

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING THE SOUTH FOURTH STREET PROJECT ENVIRONMENTAL IMPACT REPORT AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES, AND ALTERNATIVES, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING A 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 and circulated an Environmental Impact Report for the Downtown Strategy 2040 (“Downtown Strategy 2040 EIR”) to update and replace the Downtown Strategy 2000 Environmental Impact Report and analyze the environmental impacts of increased downtown development capacity under the Downtown Strategy Plan 2040 and Envision San José 2040 General Plan; and

**WHEREAS**, on December 18, 2018, in connection with the adoption of the Downtown Strategy 2040 Plan (Planning File No. PP15-102), the City Council certified the Downtown Strategy 2040 EIR and adopted a mitigation monitoring and reporting program pursuant to CEQA; and

**WHEREAS**, the proposed project on the west side of South 4th Street, approximately 170 feet south of East San Salvador Street, involves a Site Development Permit (File Nos. H17-004 and ER20-262) for the demolition of the existing buildings and hardscape and the construction of a 25-story residential building with 210 dwelling units and rooftop amenities on an approximately 0.52-acre site (the “Project”); and

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

**WHEREAS**, the Final SEIR concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce some but not all of those significant impacts to a less-than-significant level; and

**WHEREAS**, on February 14, 2024, the Planning Commission of the City of San José reviewed the FSEIR prepared for the Project, and recommended to the City Council that it find the environmental clearance for the 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 incorporated herein as if set forth in the body of this Resolution; and
2. The City Council finds and certifies the FSEIR has been prepared and completed in compliance with CEQA; and

3. The City Council was presented with, and has independently reviewed and analyzed, the FSEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the FSEIR and the Project, prior to acting upon or approving the Project, and has found that the FSEIR represents the independent judgment of the City as lead agency for the Project, and designated the 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 record of proceedings on which the decision of the City is based; and
4. The City Council recognizes that the FSEIR contains additions, clarifications, modifications, and other information in response to comments on the Draft SEIR or obtained after the Draft SEIR was issued and circulated for public review and hereby finds such changes and additional information would not result in: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft SEIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project, or (iii) any feasible alternative considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project; and
5. The City Council finds and determines that recirculation of this FSEIR 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, as identified in the FSEIR, with the understanding that all the information in this Resolution is intended as a summary of the full administrative record supporting the FSEIR.

### **SOUTH FOURTH STREET PROJECT ENVIRONMENTAL EFFECTS FOUND NOT TO BE SIGNIFICANT**

Through project scoping and the environmental analysis contained within the FSEIR, it was determined that the Project would not result in a potential significant effect on the environment with respect to aesthetics, agricultural and forestry resources, energy, geology and soils and minerals, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, population and housing, public services, recreation, transportation, tribal cultural resources, utilities and service systems, wildfire, and growth inducing impacts. A

summary of the reasons for this determination can be found in Chapters 4.1, 4.2, 4.6, 4.7, 4.8, 4.9, 4.10, 4.12, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20 of Appendix A of the Draft SEIR and Chapters 3.4 and 4.0 of the Draft SEIR. No further findings are required for these subject areas.

## **Findings for Significant but Mitigated Impacts**

### **Air Quality**

**Impact:** **Impact AIR-1:** Construction activities associated with the proposed project would result in an infant cancer risk of 103.35 cases per one million and an annual fine particulate matter where particles have a diameter of 2.5 micrometers or less (PM<sub>2.5</sub>) of 1.12 micrograms per cubic meter air (µg/m<sup>3</sup>) which exceeds the Bay Area Air Quality Management District (BAAQMD) significance thresholds of 10 cases per one million and 0.3 µg/m<sup>3</sup>, respectively.

**Mitigation:** **MM AIR-1.1:** Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan for review and approval to the Director of Planning, Building and Code Enforcement or the Director's designee, demonstrating that the off-road equipment used for construction of the project would achieve a fleet-wide average of at least 90 percent reduction in diesel particulate matter (DPM) emissions. The plan to achieve the 90 percent reduction would include the following, or an equivalent alternative that meets the required reduction:

- All diesel-powered off-road equipment (larger than 25 horsepower) operating on-site for more than two days continuously, or 20 hours total shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 final emission standards for fine particulate matter (PM<sub>2.5</sub>) and Coarse Particulate Matter (PM<sub>10</sub>).
  - Alternatively, equipment that meet U.S. EPA emissions for Tier 3 engines and is equipped with California Air Resources Board-certified Level 3 Diesel Particulate Filters that altogether achieve a 90 percent reduction in diesel particulate matter emissions would meet this requirement.
  - Use of alternatively fueled or electric equipment.

- Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary and portable equipment, such as cranes, aerial lifts, cement and mortar mixers, concentrate/industrial saws, air compressors, and welders.

As an alternative to the measures above, the project applicant could request a plan from a qualified air quality specialist that reduces on- and near-site construction DPM emissions by 90 percent or greater. The plan shall be submitted to the City of San José Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

**Finding:** With implementation of Mitigation Measure AIR-1.1, and the Standard Permit Conditions and Conditions of Approval, the infant residential cancer risk would be reduced from 103.35 cases per one million to 3.95 cases per one million and the maximum PM<sub>2.5</sub> concentration would be reduced from 1.12 micrograms per cubic meter (µg/m<sup>3</sup>) to 0.21 µg/m<sup>3</sup> which would be below the BAAQMD significance thresholds of 10 cases per one million and PM<sub>2.5</sub> of 0.3 µg/m<sup>3</sup>, respectively. The hazard index (HI) would be reduced from 0.07 to less than 0.01. Therefore, the proposed project would result in less than significant toxic air contaminant (TAC) impacts at the locations of the identified off-site maximum exposed individuals (MEIs). **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

**Facts in Support of the Finding:** The MEI was identified at two different locations. The PM<sub>2.5</sub> concentration MEI is located on the first floor of the single-family residence south of the site while the cancer risk MEI is located on the second floor of the multi-family apartment building south of the PM<sub>2.5</sub> concentration MEI. The maximum annual PM<sub>2.5</sub> concentration would be 1.12 µg/m<sup>3</sup> (without mitigation) which exceed the BAAQMD significance threshold of 0.3 µg/m<sup>3</sup>. The maximum cancer risk would be 103.35 cases per one million cases for infants (without mitigation) which would exceed the BAAQMD significance threshold of 10 cases per one million. With implementation of Mitigation Measure AIR-1.1, and the Standard Permit Conditions and Conditions of Approval dust and diesel emissions would be reduced during project construction. As a result, the infant residential cancer risk would be reduced from 103.35 cases per one million to 3.95 cases per one million and the maximum PM<sub>2.5</sub> concentration would be reduced from 1.12 µg/m<sup>3</sup> to 0.21 µg/m<sup>3</sup> which would be below the BAAQMD significance thresholds of 10 cases per one million and PM<sub>2.5</sub> of 0.3 µg/m<sup>3</sup>, respectively.

## **Biological Resources**

**Impact:** **Impact BIO-1:** Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.

**Mitigation:** **MM BIO-1.1:** Tree removal and construction shall be scheduled 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<sup>st</sup>, inclusive.

If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1<sup>st</sup> through April 30<sup>th</sup>, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1<sup>st</sup> through August 31<sup>st</sup>, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest. The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.

Prior to any tree removal, or approval of any demolition or grading permits (whichever occurs first), the applicant shall submit the ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.

**Finding:** With implementation of Mitigation Measure BIO-1.1, the project would not have a significant impact on the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment. **[Same Impact as Approved Project (Less than Significant Impact with Mitigation Incorporated)]**

**Facts in Support of the Finding:** Implementation of Mitigation Measure BIO-1.1 will ensure that if construction cannot avoid the nesting season, any nesting birds on the project site and immediately adjacent to the project site are identified, and buffer zones around the trees with nests are established to ensure that the nests are protected during construction activities.

### **Noise and Vibration**

**Impact:** **Impact NOI-2:** Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings and 0.2 inches/second (in/sec) peak particle velocity (PPV) for buildings of normal conventional construction within 50 feet and 25 feet of the project site, respectively. In addition, impact and vibratory pile driving would exceed the City's thresholds at historic buildings located within 290 and 190 feet of the pile driving activities, respectively, and at conventional buildings located within 125 and 85 feet of the pile driving activities, respectively.

**Mitigation:** **MM NOI-2.1:** Prior to the issuance of a demolition, grading, or building permit, which occurs earliest, the applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The Plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City of San José's Historic Preservation Officer, or equivalent for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earlier. Since exposure to excessive vibration levels could potentially damage historic buildings and buildings of conventional construction, the Plan shall include, but not be limited to, the following measures to ensure that the project-generated vibration levels would not exceed the General Plan thresholds of 0.08 in/sec PPV for historic buildings and 0.2 in/sec PPV for buildings of normal conventional construction:

- A description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.
- A list of all heavy construction equipment that are known to produce high vibration levels (e.g., jackhammers, hoe rams, clam shovel drop, large bulldozers, caisson drillings, loaded trucks, and vibratory roller, etc.) shall be submitted to the Director of Planning, Building

and Code Enforcement or the Director's designee for review and approval prior to issuance of demolition or grading permits. This Plan shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Demolition, earth-moving, and ground impacting operations shall be phased so that it does not occur during the same time period.

- Where possible, the use of heavy vibration-generating construction equipment shall be prohibited within 20 feet of any adjacent building.
- Document conditions at all structures located within 125 feet of construction and at historic structures located within 300 feet of construction prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically:
  - Vibration limits shall be applied to vibration-sensitive structures located within 300 feet of any high impact construction activities, such as pile driving, and 75 feet of other construction activities identified as sources of high NOI-1 vibration levels.
  - Performance of a photo survey, elevation survey, and crack monitoring survey for each structure of normal construction within 125 feet of any high impact construction activities and/or within 30 feet of other construction activities identified as sources of high vibration levels and each historic structure within 300 feet of pile driving activities and/or within 75 feet of other construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, and shall include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures.
- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack



surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.

- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.
- If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.
- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.
- Regular monitoring reports during construction shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the HPO as outlined in the monitoring schedule.

**MM NOI-2.2:** The project applicant shall prepare preconstruction documentation of the nearby historic resources as part of project start-up. Prior to issuance of a demolition, grading, or building permit, whichever occurs earliest, a qualified historic architect shall undertake an existing visual conditions study of the nearby historic resources within 290 feet of the project site. The purpose of the study would be to establish the baseline conditions of the neighboring historic buildings prior to construction, including the location and extent of any visible cracks or spalls. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including those physical characteristics of the resources that convey their historic significance. The documentation shall be reviewed and approved by the City of San José's Historic Preservation Officer, or equivalent prior to issuance of a demolition, grading, or building permit, whichever occurs earliest.

**MM NOI-2.3:** Once the baseline conditions of the neighboring historical resources within 290 feet of the project site are determined (refer to MM NOI-2.2), the project applicant shall prepare and implement a Historical

Resources Protection Plan (HRRP) that provides measures and procedures to protect nearby historic resources from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage).

If pile driving is used, a qualified geologist, or other professional with expertise in ground vibration and its effect on existing structures, shall prepare a study of the potential vibration caused by construction activities associated with the proposed project. Based on the results of the study, specifications regarding the restriction and monitoring of pile-driving shall be incorporated into the construction contract to manage the mean and methods of construction. Any initial pile driving shall be monitored and if vibrations levels exceed the threshold, modifications shall be made to reduce vibration levels below the established threshold. A copy of the study, contract specifications, and monitoring reports shall be provided to the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement.

The HRRP shall be prepared by a qualified Historic Architect and reviewed and approved by the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to Public Works clearance, including any ground-disturbing work. The project applicant shall ensure the contractor follows the HRRP while working near these historic resources. At a minimum, the plan shall include:

- Guidelines for operation of construction equipment adjacent to historical resources;
- Means and methods to reduce vibrations from excavation and construction;
- Requirements for monitoring and documenting compliance with the plan; and
- Education/training of construction workers about the significance of the historical resources around which they would be working.

**MM NOI-2.4:** The Historic Architect shall establish a “Monitoring Team” comprised of at least one qualified Historic Architect and one structural engineer for the duration of the site monitoring process. During the demolition and construction phases, the Monitoring Team shall make periodic site visits to monitor the condition of the property, including monitoring of any instruments such as crack gauges, if necessary, or

reviewing vibration monitoring required by other construction monitoring processes required under the City's permit processes. Site visit reports and documents shall be provided to the City's Historic Preservation Officer on a quarterly basis. The Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement may request any additional number of site visits at their discretion.

If, in the opinion of the Monitoring Team, substantial adverse impacts related to construction activities are found during construction, a representative of the Monitoring Team shall inform the project applicant (or the applicant's designated representative responsible for construction activities), the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the potential impacts. The project applicant shall implement the Monitoring Team's recommendations for corrective measures, including halting construction in situations where construction activities would imminently endanger historic resources. In the event of damage to a nearby historic resource during construction, the project applicant shall ensure that repair work is performed in compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and shall restore the character-defining features in a manner that does not affect the structure's historic status. The Monitoring Team shall prepare a report documenting all site visits. The reporting period shall be a minimum of once every three months. The Monitoring Team, or its representative, shall prepare a report documenting all site visits. The reporting period shall be a minimum of once every three months. The Monitoring Team or its representative, shall submit the site visit reports to the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer no later than one week after each reporting period. The Monitoring Report shall also include, but is not limited to, the following:

- Summary of the demolition and construction progress;
- Identification of substantial adverse impacts related to construction activities;
- Problems and potential impacts to the historical resources and adjacent buildings during construction activities;
- Recommendations to avoid any potential impacts;
- Actions taken by the project applicant in response to the problem;

- Progress and the level of success in meeting the applicable Secretary of the Interior's Standards for the Treatment of Historic Properties for the project as noted above for the character-defining features, and in preserving the character-defining features of nearby historic properties; and
- Inclusion of photographs to explain and illustrate progress.
- In addition, the Monitoring Team shall submit a final document associated with monitoring and repairs after completion of the construction activities to the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to the issuance of any Certificate of Occupancy (temporary or final).

**Finding:** With implementation of Mitigation Measures NOI-1.1 and NOI-2.1 to NOI-2.4, ground borne vibration impacts associated with project construction would be less than significant. **[Same as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

**Facts in Support of Finding:** The Downtown Strategy 2040 FEIR recognized that construction vibration for future projects in downtown could exceed these thresholds and included mandatory measures to be implemented by future projects to reduce vibration impacts. Per General Plan Policy EC-2.3, a continuous vibration limit of 0.08 in/sec PPV will be used to minimize the potential for cosmetic damage to sensitive historic structures and a continuous vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction.

Vibration levels during construction activities could exceed the General Plan thresholds of 0.08 in/sec PPV for historic buildings and 0.2 in/sec PPV for buildings of normal conventional construction within 50 feet and 25 feet of the project site, respectively. In addition, impact and vibratory pile driving would exceed the City's thresholds at historic buildings located within 290 and 190 feet of the pile driving activities, respectively, and at conventional buildings located within 125 and 85 feet of the pile driving activities, respectively. Because exposure to excessive vibration levels could potentially damage these buildings, Mitigation Measures NOI-1.1 and NOI-2.1 to NOI-2.4 includes measures to ensure that the project-generated vibration levels would not exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings and 0.2 in/sec

PPV for buildings of normal conventional construction. The project applicant would be required to prepare preconstruction documentation of the nearby historic resources and implement a Construction Vibration Monitoring Plan to protect nearby historic buildings and buildings of conventional construction from direct and indirect impacts from construction activities. Monitoring the historic structures would ensure that physical impacts (such as cracks or other damage to the structures) found during construction to historic structures would be repaired and restored in a manner that does not affect the structures historic status. With implementation of Mitigation Measures NOI-1.1 and NOI-2.1 to NOI-2.4, the Project would have a less than significant impact.

## **SIGNIFICANT ENVIRONMENTAL IMPACTS**

### **Noise and Vibration**

**Impact:** **Impact NOI-1:** Construction noise levels would exceed the exterior threshold of 80 equivalent continuous noise level (dBA  $L_{eq}$ ) at residential land uses to the south during demolition, grading, trenching, paving, and pile driving activities. The 90 dBA  $L_{eq}$  threshold for commercial land uses would be exceeded during pile driving activities.

**Mitigation:** **MM NOI-1.1:** Prior to issuance of a demolition, grading, or building permit whichever occurs earliest, and consistent with the Municipal Code and in accordance with the Downtown Strategy 2040 FEIR, particularly Policy EC-1.7, a qualified acoustic consultant shall prepare a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, and designation of a noise disturbance coordinator, to the Director of Planning, Building and Code Enforcement or the Director's Designee. 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 contact information for the noise disturbance coordinator shall be prominently posted on the project site. The best available noise suppression devices and techniques shall include, but is not limited to, the following:

- 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 of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

- Construct solid plywood fencing around construction sites adjacent to operational business, residences, or other noise-sensitive land uses. A temporary eight-foot noise barrier shall be constructed along the southern property line of the project site to shield adjacent residential land uses from ground-level construction equipment and activities. The noise barrier shall be solid over the face and at the base of the barrier in order to provide a five 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.
- Prohibit unnecessary idling of internal combustion engines.
- 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.
- Use ‘quiet’ models of 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.
- If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.

- Designate a “noise disturbance coordinator” to respond to any local complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., beginning work too early, bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. A telephone number for the noise disturbance coordinator shall be conspicuously posted at the construction site. The notice sent to neighbors regarding the construction schedule shall be included in the posted sign.

As a part of the noise logistic plan and project, construction activities for the proposed project shall include, but are not limited to, the following best management practices to achieve an exterior threshold of 80 dBA  $L_{eq}$  at adjacent residential land uses and 90 dBA  $L_{eq}$  at adjacent commercial land uses as feasible:

- Utilize the best available noise suppression devices and techniques during construction activities (per General Plan Policy EC-1.7).
- If impact pile driving is proposed, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile.
- If impact driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced.
- Material stockpiles, as well as maintenance/equipment staging and parking areas, shall be located as far as feasible from residential receptors.
- The project applicant shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
- In order to minimize negative effects of construction noise on the surrounding neighborhoods near the project site, the following

measures will be utilized to identify, mitigate, respond to and track any complaints that may arise pertaining to construction noise:

- Property owners and occupants located within 500 feet of construction activities shall be notified at least 14 calendar days prior to commencement of construction by posting signs around the perimeter of the project site and/or flyers mailed to nearby receptors.
- A large on-site sign near the public right-of-way containing permitted construction days/hours, complaint procedures, and phone numbers for the project's complaint manager and City Code Enforcement unit shall be posted.
- A complaint log that records received complaints and how complaints were addressed shall be maintained and submitted to the City for review upon the City's request. All complaints shall be responded to within 24 hours.
- If reliable noise complaints are received during demolition, excavation, and/or construction activities, noise levels shall be monitored at the location from which the noise complaints originated by a qualified acoustical professional. Integrated average ( $L_{eq}$ ) noise level measurements on an hourly basis should be made of activities representative of those that generated the complaint. If the measured noise levels during this test are found to exceed 80 dBA  $L_{eq}$  at residential property lines or 90 dBA  $L_{eq}$  at commercial property lines, the acoustical professional should specify additional noise attenuation measures to reduce noise the construction levels to the noise limits established by the Federal Transit Administration (FTA). These measures may include operational considerations, the use of additional ground level noise barriers or noise control blanketing of the building structure.

**Finding:** While implementation of the Mitigation Measure NOI-1.1 would lessen most construction noise impacts to adjacent sensitive receptors, some construction activities, such as pile driving, would exceed the exterior threshold of 80 dBA  $L_{eq}$  at adjacent residential land uses and the 90 dBA  $L_{eq}$  threshold for commercial land uses. The project's impact from construction generated noise would remain significant and unavoidable.  
**[New Significant Unavoidable Impact (Less Than Significant Impact)]**



**Facts in Support of the Finding:** General Plan Policy EC-1.7 requires that all construction operations within the City use best available noise suppression devices and techniques and limit construction hours near residential uses per the Municipal Code allowable hours. Additionally, the City considers significant construction noise impacts to occur if a project is located within 500 feet of residential uses or 200 feet of commercial or office uses and would involve substantial noise-generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months. The City of San José does not have noise level thresholds for construction activities; therefore, noise limits established by the Federal Transit Administration (FTA) were used to identify the potential impacts from temporary construction noise. During daytime hours, an exterior threshold of 80 dBA  $L_{eq}$  shall be applied at residential land uses and 90 dBA  $L_{eq}$  shall be applied at commercial and industrial land uses. As shown in Table 3.5-5 of the Draft SEIR, construction noise levels would exceed the exterior threshold of 80 dBA  $L_{eq}$  by one dBA  $L_{eq}$  at residential land uses to the south and the 90 dBA  $L_{eq}$  threshold for commercial land uses would be exceeded by up to 10 dBA  $L_{eq}$  during pile driving activities. Since project construction would last for a period of more than 12 months and is located within 500 feet of existing residential land uses and 200 feet of existing commercial land uses, construction of the proposed project would result in a noise impact. Per Mitigation Measure NOI-1.1, the project applicant would be required to prepare a construction noise logistics plan which will identify alternative construction methods (such as pre-drilled pile holes to reduce pile impacts) to reduce noise impacts on neighboring residents and other uses. Even with implementation of Mitigation Measure NOI-1.1, the impact would be significant and unavoidable.

## **FINDINGS CONCERNING ALTERNATIVES**

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

The alternatives analyzed in the Draft SEIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects.

The objectives for the Project are as follows:

1. Provide up to 210 housing units in the City of San José which would aid the City in addressing the current housing shortage.
2. Provide high-density housing in the downtown, that are accessible to downtown jobs, retail and entertainment and various modes of public transit, consistent with the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 Plan of locating high-density development on infill sites along transit corridors to foster transit use and the efficiency of urban services.
3. Maximize use of an infill site by providing residences in an area served by various modes of public transportation such as VTA light rail and buses and the planned BART extension to downtown; thereby creating opportunities to reduce vehicle miles travelled.
4. Create a high quality, well designed, high-density, high-rise residential development project in the downtown focus area to further the Envision San José 2040 General Plan goal of creating a central identity for San José as well as adding a sense of permanency and stature to the downtown skyline.
5. Provide bicycle parking for residents to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community.
6. Provide the required number of affordable housing units mandated by the City's Inclusionary Housing Ordinance and Ellis Act Ordinance requirements.

The following alternative was considered and rejected:

- Location Alternative

The following are evaluated as alternatives to the proposed Project:

1. No Project – No Development Alternative
2. Preservation Alternative/Reduced Development Redesign

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

- A. Description of Alternative:** The No Project – No Development Alternative would retain the existing apartment complex and single-family residence as is. The project would not be constructed, and the site's existing uses would remain.
- B. Comparison of Environmental Impacts:** Under this alternative, none of the impacts of the Project would occur. This alternative would not meet any of the project objectives except for project objective 5 since bicycle storage is provided on-site for the existing residents at the site. It is possible that in the future an alternative development proposal, such as another mixed-use building or a residential building, may be presented for the project site. Any future development proposals for the site would require review and approval by the City of San José and are likely to have similar impacts as the proposed Project in terms of construction air quality, cultural resources, biological resources, and noise and vibration.
- C. Findings:** While this alternative would have no new significant impacts because there would be no development on the site, the No Project – No Development Alternative would meet one of six project objectives. In addition, the City would lose the opportunity to redevelop an underutilized site downtown and to meet the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 by locating high density development on a downtown site.

## **2. Preservation Alternative/Reduced Development Redesign**

- A. Description of Alternative:** The Preservation Alternative/Reduced Development Redesign would reduce the height of the building from 25 stories to six stories. Under this alternative, two levels of above-grade parking are proposed. The remaining floors (floors three to six) would consist of 34 dwelling units, a reduction of 176 units when compared to the proposed project.
- B. Comparison of Environmental Impacts:** With the reduction in building height, the Project would be constructed in a shorter timeframe and pile driving would not be required. Therefore, because pile driving is the primary cause of the exceedance of the noise threshold, the project-level and cumulative-level construction noise impacts would be avoided. In regard to impacts to historic resources, the reduced height and massing would comply with more elements of the 2019 Design Guidelines and Standards. In addition, this alternative would not impact the integrity of the adjacent historic structures. Since the building would be six stories tall under this alternative, it would be consistent with Section 4.2.2 Height Transition. As shown in Figure 7.3-1, the building's setback would continue to be inconsistent with the historic context buildings (Section 4.2.4 Streetwall Continuity (d)). Nevertheless, the new construction on-site would still need to

conform to all applicable design guidelines and standards which includes Section 4.2.4 Streetwall Continuity (d) and Façade Window Placement (g) of the 2019 Design Guidelines and Standards.

All other impacts, including those for construction air quality, biological resources, and noise and vibration would remain the same and this alternative would be required to implement all mitigation measures (AIR-1.1, BIO-1.1, NOI-1.1, NOI-2.1, NOI-2.2, NOI-2.3, NOI-2.4, and C-NOI-1.1), Standard Permit Conditions, and Conditions of Approval identified for the proposed project.

- C. Findings:** The Preservation Alternative/Reduced Development Redesign would not meet project objectives 1, 2, and 4 to provide high-rise housing in the downtown or maximize the use of an infill site. As mentioned above, the proposed residential units would be reduced from 210 units to 34 units (a loss of 176 residential units). This alternative would result in a reduction in building height which would avoid the project-level and cumulative-level construction noise impacts when compared to the proposed project. In addition, the reduced height and massing under this alternative would comply more with the elements of the 2019 Design Guidelines and Standards (e.g., Section 4.2.2 Height Transition) when compared to the proposed project and impacts to the integrity of the adjacent historic structures would be avoided. All other impacts would remain the same or less than the proposed project because the alternative would still result in a ground disturbance and major construction activities would still occur.

### **Environmentally Superior Project**

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the discussion of project alternatives, the environmentally superior alternative to the project is the No Project – No Development Alternative because it would avoid all of the Project's significant environmental impacts. This project would meet none of the project objectives. CEQA Guidelines Section 15126.6(e)(2) states that "if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives." Therefore, in addition to the No Project – No Development Alternative, the Preservation Alternative/Reduced Development Redesign is the environmentally superior alternative because the significant unavoidable project-level and cumulative level construction noise impacts would be avoided and would maintain the integrity of the adjacent historic structures better than with the project.

## 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 Impact.** With respect to the foregoing findings and in recognition of those facts which are included in the administrative record, the City has determined the Project has significant unmitigated or unavoidable impacts, as set forth above, associated with project-level and cumulative-level construction noise.
- 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 the significant and adverse impacts of the Project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project.
- 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 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:
- Provide additional housing to address the City's current housing shortage.
  - Provide high-density housing in the downtown, that are accessible to downtown jobs, retail and entertainment and various modes of public transit, consistent with the strategies and goals of the Envision San José 2040 General Plan and Downtown Strategy 2040 Plan of locating high-density development on infill sites along transit corridors to foster transit use and the efficiency of urban services.

- Maximize the use of an infill site and reduce vehicle miles traveled by locating residences in an area served by various modes of public transportation, consistent with the goals of the Downtown Strategy 2040 Plan.
- Create a high quality, well designed, high-density, high-rise residential development project in the downtown focus area to further the Envision San José 2040 General Plan goal of creating a central identity for San José as well as adding a sense of permanency and stature to the downtown skyline.
- Provide bicycle parking for residents to help support the goals of the Envision San José 2040 General Plan in promoting San José as a great bicycling community.
- Provide the required number of affordable housing units mandated by the City's Inclusionary Housing Ordinance and Ellis Act Ordinance requirements.
- The Project site is located within an identified Growth Area, as specified in the Envision San José 2040 General Plan (Major Strategy #3 Focused Growth). The Project would intensify an underutilized downtown site with a residential development located in proximity to a variety of services, employment centers, educational institutes, and transit, including a planned Bay Area Rapid Transit (BART) station. Planning such sites for higher density residential development enables the City to provide economic and residential benefits consistent with the community objectives of the Envision San José 2040 General Plan.
- Support the continued growth of the downtown as a vibrant urban center for living by adding up to 210 residential units. The Project's location in the downtown core will allow residents the opportunity to take advantage of a wide variety of commute options including walking, bicycling, bus and light rail. Focusing residential growth within the downtown will support the Envision San José 2040 General Plan's economic, fiscal, environmental, and urban design/placemaking goals (Major Strategy #9 Destination Downtown and #11 Design for a Healthful Community).
- Increase residential growth in an identified Growth Area to maximize use of existing transit infrastructure, provide for more efficient delivery of City services, and foster the development of a more vibrant, walkable urban core consistent with General Plan Land Use Goals LU-1.2, LU-2, LU-3.1, and LU-10.4.

The City Council has weighed each of the above benefits of the Project against its unavoidable environmental risks and adverse environmental effects identified in the FSEIR, 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.

### **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 California Public Resources Code Section 21081.6 and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation for responsibility for mitigation implementation and the agency responsible for the monitoring action.

### **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 Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, 3rd Floor Tower, San José, CA 95113.

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

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**South Fourth Street Project**  
**File No. H17-004**  
**April 2023**

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# PREFACE

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

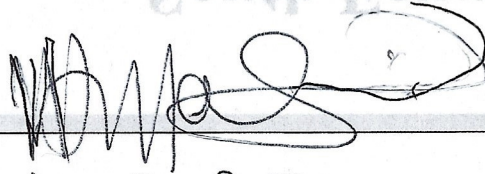
The Supplemental Environmental Impact Report (SEIR) prepared for the South Fourth Street project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP addresses those measures in terms of how and when they will be implemented.

Upon implementation, the mitigation measures enumerated in this document would reduce the level of impact of potential environmental effects of the proposed action. In all cases, but one (cumulative construction noise impacts), these mitigation measures would reduce the impact of any effects determined to be significant prior to mitigation to less than significant levels.

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

I, Nelly Amas, the applicant, on the behalf of 439 S. 4th St. LLC, hereby agree to implement the mitigation measures described below which have been developed in conjunction with the preparation of an SEIR 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

May 2nd 2023



*Planning, Building and Code Enforcement*

CHRISTOPHER BURTON, DIRECTOR

**South Fourth Street Project  
File No. H17-004**

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<b>AIR QUALITY</b>					
<b>Impact AIR-1:</b> Construction activities associated with the proposed project would result in an infant cancer risk of 103.35 cases per one million and an annual fine particulate matter where particles have a diameter of 2.5 micrometers or less (PM <sub>2.5</sub> ) of 1.12 micrograms per cubic meter air (µg/m <sup>3</sup> ) which exceeds the BAAQMD significance thresholds of 10 cases per one million and 0.3 µg/m <sup>3</sup> , respectively.					
<p><b>MM AIR-1.1:</b> Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan for review and approval to the Director of Planning, Building and Code Enforcement or the Director's designee, demonstrating that the off-road equipment used for construction of the project would achieve a fleet-wide average of at least 90 percent reduction in diesel particulate matter (DPM) emissions. The plan to achieve the 90 percent reduction would include the following, or an equivalent alternative that meets the required reduction:</p> <ul style="list-style-type: none"> <li>All diesel-powered off-road equipment (larger than 25 horsepower) operating on-site for more than two days continuously or 20 hours total shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 final emission standards for fine particulate matter (PM<sub>2.5</sub>) and Coarse Particulate Matter (PM<sub>10</sub>).</li> </ul>	Submit a construction operation plan verifying that the equipment included in the plan meets the standards defined in MM AIR-1.1. Alternatively, the project applicant may request a plan that reduces on- and near-site construction DPM emissions by 90 percent or greater from a qualified air quality specialist.	Prior to issuance of any demolition, grading, or building permits (whichever occurs earliest).	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve construction operations plan and letter for compliance with standards defined in MM AIR-1.1.	Prior to issuance of any demolition, grading, or building permits (whichever occurs earliest).



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<ul style="list-style-type: none"> <li>○ Alternatively, equipment that meet U.S. EPA emissions for Tier 3 engines and is equipped with California Air Resources Board-certified Level 3 Diesel Particulate Filters that altogether achieve a 90 percent reduction in diesel particulate matter emissions would meet this requirement.</li> <li>○ Use of alternatively fueled or electric equipment.</li> <li>● Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary and portable equipment, such as cranes, aerial lifts, cement and mortar mixers, concentrate/industrial saws, air compressors, and welders.</li> </ul> <p>As an alternative to the measures above, the project applicant could request a plan from a qualified air quality specialist that reduces on- and near-site construction DPM emissions by 90 percent or greater. The plan shall be submitted to the City of San José Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to the issuance of any demolition, grading, or building</p>					



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permits (whichever occurs earliest).					
BIOLOGICAL RESOURCES					
<b>Impact BIO-1:</b> Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.					
<p><b>MM BIO-1.1:</b> Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1<sup>st</sup> through August 31<sup>st</sup>, inclusive.</p> <p>If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1<sup>st</sup> through April 30<sup>th</sup>, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1<sup>st</sup> through August 31<sup>st</sup>, inclusive), unless a shorter pre-construction survey is</p>	<p>Avoid construction activities during nesting seasons. If construction activities cannot be scheduled outside of nesting season, conduct a pre-construction nesting bird survey by a qualified ornithologist in compliance with the survey timing defined in MM BIO-1.1, designate a construction-free buffer zone around any discovered nest. Qualified ornithologist shall submit a report indicating the results of the</p>	<p>Prior to any tree removal, or approval of any demolition or grading permits (whichever occurs first).</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee.</p>	<p>Confirm that demolition and construction activities are scheduled outside of the nesting season, or review report indicating the results of the survey and any designated buffer zones.</p>	<p>Prior to any tree removal, or approval of any demolition or grading permits (whichever occurs first).</p>



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<p>determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the qualified ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest. The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.</p> <p>Prior to any tree removal, or approval of any demolition or grading permits (whichever occurs first), the applicant shall submit the ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.</p>	survey and any designated buffer zones.				





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<b>NOISE AND VIBRATION</b>					
<b>Impact NOI-1:</b> Construction noise levels would exceed the exterior threshold of 80 dBA $L_{eq}$ at residential land uses to the south during demolition, grading, trenching, paving, and pile driving activities. The 90 dBA $L_{eq}$ threshold for commercial land uses would be exceeded during pile driving activities.					
<b>MM NOI-1.1:</b> Prior to the issuance of a demolition, grading, or building permit whichever occurs earliest, and consistent with the Municipal Code and in accordance with the Downtown Strategy 2040 FEIR, particularly Policy EC-1.7, a qualified acoustic consultant shall prepare a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, and designation of a noise disturbance coordinator, to the Director of Planning, Building and Code Enforcement or the Director's Designee. 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 contact information for the noise disturbance coordinator shall be prominently posted on the project site. The best available noise suppression devices and techniques shall include, but is not limited to, the following:	Qualified acoustic consultant 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.	Prior to the issuance of a demolition, grading, or building permit whichever occurs earliest.	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the noise logistics plan.	Prior to the issuance of a demolition, grading, or building permit whichever occurs earliest.



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<ul style="list-style-type: none"> <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). 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 Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.</li> <li>Construct solid plywood fencing around construction sites adjacent to operational business, residences, or other noise-sensitive land uses. A temporary eight-foot noise barrier shall be constructed along the southern property line of the project site to shield adjacent residential land uses from ground-level construction equipment and activities. The noise barrier shall be solid over the face and at the base of the barrier in order to provide a five dBA noise reduction.</li> </ul>					





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<ul style="list-style-type: none"> <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>Prohibit unnecessary idling of internal combustion engines.</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> <li>Use 'quiet' models of 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 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.</li> <li>If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a</li> </ul>					



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<p>temporary noise control blanket barrier along surrounding building facades that face the construction sites.</p> <ul style="list-style-type: none"> <li>Designate a “noise disturbance coordinator” to respond to any local complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., beginning work too early, bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. A telephone number for the noise disturbance coordinator shall be conspicuously posted at the construction site. The notice sent to neighbors regarding the construction schedule shall be included in the posted sign.</li> </ul> <p>As a part of the noise logistic plan and project, construction activities for the proposed project shall include, but are not limited to, the following best management practices to achieve an exterior threshold of 80 dBA <math>L_{eq}</math> at adjacent residential land uses and 90 dBA <math>L_{eq}</math> at adjacent commercial land uses as feasible:</p>					



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<ul style="list-style-type: none"> <li>Utilize the best available noise suppression devices and techniques during construction activities (per General Plan Policy EC-1.7).</li> <li>If impact pile driving is proposed, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile.</li> <li>If impact driving is proposed, multiple-pile drivers shall be considered to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced.</li> <li>Material stockpiles, as well as maintenance/equipment staging and parking areas, shall be located as far as feasible from residential receptors.</li> <li>The project applicant shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent</li> </ul>					



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<p>residential land uses so that construction activities can be scheduled to minimize noise disturbance.</p> <ul style="list-style-type: none"> <li>In order to minimize negative effects of construction noise on the surrounding neighborhoods near the project site, the following measures will be utilized to identify, mitigate, respond to and track any complaints that may arise pertaining to construction noise: <ul style="list-style-type: none"> <li>Property owners and occupants located within 500 feet of construction activities shall be notified at least 14 calendar days prior to commencement of construction by posting signs around the perimeter of the project site and/or flyers mailed to nearby receptors.</li> <li>A large on-site sign near the public right-of-way containing permitted construction days/hours, complaint procedures, and phone numbers for the project's complaint manager and City Code Enforcement unit shall be posted.</li> <li>A complaint log that records received complaints and how complaints were addressed shall be maintained and</li> </ul> </li> </ul>					



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<p>submitted to the City for review upon the City's request. All complaints shall be responded to within 24 hours.</p> <ul style="list-style-type: none"> <li>○ If reliable noise complaints are received during demolition, excavation, and/or construction activities, noise levels shall be monitored at the location from which the noise complaints originated by a qualified acoustical professional. Integrated average (<math>L_{eq}</math>) noise level measurements on an hourly basis should be made of activities representative of those that generated the complaint. If the measured noise levels during this test are found to exceed 80 dBA <math>L_{eq}</math> at residential property lines or 90 dBA <math>L_{eq}</math> at commercial property lines, the acoustical professional should specify additional noise attenuation measures to reduce noise the construction levels to the noise limits established by the Federal Transit Administration (FTA). These measures may include operational considerations, the use of additional</li> </ul>					



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ground level noise barriers or noise control blanketing of the building structure.					
<b>Impact NOI-2:</b> Construction vibration levels would exceed the City thresholds defined in General Plan Policy EC-2.3 of 0.08 in/sec PPV for historic buildings and 0.2 in/sec PPV for buildings of normal conventional construction within 50 feet and 25 feet of the project site, respectively. In addition, impact and vibratory pile driving would exceed the City's thresholds at historic buildings located within 290 and 190 feet of the pile driving activities, respectively, and at conventional buildings located within 125 and 85 feet of the pile driving activities, respectively.					
<b>MM NOI-2.1:</b> Prior to the issuance of a demolition, grading, or building permit, which occurs earliest, the applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The Plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City of San José's Historic Preservation Officer, or equivalent for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earlier. Since exposure to excessive vibration levels could potentially damage historic buildings and buildings of conventional construction, the Plan shall	Submit and implement a Plan to document conditions prior to, during, and after vibration generating construction activities.  All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods.	Prior to issuance of any demolition, grading, or building permits, whichever occurs earliest.	Director of Planning, Building and Code Enforcement or Director's designee and the City's Historic Preservation Officer.	Review and approval of the Plan and post-vibration-generating construction activity survey.	Prior to issuance of any demolition, grading, or building permits, whichever occurs earliest.



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<p>include, but not be limited to, the following measures to ensure that the project-generated vibration levels would not exceed the General Plan thresholds of 0.08 in/sec PPV for historic buildings and 0.2 in/sec PPV for buildings of normal conventional construction:</p> <ul style="list-style-type: none"> <li>• A description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.</li> <li>• A list of all heavy construction equipment that are known to produce high vibration levels (e.g., jackhammers, hoe rams, clam shovel drop, large bulldozers, caisson drillings, loaded trucks, and vibratory roller, etc.) shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to issuance of demolition or grading permits. This Plan shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Demolition, earth-moving, and ground</li> </ul>					



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<p>impacting operations shall be phased so that it does not occur during the same time period.</p> <ul style="list-style-type: none"> <li>Where possible, the use of heavy vibration-generating construction equipment shall be prohibited within 20 feet of any adjacent building.</li> <li>Document conditions at all structures located within 125 feet of construction and at historic structures located within 300 feet of construction prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically: <ul style="list-style-type: none"> <li>Vibration limits shall be applied to vibration-sensitive structures located within 300 feet of any high impact construction activities, such as pile driving, and 75 feet of other construction activities identified as sources of high vibration levels.</li> <li>Performance of a photo survey, elevation survey, and crack monitoring survey for each structure of normal construction</li> </ul> </li> </ul>					





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<p>within 125 feet of any high impact construction activities and/or within 30 feet of other construction activities identified as sources of high vibration levels and each historic structure within 300 feet of pile driving activities and/or within 75 feet of other construction activities. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion, and shall include internal and external crack monitoring in structures, settlement, and distress, and shall document the condition of foundations, walls and other structural elements in the interior and exterior of said structures.</p> <ul style="list-style-type: none"> <li>Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions.</li> </ul>					



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<p>Construction contingencies shall be identified for when vibration levels approached the limits.</p> <ul style="list-style-type: none"> <li>At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.</li> <li>If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.</li> <li>Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.</li> <li>Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.</li> <li>Regular monitoring reports during construction shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the HPO as outlined in the monitoring schedule.</li> </ul>					



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<p><b>MM NOI-2.2:</b> The project applicant shall prepare preconstruction documentation of the nearby historic resources as part of project start-up. Prior to issuance of a demolition, grading, or building permit, whichever occurs earliest, a qualified historic architect shall undertake an existing visual conditions study of the nearby historic resources within 290 feet of the project site. The purpose of the study would be to establish the baseline conditions of the neighboring historic buildings prior to construction, including the location and extent of any visible cracks or spalls. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including those physical characteristics of the resources that convey their historic significance. The documentation shall be reviewed and approved by the City of San José's Historic Preservation Officer, or equivalent prior to issuance of a demolition, grading, or building permit, whichever occurs earliest.</p>	<p>Prepare preconstruction documentation of the nearby historic resources as part of project start-up. A qualified historic architect shall undertake an existing visual conditions study of the nearby historic resources within 290 feet of the project site as described in MM NOI-2.2.</p>	<p>Prior to issuance of a demolition, grading, or building permit, whichever occurs earliest.</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee and the City's Historic Preservation Officer.</p>	<p>Review and approval of documentation.</p>	<p>Prior to issuance of a demolition, grading, or building permit, whichever occurs earliest.</p>
<p><b>MM NOI-2.3:</b> Once the baseline conditions of the neighboring historical resources within 290 feet of the project site are determined (refer to MM NOI-2.2), the project applicant shall prepare and implement a Historical Resources Protection Plan (HRRP) that</p>	<p>Prepare and implement a HRRP once the baseline conditions of the neighboring historical resources within 290 feet of</p>	<p>During construction activities including pile driving.</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee.</p>	<p>Review and approve HRRP.  Review of study, contract</p>	<p>Prior to issuance of a demolition, grading, or building permit,</p>



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<p>provides measures and procedures to protect nearby historic resources from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage).</p> <p>If pile driving is used, a qualified geologist, or other professional with expertise in ground vibration and its effect on existing structures, shall prepare a study of the potential vibration caused by construction activities associated with the proposed project. Based on the results of the study, specifications regarding the restriction and monitoring of pile-driving shall be incorporated into the construction contract to manage the mean and methods of construction. Any initial pile driving shall be monitored and if vibrations levels exceed the threshold, modifications shall be made to reduce vibration levels below the established threshold. A copy of the study, contract specifications, and monitoring reports shall be provided to the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement.</p>	<p>the project site are determined (refer to MM NOI-2.2).</p> <p>Qualified geologist shall prepare a study of the potential vibration caused by construction activities associated with the proposed project if pile driving is used.</p>		<p>and the City's Historic Preservation Officer.</p>	<p>specifications, and monitoring reports if pile driving is proposed.</p>	<p>whichever occurs earliest.</p>



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<p>The HRRP shall be prepared by a qualified Historic Architect and reviewed and approved by the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to Public Works clearance, including any ground-disturbing work. The project applicant shall ensure the contractor follows the HRRP while working near these historic resources. At a minimum, the plan shall include:</p> <ul style="list-style-type: none"> <li>• Guidelines for operation of construction equipment adjacent to historical resources;</li> <li>• Means and methods to reduce vibrations from excavation and construction;</li> <li>• Requirements for monitoring and documenting compliance with the plan; and</li> <li>• Education/training of construction workers about the significance of the historical resources around which they would be working.</li> </ul> <p><b>MM NOI-2.4:</b> The Historic Architect shall establish a “Monitoring Team” comprised of at least one qualified Historic Architect and one structural engineer for the duration of the site monitoring process. During the demolition and construction phases, the Monitoring Team shall make periodic site visits to monitor the</p>	<p>Historic Architect shall establish a “Monitoring Team” comprised of at least one qualified Historic Architect and one structural engineer.</p>	<p>During the duration of the site monitoring process.</p>	<p>Director of Planning, Building and Code Enforcement or the Director’s designee and the City of San</p>	<p>Review of site visit reports and documents.</p>	<p>Prior to issuance of a demolition, grading, or building permit,</p>



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<p>condition of the property, including monitoring of any instruments such as crack gauges, if necessary, or reviewing vibration monitoring required by other construction monitoring processes required under the City's permit processes. Site visit reports and documents shall be provided to the City's Historic Preservation Officer on a quarterly basis. The Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement may request any additional number of site visits at their discretion.</p> <p>If, in the opinion of the Monitoring Team, substantial adverse impacts related to construction activities are found during construction, a representative of the Monitoring Team shall inform the project applicant (or the applicant's designated representative responsible for construction activities), the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the potential impacts. The project applicant shall implement the Monitoring Team's recommendations for corrective measures, including halting construction in situations</p>	<p>Monitoring team shall make periodic site visits to monitor the condition of the property.</p> <p>Implement recommendations for corrective measures from the Monitoring Team if substantial impacts are found. A report documenting all site visits shall be prepared by the Monitoring Team or its representative in the event substantial adverse impacts related to construction activities are identified during construction.</p>	<p>During demolition and construction phases.</p> <p>Reporting period shall occur once every three months and submit site visit reports no later than one week after each reporting period.</p>	<p>José's Historic Preservation Officer.</p>		<p>whichever occurs earliest; quarterly monitoring.</p>



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<p>where construction activities would imminently endanger historic resources. In the event of damage to a nearby historic resource during construction, the project applicant shall ensure that repair work is performed in compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and shall restore the character-defining features in a manner that does not affect the structure's historic status. The Monitoring Team shall prepare a report documenting all site visits. The reporting period shall be a minimum of once every three months. The Monitoring Team, or its representative, shall prepare a report documenting all site visits. The reporting period shall be a minimum of once every three months. The Monitoring Team or its representative, shall submit the site visit reports to the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer no later than one week after each reporting period. The Monitoring Report shall also include, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Summary of the demolition and construction progress;</li> <li>• Identification of substantial adverse impacts related to construction activities;</li> </ul>					



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<ul style="list-style-type: none"> <li>Problems and potential impacts to the historical resources and adjacent buildings during construction activities;</li> <li>Recommendations to avoid any potential impacts;</li> <li>Actions taken by the project applicant in response to the problem;</li> <li>Progress and the level of success in meeting the applicable Secretary of the Interior's Standards for the Treatment of Historic Properties for the project as noted above for the character-defining features, and in preserving the character-defining features of nearby historic properties; and</li> <li>Inclusion of photographs to explain and illustrate progress.</li> <li>In addition, the Monitoring Team shall submit a final document associated with monitoring and repairs after completion of the construction activities to the Director of Planning, Building and Code Enforcement or the Director's designee and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to the issuance of any Certificate of Occupancy (temporary or final).</li> </ul>					





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<b>Impact C-NOI-1:</b> The proposed project, by itself, would contribute to the overall cumulative construction noise impact from development within the vicinity of the project site.					
<b>MM C-NOI-1.1:</b> As part of the construction noise logistics plan (refer to Mitigation Measure NOI-1.1), the project applicant shall eliminate pile driving and limit the number of drilling days.	Same as MM NOI-1.1.				

**Source:** City of San José. Supplemental Environmental Impact Report. South Fourth Street Project. April 2023.