

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN JOSE CERTIFYING THE SEELY AVENUE MIXED-  
USE PROJECT ENVIRONMENTAL IMPACT REPORT AND  
MAKING CERTAIN FINDINGS CONCERNING  
SIGNIFICANT IMPACTS, MITIGATION MEASURES, AND  
ALTERNATIVES, AND ADOPTING A STATEMENT OF  
OVERRIDING CONSIDERATIONS AND A RELATED  
MITIGATION MONITORING AND REPORTING PROGRAM,  
ALL IN ACCORDANCE WITH THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT, AS AMENDED**

**WHEREAS**, the City of San José (“City”), acting as lead agency under the California Environmental Quality Act (“CEQA”), prepared an environmental impact report (“EIR”) for the Seely Avenue Mixed-Use Project (File Nos. PDC21-035, PD22-002, PT22-003 & ER21-284); and

**WHEREAS**, the EIR analyzed the environmental impacts of the proposed Seely Avenue Mixed-Use Project, which includes a Planned Development Rezoning to an Industrial Park Planned Development Zoning District (IP(PD)) and a Planned Development Permit for development of 1,472 residential units, 18,965 square feet of general neighborhood retail space, a 2.5-acre public park on a 22-acre site located at 0 Seely Avenue in the City of San José, California, and the dedication of an approximately 0.11 acre site to the San José Municipal Water System for the development of a domestic water well (the “Project”); and

**WHEREAS**, the City is the lead agency for the Project and has prepared a Final Environmental Impact Report for the Project pursuant to and in accordance with CEQA, which the Final EIR is comprised of the Draft EIR and the First Amendment to the Draft EIR (collectively, the “FEIR”); and

**WHEREAS**, on June 26, 2024, the Planning Commission of the City of San José reviewed the FEIR prepared for the Project and recommended to the City Council that it finds the environmental clearance for the proposed Project was completed in accordance with the requirements of CEQA and further recommended the City Council adopt a resolution certifying the FEIR; and

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

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

1. The foregoing recitals are true and correct, and are incorporated herein as if fully set forth in the body of this Resolution; and
2. The City Council finds and certifies that the FEIR has been prepared and completed in compliance with CEQA; and
3. The City Council was presented with, and has independently reviewed and analyzed the FEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the FEIR and the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgement of the City as lead agency for the Project, and designated the Director of Planning, Building, and Code Enforcement ("Director") at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California 95113, as the custodian of documents and record of proceedings on which the decision of the City is based; and
4. The City Council recognizes that the FEIR contains additions, clarifications, modifications, and other information in response to comments on the Draft EIR or obtained after the Draft EIR was issued and circulated for public review and hereby

finds such changes and additional information are not significant new information as that phrase is described under CEQA because such changes and additional information do not indicate that any of the following would result from approval and implementation of the Project: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft EIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented, or (iii) any feasible alternative considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented; and

5. The City Council finds and determines that recirculation of the FEIR for further public review and comment is not warranted or required under the provisions of CEQA; and
6. The City Council makes the following findings with respect to potentially significant environmental impacts of the Project, as identified in the FEIR with the understanding that all of the information in this Resolution is intended as a summary of the full administrative record supporting the FEIR; which full administrative record should be consulted for the full details supporting these findings.

## **SEELY AVENUE MIXED-USE PROJECT SIGNIFICANT ENVIRONMENTAL IMPACTS**

### **Air Quality**

**Impact:**      **Impact AQ-1:** Emissions from Project operations would result in 54.82 pounds/day of Reactive Organic Gases (ROG), which exceeds the Bay Area Air Quality Management District (BAAQMD) threshold of 54 pounds/day.

**Mitigation:**   **MM AQ-1:** Prior to the issuance of any grading, building or demolition permits, the Project applicant shall develop and implement a construction monitoring and operations plan that demonstrates use of super-compliant volatile organic compound or "VOC" (i.e., reactive organic gases [ROG]) coatings, that are below current BAAQMD requirements (i.e., Regulation 8, Rule 3: Architectural Coatings), for at least 90 percent of all residential and nonresidential interior paints and 80 percent of exterior paints. This includes all architectural coatings applied during both construction and reapplications throughout the Project's operational lifetime. At least 90 percent and 80 percent of coatings applied for interior and exterior,

respectively, must meet a “super-compliant” VOC standard of less than 10 grams of VOC per liter of paint.

For reapplication of coatings during the Project’s operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low VOC coatings to be used. Examples of “super-compliant” coatings are contained in the BAAQMD’s website. The plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director’s designee prior to the issuance of any demolition, grading, or building permits (whichever occurs first).

**Finding:** With implementation of MM AQ-1, the Project’s impact from operational ROG emissions would be reduced to a less than significant level. **(Less Than Significant Impact with Mitigation Incorporated)**

**Facts in Support of the Finding:** With implementation of MM AQ-1, the Project’s operation ROG emissions of architectural coatings would be reduced by 9 percent to 49.22 pounds/day and would no longer approach exceedance of the single-source threshold of 54 pounds/day. Therefore, the impact of the Project’s operations would be reduced to a less than significant level.

### **Biological Resources**

**Impact:** **Impact BIO-1:** Project construction, including the removal of vegetation, shrubs/trees, and structures, that would occur during the migratory bird nesting season could result in a significant impact to nesting bird species.

**Mitigation:** **MM BIO-1:**

- **Avoidance:** Prior to the issuance of any tree removal, grading, building or demolition permits (whichever comes first), the Project applicant shall schedule all 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 1 through August 31 (inclusive). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching.
- **Nesting Bird Surveys:** If construction activities cannot be scheduled to occur between September 1 and January 31, pre-construction surveys for nesting birds and raptors shall be completed by a qualified ornithologist or biologist to ensure that no nests shall be disturbed during Project implementation. The 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 1 through April 30 inclusive), and no more than 30 days prior to the initiation these activities during the late

part of the breeding season (May 1 through August 31 inclusive). During this survey, the qualified ornithologist/biologist shall inspect all suitable nesting habitat on the Project site and within the zone of influence (the area immediately surrounding the Project site that supports suitable nesting habitat that could be impacted by the Project due to visual or auditory disturbance associated with the removal of vegetation and construction activities scheduled to occur during the nesting season).

- **Buffer Zone:** If an active nest is found, the qualified ornithologist/biologist shall determine an appropriately sized species specific buffer around the nest in which no work will be allowed until the young have successfully fledged. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffer sizes may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest. The construction contractor shall establish a construction free buffer zone around the nest as determined by the qualified ornithologist/biologist to ensure that migratory bird and raptor nests shall not be disturbed during Project construction. This buffer shall remain in place until such a time as the young have been determined (by a qualified ornithologist/biologist) to have fledged. Any birds that begin nesting amid construction activities shall be assumed to be habituated.
- **Reporting:** Prior to the initiation of any tree removal, or approval of any grading or demolition permits (whichever occurs first), the qualified ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Planning, Building, and Code Enforcement or the Director's designee.

**Finding:** Implementation of MM BIO-1.1 would reduce impacts to migratory birds to a less than significant level. **(Less Than Significant with Mitigation Incorporated)**

**Facts in Support of the Finding:** Tree removal would be scheduled to avoid the nesting season or, pre-construction surveys would be completed, and a report indicating the results of the survey and any designated buffer zones would be submitted to the Director or Director's designee prior to any tree removal, or approval of any grading or demolition permits (whichever occur first) to reduce impacts to nesting birds to a less than significant level. Conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests will ensure that raptor or migratory bird nests are not disturbed during Project construction. The size of the buffer zones will be determined by consultation between a qualified specialist/wildlife biologist and based on scientific evidence and best

management practices. Compliance with Mitigation Measure MM BIO-1.1 will avoid impacts to nesting bird species.

**Impact:** **Impact BIO-2:** Project construction, including the removal of trees and building demolition, could negatively impact roosting bat habitat if done during the maternity roosting season (May 1 to September 15).

**Mitigation: MM BIO-2:**

- **Avoidance:** Prior to the issuance of any tree removal, grading, building or demolition permits (whichever comes first), for all project activities planned in or adjacent to potential bat roosting habitat, a qualified biologist shall conduct daytime and evening acoustic surveys in addition to extensive visual surveys of potential habitat for special-status bats at least seven days prior to initiation of project activities.  
To ensure that special-status bats have left potential roosting refugia, work shall occur over the course of two days. On the first day, smaller limbs or items from the identified trees or structures shall be brushed back or modified in the late afternoon. This disturbance should cause any potential roosting bats to seek other roosts during their nighttime foraging. The remainder of the refugia item can then be further limbed or removed as needed on the second day as late in the afternoon as feasible. Comparable demolition techniques shall be used to dismantle occupied structures on the project site.  
Based on the results of these initial surveys, one or more of the following shall occur:
- **No Detection:** If it is determined that bats are not present on or adjacent to the Project site, no additional mitigation is required. If no bats are found roosting, bat exclusion devices will be installed to prevent bats from taking up occupancy of the vacant structures prior to the onset of construction.
- **Buffer Zone:** If it is determined that bats are utilizing the Project site or adjacent trees and may be impacted by the Project, pre-construction surveys shall be conducted within 50 feet of construction limits no more than 30 days prior to the start of construction. If, according to the bat specialist/wildlife biologist, no bats or bat signs are observed in the course of the pre-construction surveys, the qualified bat specialist /wildlife biologist shall determine if disturbance will jeopardize the roost (i.e., maternity, foraging, day, or night).
- **Roosting:** If a single bat and/or only adult bats are roosting, removal of trees or structures may proceed after the bats have been safely excluded from the roost. Exclusion techniques shall be determined by the qualified bat specialist /wildlife biologist and would depend on roost type. If an active maternity roost is detected, avoidance is preferred.

Work in the vicinity of the roost (buffer to be determined by qualified bat specialist or wildlife biologist) shall be postponed until the qualified bat specialist /wildlife biologist monitoring the roost determines that the young have fledged and are no longer dependent on the roost. The monitor shall ensure that all bats have left the area of disturbance prior to initiation of pruning and/or removal of trees that would disturb the roost. If a roost of bats is found in any of the existing structures, the bats shall be safely evicted under the direction of a qualified biologist. Eviction of bats will occur at night to decrease the likelihood of predation (compared to eviction during the day). Eviction will occur outside of the maternity season but will not occur during long periods of inclement or cold weather (as determined by the qualified biologist) when prey are not available or bats are in torpor. Eviction activities will be performed under the supervision of a qualified biologist.

- **Reporting:** Prior to the issuance of any grading, building or demolition permits (whichever comes first), the qualified bat specialist/wildlife biologist shall submit a 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 for the regionally known bat species with suitable on-site roosting habitat.

**Finding:** Implementation of MM BIO-1.2 would reduce impacts to roosting bat habitat to a less than significant level. **(Less Than Significant with Mitigation Incorporated)**

**Facts in Support of the Finding:** Conducting pre-construction surveys will ensure that roosting bat habitats are not disturbed during Project construction. The size of the buffer zones will be determined by consultation between a qualified specialist/wildlife biologist and based on scientific evidence and best management practices. Compliance with Mitigation Measure MM BIO-1.2 will avoid impacts to roosting bat habitat.

### **Cultural Resources**

**Impact:** **Impact CR-2:** The Project may impact Native American and historic-era archaeological deposits during excavation and construction activities.

**Mitigation:** **MM CR-2.1: Retention of a Qualified Archaeologist.** Prior to issuance of any grading, building or demolition permits, the Project applicant shall retain a qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (codified in 36 Code of Federal Regulations [CFR] Part 61; 48 Federal Register [FR] 44738-44739) to oversee and ensure that all mitigation related to archaeological resources is carried out.

**MM CR-2.2: Tribal Cultural Resources Awareness Training.** Prior to issuance of any demolition or grading permits, whichever occurs first, the Project applicant shall be required to submit evidence that a Cultural Awareness Training has been provided to construction personnel prior to ground disturbances. The training shall be facilitated by a qualified project archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

**MM CR-2.3: Native American Monitoring.** A qualified Native American Monitor, registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, in collaboration with a qualified Archeologist shall also be present during applicable earthmoving activities such as, but not limited to, trenching, initial or full grading, boring onsite, or major landscaping.

**MM CR-2.4: Final Disposition of Cultural Materials.** For any archaeological materials recovered from the Project site during construction, the following shall apply:

- Disposition of Native American archaeological materials shall be determined through consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, the Director of Planning, Building and Code Enforcement or the Director's designee, and the qualified archaeologist. Disposition of human remains and associated grave goods shall be determined through consultation between the Most Likely Descendant and the landowner.
- Disposition of significant historic-era archaeological materials shall include the following options, in order of preference. Final disposition of these materials shall take into account input from descendant communities. (1) Curation at a repository accredited by the American Association of Museums that meets the standards outlined in 36 Code of Federal Regulations (CFR) 79.9; (2) Curation at a non-accredited repository as long as it meets the minimum standards set forth by 36 CFR 79.9; (3) Donation of the collection to a public, non-profit institution



with a research interest in the materials; (4) Donation to a local school or historical society in the area for educational purposes.

**Finding:** With Implementation of MM CR-2.1 through CR-2.4, the Project will have less than significant impacts to Native American and historic-era archaeological deposits, if present on site, during excavation and construction activities. **(Less Than Significant with Mitigation Incorporated)**

**Facts in Support of the Finding:** Development of the Project would require construction activities such as grading and excavation, which could result in the accidental destruction or disturbance of Native American and historic-era archaeological deposits. Implementation of MM CR-2.1 through CR-2.4 would reduce impacts to archaeological resources to less than significant levels by requiring retention of a qualified archeologist, cultural awareness training, and retention of a qualified Native American Monitor to be present during earthmoving activities like trenching, initial or full grading, boring onsite, or major landscaping. Moreover, procedures for the disposition of Native American or historic-era archeological materials recovered, if any, will be implemented in the event that archaeological materials are recovered from the Project site during construction.

### **Hazards and Hazardous Materials**

**Impact:** **Impact HAZ-1:** The Project would result in a potentially significant impact from the removal of the existing heating oil underground/above-ground storage tanks.

**Mitigation:** **MM HAZ-1:** Prior to the issuance of any grading, demolition, or building permits (whichever occurs first), the Project applicant shall obtain proper permits from the Santa Clara County Department of Environmental Health (SCCDEH) and San José Fire Department prior to removal of the underground storage tank (UST) and aboveground storage tank (ASTs). Collect and analyze sampling beneath the tanks after the removals under the direction of the SCCDEH and provide confirmation of the UST removal to the City's Planning, Building and Code Enforcement Department. If the SCCDEH has determined the storage tanks have leaked, the Project applicant shall perform all subsequent investigation and remediation as required under SCCDEH oversight to meet regulatory requirements and ensure the Project site is safe for the development.

**Mitigation:** **MM HAZ-1.2:** Due to the site's history and the presence of miscellaneous drums, aboveground storage tanks (ASTs), and debris, the Project applicant shall prepare a Soil Management Plan (SMP) to minimize health

risks to construction workers and future residences and site occupants. The SMP shall be prepared prior to issuance of any grading demolition or building permits (whichever occurs first) to establish appropriate management practices for handling impacted soil and/or groundwater, if encountered, and shall include the following at a minimum:

- A detailed discussion of the Project site background;
- Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program;
- Procedures to follow, including regulatory notification, if evidence of an unknown historic release of hazardous materials is discovered during excavation or demolition; and
- A health and safety plan (HSP) for each contractor working at the Project site, in an area below grade, that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.

**Finding:** With implementation of MM HAZ-1.1 and 1.2, the Project will have a less than significant hazardous materials impact from the removal of the existing heating oil underground/above-ground storage tanks. **(Less Than Significant with Mitigation Incorporated)**

**Facts in Support of the Finding:** The required sampling beneath the storage tanks after removals will determine whether any leaks have occurred. If so, the Project applicant shall perform all subsequent investigation and remediation as required under SCCDEH oversight to meet regulatory requirements, ensure the Project site is safe for the development, and ensure potential impacts on site are reduced to a less than significant level. The required soil management plan will provide appropriate management practices for handling impacted soil and/or groundwater, if encountered, to ensure potential impacts to construction workers and nearby residential receptors are minimized to a less than significant level.

**Impact:** **Impact HAZ-2:** The Project could result in a potentially significant impact from the potential for harmful vapors (benzene, vinyl chloride, and TCE) volatilizing from contaminated soil and migrating into structures, leading to possible adverse health impacts to residents.

**Mitigation:** **MM HAZ-2:** In connection with the construction of each building on the Project site (i.e., Building A, Building B, Building C, Townhomes, and Affordable Apartment Building), the Project applicant shall, in accordance

with the SMP discussed in MM HAZ-1.2, obtain regulatory oversight with SCCDEH and determine if potential vapor intrusion risks exist from the identified VOCs and then, as necessary, evaluate and/or mitigate any such potential vapor intrusion risks through the installation of vapor mitigation measures. The Project applicant shall comply with all applicable reporting, testing, mitigation, and/or operation & maintenance protocols documented in the SMP and Vapor Intrusion Mitigation System Pre-Occupancy Verification Monitoring Report (if required) and any other reports required by the SCCDEH. Prior to occupancy, the applicant shall submit to the City evidence of SCCDEH's written approval of the SMP and the Vapor Intrusion Mitigation System Pre-Occupancy Verification Completion and Monitoring Report and other reports (if required).

**Finding:** With implementation of MM HAZ-2, the Project will have a less than significant hazardous materials impact to construction workers and nearby residential receptors. **(Less Than Significant with Mitigation Incorporated)**

**Facts in Support of the Finding:** If vapor intrusion risk is present in connection with construction of any building on the Project site, the Project applicant will evaluate and/or mitigate any such potential vapor intrusion risks through the installation of vapor mitigation measures. The required reporting, testing, mitigation, and/or operation & maintenance protocols documented in the SMP and Vapor Intrusion Mitigation System Pre-Occupancy Verification Monitoring Report, and any other reports required by the SCCDE, will ensure that potential hazardous materials impacts to construction workers and nearby residential receptors are minimized to a less than significant level.

**Impact:** **Impact HAZ-3:** Due to its agricultural history, soils on the Project site contain elevated levels of lead and arsenic that exceed the applicable regulatory environmental screening levels (ESLs) within certain areas of the Project site. If the identified soil impacts are not mitigated, construction of the Project could result in exposure of construction workers, adjacent properties, and future site occupants to pesticide contamination.

**Mitigation:** **MM HAZ-3:** Prior to issuance of any demolition and/or grading permits, the Project applicant shall enter the SCCDEH Site Cleanup Program, or the Department of Toxic Substances Control (DTSC) to obtain regulatory oversight of the mitigation of contaminated soil to ensure the Project site is safe for construction workers and the public after development. A Removal Action Plan, SMP or other similarly titled report describing the remediation must be prepared and implemented to document the removal and/or capping of contaminated soil. All work and reports produced shall be

performed under the applicable regulatory oversight and approval. Evidence of regulatory oversight, and approved plan(s) shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City for approval prior to the issuance of any grading permits.

**Finding:** With the implementation of MM HAZ-3, the Project would have a less than significant hazardous materials impact to construction workers and nearby residential receptors. **(Less Than Significant with Mitigation Incorporated)**

**Facts in Support of the Finding:** The required regulatory oversight and approvals, including a Removal Action Plan, SMP, or other similar document will ensure that potential hazardous materials impacts related to the removal and/or capping of contaminated soil would be reduced to a less than significant level.

### Noise

**Impact:** **Impact NSE-1:** Construction of the Project could last longer than 12 months and would require work on Saturday between 8:00 am and 5:00 pm, which would result in a potentially significant, temporary construction noise impact.

**Mitigation:** **MM NSE-1:** Prior to the issuance of any grading or building demolition permits, the Project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistic plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits. As a part of the construction noise logistics plan, construction activities for the Project shall include, at a minimum, the following best management practices:

- Prohibit pile driving.
- Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence (San José Municipal Code Section 20.100.450). Construction outside of these hours may be approved through a development permit

based on a site-specific “construction noise mitigation plan” and a finding by the Director that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

- Construct solid plywood fences or similar along the northwest boundary of the site adjacent to residences to shield adjacent residential land uses from ground-level construction equipment and activities. The temporary 8-foot noise barrier shall be solid over the face and at the base of the barrier in order to provide a 5 dBA noise reduction.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Unnecessary idling of internal combustion engines shall be strictly prohibited.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors.
- Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses
- Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent businesses, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
- Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem. Conspicuously, post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

**Finding:** With implementation of MM NSE-1, construction of the Project will have a less than significant noise impact. **(Less Than Significant Impact with Mitigation Incorporated)**

**Facts in Support of the Finding:** The Project will prepare and implement the required construction noise logistics plan, which will include best management practices. Among other best management practices, prohibiting pile driving, constructing solid plywood fences or similar along the northwest boundary of the site adjacent to residences, and equipping all internal combustion engine-driven equipment with intake and exhaust mufflers, will

reduce the Project's construction noise impact to a less than significant level.

### **Transportation and Traffic**

**Impact:** **Impact TR-1:** The residential component of the Project would generate vehicle miles traveled (VMT) of 11.19 per capita, which would exceed the City's relevant residential VMT threshold of 10.12 VMT per capita.

**Mitigation:** **MM TR-1.1:** Prior to the issuance of any demolition, grading and/or building permits, the Project applicant shall prepare project construction plans that illustrate the design of the Project site enhancements, and shall coordinate with the City's Parks, Recreation, & Neighborhood Services Department, Department of Transportation, and the Department of Public Works to incorporate the following:

- **Bike Access Improvements:** Construct a Class II bike lane along the opposite side of Seely Ave (southbound direction). Coordination with the City would be needed to implement this non-frontage bicycle network improvements.
- **Pedestrian Network Improvements:** Construct a new crosswalk on Seely Avenue and Americans with Disabilities Act (ADA) compliant curb ramps (off-site pedestrian improvements). The Project shall provide a trail connection between Building B and the townhomes. Clear pedestrian paths between the trail connections and the proposed on-site public park shall be provided.
- **Car Sharing Program:** Provide either subsidies or promotions for a car sharing program (e.g., Zipcar, Car2Go, GetAround, etc.) for residents of the apartments upon request. Dedicated car share vehicle parking would also be provided at a preferential on-site location within each apartment building. All residents of the apartments (both market rate and affordable apartments) with a valid driver's license would be eligible to participate in the car sharing program.
- **Traffic Calming Measures:** The Project would construct new bicycle facilities on both sides of Seely Avenue. As a result of these improvements, the existing travel lane widths along Seely Avenue would be narrowed. Narrowing travel lane widths results in reduced vehicle speeds. Providing traffic calming and safety measures such as narrowing travel lane widths and adding signalized pedestrian crossings creates a safer environment and promotes walking and biking as alternatives to driving.
- **Unbundled Parking:** Provide 100 percent unbundled parking for the designated apartment spaces. Unbundles parking is separating the cost of parking from residential leases and allowing tenants to choose

whether to lease a parking space. With this approach those tenants without a vehicle would not be required to pay for parking that they do not want or need.

- **Voluntary Travel Behavior Change Program:** Provide a program that targets individual attitudes and behaviors of apartment residents towards travel and provides information and tools for residents to analyze and alter their travel behavior. Voluntary Travel Behavior Change programs include mass communication campaigns and travel feedback programs, such as travel diaries or feedback on calories burned from alternative modes of travel. This strategy encourages the use of shared ride modes, transit, walking, and biking, thereby reducing drive-alone vehicle trips and VMT. All residents/households would be provided with the information/tools necessary to fully participate in the Voluntary Travel Behavior Change program.
- **On-Site Transportation Demand Management (TDM) Administration and Services:** Designate a transportation coordinator who focuses on transportation issues and is responsible for implementing the TDM measures. The transportation coordinator would be a point of contact for residents should TDM-related questions arise and would be responsible for ensuring that residents are aware of all the transportation options available to them. The transportation coordinator would provide the following services and functions:
  - Provide new tenants with information brochures at the time of move-in. The welcome brochures should include information about public transit services, transit passes, bicycle maps, and other rideshare/carpool options.
  - Assist with carpool matching. The transportation coordinator should help match residents interested in carpooling.
  - Be knowledgeable enough to answer residents' TDM program related questions.
- **Information Board/Online Kiosk:** Provide an online kiosk with information regarding non-auto transportation alternatives. The online kiosk shall update key transportation information included in the welcome brochures. Transportation news and commuter alerts should be posted online. The website shall be operational as soon as the new buildings are ready for leasing.
- **Traffic Calming Measures:** The Project applicant shall be required to implement additional traffic calming measures following occupancy of the Project if City staff determines that the increase in traffic volume could create safety-related issues along the northern segment of Seely Avenue near the residential neighborhoods north of the Project site. If issues are identified following occupancy of the Project, City staff will require a focused traffic operations study of Seely Avenue to determine

the appropriate traffic calming measures that should be implemented by the Project. Additional traffic calming measures could include (but are not limited to) roadway striping, curb markings, enhanced crosswalks, signage, bulb-outs, chicanes, chokers, medians, and road bumps. Should the Project ultimately be required to implement traffic calming measures, the cost of such improvements shall not exceed \$450,000.

**MM TR-1.2:** Prior to the issuance of any building or occupancy permits for the apartment complex, the Project applicant shall provide a draft Transportation Demand Management (TDM) plan prior to issuance of Planning Permit for review and approval. Prior to clearance for building occupancy, a final TDM Plan shall be submitted to the City for approval. After the Project is constructed and occupied, the Project applicant shall identify a transportation coordinator. The transportation coordinator would be responsible for implementing the ongoing TDM program. The TDM Plan would need to be re-evaluated annually for the life of the Project. It is recommended that the designated transportation coordinator consult with City staff to ensure the monitoring and reporting meets the City's expectations. The TDM Coordinator shall be responsible for submitting the monitoring reports to the Director of the Department of Public Works or Director's designee and the Director of the Planning, Building and Code Enforcement Department or the Director's designee for the life of the Project.

**Finding:** With implementation of the MM TR-1.1 and 1.2, the Project would have a less than significant traffic and transportation impact. **(Less Than Significant Impact with Mitigation Incorporated)**

**Facts in Support of Finding:** Project construction plans will illustrate the design of Project site enhancements, including traffic and transportation improvement strategies like bike access improvements, pedestrian access improvements, a car-sharing program, and traffic calming measures. The Project will also prepare and implement a TDM plan. Implemented together, these mitigation measures will reduce the Project's traffic and transportation impact to a less than significant level.

## **SIGNIFICANT UNAVOIDABLE ENVIRONMENTAL IMPACTS**

### **Cultural Resources**

**Impact:** **Impact CR-1:** The Project includes the demolition of structures and site features that are collectively and individually eligible for listing under the California Register of Historical Resources (CRHR) and the San José Historic Resources Inventory as a Candidate City Landmark.



**Mitigation: MM CR-1.1:** Prior to issuance of any demolition permits or any other approval that would allow disturbance of the Project site, the Permittee shall prepare and submit, for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee in coordination with the City's Historic Preservation Officer, a Historic Resources Mitigation Action Plan (Action Plan) demonstrating that the all required steps, actions, and documents identified within this EIR have been satisfied in accordance with the Action Plan. The Action Plan shall outline the roles and responsibilities of the Permittee, City staff, and outside individuals, groups, firms, and consultants and timelines in carrying out required mitigation measures MM CR-1.2 to MM CR-1.6.

**MM CR-1.2:** Prior to the issuance of a demolition permit or any other approval that would allow ground disturbance on the Project site, all contributing buildings, structures, and landscape features to the eligible historic district and individually significant buildings on the property shall be documented in accordance with the guidelines established for the Historic American Buildings Survey (HABS) and shall consist of the following components:

- **Drawings** – prepare sketch floor plans.
- **Photographs** – Digital photographic documentation of the interior, exterior and setting of the buildings in compliance with the National Register Photo Policy Factsheet. Photos must have a permanency rating of approximately 75 years.
- **Written data** – HABS outline Format written documentation.

The Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the Secretary of the Interior's Professional Qualification Standards to preparation of the drawings, photographs and written data. The City of San José's Historic Preservation Officer shall review and approve the documentation. After City review and approval, the Permittee shall submit the final documentation to the Director of Planning, Building and Code Enforcement or Director's designee, file the documentation with History San José and the California Room of the Martin Luther King Library, and submit proof of receipt by these entities to the City.

**MM CR-1.3:** Prior to issuance of any grading, demolition, or building permits or any other approval that would allow disturbance of the Project site, all individually significant and contributing buildings and structures to the eligible historic district shall be 3D laser scanned. The Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior's Professional Qualification

Standards to perform 3D laser scanning. The laser scanning shall document the existing conditions of the property, utilizing 3D Laser Scanning techniques to capture the significant buildings and create a 3D point cloud model for digital archival purposes. A plan of the proposed procedures for the laser scanning shall be submitted as part of the required Action Plan (MM CR-1.1) prior to commencement. The documentation from the 3D Laser Scanning shall be reviewed and approved by the City's Historic Preservation Officer. After City review and approval, the Permittee shall be submit the documentation to the Director of Planning, Building and Code Enforcement or Director's designee, file the documentation with History San José and the California Room of the Martin Luther King Library, and submit proof of receipt by these entities to the City.

**MM CR-1.4:** Prior to issuance of any demolition permits or any other approval that would allow ground disturbance on the Project site, the Permittee shall separately advertise the availability of all individually significant and contributing buildings, structures and site features to the eligible historic district for relocation and then salvage by a third party.

- **Relocation.** The Permittee shall advertise the availability of the buildings for relocation for a period of no less than 60 days. The advertisements must include a newspaper of general circulation, a website, and notice visible from the public right-of-way on the Project site. The Permittee must submit evidence (i.e., receipts, date and time stamped photographs, etc.) to the Director of Planning, Building and Code Enforcement or the Director's designee that this condition has been met. If a third party agrees to relocate any of the buildings, the following measures must be followed:

1. The City's Director of Planning, Building and Code Enforcement or the Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is suitable for the buildings.
2. Prior to relocation, the third party shall hire a qualified historic preservation architect and a qualified structural engineer to undertake an existing conditions study. The purpose of the study shall be to establish the baseline condition of the building/s prior to relocation. The documentation shall outline how to protect and preserve the buildings and their character-defining features from damage during the relocation process. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to relocation.

3. To protect the building during relocation, the third party shall engage a building mover who has experience moving historic structures. A qualified structural engineer shall also be engaged to determine if the building/s needs to be reinforced/stabilized before the move.
  4. Once relocated, the building/s shall be repaired and restored, as needed, by the third party in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. In particular, the character-defining features shall be restored in a manner that preserves their historic integrity for long-term preservation. Upon completion of the work, a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior's Professional Qualification Standards shall prepare a written report outlining how the work was conducted in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the Permittee shall submit the report to the City's Historic Preservation Officer.
- **Salvage.** If at the end of the 60-day period minimum relocation advertisement period no third party relocates the significant buildings, the historic building materials shall be made available for salvage and reuse. The Permittee shall advertise the availability of the buildings for salvage for a period of no less than 30 days. The advertisements must include a newspaper of general circulation, a website, and notice visible from the public right-of-way on the Project site. The Permittee shall submit evidence (i.e., receipts, date and time stamped photographs, etc.) to the City's Director of Planning, Building and Code Enforcement or the Director's designee that this condition has been met.

**MM CR-1.5:** Prior to issuance of any building permits, the Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior's Professional Qualification Standards to initiate the design development of a commemorative and interpretive program, exhibit, and/or display including, but not limited to interpretive text and historic photographs, art or sculpture, video, interactive media, and/or documentation of oral histories, that is integral to the Project. The preliminary design concepts for commemoration and public interpretation shall be submitted to the City Historic Preservation Officer for review and approval.

**MM CR-1.6:** Commemoration and Public Interpretation Implementation. The specific design and details of the commemorative and interpretive program shall be fully developed in close coordination with the City as the

Project is implemented. The final design shall be reviewed and approved by the City's Historic Preservation Officer prior to production. The commemoration and public interpretation program shall be completed and made accessible to the public. If the approved program includes a physical installation, it shall be placed in a suitable publicly accessible location on the Project site as determined by the City and subject to the following timing:

1. For commemoration and interpretation elements constructed within, on, or adjacent to an apartment building, prior to issuance of a certificate of occupancy for that building.
2. For commemoration and interpretation elements constructed by the Permittee within the City park, prior to City acceptance of the public park.

**Finding:** No feasible mitigation would reduce the impact of the Project to structures and site features that are collectively and individually eligible for listing under the California Register of Historical Resources (CRHR) and the San José Historic Resources Inventory as a Candidate City Landmark.  
**(Significant and Unavoidable Impact)**

**Facts in Support of Finding:** As discussed in Section 3.5.2.2 of the EIR, even with implementation of the identified mitigation measures (MM CR-1.1—1.6), demolition, relocation, or salvage of the site's significant buildings and structures would constitute a significant impact to the buildings and structures because they would be permanently lost or relocated. While the mitigation measures would reduce the magnitude of the impact, they will not reduce the residual effect of removal of potential historic resources from their historic context on the Project site to a less than significant level.

## **FINDINGS CONCERNING ALTERNATIVES**

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

The alternatives analyzed in the Draft EIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects. Seven alternatives were explored, including two alternatives that were rejected and not analyzed. The following five alternatives were fully analyzed as alternatives to the proposed Project:

1. No Project – No Development Alternative
2. No Project – Redevelopment Alternative
3. Historic Resource Avoidance Alternative
4. On-Site Relocation of Historical Resources Alternative
5. On-Site Relocation of Individual Historical Resources Alternative (Sakauye House Only)

### Project Objectives

The objectives for the Project are as follows:

1. Develop a mixed-use project consistent with the goals and vision of the Envision San José 2040 General Plan (2040 General Plan) on an underutilized site that will provide both market rate and affordable housing, with commercial and retail uses nearby.
2. Promote key policies envisioned in the 2040 General Plan for the North San José Growth Area including increasing housing opportunities and providing new high-density residential development exceeding the City's minimum density requirements of 75 dwelling units per acre (du/ac), in close proximity to employment centers.
3. Locate higher density housing with easy access to transportation corridors (e.g., Montague Expressway), bus corridor stops, commercial services, and employment opportunities that reduces vehicle miles traveled (VMT).
4. Offer a mix of unit types, sizes, and levels of affordability to accommodate a range of potential residents. Provide a diverse range of high-quality rental and for-sale housing that will satisfy a variety of household needs in North San José.
5. Deliver affordable housing consistent with the goals set forth in the City's recently amended Inclusionary Housing Ordinance.
6. Assist the City to satisfy its Regional Housing Needs Allocation (RHNA) for both market rate and below market rate housing units.
7. Provide housing and active commercial and open spaces in a vibrant mixed-use neighborhood with the amenities and services necessary to support a diverse, thriving community of residents and workers.
8. Allocate space for a new public park along a public street that would be visible and centrally accessible to the public within convenient walking distance.
9. Create a well-connected neighborhood with on-site services and community amenities.
10. Develop commercial retail spaces on the Project site that would attract diverse tenants, adapt to future needs, integrate local small businesses, stimulate local economic activity, serve the neighborhood, and complement adjacent public spaces.
11. Intensify the surrounding neighborhood and community through quality design, materials, and landscaping.

### Selection of Alternatives

CEQA, the CEQA Guidelines, and case law on the subject have found that feasibility can be based on a wide range of factors and influences. The CEQA Guidelines advise that such factors can include (but are not necessarily limited to) the suitability of an alternative site, economic viability, availability of infrastructure, consistency with the general plan or other plans or regulatory limitations, jurisdictional boundaries, and whether the project proponent can “reasonably acquire, control or otherwise have access to the alternative site” (Section 15126.6[f][1]).

#### **1. No Project – No Development Alternative**

- A. Description of Alternative:** The No Project—No Development Alternative (Alternative 1) assumes that the Project would not be constructed and that no alternative development would occur on the Project site.
- B. Comparison of Environmental Impacts:** The No Project—No Development Alternative (Alternative 1) would avoid all of the environmental impacts identified in the FEIR.
- C. Finding:** Alternative 1 would avoid all of the Project’s environmental impacts by maintaining the baseline conditions for the Project site described in the FEIR. However, this Alternative would not meet any of the Project’s specific objectives, which include providing planned housing (including affordable apartments), retail space, and a park in the City. Alternative 1 also would not provide a new well that would serve water to other users outside of the Project. Therefore, because Alternative 1 would not meet any Project objectives, this alternative is rejected.

#### **2. No Project – Redevelopment Alternative**

- A. Description of Alternative:** The No Project—Redevelopment Alternative (Alternative 2) assumes that if the Project were not approved, the unoccupied and underutilized Project site would be redeveloped with an alternative development consistent with what is allowed under the City’s General Plan and Municipal Code. Alternative 2 is assumed to be consistent with the underlying Industrial Park 2040 General Plan Land Use Designation and zoning, and that no rezoning would be required.
- B. Comparison of Environmental Impacts:** Given that the footprint and amount of construction would be similar to the Project, impacts related to cultural resources, ROG emissions, cancer risk, migratory birds, roosting bats, hazardous materials, construction noise, and VMT would be similar to the Project

- C. Finding:** Alternative 2 would provide a new Project consistent with the 2040 General Plan and underlying zoning. Impacts related to cultural resources, ROG emissions, cancer risk, migratory birds, roosting bats, hazardous materials, construction noise, and VMT would be similar to the Project. However, Alternative 2 would not meet any of the Project objectives. Therefore, because Alternative 2 would not meet any Project objectives, this alternative is rejected.

### **3. Historic Resource Avoidance Alternative**

- A. Description of Alternative:** The Historic Resource Avoidance Alternative (Alternative 3) would leave the seven contributing structures intact and limit development to the area surrounding the eligible historic resources. Alternative 3 would also retain the existing orchard, which contributes to the eligibility of the historic district. Retained structures would be restored and preserved consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties as part of a 3.37-acre historic district with historic interpretive areas. The historic building exteriors would be structurally stabilized and maintained for interpretive use as part of the Project. The planned public park would be reduced to a 0.55-acre area located in the Sakauye farm location that would contain neither historic buildings nor orchard trees. Figure 8-1 of the EIR depicts the Conceptual Site Plan for Alternative 3.
- B. Comparison of Environmental Impacts:** Under Alternative 3, the significant impact to historic resources would be avoided because construction of the Project components surrounding the historic district would not affect its eligibility. Under Alternative 3, the impact to greenhouse gas emissions, noise and vibration, and transportation would also be decreased due to the reduced size of the proposed residential Project.
- C. Finding:** Construction of the Project components surrounding the historic district would not affect the eligibility of the district. Therefore, the significant impact to historic resources would be avoided. Under Alternative 3, the impact to greenhouse gas emissions, noise and vibration, and transportation would also be decreased due to the reduced size of the proposed residential project. However, Alternative 3 would not fully meet the Project objectives because it would reduce the size of the proposed residential project by approximately 27 percent (401 less units), including a 35 percent reduction in affordable apartments (63 less units). Further, the retail space would be reduced by 5,359 square feet. While a reduction in housing can be considered as part of an Alternatives analysis, CEQA Guidelines Section 15041(c) states that for projects that include housing development, "a Lead or Responsible Agency shall not reduce the proposed number of housing units as a mitigation measure or alternative to lessen a particular significant effect on the environment if that agency determines that there is another feasible, specific mitigation measure or alternative that would provide a comparable lessening of the

significant effect.” Additionally, Alternative 3 would present severe financing challenges to the Project, such that no reasonably prudent person would proceed with Alternative 3. Losing over 400 units would require all of the project’s land, entitlement, and infrastructure costs to be allocated over just two market rate multifamily buildings, instead of three. Relatedly, the reduction of the public park to .55 acres would significantly reduce the Project’s park credits, adding over \$11.5M in project costs. Therefore, because Alternative 3: (i) would not meet the Project objectives to provide a mixed-use project consistent with the goals and vision of the Envision San Jose 2040 General Plan, to locate higher density housing with easy access to transportation corridors, to deliver affordable housing, and to assist the City in satisfying its RHNA for both market rate and below market rate units; and (ii) would render the project economically infeasible, this alternative is rejected.

#### **4. On-Site Relocation of Individual Historical Resources Alternative**

- A. Description of Alternative:** The On-Site Relocation of Individual Historical Resources Alternative (Alternative 4) would relocate the seven historic resources deemed eligible for listing in the CRHR to the 2.5-acre site, currently planned for a park under the Project. To maintain historic eligibility, all structures would retain their existing orientation and would be spaced in a way that emulates the current layout of the site. This spacing would make the dog park, active open space, and small-scale sport court uses planned as part of the Project by the City’s Parks, Recreation, & Neighborhood Services Department infeasible. Under the On-Site Relocation Alternative, the historical interpretive use proposed as part of the Project would become the primary use of the park. All other aspects of the Project, would remain the same.
- B. Comparison of Environmental Impacts:** Alternative 4 would reduce impacts associated with demolition of the historic structures to a less-than-significant level. However, because all other aspects of the Project would remain the same, Alternative 4 would not reduce the significance of the air quality, biological resources, hazards and hazardous materials, noise and vibration, or transportation impacts identified in this EIR. Therefore, the same mitigation measures identified in this EIR for the Project would be required for Alternative 4, and would reduce impacts to a less than significant level. Under Alternative 4, recreation impacts would be more severe given the lack of amenities provided for the new park.
- C. Finding:** Alternative 4 would reduce impacts associated with demolition of the historic structures to a less-than significant level, but it would not reduce the significance of the air quality, biological resources, hazards and hazardous materials, noise and vibration, or transportation impacts identified in this EIR. Therefore, the same mitigation measures identified in this EIR for the Project would be required for Alternative 4 to reduce impacts to a less than significant level.



Because all other aspects of the Project would remain the same, Alternative 4 would meet most of the Project objectives. However, under Alternative 4, recreation impacts would be increased because the amenities that the City's Parks, Recreation, & Neighborhood Services Department has requested for the new park would not be provided. Therefore, Alternative 4 does not fully comply with the Project's objective to "allocate space for a new public park along a public street that would be visible and centrally accessible to the public within convenient walking distance." Additionally, Alternative 4 would present severe financing challenges to the Project, such that no reasonably prudent person would proceed with Alternative 4. The Project's retail spaces depend on the centralized city park for visibility, activation, and accessibility, but under Alternative 4 they would face historic buildings and an orchard. Also, reducing the public park to .85 acres would significantly reduce the Project's park credits, adding over \$9.7M in project costs. Because Alternative 4: (i) would not meet the Project objective to allocate space for a new public park along a public street that would be visible and centrally accessible to the public within convenient walking distance; (ii) would require the same mitigation measures identified in the FEIR for the Project to reduce impacts to a less than significant level; and (iii) would render the project economically infeasible, this alternative is rejected.

**5. On-Site Relocation of Individual Historical Resources Alternative (Sakaue House Only)**

- A. Description of Alternative:** Under the On-Site Relocation of Individual Historical Resources Alternative (Sakaue House Only) (Alternative 5), the Sakaue house would be preserved and restored consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The house would be used for historic interpretive uses only; the building would not be leased or sold for residential use. As a result, Alternative 5 would provide four fewer townhomes than the Project. All other aspects of the Project would remain the same.
- B. Comparison of Environmental Impacts:** Alternative 5 would reduce the severity of Impact CR-1 and would eliminate the impact to the Sakaue house specifically. However, because the other 6 structures that contribute to the eligibility of the potential historic district would still be removed, Impact CR-1 would remain significant and unavoidable. Although Alternative 5 would provide 4 fewer dwelling units than the Project, it would still have a density of approximately 81 du/acre and would therefore satisfy Project objective 2 by meeting the minimum density requirements for the North San José TERO. Because all other aspects of the Project would remain the same under Alternative 5, all other impacts would remain the same.
- C. Finding:** Alternative 5 would reduce the severity of Impact CR-1 and would eliminate the impact to the Sakaue house specifically. However, Impact CR-1

would remain significant and unavoidable because the other 6 structures that contribute to the eligibility of the potential historic district would still be removed. Although Alternative 5 would provide 4 fewer dwelling units than the Project, it would still have a density of approximately 81 du/acre and would therefore satisfy Project objective 2 by meeting the minimum density requirements for the North San José TERO. Because all other aspects of the Project would remain the same under Alternative 5, all other Project objectives would be met and all other impacts would remain the same. Additionally, Alternative 5 would present severe financing challenges to the Project, such that no reasonably prudent person would proceed with Alternative 5. The economic value of for-sale townhomes is a critical subsidy for the high infrastructure and land costs that cannot be absorbed by other Project elements, including high density multifamily units in the current economic environment. Eliminating a number of townhomes, as Alternative 5 requires, thus presents an insurmountable financing obstacle for the infrastructure needed for both the affordable and market rate rental units. Therefore, because Alternative 5 would not reduce any significant impacts to less than significant levels, would provide a Project with fewer housing units, and would render the Project economically infeasible, this alternative is rejected.

### **Environmentally Superior Alternative**

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative is Alternative 3, Historic Resource Avoidance Alternative. Alternative 3 would avoid the significant unavoidable historic resources impact identified in this EIR. Alternative 3 would also reduce the severity of impacts associated with traffic generation, air pollutant emissions, and noise commensurate with the decrease in residential units and commercial space provided. While Alternative 3 would not meet Project objective 2, it would meet the rest of the Project objectives.

### **MITIGATION MONITORING AND REPORTING PROGRAM**

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

### **STATEMENT OF OVERRIDING CONSIDERATIONS**

Pursuant to CEQA, the City Council of the City of San José hereby adopts and makes the following statement of overriding considerations regarding the remaining significant

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

- A. Significant Unavoidable Impacts.** With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the Project will result in significant unmitigated or unavoidable impacts, as set forth above, associated with cultural resources.
- B. Overriding Considerations.** The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the Project are acceptable in light of the economic, legal, environmental, social, technological or other considerations noted below, because the benefits of the Project outweigh its significant adverse environmental impact of the Project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent basis for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan.
- C. Benefits of the Proposed Project.** The City Council has considered the public record of proceedings on the proposed Project and other written materials presented to the City as well as oral and written testimony at all public hearings related to the Project, and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:
- **General Plan Land Use Alignment:** The Project strategically aligns with the Envision San José 2040 General Plan (General Plan), utilizing its designation as a Transit Employment Residential Overlay (TERO) to maximize housing and commercial opportunities on an underutilized site. In providing ground floor commercial and a wide range of housing options in close proximity to employment centers, the Project makes efficient use of the site realizing the goals laid out for the TERO land use designation.
  - **Diverse Income Housing Options:** The Project adds a significant number of both market-rate and affordable housing units to the City of San José, directly supporting the City's diversity and inclusivity goals by providing high-quality housing for a wide range of income levels, as well as satisfying the City's RHNA. The Project will provide over 20% of the proposed apartment units to income qualified renters and buyers, exceeding the City's 15% Inclusionary Housing Ordinance (IHO) requirement, and in line with the original 20% goal of the North San Jose Area Policy. The affordable housing on site includes 5% at 100% of

Area Median Income (AMI) to address the City's "missing middle" need for workforce housing, and 15% at an average of 60% of AMI. In addition, the project will also generate approximately \$8,000,000 in IHO fees for future affordable housing.

- **Comprehensive Mix of Housing:** The Project includes a comprehensive mix of housing options, ranging from high-density multifamily units—including studios, one-, two-, and three-bedroom apartments—to attached for-sale townhomes with three and four bedrooms. This variety in housing type seeks to create a vibrant, mixed-use community that caters to a diverse population, from single professionals and young couples to growing families and multi-generational households. With this mix of for-sale product and multi-family apartments, the Project exceeds the City's minimum density requirements, further ensuring efficient land uses and contributing to the City's RHNA obligations.
- **Multi-Functional Public Park:** The Project includes the design and construction of a 2.5-acre turnkey public park, in coordination with the City's Parks, Recreation and Neighborhood Services Department. This park, located along Seely Avenue will feature a great lawn, dog park, public plaza, youth play area, pickleball courts, outdoor fitness equipment, and a historical interpretation area. This range of amenities furthers the General Plan's neighborhood oriented goals by providing high-quality, accessible recreational spaces. It also supports the general plan goals by promoting health and wellness, enhancing quality of life, and fostering social interactions among residents of all ages and backgrounds.
- **Enhanced Pedestrian and Bicycle Infrastructure:** The Project will enhance neighborhood connectivity through pedestrian and bicycle network improvements. The Project will construct pedestrian circulation paths around the development and enhance the existing mid-block crosswalk on Seely Avenue, promoting greater connectivity amongst all uses and the public park. These improvements are designed to facilitate safe and enjoyable pedestrian travel, encouraging residents and visitors to utilize all Project amenities. The Project will also enhance bicycle infrastructure by adding a Class IV bike along the Seely Avenue frontage and a Class II bike lane across the street along southbound Seely Avenue. All Project improvements serve to assist with the City's goals to reduce vehicle miles traveled (VMT), lower greenhouse gas emissions, and promote a healthy, active lifestyle among residents.
- **Neighborhood Retail Space:** The Project incorporates approximately 19,000 square feet of neighborhood retail space that is strategically located to front onto the public park. This positioning is designed to maximize the interaction between the retail and the park, providing a vibrant space where community members can engage with the commercial uses while enjoying the park's amenities. This configuration encourages an active street life and promotes foot traffic for local

businesses occupying the space. The neighborhood retail enhances the recreational experience of the park user and stimulates local economic activity.

- **Green Infrastructure:** The Project will implement numerous sustainable building practices aligning with the General Plan's emphasis on environmental stewardship and sustainability. The Project furthers this commitment to renewable energy through the installation of rooftop solar on all buildings and the construction of electric vehicle chargers in accordance with the City's EV code. The multi-family component of the Project is committed to enrollment in San Jose Clean Energy and supporting the City's shift towards renewable energy. Additionally, the Project will construct a new looped recycled water line from the existing Coyote Creek Trail levee point of connection to the connection on Epic Way, which will provide landscape irrigation to the entire Project, including the City park. Additionally, the Project will dedicate land for a new municipal water well to support the region's potable water distribution system, thereby enhancing water supply resilience and reliability for the community.
- **An Interconnected and Engaged Community:** Designed to foster interaction and engagement, the Project's mix of uses and central park amenity encourages a sense of community among residents, businesses, and visitors, creating a safe, inclusive, and vibrant neighborhood. This approach fosters a dynamic urban environment where residents enjoy easy access to amenities and work, reducing the need for long commutes and enhancing the area's vibrancy. Additionally, the site's location in close proximity to major transportation corridors and bus stops, while also providing improved pedestrian and bicycle infrastructure, is intended to minimize environmental impact and reduce vehicle miles traveled. The Project will underground all power lines on Seely Avenue in compliance with Rule 20, and will underground the power lines along Montague Expressway voluntarily. These benefits underscore the Project's commitment to align with the strategic goals and policies of the General Plan.

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

## LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at the City's Department of Planning, Building and Code Enforcement, San José City Hall, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and are also

available for viewing electronically on the Department of Planning, Building and Code Enforcement website. The City Council hereby designates the City's Director of Planning, Building, and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

# MITIGATION MONITORING AND REPORTING PROGRAM

## 0 Seely Avenue Mixed-Use Project File No. PDC21-035

June 2024



## P R E F A C E

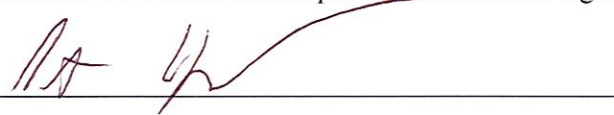
Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring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

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

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

The mitigation measures enumerated in this document would reduce the level of impact of potential environmental effects of the proposed action. In all cases, these mitigation measures would reduce the impact of effects determined to be significant prior to mitigation to less-than-significant levels.

I, Scott Youdall, the applicant, on the behalf of Seely Development Partners LLC, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of an EIR for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less-than-significant level.

Project Applicant's Signature 

Date 7/16/24



MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<b>AIR QUALITY</b>					
<b>IMPACT AQ-1: Emissions from project operations would result in 54.82 pounds/day of ROG, which exceeds the BAAQMD threshold of 54 pounds/day.</b>					
<p><b>MM AQ-1:</b> Prior to the issuance of any grading, building or demolition permits, the project applicant shall develop and implement a construction monitoring and operations plan that demonstrates use of super-compliant volatile organic compound or “VOC” (i.e., reactive organic gases [ROG]) coatings, that are below current Bay Area Air Quality Management District (BAAQMD) requirements (i.e., Regulation 8, Rule 3: Architectural Coatings), for at least 90 percent of all residential and nonresidential interior paints and 80 percent of exterior paints. This includes all architectural coatings applied during both construction and reapplications throughout the project’s operational lifetime. At least 90 percent and 80 percent of coatings applied for interior and exterior, respectively, must meet a “super-compliant” VOC standard of less than 10 grams of VOC per liter of paint.</p> <p>For reapplication of coatings during the project’s operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low VOC coatings to be used. Examples of “super-compliant” coatings are contained in the BAAQMD’s website. The plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director’s designee prior to the issuance of any</p>	Prepare and implement a construction monitoring and operations plan. Submit a copy of the plan to the Director of Planning, Building and Code Enforcement or the Director’s designee.	<p>Prepare and submit plan prior to issuance of any grading, building or demolition permits.</p> <p>Implement plan during construction and throughout operation.</p>	Director of Planning, Building and Code Enforcement or the Director’s designee.	Review and approve the construction monitoring and operations plan.	Prior to the issuance of any grading, building or demolition permits.

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demolition, grading, or building permits (whichever occurs first). With implementation of MM AQ- 1, the project’s operation ROG emissions of architectural coatings would be reduced by 9 percent to 49.22 pounds/day and would no longer approach exceedance of the single-source threshold.					
<b>BIOLOGICAL RESOURCES</b>					
<b>IMPACT BIO-1: Project construction, including the removal of vegetation, shrubs/trees, and structures, that would occur during the migratory bird nesting season could result in a significant impact to nesting bird species.</b>					
<b>MM BIO-1: Avoidance:</b> Prior to the issuance of any tree removal, grading, building or demolition permits (whichever comes first), the project applicant shall schedule all 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 1 through August 31 (inclusive). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching. <b>Nesting Bird Surveys:</b> If construction activities cannot be scheduled to occur between September 1 and January 31, pre-construction surveys for nesting birds and raptors shall be completed by a qualified ornithologist or biologist to ensure that no nests shall be disturbed during project implementation. The survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season	Avoid vegetation removal between February 1 through September 15, inclusive.  Conduct pre-construction nesting bird surveys 14 days prior to the start of construction activities.  Establish a construction free buffer zone if an active nest is found close to the work site.  Submit a report of the results of the nesting bird survey to the Director of Planning,	Prior to issuance of any grading or demolition permits.	Director of Planning, Building and Code Enforcement or the Director’s designee.	Review the results of the nesting bird surveys and buffer zone plans.	Prior to issuance of any grading or demolition permits.

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<p>(February 1 through April 30 inclusive), and no more than 30 days prior to the initiation these activities during the late part of the breeding season (May 1 through August 31 inclusive). During this survey, the qualified ornithologist/biologist shall inspect all suitable nesting habitat on the project site and within the zone of influence (the area immediately surrounding the Project site that supports suitable nesting habitat that could be impacted by the project due to visual or auditory disturbance associated with the removal of vegetation and construction activities scheduled to occur during the nesting season).</p> <p><b>Buffer Zone:</b> If an active nest is found, the qualified ornithologist/biologist shall determine an appropriately sized species-specific buffer around the nest in which no work will be allowed until the young have successfully fledged. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffer sizes may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest. The construction contractor shall establish a construction free buffer zone around the nest as determined by the qualified ornithologist/biologist to ensure that migratory bird and raptor nests shall not be disturbed during project construction. This buffer shall remain in place until such a</p>	Building and Code Enforcement or Director’s designee.				

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<p>time as the young have been determined (by a qualified ornithologist/biologist) to have fledged. Any birds that begin nesting amid construction activities shall be assumed to be habituated.</p> <p><b>Reporting:</b> Prior to the initiation of any tree removal, or approval of any grading or demolition permits (whichever occurs first), the qualified ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Planning, Building, and Code Enforcement or the Director's designee.</p>					
<b>IMPACT BIO-2: Project construction, including the removal of trees and building demolition could negatively impact roosting bat habitat if done during the maternity roosting season (May 1 to September 15).</b>					
<p><b>MM BIO-2:</b></p> <ul style="list-style-type: none"> <li><b>Avoidance:</b> Prior to the issuance of any tree removal, grading, building or demolition permits (whichever comes first), for all project activities planned in or adjacent to potential bat roosting habitat, a qualified biologist shall conduct daytime and evening acoustic surveys in addition to extensive visual surveys of potential habitat for special-status bats no more than 30 days prior to initiation of project activities.</li> </ul>	Conduct site surveys to characterize bat utilization of roosting bat habitat on and adjacent to the Project site and potential bat species present prior to construction.	Prior to issuance of any grading, building or demolition permits.	Director of Planning, Building and Code Enforcement or the Director's designee.	Review report indicating the results of the survey and any designated buffer zones.	Prior to issuance of any grading, building or demolition permits.

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<p>To ensure that special-status bats have left potential roosting refugia, work shall occur over the course of two days. On the first day, smaller limbs or items from the identified trees or structures shall be brushed back or modified in the late afternoon. This disturbance should cause any potential roosting bats to seek other roosts during their nighttime foraging. The remainder of the refugia item can then be further limbed or removed as needed on the second day as late in the afternoon as feasible. Comparable demolition techniques shall be used to dismantle occupied structures on the Project site.</p> <p>Based on the results of these initial surveys, one or more of the following shall occur:</p> <ul style="list-style-type: none"> <li>• <b>No Detection:</b> If it is determined that bats are not present on or adjacent to the project site, no additional mitigation is required. If no bats are found roosting, bat exclusion devices will be installed to prevent bats from taking up occupancy of the vacant structures prior to the onset of construction.</li> <li>• <b>Buffer Zone:</b> If it is determined that bats are utilizing the project site or adjacent trees and may</li> </ul>					

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<p>be impacted by the project, pre-construction surveys shall be conducted within 50 feet of construction limits no more than 30 days prior to the start of construction. If, according to the bat specialist/wildlife biologist, no bats or bat signs are observed in the course of the pre-construction surveys, the qualified bat specialist /wildlife biologist shall determine if disturbance will jeopardize the roost (i.e., maternity, foraging, day, or night).</p> <ul style="list-style-type: none"> <li> <b>Roosting:</b> If a single bat and/or only adult bats are roosting, removal of trees or structures may proceed after the bats have been safely excluded from the roost. Exclusion techniques shall be determined by the qualified bat specialist /wildlife biologist and would depend on roost type. If an active maternity roost is detected, avoidance is preferred. Work in the vicinity of the roost (buffer to be determined by qualified bat specialist or wildlife biologist) shall be postponed until the qualified bat specialist/wildlife biologist monitoring the roost determines that the young have fledged and are no longer dependent on the roost. The monitor shall ensure that all bats have left the area of disturbance prior to initiation of pruning and/or removal of trees that would disturb the roost. If a roost of bats is found in any </li> </ul>					

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<p>of the existing structures, the bats shall be safely evicted under the direction of a qualified biologist. Eviction of bats will occur at night to decrease the likelihood of predation (compared to eviction during the day). Eviction will occur outside of the maternity season but will not occur during long periods of inclement or cold weather (as determined by the qualified biologist) when prey are not available or bats are in torpor. Eviction activities will be performed under the supervision of a qualified biologist.</p> <p><b>Reporting:</b> Prior to the issuance of any grading, building or demolition permits (whichever comes first), the qualified bat specialist/wildlife biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Planning, Building, and Code Enforcement or the Director's designee for the regionally known bat species with suitable on-site roosting habitat.</p>					
<b>Cultural Resources</b>					
<b>IMPACT CR-1: The Project includes the demolition of structures and site features that are collectively and individually eligible for listing under the California Register of Historical Resources ("CRHR") and the San José Historic Resources Inventory as a Candidate City Landmark.</b>					
<b>MM CR-1.1: Action Plan:</b> Prior to issuance of any demolition permits or any other approval that would allow disturbance of the project site, the Permittee shall prepare	Preparation of Action Plan.	Prior to issuance of any grading, building or demolition permits.	Director of Planning, Building and Code	Review and approve action plan	Prior to issuance of any grading, building

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and submit, for review and approval by the Director of Planning, Building and Code Enforcement or the Director’s designee in coordination with the City’s Historic Preservation Officer, a Historic Resources Mitigation Action Plan (Action Plan) demonstrating that the all required steps, actions, and documents identified within this EIR have been satisfied in accordance with the Action Plan. The Action Plan shall outline the roles and responsibilities of the Permittee, City staff, and outside individuals, groups, firms, and consultants and timelines in carrying out required mitigation measures MM CR-1.2 to MM CR-1.6.			Enforcement or Director’s designee.		or demolition permits.
<b>MM CR-1.2: Historic American Building Survey (“HABS”)</b> <b>Outline Format:</b> Prior to the issuance of a demolition permit or any other approval that would allow ground disturbance on the project site, all contributing buildings, structures, and landscape features to the eligible historic district and individually significant buildings on the property shall be documented in accordance with the guidelines established for the Historic American Buildings Survey (HABS) and shall consist of the following components: <ul style="list-style-type: none"> <li>• Drawings – prepare sketch floor plans</li> <li>• Photographs – Digital photographic documentation of the interior, exterior and setting of the buildings in compliance with the National Register Photo Policy Factsheet. Photos must have a permanency rating of approximately 75 years.</li> </ul>	Preparation of HABS documentation.	Prior to issuance of any grading, building or demolition permits.	City Historic Preservation Officer.  Director of Planning, Building and Code Enforcement or Director’s designee.	Review and approve historical documentation.  Receive historic resource documentation and receipt of submittal to History San José.	Prior to issuance of any grading, building or demolition permits.



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<ul style="list-style-type: none"> <li>Written data – HABS outline Format written documentation.</li> </ul> <p>The Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the Secretary of the Interior’s Professional Qualification Standards to preparation of the drawings, photographs and written data. The City of San José’s Historic Preservation Officer shall review and approve the documentation. After City review and approval, the Permittee shall submit the final documentation to the Director of Planning, Building and Code Enforcement or Director’s designee of the City, file the documentation with History San José and the California Room of the Martin Luther King Library, and submit proof of receipt by these entities to the City.</p>					
<b>MM CR-1.3: Three-Dimensional (“3D”) Laser Scanning.</b> Prior to issuance of any grading, demolition, or building permits or any other approval that would allow disturbance of the project site, all individually significant and contributing buildings and structures to the eligible historic district shall be 3D laser scanned. The Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior’s Professional Qualification Standards to perform 3D laser scanning. The laser scanning shall document the existing conditions of the property, utilizing 3D Laser Scanning techniques to capture the significant buildings and create a 3D point cloud model for	Conduct professional 3D laser scanning of the “Sakauye House”.	Prior to issuance of any demolition permits.	City Historic Preservation Officer  Director of Planning, Building and Code Enforcement or Director’s designee.	Review and approve 3D Laser Scanning.  Receive 3D Laser scanning documentation and receipt of submittal to History San José.	Prior to issuance of any demolition permits.

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digital archival purposes. A plan of the proposed procedures for the laser scanning shall be submitted as part of the required Action Plan (MM CR-1.1) prior to commencement. The documentation from the 3D Laser Scanning shall be reviewed and approved by the City’s Historic Preservation Officer. After City review and approval, the Permittee shall be submit the documentation to the Director of Planning, Building and Code Enforcement or Director’s designee of the City, file the documentation with History San José and the California Room of the Martin Luther King Library, and submit proof of receipt by these entities to the City.					
<p><b>MM CR-1.4: Relocation and Salvage.</b> Prior to issuance of any demolition permits or any other approval that would allow ground disturbance on the project site, the Permittee shall separately advertise the availability of all individually significant and contributing buildings, structures and site features to the eligible historic district for relocation and then salvage by a third party.</p> <p><b>Relocation.</b> The Permittee shall advertise the availability of the buildings for relocation for a period of no less than 60 days. The advertisements must include a newspaper of general circulation, a website, and notice visible from the public right-of-way on the project site. The Permittee must submit evidence (i.e., receipts, date and time stamped photographs, etc.) to the Director of Planning, Building and Code Enforcement or the Director’s designee that this</p>	All contributing and individually significant buildings or structures would be separately advertised for relocation and then salvage.	Prior to issuance of any grading, building or demolition permits.	City Historic Preservation Officer.	Review and approve Signage and displays.	Prior to issuance of any grading, building or demolition permits.

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<p>condition has been met. If a third party agrees to relocate any of the buildings, the following measures must be followed:</p> <ol style="list-style-type: none"> <li>1. The City's Director of Planning, Building and Code Enforcement or the Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is suitable for the buildings.</li> <li>2. Prior to relocation, the third party shall hire a qualified historic preservation architect and a qualified structural engineer to undertake an existing conditions study. The purpose of the study shall be to establish the baseline condition of the building/s prior to relocation. The documentation shall outline how to protect and preserve the buildings and their character defining features from damage during the relocation process. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to relocation.</li> <li>3. To protect the building during relocation, the third party shall engage a building mover who has experience moving historic structures. A qualified structural engineer shall also be engaged to determine if the building/s needs to be reinforced/stabilized before the move.</li> <li>4. Once relocated, the building/s shall be repaired and restored, as needed, by the third party in</li> </ol>					

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<p>conformance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties. In particular, the character-defining features shall be restored in a manner that preserves their historic integrity for long-term preservation. Upon completion of the work, a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior’s Professional Qualification Standards shall prepare a written report outlining how the work was conducted in conformance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties and the Permittee shall submit the report to the City’s Historic Preservation Officer.</p> <p><b>Salvage.</b> If at the end of the 60-day period minimum relocation advertisement period no third party relocates the significant buildings, the historic building materials shall be made available for salvage and reuse. The Permittee shall advertise the availability of the buildings for salvage for a period of no less than 30 days. The advertisements must include a newspaper of general circulation, a website, and notice visible from the public right-of-way on the project site. The Permittee shall submit evidence (i.e., receipts, date and time stamped photographs, etc.) to the City’s Director of Planning, Building and Code Enforcement or the Director’s designee that this condition has been met.</p>					

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<b>MM CR-1.5: Commemoration and Public Interpretation Concepts.</b> Prior to issuance of any building permits, the Permittee shall retain a qualified historic resources consultant or equivalent professional meeting the qualifications in the Secretary of the Interior’s Professional Qualification Standards to initiate the design development of a commemorative and interpretive program, exhibit, and/or display including, but not limited to interpretive text and historic photographs, art or sculpture, video, interactive media, and/or documentation of oral histories, that is integral to the project. The preliminary design concepts for commemoration and public interpretation shall be submitted to the City Historic Preservation Officer for review and approval.	Create historical display that shows interpretive text and historic photographs, art or sculpture, video, interactive media, or oral histories. The display shall be placed in a suitable publicly accessible location on the Project site.	Prior to issuance of any grading, building or demolition permits.	City Historic Preservation Officer.	Review and approve Signage and displays.	Prior to issuance of any grading, building or demolition permits.
<b>MM CR-1.6: Commemoration and Public Interpretation Implementation.</b> The specific design and details of the commemorative and interpretive program shall be fully developed in close coordination with the City as the project is implemented. The final design shall be reviewed and approved by the City’s Historic Preservation Officer prior to production. The commemoration and public interpretation program shall be completed and made accessible to the public. If the approved program includes a physical installation, it shall be placed in a suitable publicly accessible location on the project site as determined by the City and subject to the following timing: 1) For commemoration and interpretation elements constructed within, on, or adjacent to an	Create historical display that shows interpretive text and historic photographs, art or sculpture, video, interactive media, or oral histories. The display shall be placed in a suitable publicly accessible location on the Project site.	Prior to issuance of a certificate of occupancy for that building, or prior to City acceptance of the public park.	City Historic Preservation Officer.	Review and approve Signage and displays.	Prior to issuance of a certificate of occupancy for that building, or prior to City acceptance of the public park.

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apartment building, prior to issuance of a certificate of occupancy for that building. 2) For commemoration and interpretation elements constructed by the Permittee within the City park, prior to City acceptance of the public park.					
<b>IMPACT CR-2: The Project may impact Native American and historic-era archaeological deposits during excavation and construction activities.</b>					
<b>MM CR-2.1: Retention of a Qualified Archaeologist.</b> Prior to issuance of any grading, building or demolition permits, the project applicant shall retain a qualified archaeologist meeting the Secretary of the Interior’s Professional Qualifications Standards for Archeology (codified in 36 Code of Federal Regulations [CFR] Part 61; 48 Federal Register [FR] 44738-44739) to oversee and ensure that all mitigation related to archaeological resources is carried out.	Retain qualified archaeologist.	Prior to the issuance of any grading, building and demolition permits.	Director of Planning, Building and Code Enforcement or the Director’s designee.	Ensure qualified archaeologist is present during construction activities to review and approve documentation and construction plans.	Prior to the issuance of any grading, building and demolition permits.
<b>MM CR-2.2: Tribal Cultural Resources Awareness Training.</b> Prior to issuance of any demolition or grading permits, whichever occurs first, the project applicant shall be required to submit evidence that conduct a Cultural Awareness Training has been provided to for construction personnel prior to ground disturbances. The training shall be facilitated by a qualified project archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Documentation	Retain Native American Monitor.	Prior to the issuance of any grading, building and demolition permits.	Director of Planning, Building and Code Enforcement or the Director’s designee.	Ensure Native American Monitor is present during construction activities to review and approve documentation and construction plans.	Prior to the issuance of any grading, building and demolition permits.

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verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee.					
<b>MM CR-2.3: Native American Monitoring.</b> A qualified Native American Monitor, registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, in collaboration with a qualified Archeologist shall also be present during applicable earthmoving activities such as, but not limited to, trenching, initial or full grading, boring on-site, or major landscaping.	Retain Native American Monitor.	Prior to issuance of any demolition, grading, or building permits.	Director of Planning, Building and Code Enforcement or the Director’s designee.	Ensure Native American Monitor is present during construction activities to review and approve documentation and construction plans.	Prior to the issuance of any demolition, grading, or building permits.
<b>MM CR-2.4: Final Disposition of Cultural Materials.</b> For any archaeological materials recovered from the project site during construction, the following shall apply: <ul style="list-style-type: none"> <li>Disposition of Native American archaeological materials shall be determined through consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, the Director of Planning, Building and Code Enforcement or the Director’s designee, and the qualified archaeologist.</li> </ul>	Conduct Cultural Resources Awareness Training for construction personnel.	Prior to Construction.	Director of Planning, Building and Code Enforcement or the Director’s designee.	Verify documentation of Cultural Resources Awareness Training.	Prior to Construction.

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<p>Disposition of human remains and associated grave goods shall be determined through consultation between the Most Likely Descendant and the landowner.</p> <ul style="list-style-type: none"> <li>Disposition of significant historic-era archaeological materials shall include the following options, in order of preference. Final disposition of these materials shall take into account input from descendant communities. <ul style="list-style-type: none"> <li>Curation at a repository accredited by the American Association of Museums that meets the standards outlined in 36 Code of Federal Regulations (CFR) 79.9.</li> <li>Curation at a non-accredited repository as long as it meets the minimum standards set forth by 36 CFR 79.9.</li> <li>Donation of the collection to a public, non-profit institution with a research interest in the materials.</li> <li>Donation to a local school or historical society in the area for educational purposes.</li> </ul> </li> </ul>					
<b>HAZARDS AND HAZARDOUS MATERIALS</b>					
<b>IMPACT HAZ-1: The Project would result in a potentially significant impact from the removal of the existing heating oil underground/above-ground storage tanks.</b>					



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<b>MM HAZ-1.1:</b> Prior to the issuance of any grading, demolition, or building permits (whichever occurs first), the project applicant shall obtain proper permits from the Santa Clara County Department of Environmental Health (SCCDEH) and San José Fire Department prior to removal of the underground storage tank (UST) and aboveground storage tank (ASTs). Collect and analyze sampling beneath the tanks after the removals under the direction of the SCCDEH and provide confirmation of the UST removal to the City’s Planning, Building and Code Enforcement. If the SCCDEH has determined the storage tanks have leaked, the project applicant shall perform all subsequent investigation and remediation as required under SCCDEH oversight to meet regulatory requirements and ensure the project site is safe for the development.	Obtain permits from the SCCDEH and San José Fire Department.  Collect and analyze sampling beneath the tanks after the removals under the direction of the SCCDEH.	Prior to issuance of any grading, demolition, or building permits.	Director of Planning, Building and Code Enforcement or the Director’s designee.	Review permits from SCCDEH and San José Fire Department.	Prior to issuance of any grading, demolition, or building permits.
<b>MM HAZ-1.2:</b> Due to the site’s history and the presence of miscellaneous drums, aboveground storage tanks (ASTs), and debris, the project applicant shall prepare a Soil Management Plan (SMP) to minimize health risks to construction workers and future residences and site occupants. The Site Management Plan (SMP) shall be prepared prior to issuance of any grading demolition or building permits (whichever occurs first) to establish appropriate management practices for handling impacted soil and/or groundwater, if encountered, and shall include the following at a minimum:	Prepare SMP.	Prior to issuance of any grading, demolition, or building permits.	Director of Planning, Building and Code Enforcement or the Director’s designee.	Review SMP.	Prior to issuance of any grading, demolition, or building permits.

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<ul style="list-style-type: none"> <li>• A detailed discussion of the project site background;</li> <li>• Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program;</li> <li>• Procedures to follow, including regulatory notification, if evidence of an unknown historic release of hazardous materials is discovered during excavation or demolition; and</li> <li>• A health and safety plan (HSP) for each contractor working at the project site, in an area below grade, that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.</li> </ul>					
<b>Impact HAZ-2: The Project could result in a potentially significant impact from the potential for harmful vapors (benzene, vinyl chloride, and TCE) volatilizing from contaminated soil and migrating into structures, leading to possible adverse health impacts to residents.</b>					

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<b>MM HAZ-2:</b> In connection with the construction of each building on the project site (i.e., Building A, Building B, Building C, Townhomes, and Affordable Apartment Building), the project applicant shall, in accordance with the SMP discussed in MM HAZ-1.2, obtain regulatory oversight with Santa Clara County Department of Environmental Health (SCCDEH) and determine if potential vapor intrusion risks exist from the identified VOCs and then, as necessary, evaluate and/or mitigate any such potential vapor intrusion risks through the installation of vapor mitigation measures. The project applicant shall comply with all applicable reporting, testing, mitigation, and/or operation & maintenance protocols documented in the SMP and Vapor Intrusion Mitigation System Pre-Occupancy Verification Monitoring Report (if required) and any other reports required by the SCCDEH. Prior to occupancy, the applicant shall submit to the City evidence of SCCDEH’s written approval of the SMP and the Vapor Intrusion Mitigation System Pre-Occupancy Verification Completion and Monitoring Report and other reports (if required).	Obtain regulatory oversight of the mitigation of contaminated soil from the DTSC and enter into the SCCDEH’s Site Cleanup Program.	Prior to issuance of any grading or demolition permits.	Director of Planning, Building and Code Enforcement or the Director’s designee.	Review and approve evidence of regulatory oversight and approved plan(s).	Prior to issuance of any grading or demolition permits.
<b>IMPACT HAZ-3: Due to the agricultural history on the shallow project site, the Project site soils contain elevated levels of lead and arsenic that exceed the applicable regulatory ESLs. If the identified soil impacts are not mitigated, construction of the Project could result in exposure of construction workers, adjacent properties, and future site occupants to pesticide contamination.</b>					
<b>MM HAZ-3:</b> Prior to issuance of any demolition and/or grading permits, the project applicant shall enter the Santa Clara County Department of Environmental Health’s (SCCDEH) Site Cleanup Program, or the Department of	Obtain regulatory oversight of the mitigation of contaminated soil from	Prior to issuance of any grading or demolition permits.	Director of Planning, Building and Code Enforcement or	Review and approve evidence of regulatory	Prior to issuance of any grading or demolition permits.

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<p>Toxic Substances Control (DTSC) to obtain regulatory oversight of the mitigation of contaminated soil to ensure the project site is safe for construction workers and the public after development. A Removal Action Plan, Soil Management Plan (SMP) or other similarly titled report describing the remediation must be prepared and implemented to document the removal and/or capping of contaminated soil. All work and reports produced shall be performed under the applicable regulatory oversight and approval.</p> <p>Evidence of regulatory oversight, and approved plan(s) shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City for approval prior to the issuance of any grading permits.</p>	the DTSC and enter into the SCCDEH's Site Cleanup Program.		the Director's designee.	oversight and approved plan(s).	
<b>Hydrology and Water Quality</b>					
<b>IMPACT HYD-1: Construction of the Project would require ground disturbing activities such as grading and excavation, which could result in accelerated erosion or siltation on work site by exposing soil to runoff, which could degrade water quality due to contaminants present.</b>					
<b>MM HAZ-3:</b> Please refer to MM HAZ-3 above for a description.					
<b>NOISE AND VIBRATION</b>					
<b>IMPACT NSE-1: Construction of the Project could last longer than 12 months and would require work on Saturday between 8:00 am and 5:00 pm which would result in potentially significant, temporary construction noise impacts.</b>					

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<p><b>MM NSE-1: Construction Noise Logistics Plan.</b> Prior to the issuance of any grading or building demolition permits, the Project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistic plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director’s designee prior to the issuance of any grading or demolition permits. As a part of the construction noise logistics plan, construction activities for the proposed project shall include, at a minimum, the following best management practices:</p> <ul style="list-style-type: none"> <li>• Prohibit pile driving.</li> <li>• Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence (San José Municipal Code Section 20.100.450).</li> </ul>	<p>Prepare and implement noise logistics plan. Submit a copy of the plan to the Director of Planning, Building and Code Enforcement.</p> <p>Comply with Policy EC-1.7 noise suppression measures</p>	<p>Prior to issuance of any grading, building or demolition permits.</p> <p>During construction</p>	<p>Director of Planning, Building and Code Enforcement or Director’s designee</p>	<p>Receive copy of noise logistics plan.</p> <p>Ensure compliance with noise suppression devices and techniques through review of documentation provided by applicant.</p>	<p>Prior to issuance of any grading, building or demolition permits</p> <p>Documentation of compliance provided monthly during construction</p>

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<p>Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of PBCE that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.</p> <ul style="list-style-type: none"> <li>• Construct solid plywood fences or similar along the northwest boundary of the site adjacent to residences to shield adjacent residential land uses from ground-level construction equipment and activities. The temporary 8-foot noise barrier shall be solid over the face and at the base of the barrier in order to provide a 5 dBA noise reduction.</li> <li>• Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.</li> <li>• Unnecessary idling of internal combustion engines shall be strictly prohibited.</li> <li>• Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.</li> </ul>					

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<ul style="list-style-type: none"> <li>Utilize "quiet" air compressors and other stationary noise sources where technology exists.</li> <li>Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.</li> <li>Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.</li> <li>Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.</li> </ul>					
<b>TRANSPORTATION</b>					
<b>IMPACT TR-1: The residential component of the Project would generate VMT of 11.19 per capita. The Project VMT, therefore, exceeds the residential threshold of 10.12 VMT per capita.</b>					
<b>MM TR-1.1:</b> Prior to the issuance of any demolition, grading and/or building permits, the Project applicant shall prepare project construction plans that illustrate the	Provide an online kiosk with information regarding non-auto	Prior to issuance of any building permits.	Director of Planning, Building and Code	Review and approve TDM plan.	Prior to issuance of any building permits.

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<p>design of the Project site enhancements, and shall coordinate with the City Parks, Recreation, &amp; Neighborhood Services, Department of Transportation, and the Department of Public Works to incorporate the following:</p> <ul style="list-style-type: none"> <li>• <b>Bike Access Improvements:</b> Construct a Class II bike lane on the opposite side of Seely Avenue (southbound direction). Coordination with the City would be needed to implement this non-frontage bicycle network improvement.</li> <li>• <b>Pedestrian Network Improvements:</b> Construct a new crosswalk on Seely Avenue and Americans with Disabilities Act (ADA) compliant curb ramps (off-site pedestrian improvements). The project shall provide a trail connection between Building B and the townhomes. Clear pedestrian paths between the trail connections and the proposed on-site public park shall be provided.</li> <li>• <b>Car Sharing Program:</b> Provide either subsidies or promotions for a car sharing program (e.g., Zipcar, Car2Go, GetAround, etc.) for residents of the apartments upon request. Dedicated car share vehicle parking would also be provided at a preferential on-site location within each apartment building. All residents of the</li> </ul>	<p>transportation alternatives.</p> <p>Provide a program that targets individual attitudes and behaviors or apartment residents towards travel and provides information and tools for residents to analyze and alter their travel behavior.</p> <p>Provide On-Site TDM Administration and Services.</p>		Enforcement or the Director's designee.		



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<p>apartments (both market rate and affordable apartments) with a valid driver's license would be eligible to participate in the car sharing program.</p> <ul style="list-style-type: none"> <li>• <b>Traffic Calming Measures:</b> The Project would construct new bicycle facilities on both sides of Seely Avenue. As a result of these improvements, the existing travel lane widths along Seely Avenue would be narrowed. Narrowing travel lane widths results in reduced vehicle speeds. Providing traffic calming and safety measures such as narrowing travel lane widths and adding signalized pedestrian crossings creates a safer environment and promotes walking and biking as alternatives to driving.</li> <li>• <b>Unbundled Parking:</b> Provide 100 percent unbundled parking for the designated apartment spaces. Unbundled parking is separating the cost of parking from residential leases and allowing tenants to choose whether to lease a parking space. With this approach those tenants without a vehicle would not be required to pay for parking that they do not want or need.</li> <li>• <b>Voluntary Travel Behavior Change Program:</b> Provide a program that targets individual attitudes and behaviors of apartment residents</li> </ul>					

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<p>towards travel and provides information and tools for residents to analyze and alter their travel behavior. Voluntary Travel Behavior Change programs include mass communication campaigns and travel feedback programs, such as travel diaries or feedback on calories burned from alternative modes of travel. This strategy encourages the use of shared ride modes, transit, walking, and biking, thereby reducing drive-alone vehicle trips and VMT. All residents/households would be provided with the information/tools necessary to fully participate in the Voluntary Travel Behavior Change program.</p> <ul style="list-style-type: none"> <li>• <b>On-Site Transportation Demand Management (TDM) Administration and Services:</b> Designate a transportation coordinator who focuses on transportation issues and is responsible for implementing the TDM measures. The transportation coordinator would be a point of contact for residents should TDM-related questions arise and would be responsible for ensuring that residents are aware of all the transportation options available to them. The transportation coordinator would provide the following services and functions</li> </ul>					

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<ul style="list-style-type: none"> <li>○ Provide new tenants with information brochures at the time of move-in. The welcome brochures should include information about public transit services, transit passes, bicycle maps, and other rideshare/carpool options.</li> <li>○ Assist with carpool matching. The transportation coordinator should help match residents interested in carpooling.</li> <li>○ Be knowledgeable enough to answer residents' TDM program related questions.</li> <li>● <b>Information Board/Online Kiosk:</b> Provide an online kiosk with information regarding non-auto transportation alternatives. The online kiosk shall update key transportation information included in the welcome brochures. Transportation news and commuter alerts should be posted online. The website shall be operational as soon as the new buildings are ready for leasing.</li> <li>● <b>Traffic Calming Measures:</b> The project applicant shall be required to implement additional traffic calming measures following occupancy of the project if City staff determines that the increase in traffic volume could create safety-related issues</li> </ul>					

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along the northern segment of Seely Avenue near the residential neighborhoods north of the project site. If issues are identified following occupancy of the project, City staff will require a focused traffic operations study of Seely Avenue to determine the appropriate traffic calming measures that should be implemented by the project. Additional traffic calming measures could include (but are not limited to) roadway striping, curb markings, enhanced crosswalks, signage, bulb-outs, chicanes, chokers, medians, and road bumps. Should the project ultimately be required to implement traffic calming measures, the cost of such improvements shall not exceed \$450,000.					
<b>MM TR-1.2:</b> Prior to the issuance of any building or occupancy permits for the apartment complex, the project applicant shall provide a draft Transportation Demand Management (TDM) plan prior to issuance of Planning Permit for review and approval. Prior to clearance for building occupancy, a final TDM Plan shall be submitted to the City for approval. After the project is constructed and occupied, the project applicant shall identify a transportation coordinator. The transportation coordinator would be responsible for implementing the ongoing TDM program. The TDM Plan would need to be re-evaluated annually for the life of the project. It is recommended that	Retain TDM coordinator and monitor.	Prior to issuance of any building or occupancy permits; during Operation.	Director of Planning, Building and Code Enforcement or the Director’s designee.	Review and approve TDM plan and monitoring reports.	Prior to issuance of any building or occupancy permits; During Operation.

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the designated transportation coordinator consult with City staff to ensure the monitoring and reporting meets the City’s expectations. The TDM Coordinator shall be responsible for submitting the monitoring reports to the Director of Department of Public Works or Director’s designee and Director of City Planning, Building and Code Enforcement Department or the Director’s designee for the life of the project.					

Source: City of San José. June 2024. Seely Avenue Mixed-Use Project EIR.