected by storm drains and discharged into the Guadalupe River. Based on data from the EPA³⁸, the Guadalupe River is currently listed on the California 303(d)³⁹ list for mercury and trash.

Flooding

According to the FEMA Flood Insurance Rate Maps (FIRM),⁴⁰ the project site is located in Flood Zone D. Zone D is an area of undetermined but possible flood hazard that is outside the 100-year flood plain. There are no City floodplain requirements for Zone D.

Dam Failure

The downtown area, including the project site, is located within the Anderson Dam and Lexington dam failure inundation hazard zones.^{41,42}

³⁸ U.S. EPA. "California 303(d) Listed Waters." Accessed July 27, 2020.
https://iaspub.epa.gov/tmdl_waters10/attains_waterbody.control?p_list_id=CAR2054005019980928160437&p_stat_e=CA&p_cycle=2012.

³⁹ The Clean Water Act, section 303, establishes water quality standards and TMDL programs. The 303(d) list is a list of impaired water bodies

⁴⁰ Federal Emergency Management Agency. "FEMA Flood Map Service Center." Accessed March 24, 2020.
<https://msc.fema.gov/portal/search?AddressQuery>.

⁴¹ Santa Clara Valley Water District. "Anderson Dam Flood Inundation Maps." Accessed March 24, 2020.
<https://www.valleywater.org/sites/default/files/Anderson%20Dam%20Inundation%20Maps%202016.pdf>.

⁴² Santa Clara Valley Water District. "Lexington Dam Flood Inundation Maps." Accessed March 24, 2020.
<https://www.valleywater.org/sites/default/files/Lexington%20Dam%20Inundation%20Map%202016.pdf>.

Seiches, Tsunamis, and Mudflows

A seiche is the oscillation of water in an enclosed body of water such as a lake or the San Francisco Bay. There are no landlocked bodies of water near the project site that would affect the site in the event of a seiche.

A tsunami is a sea wave generated by an earthquake, landslide, or other large displacement of water in the ocean. There are no bodies of water near the project site that would affect the site in the event of a tsunami.⁴³

A mudflow is the rapid movement of a large mass of mud formed from loose soil and water. The project site and surrounding area are relatively flat. The project site is not susceptible to mudflows.

Groundwater

Groundwater beneath the site is estimated to be between 11 to 37 feet bgs. Fluctuations in the groundwater level may occur due to seasonal changes, variations in rainfall, and underground drainage patterns.

Hydromodification

Based on the Downtown Strategy 2040 FEIR, the downtown area is located within a sub-watershed that is greater than 65 percent impervious. Therefore, the proposed project would be exempt from hydromodification requirements.

4.10.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

⁴³ Association of Bay Area Governments. "Tsunami Maps and Information." Accessed March 24, 2020. <http://resilience.abag.ca.gov/tsunamis/>.

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
– result in substantial erosion or siltation on- or off-site;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
– substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
– create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
– impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant hydrology and water quality impacts, as described below.

a) Would the project violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?

Construction Impacts

Implementation of the proposed project would involve excavation and grading activities on-site. Ground-disturbing activities would temporarily increase the amount of debris on-site and grading activities could increase erosion and sedimentation that could be carried by runoff into the San Francisco Bay. The project site is approximately 0.45-acre in size and would not disturb more than one acre of soil; therefore, the project would not be required to obtain an NPDES General Permit for Construction Activities. All development projects in the City are, however, required to comply with

the City of San José's Grading Ordinance⁴⁴ whether or not the project is required to obtain an NDPES General Construction Permit. Prior to the issuance of a permit for grading activity occurring during the rainy season (October 1st to April 30th), the applicant shall submit an Erosion Control Plan to the Director of Public Works for review and approval. The Erosion Control Plan shall detail BMPs that would be implemented to prevent the discharge of stormwater pollutants.

Pursuant to City requirements, the following Standard Permit Conditions have been included in the project to reduce potential construction-related water quality impacts.

Standard Permit Conditions:

- Install burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains
- Suspend earthmoving or other dust-producing activities during periods of high winds
- Water all exposed or disturbed soil surfaces at least twice daily to control dust as necessary
- Water or cover stockpiles of soil or other materials that can be blown by the wind
- Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks
- Sweep all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites daily (with water sweepers)
- Replant vegetation in disturbed areas as quickly as possible
- Fill with rock all unpaved entrances to the site to remove mud from tires prior to entering City streets, install a tire wash system if requested by the City
- Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Additionally, the project shall be required to implement the following Standard Permit Conditions, consistent with the Downtown Strategy 2040 FEIR.

Standard Permit Conditions:

- **Construction General Permit Requirements.** Prior to initiating grading activities, the project applicant will file a Notice of Intent (NOI) with the SWRCB and prepare a SWPPP prior to commencement of construction. The project's SWPPP shall include measures for soil stabilization, sediment and erosion control, non-stormwater management, and waste management to be implemented during all demolition, site excavation, grading, and construction activities. All measures shall be included in the project's SWPPP and printed on all construction documents, contracts, and project plans. The following construction BMPs may be included in the SWPPP:

⁴⁴ The San José Grading Ordinance requires the use of erosion and sediment controls to protect water quality when a site is under construction.

- Restrict grading to the dry season or meet City requirements for grading during the rainy season.
- Use effective, site-specific erosion and sediment control methods during the construction periods. Provide temporary cover of all disturbed surfaces to help control erosion during construction. Provide permanent cover as soon as is practical to stabilize the disturbed surfaces after construction has been completed.
- Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff with secure plastic sheeting or tarps.
- Implement regular maintenance activities such as sweeping driveways between the construction area and public streets. Clean sediments from streets, driveways, and paved areas on-site using dry sweeping methods. Designate a concrete truck washdown area.
- Dispose of all wastes properly and keep site clear of trash and litter. Clean up leaks, drips, and other spills immediately so that they do not contact stormwater.
- Place fiber rolls or silt fences around the perimeter of the site. Protect existing storm and sewer inlets in the project area from sedimentation with filter fabric and sand or gravel bags.

The SWPPP shall also include a Post-Construction Stormwater Management Plan that includes site design, source control, and treatment measures to be incorporated into the project and implemented following construction (refer to Section 3.10.3.3 above).

When the construction phase is complete, a Notice of Termination (NOT) will be filed with the RWQCB and the DTSC, in conformance with the Construction General Permit requirements. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a Post-Construction Stormwater Management Plan is in place, as described in the SWPPP for the site.

- **Dewatering.** The proposed project involves dewatering activities; therefore, the SWPPP shall include provisions for the proper management of dewatering effluent. At a minimum, all dewatering effluent will be contained prior to discharge to allow the sediment to settle out, and filtered, if necessary, to ensure that only clear water is discharged to the storm or sanitary sewer system. In areas of suspected groundwater contamination (i.e., underlain by fill or near sites where chemical releases are known or suspected to have occurred), groundwater will be analyzed by a state-certified laboratory for the suspected pollutants prior to discharge. Based on the results of the analytical testing, the applicant will work with the RWQCB and/or the local wastewater treatment plant to determine appropriate disposal options.⁴⁵

With implementation of the identified Standard Permit Conditions, measures, and the City's Grading Ordinance, construction of the proposed project would have a less than significant impact on water quality. **[Same Impact as Approved Project (Less Than Significant Impact)]**

⁴⁵ This measure is identified in the Downtown Strategy 2000 EIR which is incorporated by reference in the Downtown Strategy 2040 FEIR.

Post-Construction Impacts

Under existing conditions, the project site is 86 percent (approximately 16,883 square feet) covered with impervious surface area. Upon completion of the proposed project, the site would be covered with approximately 95 percent (18,647 square feet) of impervious surfaces, a net increase of nine percent. Construction of the project would result in the replacement of more than 10,000 square feet of impervious surface area; therefore, the project would be required to comply with the City of San José's Post-Construction Urban Runoff Policy 6-29 and the MRP.

The MRP requires all post-construction stormwater runoff to be treated by numerically sized LID treatment controls, such as biotreatment facilities, unless the project is granted Special Project LID Reduction Credits, which would allow the project to implement non-LID measures for all or a portion of the site depending on the project characteristics. To treat stormwater runoff, the project proposes media filters. Prior to issuing any LID Reduction Credits, the City must first establish a narrative discussion submitted by the applicant that describes how and why the implementation of 100 percent LID stormwater treatment measures are not feasible, in accordance with the MRP. If it is not feasible for the project to implement 100 percent LID measures, the project shall submit an explanation to the City for confirmation.

The Downtown Strategy 2040 FEIR concluded that with the regulatory programs currently in place, stormwater runoff from new development would have a less than significant impact on stormwater quality. With inclusion of LID stormwater treatment and compliance with the City's regulatory policies pertaining to stormwater runoff, operation of the proposed project would have a less than significant water quality impact. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Dewatering

Groundwater is estimated to be approximately 11 to 37 feet bgs. The proposed project would include one level of below-grade parking to a depth of approximately 16 feet bgs which could interfere with the shallow groundwater aquifer. It is anticipated that dewatering would be required during project construction (refer to *Section 4.7 Geology and Soils* of this document and *Section 3.3 Hazards and Hazardous Materials* of the SEIR).

In accordance with City policies, the following Standard Permit Conditions shall be implemented as part of the project.

Standard Permit Conditions:

Construction

- As the project is regulated by the statewide Construction General Permit, it would be subject to the requirements of that permit related to construction-period pumped groundwater discharges.

Post-Construction

- The project shall be designed so that the below-grade parking garage would be able to withstand hydrostatic groundwater pressure and would not need to pump groundwater on a

post-construction basis. If these measures are infeasible then the project can implement groundwater pumping in conformance with applicable permits.

- Any pumped uncontaminated groundwater of less than 10,000 gallons/day shall be discharged to a landscaped area or bioretention unit that is properly designed to accommodate the volume of pumped groundwater, or discharged to the sanitary sewer. Discharge to the sanitary sewer would require review by the City's Environmental Services Engineering section during the Building Permit stage and is subject to all wastewater permitting requirements and fees. In the event, it is not feasible to pump groundwater to stormwater treatment features or the sanitary sewer, groundwater may be discharged to the storm sewer system if testing determines that the discharge is uncontaminated, as outlined in the City's Stormwater Permit - Provision C.15.b.i(2)(c)-(e). Pre-discharge sampling data collected for verification that the pumped groundwater is not contaminated shall be provided to the City of San José.
- Any proposed new discharges of uncontaminated groundwater with flows equal to or more than 10,000 gallons/day, and all new discharges of potentially contaminated groundwater, shall obtain a permit from the San Francisco Bay Regional Water Quality Control Board. Upon approval of the permit, a copy shall be provided to the City of San José with the Building Permit application submittal.

The project would comply with the identified Standard Permit Conditions and would have a less than significant impact on groundwater. **[Same Impact as Approved Project (Less than Significant Impact)]**

b) Would the project substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?

The project site is not located within a designated groundwater recharge zone.⁴⁶ Since the project site would require dewatering during construction, the project would implement the Standard Permit Conditions mentioned in *Sections 4.7 Geology and Soils* and *4.10 Hydrology and Water Quality* of this document and *Section 3.3 Hazards and Hazardous Materials* of the SEIR. For these reasons, the project would not interfere with groundwater recharge or cause a reduction in the overall groundwater supply. The project would not result in a new or more significant impact on groundwater than described in the Downtown Strategy 2040 FEIR. **[Same Impact as Approved Project (Less than Significant Impact)]**

c) Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would result in substantial erosion or siltation on- or off-site; substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site; create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or impede or redirect flood flows?

⁴⁶ Santa Clara Valley Water District. Groundwater Management Plan. November 2016.

Drainage Pattern Impacts

Per the Downtown Strategy 2040 FEIR, existing surfaces are largely impervious, making future development unlikely to alter the existing drainage pattern such that substantial flooding or erosion would occur in the receiving water bodies. The proposed project would not substantially alter the existing drainage pattern of the site or area through the alteration of any waterway. Therefore, the project would not substantially increase erosion or increase the rate or amount of stormwater runoff. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Storm Drainage Impacts

The existing and proposed square footages of pervious and impervious surfaces are shown on Table 4.10-1 below.

Table 4.10-1: Pervious and Impervious Surfaces On-Site						
Site Surface	Existing/Pre-Construction (sq ft)	%	Project/Post-Construction (sq ft)	%	Difference (sq ft)	%
Impervious Surfaces						
Roof Area	16,883	86	18,647	95	+1,764	+9
Parking	0	0	0	0	0	0
Sidewalks, Patios, Driveways, etc.	0	0	0	0	0	0
Streets	0	0	0	0	0	0
<i>Subtotal</i>	16,883	86	18,647	95	+1,764	+9
Pervious Surfaces						
Pavement and Landscaping	2,710	14	946	5	-1,764	-9
Total:	19,593	100	19,593	100		

As mentioned previously, the project site is currently 86 percent (approximately 16,883 square feet) covered with impervious surfaces. Under existing conditions, the storm drainage lines have sufficient capacity to serve the site. The impervious surfaces on-site would increase by approximately 1,764 square feet under project conditions which would result in a slight increase in stormwater runoff. The project would comply with the City's Post-Construction Urban Runoff Policy 6-29 and the RWQCB MRP, to minimize and treat stormwater runoff to reduce the rate of stormwater runoff while removing pollutants.

The Downtown Strategy 2040 FEIR concluded that implementation of General Plan policies and existing regulations would substantially reduce drainage impacts. In accordance with General Plan policies, future development within the Downtown Strategy 2040 area would be required to be designed and constructed to meet the City's 10-year storm event design standard. As a result, the proposed project would not substantially alter the existing drainage pattern of the site or area. **[Same Impact as Approved Project (Less Than Significant Impact)]**

d) Would the project risk release of pollutants due to project inundation in flood hazard, tsunami, or seiche zones?

Due to the location of the project site, the project would not be subject to inundation by seiche or tsunami. In addition, the project area is flat and there are no mountains in close proximity. As a result, development of the project site would not cause mudflows that would impact adjacent properties.

As mentioned in *Section 4.10.1.2*, the project site is located in Flood Zone D. Zone D is an area of undetermined but possible flood hazard that is outside the 100-year floodplain. There are no floodplain requirements for Zone D. The project site is also located within the Anderson dam and Lexington dam failure inundation zones. The California Division of Safety of Dams (DSOD) inspects dam on an annual basis and Valley Water routinely monitors the 10 dams, including the Anderson and Lexington dams. Therefore, the likelihood of flooding from dam failure is low and the project would not release pollutants due to dam inundation. **[Same Impact as Approved Project (Less Than Significant Impact)]**

e) Would the project conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

The proposed project would comply with the City of San José's Post-Construction Urban Runoff Policy 6-29 and the MRP; therefore, implementation of the project would not significantly impact water quality. The project site is not located within a groundwater recharge area and would not interfere with groundwater recharge. For these reasons, the project would not conflict with implementation of a water quality or groundwater management plan. **[Same Impact as Approved Project (Less Than Significant Impact)]**

4.11 LAND USE AND PLANNING

4.11.1 Environmental Setting

4.11.1.1 *Regulatory Framework*

City of San José

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to land use and are applicable to the project.

General Plan Policies - Land Use	
CD-1.1	Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.
CD-1.12	Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.
CD-1.23	Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.
CD-2.3	<p>Enhance pedestrian activity by incorporating appropriate design techniques and regulating uses in private developments, particularly in Downtown, Urban Villages, Main Streets, and other locations where appropriate.</p> <ol style="list-style-type: none">1. Include attractive and interesting pedestrian-oriented streetscape features such as street furniture, pedestrian scale lighting, pedestrian oriented way-finding signage, clocks, fountains, landscaping, and street trees that provide shade, with improvements to sidewalks and other pedestrian ways.2. Strongly discourage drive-up services and other commercial uses oriented to occupants of vehicles in pedestrian-oriented areas. Uses that serve the vehicle, such as car washes and service stations, may be considered appropriate in these areas when they do not disrupt pedestrian flow, are not concentrated in one area, do not break up the building mass of the streetscape, are consistent with other policies in this Plan, and are compatible with the planned uses of the area.3. Provide pedestrian connections as outlined in the Community Design Connections Goal and Policies.4. Locate retail and other active uses at the street level.5. Create easily identifiable and accessible building entrances located on street frontages or paseos.

General Plan Policies - Land Use	
	6. Accommodate the physical needs of elderly populations and persons with disabilities. 7. Integrate existing or proposed transit stops into project designs.
CD-2.11	Within the Downtown and Urban Village Area Boundaries, consistent with the minimum density requirements of the pertaining Land Use/Transportation Diagram designation, avoid the construction of surface parking lots except as an interim use, so that long-term development of the site will result in a cohesive urban form. In these areas, whenever possible, use structured parking, rather than surface parking, to fulfill parking requirements. Encourage the incorporation of alternative uses, such as parks, above parking structures.
CD-4.9	For development subject to design review, the design of new or remodeled structures will be consistent or complementary with the surrounding neighborhood fabric (including but not limited to prevalent building scale, building materials, and orientation of structures to the street).
CD-5.8	Comply with applicable Federal Aviation Administration regulations identifying maximum heights for obstructions to promote air safety.
LU-3.5	Balance the need for parking to support a thriving Downtown with the need to minimize impacts of parking upon a vibrant pedestrian and transit-oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.
TR-8.7	Encourage private property owners to share their underutilized parking supplies with the general public and/or other adjacent private developments.
TR-14.2	Regulate development in the vicinity of airports in accordance with Federal Aviation Administration regulations to maintain the airspace required for the safe operation of these facilities and avoid potential hazards to navigation.
TR-14.4	Require aviation and “no build” easement dedications, setting forth maximum elevation limits as well as for acceptable of noise or other aircraft related effects, as needed, as a condition of approval of development in the vicinity of airports.

San José Zoning Ordinance

The Zoning Ordinance serves as an implementing tool for the General Plan by establishing detailed, parcel-specific development regulations and standards. The Zoning Ordinance divides the City of San José into zoning districts to guide future land uses.

4.11.1.2 *Existing Conditions*

Existing Land Uses

The approximately 0.45-acre site is comprised of two parcels (APNs 467-47-057 and -092) located in downtown San José. The project site is bounded by a single-family residence to the north, South Fourth Street to the east, commercial buildings to the south, and multi-family residences and a youth center to the west. The project site is currently developed with two apartment buildings and a single-family residence. As mentioned in *Section 3.2.3*, the project site is designated Downtown and is zoned CG.

The Downtown land use designation allows for office, retail, service, residential, and entertainment uses in the downtown with building heights of three to 30 stories, an FAR of up to 30.0, and residential densities up to 800 dwelling units per acre.

The CG zoning designation is intended to serve the needs of the general population and allows for a full range of retail and commercial uses with a local or regional market. Under the CG zoning designation, development shall be subject to the height limitations of 65 feet and minimum setback requirements.

Zoning Code Section 20.70.110 states that new structures exceeding 150 feet and an FAR of 6:1 which are constructed within 100 feet of a City Landmark or contributing structure in a designated landmark district shall be reviewed by the Historic Landmarks Commission prior to consideration or approval of a development permit for new construction. The comments of the Historic Landmarks Commission shall be included in any development permit staff report subsequently presented to the Executive Director of the Redevelopment Agency, Director of Planning, Building and Code Enforcement, Planning Commission, or City Council.

Surrounding Land Uses

The project site is surrounded by a variety of land uses including residential (both single-family and multi-family residences) and commercial land uses ranging from one to three stories in height. Located immediately north of the project site is a two-story single-family residence and a large surface lot. East of the project site is South Fourth Street, a two-lane southbound arterial. East of South Fourth Street are one- to three-story apartment buildings and a gas station. Located south of the project site are commercial and residential land uses. West of the project site are multi-family residences and a youth center.

4.11.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
c) Result in a 10 percent or greater increase in the shadow cast onto any one of the six major open space areas in the Downtown San José area (St. James Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park, and McEnery Park)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040, the proposed project would result in less than significant land use impacts, as described below.

a) Would the project physically divide an established community?

Changes in land use are not adverse environmental impacts in and of themselves, however, they may create conditions that adversely affect existing uses in the immediate vicinity. As proposed, the project would construct a 23-story tower with up to 240 dwelling units which is consistent with the existing land uses in the area. The Downtown Strategy 2040 FEIR concluded that future development under the Downtown Strategy 2040 would not substantially change allowed land uses in the Downtown and would generally continue and reinforce the patterns of land use currently in place. The proposed project would be consistent with the existing uses in the project area and, would not physically divide an established community. **[Same Impact as Approved Project (Less than Significant Impact)]**

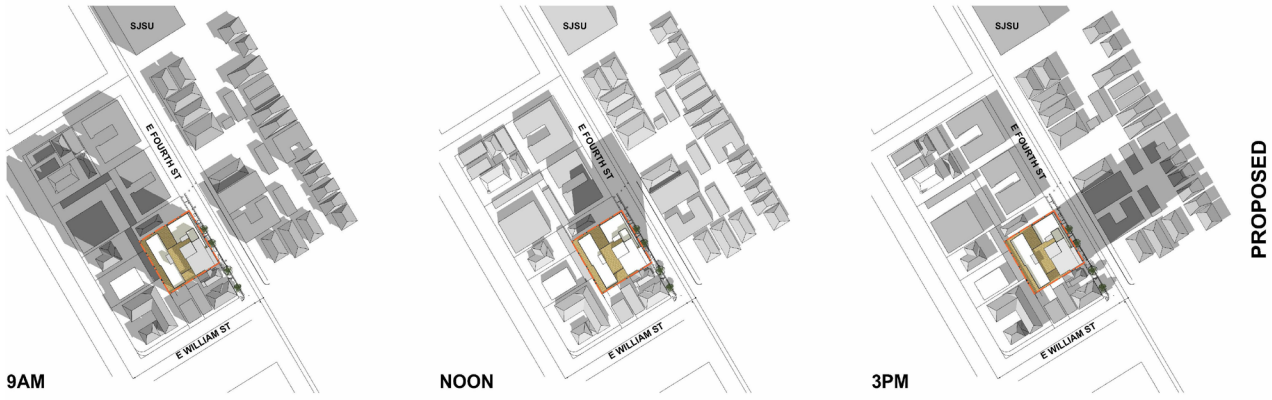
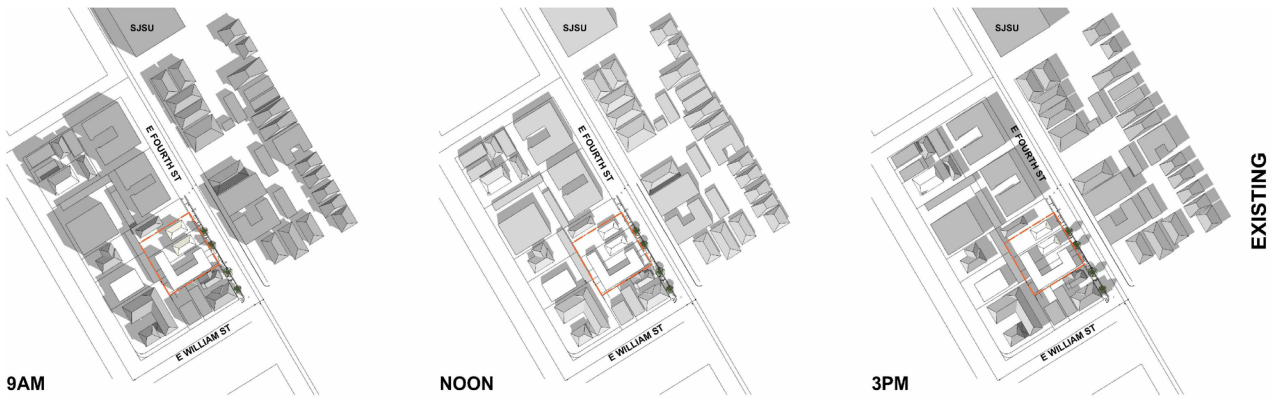
b) Would the project cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

As described within the individual sections of this document implementation of the City's Standard Permit Conditions, and the required Downtown Strategy 2040 FEIR and regulatory requirements, the project would not cause a significant environmental impact due to a conflict with plans, policies or regulation adopted for the purpose of avoiding or mitigating an environmental effect. In addition, the project would be reviewed for compliance with applicable land use plans and policies. Based on the above, the impact is less than significant. **[Same Impact as Approved Project (Less than Significant Impact)]**

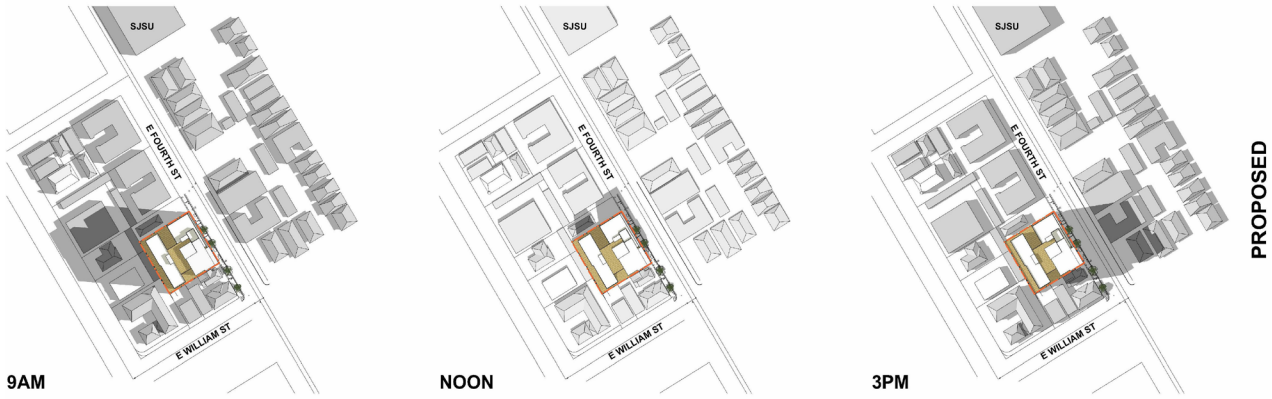
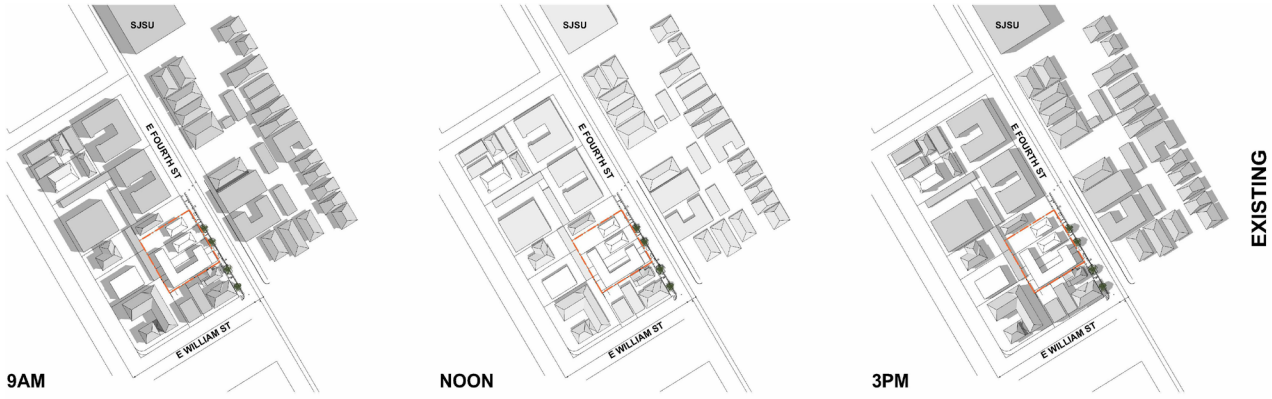
c) Would the project result in a 10 percent or greater increase in the shadow cast onto any one of the six major open space areas in the Downtown San José area (St. James Park, Plaza of Palms, Plaza de César Chávez, Paseo de San Antonio, Guadalupe River Park, and McEnery Park)?

The proposed project is not located near any of the six major open space areas in the downtown area. The nearest major open space area is Plaza de César Chávez located approximately 0.3 miles northwest of the project site. Due to the location of the project site, the proposed 23-story tower would not cast a shadow onto any of the identified major open spaces.

Nevertheless, a shade and shadow analysis was completed for the project. Shade and shadow analyses are typically prepared for March 21, June 21, and December 21. This provides an analysis of each season as well as the longest and shortest days of the year, covering the full spectrum of possible shade and shadow issues. The analysis provides data for 9:00 AM, noon, and 3:00 PM. As shown on Figure 4.11-1 the maximum shading from the project would occur in the winter months during morning and afternoon hours. In the winter morning hours, the project would cast shadows to the northwest, extending onto existing residential and commercial development. In the afternoon, the project would cast shadows to the northeast, extending onto the existing residences. As of August 2020, there were no existing solar collectors seen on the roofs of the adjacent properties that would be affected by shading from the project. Shading from the project would not occur year-round on any of the adjacent properties and would not substantially impair the use of adjacent land uses. While the proposed project would shade the adjacent residences and commercial uses, it would not shade any existing public parks or open space areas in proximity to the site. As a result, the proposed project would have a less than significant shade and shadow impact. **[Same Impact as Approved Project (Less than Significant Impact)]**



SHADOW ANALYSIS - MARCH/ SEPTEMBER 21 (EQUINOX)



SHADOW ANALYSIS - JUNE 21 (SUMMER SOLSTICE)



SHADOW ANALYSIS - DECEMBER 21 (WINTER SOLSTICE)

4.12 MINERAL RESOURCES

4.12.1 Environmental Setting

4.12.1.1 *Regulatory Framework*

Surface Mining and Reclamation Act

The Surface Mining and Reclamation Act (SMARA) was enacted by the California Legislature in 1975 to address the need for a continuing supply of mineral resources, and to prevent or minimize the negative impacts of surface mining to public health, property and the environment. As mandated under SMARA, the State Geologist has designated mineral land classifications in order to help identify and protect mineral resources in areas within the state subject to urban expansion or other irreversible land uses which would preclude mineral extraction. SMARA also allowed the State Mining and Geology Board (SMGB), after receiving classification information from the State Geologist, to designate lands containing mineral deposits of regional or statewide significance.

Pursuant to the mandate of the SMARA, the SMGB has designated the Communications Hill Area (Sector EE), bounded generally by the Southern Pacific Railroad, Curtner Avenue, SR 87, and Hillsdale Avenue as containing mineral deposits that are of regional significance as a source of construction aggregate materials. Neither the State Geologist nor the SMGB have classified any other areas in San José as containing mineral deposits of statewide significance or requiring further evaluation.

4.12.1.2 *Existing Conditions*

Under the SMARA, the SMGB has designated an area of Communications Hill in Central San José, bounded by the Union Pacific Railroad, Curtner Avenue, State Route 87, and Hillsdale Avenue, as a regional source of construction aggregate materials. Other than in this area, San José does not have mineral deposits subject to SMARA. Communications Hill is located over two miles southeast of the project site.

4.12.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project have no impact on mineral resources, as described below.

a) Would the project result in the loss of availability of a known mineral resource that would be of value to the region and residents of the state?

The project site is in a developed area of San José that does not contain any known or designated mineral resources. Implementation of the proposed project would not result in impacts to known mineral resource. **[Same Impact as Approved Project (No Impact)]**

b) Would the project result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?

No mineral resource recovery sites are located within the downtown area of the City. Consistent with the findings of the Downtown Strategy 2040 FEIR, the proposed project would not result in the loss of availability of a locally important mineral resource recovery site. **[Same Impact as Approved Project (No Impact)]**

4.13 NOISE

The proposed project would demolish two apartment buildings and a single-family residence and construct a 23-story, residential tower.

4.13.1 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project result in:					
a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Generation of excessive groundborne vibration or groundborne noise levels?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Implementation of the proposed project has the potential to result in significant construction noise and vibration impacts. The project's impacts to noise and vibration is evaluated in the SEIR. No further analysis is provided in this Initial Study.

4.14 POPULATION AND HOUSING

4.14.1 Environmental Setting

4.14.1.1 *Regulatory Framework*

State

Housing-Element Law

State requirements mandating that housing be included as an element of each jurisdiction's general plan is known as housing-element law. The Regional Housing Need Allocation (RHNA) is the state-mandated process to identify the total number of housing units (by affordability level) that each jurisdiction must accommodate in its housing element. California housing-element law requires cities to: 1) zone adequate lands to accommodate its RHNA; 2) produce an inventory of sites that can accommodate its share of the RHNA; 3) identify governmental and non-governmental constraints to residential development; 4) develop strategies and a work plan to mitigate or eliminate those constraints; and 5) adopt a housing element and update it on a regular basis.⁴⁷ The City of San José Housing Element and related land use policies were last updated in January 2015.

Regional and Local

Plan Bay Area 2040

Plan Bay Area 2040 is a long-range transportation, land-use, and housing plan intended support a growing economy, provide more housing and transportation choices, and reduce transportation-related pollution and GHG emissions in the Bay Area. Plan Bay Area 2040 promotes compact, mixed-use residential and commercial neighborhoods near transit, particularly within identified Priority Development Areas (PDAs).⁴⁸

ABAG allocates regional housing needs to each city and county within the nine-county San Francisco Bay Area, based on statewide goals. ABAG also develops forecasts for population, households, and economic activity in the Bay Area. ABAG, MTC, and local jurisdiction planning staff created the Regional Forecast of Jobs, Population, and Housing, which is an integrated land use and transportation plan through the year 2040 (upon which Plan Bay Area 2040 is based).

4.14.1.2 *Existing Conditions*

The population of San José was estimated to be approximately 1,049,187 in January 2020 with an average of 3.19 persons per household.⁴⁹ The projections produced by ABAG predict the City

⁴⁷ California Department of Housing and Community Development. "Regional Housing Needs Allocation and Housing Elements" Accessed May 19, 2020. <http://hcd.ca.gov/community-development/housing-element/index.shtml>.

⁴⁸ Association of Bay Area Governments and Metropolitan Transportation Commission. "Project Mapper." Accessed May 19, 2020. <http://projectmapper.planbayarea.org/>.

⁴⁹ State of California, Department of Finance, E-5 Population and Housing Estimates for Cities, Counties and the State — January 1, 2011-2020. Sacramento, California, May 2019.

population to increase to 1,357,845 by 2040.⁵⁰ The City currently has approximately 335,887 housing units⁵¹

The jobs/housing balance is the relationship between the number of housing units required as a result of local jobs and the number of dwelling units available in the City. This relationship is quantified by the jobs/employed resident ratio. When the ratio reaches 1.0, a balance is struck between the supply of local housing and local jobs. The jobs/employed resident ratio is determined by dividing the number of local jobs by the number of employed residents that can be housed in local housing. According to the Downtown Strategy 2040 FEIR, the current ratio of jobs to employed residents in San José is estimated to be 0.8 to 1, making the city “housing rich”.

4.14.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in a less than significant impact on population and housing, as described below.

a) Would the project induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

A project can induce substantial population growth by: 1) proposing new housing beyond projected or planned development levels, 2) generating demand for housing as a result of new businesses, 3) extending roads or other infrastructure to previously undeveloped areas, or 4) removing obstacles to population growth (i.e., expanding capacity of a wastewater treatment plant beyond that necessary to serve planned growth).

⁵⁰ ABAG, Projections 2040: Forecasts for Population, Household, and Employment for the Nine County San Francisco Bay Area Region. 2017.

⁵¹ Ibid.

The project would construct a residential tower with 240 dwelling units which would result in an increase of 750 to 766⁵² new residents. The proposed project is part of planned growth in the downtown area. While the project would increase housing within the City, it would not result in unplanned residential growth and it would not have an impact on the jobs/housing imbalance. **[Same as Approved Project (Less Than Significant Impact)]**

b) Would the project displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

The project would demolish two apartment buildings and a single-family residence resulting in the construction of 240 new dwelling units (a net increase of 224 units), the project would not result in a reduction in the total number of housing units on-site or within the City, nor would it necessitate the construction of housing elsewhere.

The existing residents would be displaced as a result of the project. As the existing apartment buildings were constructed prior to 1979, the property owner would be required to comply with all applicable requirements of the City's Ellis Act Ordinance, including, but not limited to, tenant noticing requirements and relocation benefits. It should be noted that if a project's social and economic effects do not result in physical changes, the effects are not environmental impacts under CEQA. Because there is no physical change to the environment that would result from the displacement of residents in the existing apartments, no further discussion is required. **[Same Impact as Approved Project (Less than Significant Impact)]**

⁵² The average number of residents is calculated from 3.19 persons per household from the State of California Department of Finance.

4.15 PUBLIC SERVICES

4.15.1 Environmental Setting

4.15.1.1 *Regulatory Framework*

State

Government Code Section 66477

The Quimby Act (included within Government Code Section 66477) requires local governments to set aside parkland and open space for recreational purposes. It provides provisions for the dedication of parkland and/or payment of fees in lieu of parkland dedication to help mitigate the impacts from new residential developments. The Quimby Act authorizes local governments to establish ordinances requiring developers of new residential subdivisions to dedicate parks, pay a fee in lieu of parkland dedication, or perform a combination of the two.

Government Code Section 65995 through 65998

California Government Code Section 65996 specifies that an acceptable method of offsetting a project's effect on the adequacy of school facilities is the payment of a school impact fee prior to the issuance of a building permit. Government Code Sections 65995 through 65998 set forth provisions for the payment of school impact fees by new development by "mitigating impacts on school facilities that occur (as a result of the planning, use, or development of real property)" (Section 65996[a]). The legislation states that the payment of school impact fees "are hereby deemed to provide full and complete school facilities mitigation" under CEQA (Section 65996[b]).

Developers are required to pay a school impact fee to the school district to offset the increased demands on school facilities caused by the proposed residential development project. The school district is responsible for implementing the specific methods for mitigating school impacts under the Government Code.

Regional and Local

Countywide Trails Master Plan

The Santa Clara County Trails Master Plan Update is a regional trails plan approved by the Santa Clara County Board of Supervisors. It provides a framework for implementing the County's vision of providing a contiguous trail network that connects cities to one another, cities to the county's regional open space resources, County parks to other County parks, and the northern and southern urbanized regions of the County. The plan identifies regional trail routes, sub-regional trail routes, connector trail routes, and historic trails.

City of San José

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to public facilities and services and are applicable to the project.

General Plan Policies - Public Facilities and Services	
ES-3.1	<p>Provide rapid and timely Level of Service response time to all emergencies:</p> <ol style="list-style-type: none"> 1. For police protection, achieve a response time of six minutes or less for 60 percent of all Priority 1 calls, and of eleven minutes or less for 60 percent of all Priority 2 calls. 2. For fire protection, achieve a total response time (reflex) of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents. 3. Enhance service delivery through the adoption and effective use of innovative, emerging techniques, technologies and operating models. 4. Measure service delivery to identify the degree to which services are meeting the needs of San José's community. 5. Ensure that development of police and fire service facilities and delivery of services keeps pace with development and growth in the city.
ES-3.3	Locate police and fire service facilities so that essential services can most efficiently be provided and level of service goals met. Ensure that the development of police and fire facilities and delivery of services keeps pace with development and growth of the city.
ES-3.4	Construct and maintain architecturally attractive, durable, resource-efficient, environmentally sustainable and healthful police and fire facilities to minimize operating costs, foster community engagement, and express the significant civic functions that these facilities provide for the San José community in their built form. Maintain City programs that encourage civic leadership in green building standards for all municipal facilities.
ES-3.6	Work with local, State, and Federal public safety agencies to promote regional cooperation in the delivery of services. Maintain mutual aid agreements with surrounding jurisdictions for emergency response.
ES-3.8	Use the Land Use/Transportation Diagram to promote a mix of land uses that increase visibility, activity and access throughout the day and to separate land uses that foster unsafe conditions.
ES-3.9	Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publicly-visible and accessible spaces.
ES-3.10	Incorporate universal design measures in new construction, and retrofit existing development to include design measures and equipment that support public safety for people with diverse abilities and needs. Work in partnership with appropriate agencies to incorporate technology in public and private development to increase public and personal safety.
ES-3.11	Ensure that adequate water supplies are available for fire-suppression throughout the City. Require development to construct and include all fire suppression infrastructure and equipment needed for their projects.

4.15.1.2 *Existing Conditions*

Fire Service

Fire protection services for the project site are provided by the City of San José Fire Department (SJFD). The SJFD consists of 34 stations distributed throughout the City. The closest fire station to

the project site is Station 3, located at 98 Martha Street, which is approximately 0.5 miles south of the project site.

For fire protection services, the General Plan identifies a total response time goal of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents.

Police Service

Police protection services are provided by the City of San José Police Department (SJPD). The police headquarters is located at 201 West Mission Street, approximately 1.75 miles northwest of the project site.

For police protection services, the General Plan identifies a service goal of six minutes or less for 60 percent of all Priority 1 (emergency) calls and 11 minutes or less for 60 percent of all Priority 2 (non-emergency) calls.

Schools

The project site is located within the San José Unified School District (SJUSD). The nearest public schools to the project site are Gardner Elementary, located at 502 Illinois Avenue (approximately one mile southwest of the site), Hoover Middle School, located at 1635 Park Avenue (approximately 2.2 miles northwest of the site), and Lincoln High School, located at 555 Dana Avenue (approximately 2.3 mile northwest of the site).

Parks

The City's Department of Parks, Recreation, and Neighborhood Services is responsible for the development, operation, and maintenance of all City park facilities. The City operates and maintains approximately 197 neighborhood-serving parks and nine regional parks.⁵³ The nearest public park is the 0.2-acre Parque de los Pobladores, located approximately 0.2 miles southwest of the project site.

Libraries

The City of San José is served by the San José Public Library System. The San José Public Library System consists of one main library (Dr. Martin Luther King Jr.) and 23 branch libraries. The nearest library is Dr. Martin Luther King Jr., approximately 0.3 miles north of the project site.

⁵³ City of San José. *Fast Facts*. October 8, 2019.

4.15.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:					
a) Fire Protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Police Protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Other Public Facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant public services impacts, as described below.

-
- a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for fire protection services?**
-

The proposed project would construct a 23-story residential tower which could increase calls for fire protection service on-site. New buildings, including the proposed project, are required to be constructed in accordance with current fire and building code. According to the Downtown Strategy 2040 FEIR, development allowed under the General Plan is not anticipated to require the construction of new fire stations, other than those currently planned. The project is part of the planned growth in the downtown area and would not result in a substantial adverse physical impact associated with the need for additional fire protection services or facilities. **[Same Impact as Approved Project (Less than Significant Impact)]**

- b) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for police protection services?**
-

Full build out of the Downtown Strategy 2040 FEIR would increase the demand for police protection services. The project, by itself, would not require additional police services or facilities since it would be constructed in accordance with current building codes and would be required to be maintained in accordance with applicable City policies to avoid unsafe building conditions and promote public safety. The project would be consistent with full build out of the Downtown Strategy 2040 plan and would not prevent the SJPd from meeting their service goals or require the construction of new or expanded police facilities. **[Same Impact as Approved Project (Less than Significant Impact)]**

c) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for schools?

The project would generate additional K-12 students due to the increase in housing units on-site. Planned growth under the General Plan would generate an additional 11,079 students in the SJUSD. Based on the SJUSD student generation rates, multi-family residential development generates approximately 0.139 elementary students, 0.059 middle school students, and 0.074 high school students per unit.⁵⁴ As a result, it is estimated that the project would generate a total of 33 elementary students, 14 middle school students, and 18 high school students. The following table shows the student capacity and enrollment numbers for the schools that would serve the proposed project.

Table 4.15-1: Local School Facilities		
Local School	Capacity⁵⁵	Current Enrollment (2018-2019)
Gardner Elementary School	374 students	387 students ⁵⁶
Hoover Middle School	1,094 students	1,082 students ⁵⁷
Lincoln High School	1,702 students	1,805 students ⁵⁸

As shown above, Gardner Elementary School and Lincoln High School are currently operating over capacity. The addition of up to 65 students in the SJUSD would comprise a small percentage of the total student population. The project is part of the planned growth in the City and would not increase students in the SJUSD beyond what was anticipated in the General Plan.

State law (Government Code Section 65996) specifies an acceptable method of offsetting a project's effect under CEQA on the adequacy of school facilities as the payment of a school impact fee prior

⁵⁴ Odell Planning and Research, Inc. *Development Fee Justification Study Prepared for the San José Unified School District*. April 2014

⁵⁵ Case, Jill. Director of Student Operational Services. San José Unified School District. Personal Communication. March 27, 2020.

⁵⁶ California Department of Education. *Gardner Elementary School Accountability Report Card*. Accessed August 12, 2020. <http://www.sarconline.org/SarcPdfs/Temp/43696666048532.pdf>.

⁵⁷ California Department of Education. *Herbert Hoover Middle School Accountability Report Card*. Accessed August 12, 2020. <http://www.sarconline.org/SarcPdfs/Temp/43696666062111.pdf>.

⁵⁸ California Department of Education. *Abraham Lincoln High School Accountability Report Card*. Accessed August 12, 2020. <http://www.sarconline.org/SarcPdfs/Temp/43696664333795.pdf>.

to issuance of a building permit. The affected school district(s) are responsible for implementing the specific methods for mitigating school effects under the Government Code, including setting the school impact fee amount consistent with State law. The school impact fees and the school districts' methods of implementing measures specified by Government Code Section 65996 would partially offset project-related increases in student enrollment. The following Standard Permit Condition is included in the project to reduce impacts to public school facilities.

Standard Permit Condition:

- The project shall pay school impact fees pursuant to Government Code Section 65996.

With implementation of the Standard Permit Conditions, the proposed project would have a less than significant impact on school services and would not, by itself, require new school facilities to be constructed. **[Same Impact as Approved Project (Less than Significant Impact)]**

-
- d) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for parks?**
-

The City of San José has a PDO which requires new housing projects to provide 3.0 acres of neighborhood/community serving parkland per 1,000 population, provide recreational facilities on-site, and/or pay an in-lieu fee. The proposed project would increase the City population by 750 to 766 new residents. The project proposes fitness space, three courtyards, and a roof deck and lounge area. In addition to the recreational facilities proposed on-site, the project would be required to comply with the following Standard Permit Condition to reduce impacts to park and recreational facilities.

Standard Permit Condition:

- The project shall pay the applicable Parkland Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees. The project's PDO/PIO fees would be used for neighborhood serving elements (such as playgrounds/tot-lots and basketball courts) within 0.75 miles of the project site, and/or community serving elements (such as soccer fields and community gardens) within a three-mile radius of the project site, consistent with General Plan Policies PR-2.4 and PR-2.5.

Since the proposed project would be required to comply with the identified Standard Permit Condition, implementation of the project would not result in significant impacts to park and recreational facilities in San José. **[Same Impact as Approved Project (Less Than Significant Impact)]**

-
- e) **Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for other public facilities?**
-

Library Facilities

The City of San José has been expanding and constructing new library facilities over the last decade to meet the needs of current residents. The General Plan policies maintain the City's current policy of providing at least 0.59 square feet of library space per capita. Development and redevelopment allowed under the General Plan would increase the City's residential population to 1,313,811. The City's existing and planned facilities would provide approximately 0.68 square feet of library space for the anticipated population under the proposed General Plan by 2035.

The Downtown Strategy 2040 FEIR concluded that development and redevelopment allowed under the proposed General Plan would be adequately served by existing and planned library facilities. The proposed increase in residents at the project site were analyzed as part of the City's planned residential growth in the City. Therefore, implementation of the project would not result in significant impacts to library facilities in San José. **[Same Impact as Approved Project (Less than Significant Impact)]**

4.16 RECREATION

4.16.1 Environmental Setting

4.16.1.1 *Regulatory Framework*

State

Government Code Section 66477

The Quimby Act (included within Government Code Section 66477) requires local governments to set aside parkland and open space for recreational purposes. It provides provisions for the dedication of parkland and/or payment of fees in lieu of parkland dedication to help mitigate the impacts from new residential developments. The Quimby Act authorizes local governments to establish ordinances requiring developers of new residential subdivisions to dedicate parks, pay a fee in lieu of parkland dedication, or perform a combination of the two.

City of San José

Greenprint 2009 Update

In December 2009, the City Council adopted the City of San José Greenprint 2009 Update, which is the City's 20-year strategic plan for parks, recreational facilities, and programs. As part of the Greenprint and Green Vision, the City has identified two goals related to the trail network: 1) complete 100 miles of interconnected trails by 2022, and 2) complete 130 miles of the network by 2035.

The Greenprint identifies the Central/Downtown Planning Area as having the greatest parkland deficit, with a projected need for roughly 300 additional acres of neighborhood/community-serving parkland to meet the City's service objective by 2020.⁵⁹ Given its population density, the most practical strategy for increasing recreation amenities will be the development of privately owned pocket parks, plazas, and other small scale recreation facilities; however, completion of planned park facilities such as Del Monte Park and build-out of the Guadalupe River Park Master Plan will help offset the acreage needed.⁶⁰

According to the Greenprint, there are no areas in the Central/Downtown Planning area that are underserved by community centers, based on a three-mile radius from residential uses. The City is working on a major update of its existing Greenprint, called Activate San José, expected to be complete in 2018.

Parkland Dedication Ordinance and the Park Impact Ordinance

The City of San José has adopted the Parkland Dedication Ordinance (PDO, Municipal Code Chapter 19.38) and Park Impact Ordinance (PIO, Municipal Code Chapter 14.25) requiring new residential development to either dedicate sufficient land to serve new residents, or pay fees to offset the increased costs of providing new park facilities for new development. Under the PDO and PIO, a

⁵⁹ Given that the 2040 General Plan allows for additional growth in Downtown compared to the 2020 General Plan, the current need exceeds the previous estimates for parkland acreage identified in the Greenprint.

⁶⁰ City of San José. *Greenprint 2009 Update for Parks, Recreation Facilities and Trails*. 2009.

project can satisfy half of its total parkland obligation by providing private recreational facilities on-site. For projects over 50 units, it is the City's decision as to whether the project will dedicate land for a new public park site or accept a fee in-lieu of land dedication. Deed-restricted affordable housing projects that meet the City's affordability criteria are subject to the PDO and PIO and receive a 50 percent credit toward the parkland obligation. The acreage of parkland required is based on the minimum acreage dedication formula outlined in the PDO.

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to recreation and are applicable to the project.

General Plan Policies - Recreation	
PR-1.1	Provide 3.5 acres per 1,000 population of neighborhood/community serving parkland through a combination of 1.5 acres of public park and 2.0 acres of recreational school grounds open to the public per 1,000 San José residents.
PR-1.2	Provide 7.5 acres per 1,000 population of citywide/regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
PR-1.3	Provide 500 square feet per 1,000 population of community center space.
PR-1.9	As Village and Corridor areas redevelop, incorporate urban open space and parkland recreation areas through a combination of high-quality, publicly accessible outdoor spaces provided as part of new development projects; privately, or in limited instances publicly, owned and maintained pocket parks; neighborhood parks where possible; as well as through access to trails and other park and recreation amenities.
PR-2.4	To ensure that residents of a new project and existing residents in the area benefit from new amenities, spend Park Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees for neighborhood serving elements (such as playgrounds/ tot-lots, basketball courts, etc.) within a 3/4 mile radius of the project site that generates the funds.
PR-2.5	Spend, as appropriate, PDO/PIO fees for community serving elements (such as soccer fields, dog parks, sport fields, community gardens, community centers, etc.) within a 3-mile radius of the residential development that generates the PDO/PIO funds.
PR-2.6	Locate all new residential developments over 200 units in size within 1/3 of a mile walking distance of an existing or new park, trail, open space or recreational school grounds open to the public after normal school hours or include one or more of these elements in its project design.
PR-3.2	Provide access to an existing or future neighborhood park, a community park, recreational school grounds, a regional park, open space lands, and/or a major City trail within a 1/3 mile radius of all San José residents by either acquiring lands within 1/3 mile or providing safe connections to existing recreation facilities outside of the 1/3 mile radius. This is consistent with the United Nation's Urban Environmental Accords, as adopted by the City for recreation open space.
PR-6.2	Develop trails, parks and recreation facilities in an environmentally sensitive and fiscally sustainable manner.

General Plan Policies - Recreation	
PR-6.5	Design and maintain park and recreation facilities to minimize water, energy and chemical (e.g., pesticides and fertilizer) use. Incorporate native and/or drought-resistant vegetation and ground cover where appropriate.
PR-7.2	Condition land development and/or purchase property along designated Trails and Pathways Corridors in order to provide sufficient trail right-of-way and to ensure that new development adjacent to the trail and pathways corridors does not compromise safe trail access nor detract from the scenic and aesthetic qualities of the corridor. Locate trail right-of-ways consistent with the provisions of the City's Riparian Corridor Policy Study and any adopted Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP).
PR-8.5	Encourage all developers to install and maintain trails when new development occurs adjacent to a designated trail location. Use the City's Parkland Dedication Ordinance and Park Impact Ordinance to have residential developers build trails when new residential development occurs adjacent to a designated trail location, consistent with other parkland priorities. Encourage developers or property owners to enter into formal agreements with the City to maintain trails adjacent to their properties.
PR-8.7	Actively collaborate with school districts, utilities, and other public agencies to provide for appropriate recreation uses of their respective properties and rights-of-ways. Consideration should be given to cooperative efforts between these entities and the City to develop parks, pedestrian and bicycle trails, sports fields and recreation facilities.

4.16.1.2 *Existing Conditions*

The City of San José currently operates 197 neighborhood parks (including skate parks), 51 community centers, nine regional parks, and 61 miles of trails. The nearest park to the project site is O'Donnell Garden Park (located 580 feet southeast of the project site). The nearest community center is John XXIII Multi-Services Center (located 0.4 miles north of the project site).

4.16.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant recreation impacts, as described below.

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

As mentioned previously, the project would result in an increase in the City population which may increase demand on recreational facilities. The project proposes fitness space, three courtyards, and a roof deck and lounge area which could help reduce the use of existing recreational facilities in the area by future residents of the site.

The project would be required (as a Standard Permit Condition) to pay the applicable PDO/PIO feeds. The City's PDO would be satisfied through a combination of several means including: dedication of land; payment of a fee (based upon the unit count of the project); credit for qualifying recreational amenities (based on project design); and improvement of existing parkland or recreational facilities. Therefore, the project would not result in a substantial physical deterioration of recreational facilities in the area. **[Same Impact as Approved Project (Less than Significant Impact)]**

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

The project does not include the expansion or construction of additional recreational facilities. As a result, implementation of the project would not result in an adverse physical effect on the environment. **[Same Impact as Approved Project (Less than Significant Impact)]**

4.17 TRANSPORTATION

The following discussion is based in part on a Local Transportation Analysis and TDM Plan prepared by *Hexagon Transportation Consultants, Inc.* in February 2021 and October 2020, respectively. A copy of these reports are included as Appendix H of the SEIR.

4.17.1 Environmental Setting

4.17.1.1 *Regulatory Framework*

State

Regional Transportation Plan

MTC is the transportation planning, coordinating, and financing agency for the nine-county San Francisco Bay Area, including Santa Clara County. MTC is charged with regularly updating the Regional Transportation Plan, a comprehensive blueprint for the development of mass transit, highway, airport, seaport, railroad, bicycle, and pedestrian facilities in the region. MTC and ABAG adopted Plan Bay Area 2040 in July 2017, which includes a Regional Transportation Plan to guide regional transportation investment for revenues from federal, state, regional and local sources through 2040.

Senate Bill 743

SB 743 establishes criteria for determining the significance of transportation impacts using a vehicle miles traveled (VMT) metric intended to promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses. Specifically, SB 743 requires analysis of VMT in determining the significance of transportation impacts. Local jurisdictions are required by Governor's Office of Planning and Research (OPR) to implement a VMT policy by July 1, 2020.

SB 743 did not authorize OPR to set specific VMT impact thresholds, but it did direct OPR to develop guidelines for jurisdictions to utilize. CEQA Guidelines Section 15064.3(b)(1) describes factors that might indicate whether a development project's VMT may be significant. Notably, projects located within 0.50 mile of transit should be considered to have a less than significant transportation impact based on OPR guidance.

Regional and City of San José

Congestion Management Program

VTa oversees the Congestion Management Program (CMP), which is aimed at reducing regional traffic congestion. The relevant state legislation requires that urbanized counties in California prepare a CMP in order to obtain each county's share of gas tax revenues. State legislation requires that each CMP define traffic LOS standards, transit service standards, a trip reduction and transportation demand management plan, a land use impact analysis program, and a capital improvement element. VTA has review responsibility for proposed development projects that are expected to affect CMP-designated intersections.

Transportation Analysis Policy (City Council Policy 5-1)

As established in City Council Policy 5-1, Transportation Analysis Policy, the City of San José uses VMT as the metric to assess transportation impacts from new development. According to the policy, an employment facility (e.g., office or research and development) or residential project's transportation impact would be less than significant if the project VMT is 15 percent or more below the existing average regional VMT per employee or existing average citywide VMT per capita respectively. For industrial projects (e.g., warehouse, manufacturing, distribution), the impact would be less than significant if the project VMT is equal to or less than existing average regional VMT per employee. The threshold for a retail project is whether it generates net new regional VMT, as new retail typically redistributes existing trips and miles traveled as opposed to inducing new travel. Screening criteria have been established to determine which projects require a detailed VMT analysis. If a project meets the relevant screening criteria, it is considered to have a less than significant VMT impact.

If a project's VMT does not meet the established thresholds, mitigation measures would be required, where feasible. The policy also requires preparation of a Local Transportation Analysis to analyze non-CEQA transportation issues, including local transportation operations, intersection level of service, site access and circulation, and neighborhood transportation issues such as pedestrian and bicycle access and recommend transportation improvements. The VMT policy does not negate Area Development policies and Transportation Development policies approved prior to adoption of Policy 5-1; however, it does negate the City's Protected Intersection policy as defined in Policy 5-3.

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to transportation and are applicable to the project.

General Plan Policies - Transportation			
TR-1.1	Accommodate and encourage use of non-automobile transportation modes to achieve San José’s mobility goals and reduce vehicle trip generation and vehicle miles traveled (VMT).		
TR-1.3	Increase substantially the proportion of commute travel using modes other than the single-occupant vehicle. The 2040 commute mode split targets for San José residents and workers are presented in the following table:		
	Commute Mode Split Targets for 2040		
	Mode	Commute Trips to and From San José	
		2008	2040 Goal
	Drive alone	77.8%	No more than 40%
	Carpool	9.2%	At least 10%
	Transit	4.1%	At least 20%
	Bicycle	1.2%	At least 15%
	Walk	1.8%	At least 15%

General Plan Policies - Transportation				
	Other means (including work at home)	5.8%	See Note 1	
	Source: 2008 data from American Community Survey (2008). Note 1: Working at home is not included in the transportation model, so the 2040 Goal shows percentages for only those modes currently included in the model.			
TR-1.4	Through the entitlement process for new development, fund needed transportation improvements for all transportation modes, giving first consideration to improvement of bicycling, walking and transit facilities. Encourage investments that reduce vehicle travel demand.			
TR-2.2	Provide a continuous pedestrian and bicycle system to enhance connectivity throughout the City by completing missing segments. Eliminate or minimize physical obstacles and barriers that impede pedestrian and bicycle movement, on City streets. Include consideration of grade-separated crossings at railroad tracks and freeways. Provide safe bicycle and pedestrian connections to all facilities regularly accessed by the public, including the Mineta San José International Airport.			
TR-2.8	Require new development where feasible to provide on-site facilities such as bicycle storage and showers, provide connections to existing and planned facilities, dedicate land to expand existing facilities or provide new facilities such as sidewalks and/or bicycle lanes/paths, or share in the cost of improvements.			
TR-3.3	As part of the development review process, require that new development along existing and planned transit facilities consist of land use and development types and intensities that contribute towards transit ridership. In addition, require that new development is designed to accommodate and to provide direct access to transit facilities.			
TR-5.3	Development projects' effects on the transportation network will be evaluated during the entitlement process and will be required to fund or construct improvements in proportion to their impacts on the transportation system. Improvements will prioritize multimodal improvements that reduce VMT over automobile network improvements. <ul style="list-style-type: none"> Downtown. Downtown San José exemplifies low-VMT with integrated land use and transportation development. In recognition of the unique position of the Downtown as the transit hub of Santa Clara County, and as the center for financial, business, institutional and cultural activities, Downtown projects shall support the long-term development of a world class urban transportation network. 			
TR-8.7	Encourage private property owners to share their underutilized parking supplies with the general public and/or other adjacent private developments.			
TR-8.9	Consider adjacent on-street and City-owned off-street parking spaces in assessing need for additional parking required for a given land use or new development.			
TR-9.1	Enhance, expand and maintain facilities for walking and bicycling, particularly to connect with and ensure access to transit and to provide a safe and complete alternative transportation network that facilitates non-automobile trips.			

4.17.1.2 *Existing Conditions*

Regional Access

Regional access to the site is provided via SR 87 and I-280.

SR 87 is a north-south freeway that provides regional access to the project site via its connection to SR 85, Highway 101 (US 101), and I-280. SR 87 has four mixed-flow lanes and two high-occupancy vehicle (HOV) lanes in the vicinity of the site.

I-280 extends from US 101 in San José to I-80 in San Francisco. It is generally an eight-lane freeway in the vicinity of downtown San José.

Local Access

Local access to the project site is provided by Third Street, Fourth Street, Fifth Street, San Salvador Street, William Street, and Reed Street.

Third Street is a one-way street with two northbound lanes and protected bike lanes between Humboldt Street and St. James Street.

Fourth Street is a two-lane southbound arterial that extends from Technology Place to Reed Street. Buffered bicycle lanes are present along Fourth Street, between St. James Street and Reed Street.

Fifth Street is a north-south, two-lane street that extends from Margaret Street to San Salvador Street.

San Salvador Street is an east-west, two-lane street that extends from Market Street to 16th Street. Bicycle lanes are located along San Salvador Street between Market Street and Fourth Street. Class IV protected bicycle lanes are provided on San Savlador Street between Fourth Street and 10th Street. San Salvador Street is a designated bicycle route and provides sharrow or shared lane markings west of 10th Street.

William Street is an east-west, two-lane street that extends from Market Street to 24th Street. William Street is a designated bicycle route that has sharrow or shared lane markings.

Reed Street is an east-west, three-lane street (two westbound lanes and one eastbound lane) that extends from Market Street to 14th Street.

Pedestrian and Bicycle Facilities

Pedestrian facilities include sidewalks and crosswalks with pedestrian signal heads at all signalized intersections within the vicinity of the project site. Overall, the existing network of sidewalks and crosswalks provide good connectivity and provides pedestrians with safe routes to transit services.

Bicycle facilities are comprised of paths (Class I), lanes (Class II), routes (Class III), and protected/buffered bicycle lanes (Class IV). Bicycle paths are paved trails that are separate from roadways. Bicycle facilities in the site vicinity include the Guadalupe River Trail approximately 0.5

miles west of the site. The Guadalupe River Trail is a Class I bikeway (paved path) that runs from Curtner Avenue to Alviso. There are bicycle facilities in the project vicinity present on the following roadways:

Class II

- San Salvador Street, between Market Street and Fourth Street

Class III

- Second Street, between San Carlos Street and Julian Street
- San Carlos Street, between Woz Way and Fourth Street
- Willian Street, its entire extent
- San Salvador Street, east of Fourth Street in the eastbound direction and east of 10th Street in the westbound direction

Class IV

- Second Street, south of San Carlos Street
- Second Street, north of Julian Street
- San Salvador Street, between Fourth Street and 10th Street, westbound direction only
- San Fernando Street, between Cahil Street and 10th Street

Existing bicycle facilities are shown in Figure 4.17-1 below.

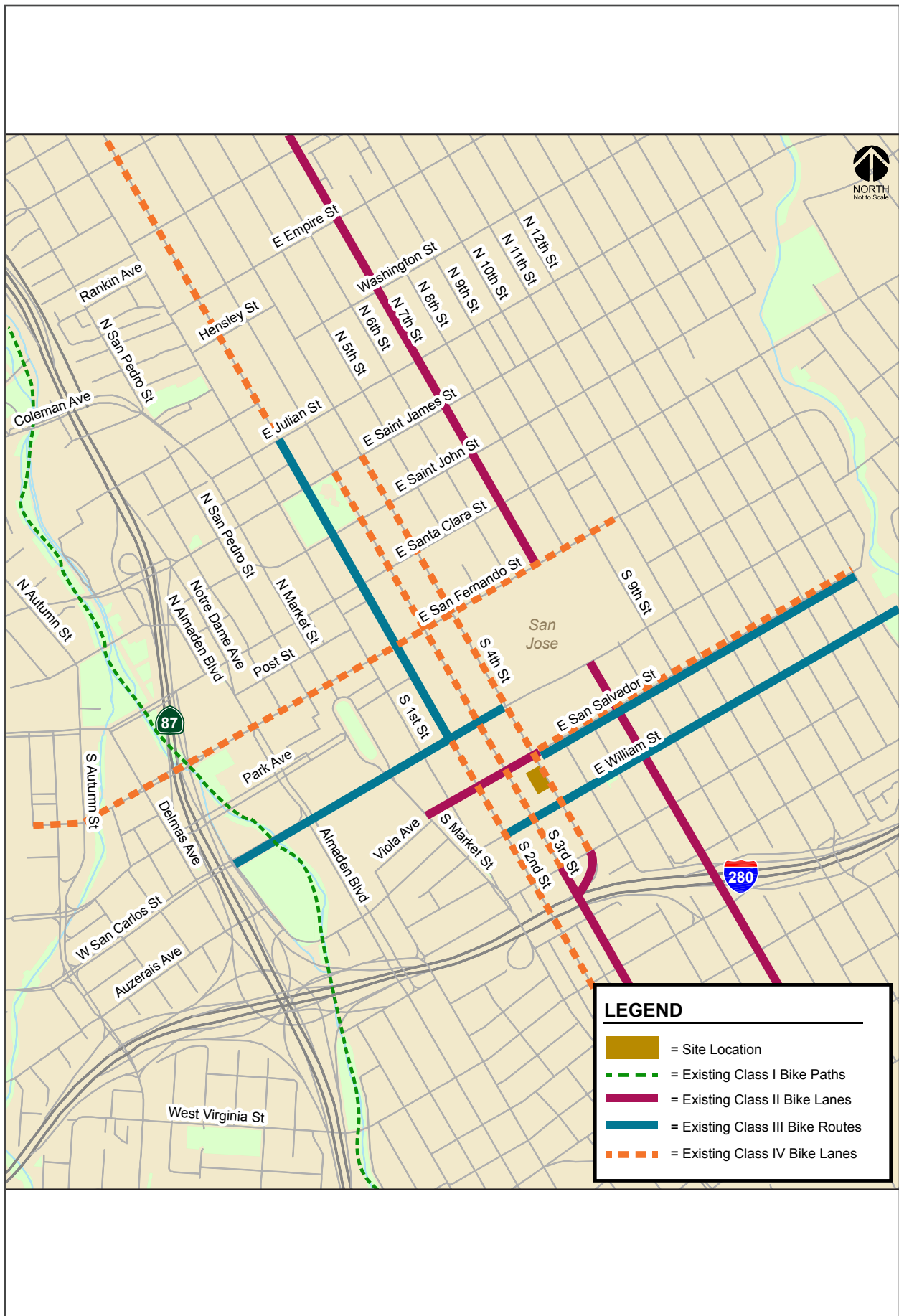
Transit Service

Transit service in the area is provide by the Santa Clara Valley Transportation Authority (VTA) and Caltrain, Altamont Commuter Express (ACE), and Amtrak. These transit services are further discussed below and shown in Figure 4.17-2.

Santa Clara Valley Transportation Authority

VTA operates local bus lines within the project vicinity. VTA operates the 42.2-mile VTA light rail line which extends from south San José through downtown to the northern areas of San José, Santa Clara, Milpitas, Mountain View, and Sunnyvale. The Winchester-Old Ironsides and Santa Teresa-Baypointe LRT lines operate along First and Second Streets, north of San Carlos Street. The First Street/San Antonio and Second Street/San Antonio LRT Stations are located approximately 0.5 miles from the project site. In addition, the San José Diridon Station is located approximately 1.4 miles from the site and is served by the Winchester-Old Ironsides LRT line.

The project site is served by local bus routes 66 and 68. The closest bus stop to the project site is located along Second Street, approximately 900 feet from the site.



EXISTING BICYCLE FACILITIES

FIGURE 4.17-1



EXISTING TRANSIT SERVICES

FIGURE 4.17-2

The VTA bus lines that operate within the project area are summarized in the Table 4.17-1 below.

Table 4.17-1: Local Bus Routes		
Bus Route	Route Description	Headway (Minutes)
Local Route 66	North Milpitas to Kaiser San José	15
Local Route 68	Gilroy Transit Center to San José Diridon Station	15

Caltrain

Caltrain is a regional, intercity commuter rail service between San Francisco and Gilroy. The Diridon Station is located approximately 1.4 miles from the project site.

Altamont Commuter Express Service

ACE provides commuter rail service between Stockton, Tracy, Pleasanton, and San José during commute hours, Monday through Friday.

Amtrak Service

Amtrak provides daily commuter passenger train service along the 170-mile Capitol Corridor between the Sacramento region and the Bay Area, with stops in San José, Santa Clara, Fremont, Hayward, Oakland, Emeryville, Berkeley, Richmond, Martinez, Suisun City, Davis, Sacramento, Roseville, Rocklin, and Auburn.

4.17.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle lanes, and pedestrian facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the development evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant transportation impacts, as described below.

a) Would the project conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle lanes, and pedestrian facilities?

Pedestrian Facilities

The Downtown Streetscape Master Plan (DSMP) provides design guidelines for existing and future development to enhance the pedestrian experience in the Greater Downtown Area. Fourth Street is a designated Downtown Pedestrian Network Street (DPNS) which are intended to support a moderate level of pedestrian activity as well as retail and transit connections. As mentioned previously, the existing pedestrian facilities have good connectivity and would provide future residents with a safe connection between the project site and surrounding land uses. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Bicycle Facilities

The project frontage is located along the City's Better Bikeways project which has recently been upgraded to provide bicyclists with a safer biking route. The project site is well served by various existing bicycle facilities; therefore, implementation of the proposed project would not conflict with any policies or plans regarding bicycle facilities or decrease the safety of these facilities. As a Condition of Project Approval, the City will require a fair share contribution to facilitate implementation of the Better Bikeways project. The project would be subject to the San José Public Works Department conditions and requirements; therefore, the project would not conflict with any policies or plans regarding bicycle facilities or decrease the safety of these facilities. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Transit Facilities

The project is in proximity to major transit services and would provide the opportunity for multi-modal travel to and from the project site. The project site is approximately 1.4 miles from the Diridon Transit Center and approximately 0.5 miles from the San Antonio LRT Station. Additionally, several bus services run along First Street and Second Street. There are several bus routes located along Santa Clara Street, approximately 0.7 miles from the project site. Implementation of the proposed project would not conflict with any policies or plans regarding transit facilities or decrease the safety of these facilities. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Airport Operations

The project would have no impact on air traffic patterns. See *Section 3.3 Hazards and Hazardous Materials* of the SEIR for a discussion of project compliance with federal aviation regulations. **[Same Impact as Approved Project (Less Than Significant Impact)]**

b) Would the project conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?

City Council Policy 5-1 has established screening criteria to determine which projects require a detailed VMT analysis. Within the screening criteria, residential projects or components of projects would be exempt from VMT analysis under the following conditions: 1) the site is located within a Planned Growth Area as defined by the General Plan; 2) the site is located within 0.5 miles of an existing major transit stop or an existing stop along a high-quality transit corridor; 3) the site is located in an area in which the per capita VMT is less than or equal to the CEQA significance threshold for the land use; 4) the project has a minimum of 35 units per acre; 5) the project has no more than the minimum number of parking spaces required (if located in Downtown, the number of parking spaces must be adjacent to the lowest amount allowed; however, if the parking is shared, publicly available, and/or “unbundled”, the number of parking spaces can be up to the zoned minimum); and 6) the project would not negatively impact transit, bike or pedestrian infrastructure.

The proposed project is located within the downtown area which does not exceed the residential VMT per capita (refer to Figures 3.15-6 and 3.15-7 of the Downtown Strategy 2040 FEIR). The Downtown Strategy 2040 FEIR concluded that full build out of the Downtown Strategy 2040 Plan would result in low VMT and would have the lowest VMT of any plan area in the City. The proposed project is located within the downtown area covered by the Downtown Strategy 2040 FEIR and therefore is expected to have a less than significant VMT impact. The project site is approximately 1.4 miles from the Diridon Transit Center and approximately 0.5 miles from the San Antonio LRT Station. Based on the City’s off-street parking requirements, a total of 240 off-street parking spaces would be required. Since the proposed project would comply with the Section 20.90.220.A.1 Subsections A and B of the City’s Municipal Code, the project would be allowed an off-street parking reduction of up to 20 percent, resulting in a required 192 spaces. The City has policies that require TDM measures for reductions in parking within the downtown. As mentioned in *Section 3.2.4*, the project proposes the following TDM measures⁶¹:

- Public Information Elements
- Unbundled Parking

In addition, the BART and High Speed Rail connections, upgrades to Caltrain services, and the Better Bikeways project would provide additional transportation options for the downtown area. For these reasons, the project would not result in a significant VMT impact and would not conflict or be inconsistent with CEQA Guidelines Section 15064.3 subdivision (b). **[Same Impact as Approved Project (Less than Significant Impact)]**

c) Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

Site Access and Driveway Design

Vehicular access to the parking garage would be provided via a two-way right-in, right-out driveway located along Fourth Street. The City of San José Downtown Streetscape Guidelines (as

⁶¹ The project, as currently proposed, would provide parking (through a combination of on-site and off-site parking) that meets or exceeds the City’s parking requirements. The TDM plan is not required per the City’s Municipal Code and was prepared at the request of the project applicant.

referenced in the City’s Complete Street Standards and Guidelines) identify maximum driveway widths of 26 feet for two-lane two-way driveways. This provides adequate width for vehicular ingress and egress and a short crossing distance for pedestrians. Based on the plans provided by the applicant, the proposed driveway would be approximately 20 feet wide and would not meet the City’s design standard. **[Same Impact as Approved Project (Less Than Significant Impact)]**

Site Distance

Adequate site distance would be required for the project driveways in accordance with the American Association of State Highway Transportation Officials (AASHTO) standards. Fourth Street does not have a posted speed limit. Therefore, it is assumed that the speed limit is 25 miles per hour (mph). The AASHTO stopping sight distance with a posted speed limit of 25 mph is 150 feet. A driver exiting the project driveway must be able to see 150 feet along Fourth Street in order to stop and avoid a collision. There is no roadway curve on Fourth Street that would obstruct the vision of drivers exiting the driveway.

The proposed project would be required to comply with all applicable City policies and would not create substantially increase hazards due to a design feature. As a result, the project would not substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment). **[Same Impact as Approved Project (Less Than Significant Impact)]**

d) Would the project result in inadequate emergency access?

The City requires consistency with applicable fire department standards before building permits are approved. Therefore, the proposed project would have a less than significant emergency vehicle access impact. **[Same Impact as Approved Project (Less Than Significant Impact)]**

4.17.2.1 Non-CEQA Effects

Per *California Building Industry Association v. Bay Area Air Quality Management District*, 62 Cal. 4th 369 (*BIA v. BAAQMD*), effects of the environment on the project are not considered CEQA impacts. The proposed project is part of planned growth in the downtown; therefore, no CEQA transportation analysis is required. A Local Transportation Analysis (LTA) shall be prepared to identify any operational issues associated with the project. The following discussion is included for informational purposes only.

Trip Generation Estimates

Vehicle trips generated by the proposed project were estimated using the rates for “Multi-family Housing High-Rise” (Land Use Code 222) published in the Institute of Transportation Engineers’ (ITE) *Trip Generation Manual*, 10th Edition (2017)⁶².

The proposed project would qualify for a location-based adjustment. Based on the City’s *VMT Evaluation Tool*, the project site is located within a designated central city urban area. Central city

⁶² Institute of Transportation Engineers. *Trip Generation Manual 10th Edition*. September 2017.

urban area have very high density, excellent accessibility, high public transit access, low number of single-family residences, and older housing stock. Residential developments within central city urban areas have a vehicle mode share of 71 percent; therefore, a 29 percent reduction was applied to trips generated by the proposed project.

A VMT adjustment was applied to the trip generation based on the VMT per capita estimate obtained from the *San José VMT Evaluation Tool*. The existing residential VMT per capita at the project site is 9.23 VMT per capita. With the proposed project, the estimated residential VMT per capita would be reduced to 8.95, a three percent decrease. As a result, a three percent reduction was applied to the baseline trips estimated to be generated by the proposed project.

The project also proposes a TDM plan (refer to *Section 3.2.4*) which would reduce the residential VMT per capita to 8.54. Since the unbundled parking cost has not been finalized, a VMT adjustment for TDM was not applied to the trip generation.

A summary of the project trip generation estimates is shown below.

Table 4.17-2: Project Trip Generation Estimates							
Land Use	Daily Trips	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Proposed Land Uses							
Multi-family Housing High-Rise	1,068	18	56	74	52	34	86
Location-Based Reduction (29 percent)	<310>	<5>	<17>	<22>	<15>	<10>	<25>
VMT Reduction (3.0 percent)	<23>	<1>	<1>	<2>	<1>	<1>	<2>
Project Trips:	735	12	38	50	36	23	59

Based on the trip generation table above, the project would generate approximately 735 daily trips with a total of 50 daily trips during the AM Peak Hour and 59 daily trips during the PM Peak Hour.

Truck Operations

Based on the City's off-street loading standards, residential uses between 200 and 500 units are required to provide two off-street loading spaces (refer to *Section 20.70.435* of the City's Municipal Code). The project proposes two loading spaces within the ground floor of the parking garage consistent with the City's requirement. The loading docks would be located at the end of the garage drive aisle.

Bicycle Parking

The proposed project would be required to provide one bicycle parking space per four residential units (refer to Table 20-190 of the City's Municipal Code). Bicycle parking should consist of at least 80 percent short-term and at most 20 percent long-term spaces.

The proposed project would be required to provide a total of 60 bicycle parking spaces (48 short-term bicycle parking spaces and 12 long-term bicycle parking spaces) to meet the City standards. The project is proposing a total of 60 bicycle spaces within a bicycle storage room which is consistent with the number of bicycle parking spaces required.

Vehicle Parking

According to the City's Downtown Zoning Regulations (*Section 20.70* of the San José Municipal Code), residential projects are required to provide one off-street parking space per residential unit. Per the City's standard parking requirements, the project would be required to provide 240 off-street parking spaces. Based on 20.90.220.A.1 of the City's Municipal Code, the project may receive up to a 50 percent reduction in the required off-street parking spaces with a development permit or a development exception if no development permit is required. For an off-street parking reduction of up to 20 percent, the following provisions must be met:

- The structure or use is located within two thousand feet of a proposed or an existing rail station or bus rapid transit station, or an area designated as a neighborhood business district, or as an urban village, or as an area subject to an area development policy in the city's general plan or the use is listed in Section 20.90.220.G; and
- The structure or use provides bicycle parking spaces in conformance with the requirements of Table 20-90.

The project site is located within the downtown growth boundary and would meet the City's bicycle parking requirement per Table 20-90. For these reasons, the project would comply with Municipal Code 20.90.220.A.1 subsections A and B and may be granted up to a 20 percent reduction in off-street parking spaces. With the allowed reduction, the project would be required to provide 192 off-street parking spaces. The City will allow the project to supplement its proposed on-site parking with off-site parking to meet its required 192 off-street parking requirement. While the number of on-site parking spaces has not been finalized, a range of 20 to 95 parking spaces would be provided within the on-site garage. Based on the plan set, the project proposes up to 95 parking spaces on-site within a stacked mechanical parking lift system. The remaining 97 off-street parking spaces would be located within the parking garage at 88 San Fernando Street. Nevertheless, the project applicant shall establish a shared parking agreement for up to 172 spaces, as needed based on the final garage design of the proposed project, within the off-site parking garage to meet the City's off-street parking requirements for the project.

4.18 TRIBAL CULTURAL RESOURCES

4.18.1 Environmental Setting

4.18.1.1 *Regulatory Framework*

State

Assembly Bill 52

AB 52, effective July 2015, established a new category of resources for consideration by public agencies called Tribal Cultural Resources (TCRs). AB 52 requires lead agencies to provide notice of projects to tribes that are traditionally and culturally affiliated with the geographic area if they have requested to be notified. Where a project may have a significant impact on a tribal cultural resource, consultation is required until the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource or until it is concluded that mutual agreement cannot be reached.

Under AB 52, TCRs are defined as follows:

- Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are also either:
 - Included or determined to be eligible for inclusion in the California Register of Historic Resources, or
 - Included in a local register of historical resources as defined in Public Resources Code Section 5020.1(k).
- A resource determined by the lead agency to be a TCR.

4.18.1.2 *Existing Conditions*

Native Americans occupied Santa Clara Valley and the greater Bay Area for more than 5,000 years. The exact time period of the Ohlone (originally referred to as Costanoan) migration into the Bay Area is debated by scholars. Dates of the migration range between 3000 B.C. and 500 A.D. Regardless of the actual time frame of their initial occupation of the Bay Area and, in particular, Santa Clara Valley, it is known that the Ohlone had a well-established population of approximately 7,000 to 11,000 people with a territory that ranged from the San Francisco Peninsula and the East Bay, south through the Santa Clara Valley and down to Monterey and San Juan Bautista.

The Ohlone people were hunter/gatherers focused on hunting, fishing, and collecting seasonal plant and animal resources, including tidal and marine resources from San Francisco Bay. The customary way of living, or lifeway, of the Costanoan/Ohlone people disappeared by about 1810 due to disruption by introduced diseases, a declining birth rate, and the impact of the California mission system established by the Spanish in the area beginning in 1777.

Artifacts pertaining to the Ohlone occupation of San José have been found throughout the downtown area, particularly near the Guadalupe River, located approximately 0.5 miles west of the project site.

4.18.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:					
a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to the development evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant tribal cultural resources impacts, as described below.

a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource that is listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?

Guadalupe River is located approximately 0.5 miles west of the project site, which is considered a highly sensitive area for prehistoric and archaeological deposits, including tribal cultural objects. No other tribal cultural features, including sites, features, places, cultural landscapes or sacred places have been identified based on available information.

Assembly Bill 52 requires lead agencies to complete formal consultations with California Native American tribes during the CEQA process to identify tribal cultural resources that may be subject to significant impacts by a project. Where a project may have a significant impact on a tribal cultural

resource, the lead agency's environmental document must discuss the impact and whether feasible alternatives or mitigation measures could avoid or substantially lessen the impact. This consultation requirement applies only if the tribes have sent written requests for notification of projects to the Lead Agency. In 2017, the City had sent a letter to tribal representatives in the area to welcome participation in consultation process for all ongoing, proposed, or future projects within the City's Sphere of Influence or specific areas of the City. The Ohlone Tribe submitted a request in July of 2018 for notification of projects requiring a Negative Declaration, a Mitigated Negative Declaration, or an Environmental Impact Report that would involve ground-disturbing activities within the downtown area of the City of San José. The tribal representatives for the Ohlone Tribe, and other tribes known to have traditional lands and cultural places within the City of San José, were sent the Notice of Preparation for the proposed project on September 1, 2020. No response or request for consultation was received. Any subsurface artifacts found on-site would be addressed consistent with the standard measures identified in the Downtown Strategy 2040 FEIR. Therefore, the proposed project would have a less than significant impact on tribal cultural resources. **[Same Impact as Approved Project (Less Than Significant Impact)]**

b) Would the project cause a substantial adverse change in the significance of a tribal cultural resource that is determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1?

As mentioned above, no tribal cultural resource has been identified based on available information. Any subsurface artifacts found on-site would be addressed consistent with the standard measures identified in the Downtown Strategy 2040 FEIR (see response above). As a result, the proposed project would not cause a substantial adverse change in the significance of a tribal cultural resources that is determined by the lead agency (i.e., the City of San José), in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. **[Same Impact as Approved Project (Less than Significant Impact)]**

4.19 UTILITIES AND SERVICE SYSTEMS

4.19.1 Environmental Setting

4.19.1.1 *Regulatory Framework*

State

State Water Code

Pursuant to the State Water Code, water suppliers providing water for municipal purposes to more than 3,000 customers or supplying more than 3,000 acre-feet (approximately 980 million gallons) of water annually must prepare and adopt an urban water management plan (UWMP) and update it every five years. As part of a UWMP, water agencies are required to evaluate and describe their water resource supplies and projected needs over a 20-year planning horizon, water conservation, water service reliability, water recycling, opportunities for water transfers, and contingency plans for drought events. The City of San José adopted its most recent UWMP in November 2016.

Assembly Bill 939

The California Integrated Waste Management Act of 1989, or AB 939, established the Integrated Waste Management Board, required the implementation of integrated waste management plans, and mandated that local jurisdictions divert at least 50 percent of solid waste generated (from 1990 levels), beginning January 1, 2000, and divert at least 75 percent by 2010. Projects that would have an adverse effect on waste diversion goals are required to include waste diversion mitigation measures.

Assembly Bill 341

AB 341 sets forth the requirements of the statewide mandatory commercial recycling program. Businesses that generate four or more cubic yards of garbage per week and multi-family dwellings with five or more units in California are required to recycle. AB 341 sets a statewide goal for 75 percent disposal reduction by the year 2020.

Senate Bill 1383

SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The bill grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that at least 20 percent of currently disposed edible food is recovered for human consumption by 2025.

City of San José

San José Zero Waste Strategic Plan/Green Vision

The Green Vision provides a comprehensive approach to achieve sustainability through new technology and innovation. The Zero Waste Strategic Plan outlines policies to help the City foster a healthier community and achieve its Green Vision goals, including 75 percent diversion by 2013 and

zero waste by 2022. The Green Vision also includes ambitious goals for economic growth, environmental sustainability and an enhanced quality of life for San José residents and businesses.

San José Construction & Demolition Diversion Program

More than 30 percent of landfill waste is construction and demolition (C&D) debris. The City's Construction & Demolition Diversion (CDD) Program ensures that at least 75 percent of this waste is recovered and diverted from landfills.

Private Sector Green Building Policy

The City of San José's Green Building Policy for private sector new construction encourages building owners, architects, developers, and contractors to incorporate meaningful sustainable building goals early in building design process. This policy establishes baseline green building standards for private sector new construction and provides a framework for the implementation of these standards. It is also intended to enhance the public health, safety and welfare of San José residents, workers, and visitors by fostering practices in the design, construction, and maintenance of buildings that will minimize the use and waste of energy, water and other resources in the City of San José.

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to utilities and service systems and are applicable to the project.

General Plan Policies - Utilities & Service Systems	
MS-3.1	Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
MS-3.2	Promote use of green building technology or techniques that can help reduce the depletion of the City's potable water supply as building codes permit. For example, promote the use of captured rainwater, graywater, or recycled water as the preferred source for non-potable water needs such as irrigation and building cooling, consistent with Building Codes or other regulations.
MS-3.3	Promote the use of drought tolerant plants and landscaping materials for non-residential and residential uses.
MS-19.1	Require new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the development of a fiscally and environmentally sustainable local water supply.
MS-19.3	Expand the use of recycled water to benefit the community and the environment.
MS-19.4	Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.

General Plan Policies - Utilities & Service Systems	
IN-1.5	Require new development to provide adequate facilities or pay its fair share of the cost for facilities needed to provide services to accommodate growth without adversely impacting current service levels.
IN-3.1	<p>Achieve minimum level of services:</p> <ul style="list-style-type: none"> • For sanitary sewers, achieve a minimum level of service “D” or better as described in the Sanitary Sewer Level of Service Policy and determined based on the guidelines provided in the Sewer Capacity Impact Analysis (SCIA) Guidelines. • For storm drainage, to minimize flooding on public streets and to minimize the potential for property damage from stormwater, implement a 10-year return storm design standard throughout the City, and in compliance with all local, State and Federal regulatory requirements.
IN-3.3	Meet the water supply, sanitary sewer and storm drainage level of service objectives through an orderly process of ensuring that, before development occurs, there is adequate capacity. Coordinate with water and sewer providers to prioritize service needs for approved affordable housing projects.
IN-3.4	<p>Maintain and implement the City’s Sanitary Sewer Level of Service Policy and Sewer Capacity Impact Analysis (SCIA) Guidelines to:</p> <ul style="list-style-type: none"> • Prevent sanitary sewer overflows (SSOs) due to inadequate capacity so as to ensure that the City complies with all applicable requirements of the Federal Clean Water Act and State Water Board’s General Waste Discharge Requirements for Sanitary Sewer Systems and National Pollutant Discharge Elimination System permit. SSOs may pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters. • Maintain reasonable excess capacity in order to protect sewers from increased rate of hydrogen sulfide corrosion and minimize odor and potential maintenance problems. • Ensure adequate funding and timely completion of the most critically needed sewer capacity projects. • Promote clear guidance, consistency and predictability to developers regarding the necessary sewer improvements to support development within the City.
IN-3.5	Require development which will have the potential to reduce downstream LOS to lower than “D”, or development which would be served by downstream lines already operating at a LOS lower than “D”, to provide mitigation measures to improve the LOS to “D” or better, either acting independently or jointly with other developments in the same area or in coordination with the City’s Sanitary Sewer Capital Improvement Program.
IN-3.9	Require developers to prepare drainage plans that define needed drainage improvements for proposed developments per City standards.
IN-5.1	Monitor the continued availability of long-term collection, transfer, recycling and disposal capacity to ensure adequate solid waste capacity. Periodically assess infrastructure needs to support the City’s waste diversion goals. Work with private Material Recovery Facilities (MRF) and Landfill operators to provide facility capacity to implement new City programs to expand recycling, composting and other waste processing.

General Plan Policies - Utilities & Service Systems	
IN-5.3	Use solid waste reduction techniques, including source reduction, reuse, recycling, source separation, composting, energy recovery and transformation of solid wastes to extend the life span of existing landfills and to reduce the need for future landfill facilities and to achieve the City's Zero Waste goals.
IP-15.2	<p>To finance the construction and improvement of facilities and infrastructure systems for which the demand for capacity cannot be attributed to a particular development, consider a series of taxes or fees through which new growth collectively finances those facilities and systems, as follows:</p> <ol style="list-style-type: none"> 1. Construction Tax and the Conveyance Tax (the latter paid in connection with any transfer of real property, not just new development) provide revenue for parks, libraries, library book stock, fire stations, maintenance yards and communications equipment. 2. The Building and Structures Tax and Commercial/Residential/Mobilehome Park Tax provide revenue for the construction of San José's major street network. 3. Connection Fees provide revenue for the construction of storm sewers, sanitary sewers and expansions of sewage treatment capacity at the Water Pollution Control Plant. 4. Fees and taxes may need to be adjusted from time to time to reflect changing costs and new requirements. Additionally, new fees or taxes may need to be imposed to finance other capital and facility needs generated by growth. 5. Where possible, if a developer constructs facilities or infrastructure for which these taxes are imposed, the developer may be provided with corresponding credits against the applicable taxes or fees.
IP-17.1 ⁶³	<p>Use San José's adopted Green Vision as a tool to advance the 2040 General Plan Vision for Environmental Leadership. San José's Green Vision is a comprehensive fifteen-year plan to create jobs, preserve the environment, and improve quality of life for our community, demonstrating that the goals of economic growth, environmental stewardship and fiscal sustainability are inextricably linked. Adopted in 2007, San José's Green Vision, adopted in 2007, establishes the following Environmental Leadership goals for the City through 2022:</p> <ol style="list-style-type: none"> 5. Divert 100 percent of the waste from our landfill and convert waste to energy; Although the City has one of the highest waste diversion rates of any large city in the nation, many waste reduction opportunities remain. If San José and other local cities achieve no further waste reduction efforts over the next 15 years, solid waste landfill space in the region could reach capacity.

4.19.1.2 *Existing Conditions*

Water Supply

Water service is provided to the City of San José by three water retailers, SJW, the City of San José Municipal Water System, and the Great Oaks Water Company. Water service to the project site is

⁶³ Policy IP-17.1, as shown, is modified in this list to reflect only those items relevant to the discussion of solid waste.

provided by SJW. The service area of SJW is 139 square miles, including most of the cities of San José and Cupertino, the entire cities of Campbell, Monte Sereno, Saratoga, the Town of Los Gatos, and parts of unincorporated Santa Clara County. Potable water provided to the service area is sourced from groundwater, imported treated water and local surface water. The site is currently developed with two apartment buildings and a single-family residence. The site currently uses 4,657 gallons of water per day (gpd).⁶⁴

Wastewater Services

Wastewater from the City of San José is treated at the San José-Santa Clara Regional Wastewater Facility (the Facility) which is administered and operated by the City Department of Environmental Services. The Facility treats an average of 110 million gallons of wastewater per day and serves 1.4 million residents.⁶⁵ The City generates approximately 69.8 million gallons per day (mgd) of dry weather sewage flow. The City's capacity allocation at the Facility is approximately 108.6 mgd, leaving the City with approximately 38.8 mgd of excess treatment capacity.

There is an existing eight-inch sanitary sewer main along the South Fourth Street frontage, which may serve the project site. The project proposes two eight-inch sanitary sewer lines on-site which would connect to a new sanitary sewer manhole along South Fourth Street. The General Plan FEIR states that average wastewater flow rates are approximately 70 to 80 percent of domestic water use and 85 to 95 percent of business use (assuming no internal recycling or reuse programs). For the purposes of this analysis, wastewater flow rates are assumed to be 80 percent of the total on-site water use. The existing buildings are estimated to generate approximately 3,726 gpd of wastewater.

Storm Drainage

The City of San José owns and maintains the municipal stormwater drainage system which serves the project site. The lines that serve the project site drain into Guadalupe River and carry stormwater from the storm drains into San Francisco Bay. The project site is approximately 0.5 miles east of Guadalupe River. There is no overland release of stormwater directly into any water body from the project site.

Currently, the project site is 86 percent (approximately 16,883 square feet) covered with impervious surfaces. There is an existing 54-inch reinforced concrete pipe (RCP) storm drain main along the South Fourth Street project frontage, which may serve the project site. The project proposes a 12-inch storm drain line which would connect to the existing 54-inch RCP.

Solid Waste

Santa Clara County's Integrated Waste Management Plan (IWMP) was approved by the California IWMB in 1996 and was reviewed in 2004 and 2007. Based on the IWMP, the County has adequate landfill capacity. In October 2007, the San José City Council adopted a Zero Waste Resolution which set a goal of 75 percent waste diversion by 2013 and zero waste by 2022. The City landfills

⁶⁴ Water usage rates were calculated using CalEEMod Appendix D (Apartments Low-Rise and Single-Family Housing). CalEEMod. "Table 9.1: Water Use Rates." Accessed August 12, 2020.

<http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixd.pdf>.

⁶⁵ City of San José. San José-Santa Clara Regional Wastewater Facility. Accessed August 12, 2020.

<http://www.sanjoseca.gov/?nid=1663>.

approximately 700,000 tons per year of solid waste including 578,000 tons per year at landfill facilities in San José. The total permitted landfill capacity of the five operating landfills in the City is approximately 5.3 million tons per year. According to the IWMP, the County has adequate disposal capacity beyond 2030.⁶⁶

All solid waste in San José is landfilled at Newby Island Sanitary Landfill (NISL). The City has an existing contract with NISL through December 31, 2020 with the option to extend the contract for as long as the landfill is open. The estimated closure date for NISL is 2041.⁶⁷ The City has an annual disposal allocation for 395,000 tons per year. As of December 2019, NISL had approximately 14.6 million cubic yards of capacity remaining.⁶⁸

The site currently contains two apartment buildings and a single-family residence that generate approximately 89 pounds of solid waste per day.⁶⁹

4.19.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Have insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

⁶⁶ Santa Clara County. *Five-Year CIWMP/RAIWMP Review Report*. June 2016.

⁶⁷ North, Daniel. General Manager, Republic Services. Personal communications. November 14, 2019.

⁶⁸ Ibid.

⁶⁹ CalRecycle. "Estimated Solid Waste Generation Rates." Accessed August 4, 2020.

<https://www2.calrecycle.ca.gov/WasteCharacterization/General/Rates>. Based on the generation rate of 5.31 pounds per unit per day for multi-family units and 9.8 pounds per unit per day for single-family units.

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
Would the project:					
d) Generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Be noncompliant with federal, state, or local management and reduction statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Similar to capacity build out evaluated in the Downtown Strategy 2040 FEIR, the proposed project would result in less than significant utilities and service systems impacts, as described below.

a) Would the project require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?

As proposed, the project would construct up to 240 dwelling units and would use approximately 69,849⁷⁰ gallons of water per day, a net increase of 65,192 gpd compared to existing conditions. Although water demand could exceed water supply during dry and multiple dry years after 2025 from full build out of the downtown, the Downtown Strategy 2040 FEIR concluded that with the implementation of existing regulations and General Plan policies, water demand would not exceed water supply. Therefore, implementation of the proposed project would not require or result in the expansion of the existing water conveyance system or the construction of new infrastructure.

The proposed project is estimated to generate 69,849⁷¹ gpd of wastewater. The proposed project would connect to the City's existing sanitary sewer system. The project would comply with all applicable Public Works requirements to ensure sanitary sewer lines would have capacity for sewer services required by the proposed project. The proposed project would dispose of wastewater at the Facility which has adequate capacity to accommodate the increased demand created by the project. Since the proposed development is consistent with planned growth in the downtown area, the project would not exceed the City's allocated capacity at the Facility.

Impervious surfaces on-site would increase by approximately nine percent (1,764 square feet) under project conditions. The existing storm drainage system has sufficient capacity to support the current site conditions. All new and redevelopment projects, including the project, regardless of size and land use would be required to implement post-construction BMPs and TCM consistent with City Policy

⁷⁰ Water usage rates were calculated using CalEEMod Appendix D (Apartments High-Rise). CalEEMod. "Table 9.1: Water Use Rates." Accessed August 12, 2020. <http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixd.pdf>.

⁷¹ Assumes wastewater is equal to total potable water use due little to no landscaping.

No. 6-29, Post-Construction Urban Runoff Management. Additionally, the project would be required to comply with the RWQCB MRP (refer to *Section 4.10 Hydrology and Water Quality*).

The project would comply with CALGreen and the City's Private Sector Green Building Policy and would be consistent with planned growth in the Downtown Strategy 2040. Additionally, the project would comply with the policies and regulations identified in the Downtown Strategy 2040 FEIR. The project would utilize existing utility connections to connect to the City's water, wastewater, storm drainage, electric, natural gas, and telecommunications facilities. Although the project would increase the demand on existing facilities in the City, relocation of existing or construction of new facilities would not be needed to serve the proposed project. As a result, the proposed project would have a less than significant impact on these facilities. **[Same Impact as Approved Project (Less Than Significant Impact)]**

b) Would the project have insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?

Water demand could exceed water supply with implementation of the General Plan during dry and multiple dry years after 2025. Although the projected water demand would increase by 3.19 percent, SJW concluded that the increase was already accounted for in SJW's 2015 UWMP. The Downtown Strategy 2040 FEIR concluded that implementation of General Plan policies and existing regulations would substantially reduce demand for water generated by current and future development. With implementation of the CALGreen requirements and the City's Private Sector Green Building Policy, there would be sufficient water supplies available to serve the project and any reasonably foreseeable future development in downtown. **[Same Impact as Approved Project (Less than Significant Impact)]**

c) Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

The proposed project would be consistent with planned growth from build out of the Downtown Strategy 2040. Development allowed under the Downtown Strategy 2040 would not exceed the City's allocated capacity at the Facility; therefore, implementation of the project would have adequate capacity to serve the project's projected demand in addition to the Facility's existing commitments. **[Same Impact as Approved Project (Less than Significant Impact)]**

d) Would the project generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

The project would generate approximately 1,274⁷² pounds of solid waste per day, a net increase of 1,185 pounds per day, compared to existing conditions. Based on the Downtown Strategy FEIR,

⁷² CalRecycle. "Estimated Solid Waste Generation Rates." Accessed August 4, 2020. <https://www2.calrecycle.ca.gov/WasteCharacterization/General/Rates>. Based on the generation rate of 5.31 pounds per unit per day for multi-family units.

build out of the Downtown Strategy 2040 could generate approximately 102,572 tons of solid waste per year. As mentioned previously, NISL had approximately 14.6 million cubic yards of capacity remaining in December 2019. Given NISL's remaining capacity, the City's contract with NISL, the amount of waste the City disposes at NISL, and the amount of waste the project is estimated to generate, there is sufficient capacity at NISL to serve the project.

Future development under the Downtown Strategy 2040, including the proposed project, would be required to comply with existing federal, state, and local programs and regulations. Therefore, implementation of the project would not generate solid waste in excess of state or local standards.

[Same Impact as Approved Project (Less than Significant Impact)]

e) Would the project be noncompliant with federal, state, or local management and reduction statutes and regulations related to solid waste?

Consistent with CALGreen requirements, the proposed project would be required to provide on-site recycling facilities, develop a construction waste management plan, salvage at least 50 percent of nonhazardous construction/demolition debris (by weight), and implement other waste reduction measures. Additionally, the estimated increases in solid waste generation from future development would be avoided through implementation of the City's Zero Waste Strategic Plan. The Zero Waste Strategic Plan, in combination with existing regulations and programs, would ensure that the proposed project would not result in significant impacts on solid waste disposal capacity in excess of state or local standards or in excess of NISL capacity. **[Same Impact as Approved Project (Less than Significant Impact)]**

4.20 WILDFIRE

4.20.1 Environmental Setting

Based on the Fire Hazard Severity Zone (FHSZ) Map, the project site is not located within a FHSZ area.⁷³

4.20.2 Impact Discussion

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, Would the project:					
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines, or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The project site is not located in or near state responsibility areas or lands classified as very high fire hazard severity zones; therefore, the project would not result in wildfire impacts. **[Same Impact as Approved Project (No Impact)]**

⁷³ CALFIRE. "Wildland Hazard & Building Codes." Accessed March 24, 2020. <http://egis.fire.ca.gov/FHSZ/>.

4.21

MANDATORY FINDINGS OF SIGNIFICANCE

	New Potentially Significant Impact	New Less than Significant with Mitigation Incorporated	New Less than Significant Impact	Same Impact as Approved Project	Less Impact than Approved Project
a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?

Implementation of the proposed project could result in a significant impact air quality, cultural resources, hazards and hazardous materials, and noise. The project's impact on the identified resource sections are evaluated in detail in the SEIR.

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

Under Section 15065(a)(3) of the CEQA Guidelines, a lead agency shall find that a project may have a significant effect on the environment where there is substantial evidence that the project has potential environmental effects “that are individually limited, but cumulatively considerable.” As defined in Section 15065(a)(3) of the CEQA Guidelines, cumulatively considerable means “that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”

Aesthetics

The geographic area for cumulative aesthetic impacts is the immediate project vicinity. As discussed in *Section 3.1 Air Quality*, the proposed project would meet the criteria of SB 743 because 1) the project would construct a residential project and 2) the project is located within a transit priority area.⁷⁴ As a result, the project would have a less than significant aesthetics impact consistent with Public Resources Code Section 21099.

Agriculture and Forestry

The geographic area for cumulative agricultural and forestry resource impacts is the County of Santa Clara. The project would have no impact on agricultural and forestry resources and, therefore, the project would not have a cumulatively considerable contribution to any impacts to agriculture and forestry resources.

Energy

The geographic area for cumulative energy impacts is the City of San José. Past, present, and future development projects contribute to the state’s energy impacts. If the project is determined to have a significant energy impact, it is concluded that the impact is cumulatively considerable. As discussed in *Section 4.6, Energy*, the project would not result in significant energy impacts. Therefore, the project would not have a cumulatively considerable contribution to a cumulative energy impact.

Geology and Soils

The geographic area for cumulative geological impacts would be locations within 1,000 feet of the project site. The projects would comply with the identified Standard Permit Conditions to reduce seismic-related impacts on people and/or property. In addition, a geotechnical exploration will be prepared for the project (as a Standard Permit Condition) to avoid and/or reduce any geologic and soil hazards. Therefore, implementation of the project would not result in a cumulatively considerable contribution to any geology and soils impacts.

Greenhouse Gas Emissions

Past, present, and future development projects (including the cumulative projects) worldwide contribute to global climate change. No single project is sufficient in size, by itself, to change the global average temperature. Therefore, due to the nature of GHG impacts, a significant project

⁷⁴ Metropolitan Transportation Commission. *Transit Priority Areas (2017)*. Accessed January 21, 2020. http://opendata.mtc.ca.gov/datasets/d97b4f72543a40b2b85d59ac085e01a0_0?geometry=-121.930%2C37.306%2C-121.898%2C37.312.

impact is a significant cumulative impact. The project is consistent with the General Plan land use designation for the site, planned growth from build out of the Downtown Strategy 2040 FEIR, and would comply with the 2030 GHGRS Compliance Checklist. Therefore, the project would not result in a cumulatively considerable contribution to a GHG impact.

Hydrology and Water Quality

The geographic area for cumulative hydrology and water quality impacts is the Guadalupe River watershed. The project would be required to implement the identified Standard Permit Conditions (refer to *Section 4.10 Hydrology and Water Quality*) to reduce impacts to water quality. For these reasons, the project would not result in a cumulatively considerable contribution to hydrology or water quality impacts.

Land Use

The geographic area for cumulative land use impacts is the downtown area. As discussed in *Section 4.11 Land Use and Planning*, the project would not divide an established community and is consistent with the General Plan land use designation, applicable General Plan policies, and zoning designation for the site. For this reason, the project would not have a cumulatively considerable contribution to a significant cumulative land use and planning impact.

Mineral Resources

As mentioned in *Section 4.12 Mineral Resources*, the project site is not located within a mineral resource recovery site. Since the project would not result in impacts to mineral resources, the project would not have a cumulatively considerable contribution to any mineral resources impacts.

Population and Housing

The geographic area for cumulative population and housing impacts is the City of San José. The project is part of planned growth anticipated from full build out of the Downtown Strategy 2040 plan, and would not induce substantial unplanned population growth. Although the existing residents would be displaced, the property owner would be required to comply with all applicable requirements of the City's Ellis Act Ordinance. For these reasons, the project would not have a cumulatively considerable contribution to a population and housing impact.

Public Services/Recreation

The geographic area for cumulative public services and recreation impacts is the City of San José. All cumulative projects would be built in conformance with current building codes would be required to be maintained in accordance with applicable City policies identified in the Downtown Strategy 2040 plan. As a Standard Permit Condition, the project would pay applicable PDO/PIO fees. Therefore, the project would not result in a cumulatively considerable contribution to public services impacts.

Transportation

The Downtown Strategy 2040 FEIR concluded that upon full build out under the Downtown Strategy 2040 Plan would result in low VMT. The proposed project would be consistent with planned growth from the Downtown Strategy 2040 and would not have a cumulatively considerable contribution to a significant cumulative VMT impact. Additionally, the project would not result in significant transportation impacts as discussed in *Section 4.17 Transportation*. The project would not result in a cumulatively considerable contribution to transportation impacts.

Tribal Cultural Resources

The geographic study area for cumulative impacts to tribal cultural resources is the surrounding area (within 1,000 feet of the project site). No tribal cultural features, including sites, features, places, cultural landscapes or sacred place have been identified at the site. Additionally, the City of San José sent notification of the project on date and has yet to receive any request for consultation for this project from the Ohlone Tribe or any other tribal representative. As a result, the project would not contribute to a cumulative impact to tribal resources.

Utilities

The geographic area for cumulative utility and service systems is the City's boundary.

Water Supply

As discussed in its respective section, the proposed project would use approximately 64,611 gpd of water. The Downtown Strategy 2040 FEIR concluded that the City will ensure that the water supply would adequately serve the new development and new or expanded entitlements for water supplies would not be required. The project would not contribute to a cumulative water supply impact.

Wastewater Treatment/Sanitary Sewer System

The project would comply with all applicable Public Works requirements to ensure sanitary sewer and water mains would have capacity for water and sewer services required by the proposed project. In addition, the Facility has adequate capacity to accommodate the increased demand created by the project. As a result, the project would not contribute considerably to a significant cumulative wastewater impact.

Solid Waste

The NISL had approximately 14.6 million cubic yards of capacity remaining in December 2019. Given NISL's remaining capacity, the City's contract with NISL, the amount of waste the City disposes at NISL, and the amount of waste the project is estimated to generate, there is sufficient capacity at NISL to serve the project. For these reasons, the proposed project would not contribute considerably to a significant cumulative solid waste impact.

Wildfire

The project site is not located within or adjacent to a state responsibility areas or lands classified as very high fire hazard severity zones; therefore, the project would not result in cumulative wildfire impacts.

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Consistent with Section 15065(a)(4) of the CEQA Guidelines, a lead agency shall find that a project may have a significant effect on the environment where there is substantial evidence that the project has the potential to cause substantial adverse effects on human beings, either directly or indirectly. Under this standard, a change to the physical environment that might otherwise be minor must be treated as significant if people would be significantly affected. This factor relates to adverse changes to the environment of human beings generally, and not to effects on particular individuals. While changes to the environment that could indirectly affect human beings would be represented by all of the designated CEQA issue areas, those that could directly affect human beings include air quality, hazardous materials, and noise. Implementation of applicable regulations and policies, Standard Permit Conditions, and mitigation measures would reduce the impacts to a less than significant level. No other direct or indirect adverse effects on human beings have been identified.

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SECTION 6.0 LEAD AGENCY AND CONSULTANTS

6.1 LEAD AGENCY

City of San José

Department of Planning, Building and Code Enforcement

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Phase I Environmental Site Assessment

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Historic Assessment